



**RESOLUTION OF THE GOVERNING BODY  
OF THE  
THREE AFFILIATED TRIBES  
OF THE  
FORT BERTHOLD INDIAN RESERVATION**

*A resolution entitled "Resolution of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation Establishing and/or Amending the Three Affiliated Tribes of the Fort Berthold Reservation Arbitration Ordinance, Tribal Election Ordinance and TAT Code of Laws Chapter 21, Section 7(e)- Usury pursuant to the Policy and Procedures for Enacting Tribal Code - Tribal Resolution 08-56-MP – April 3, 2008"*

**WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

**WHEREAS,** The Constitution of the Three Affiliated Tribes of the Fort Berthold Reservation (the "Tribe") generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of, and in the interest of, the welfare and benefit of the Tribes and of the enrolled members thereof; and

**WHEREAS,** Article VI, Section 3 of the Constitution of the Tribe specifically grants to the Tribal Business Council all necessary sovereign authority for the purpose of exercising the jurisdiction granted by the people of the Three Affiliated Tribes in Article 1 of the Constitution; and

**WHEREAS,** The Tribal Business Council has provided due notice of its intent to amend or enact the following provisions to the Tribal Code of Laws:

1. Tribal Election Code,
2. Tribal Arbitration Ordinance,
3. Chapter 21, Section 7(e) - Usury Provision

**WHEREAS,** Pursuant to Tribal Policy and Procedures for Enacting Tribal Code (Resolution 08-56-MP – April 3, 2008), the Tribal Business Council has met all requirements to enacting such code provisions and/or amendments including two formal reads before the Tribal Business Council and a thirty (30) day public comment period that expired as of June 25, 2010; and

**WHEREAS,** Pursuant to the Tribal Policy, and receiving no comments on the proposed code and/or amendments, the Tribal Business Council is authorized to enact such laws effective immediately.

## **ARBITRATION ORDINANCE**

### **Section 1. Short Title and Purpose**

- (a) Short title. This Ordinance shall be entitled “The Three Affiliated Tribes Arbitration Ordinance of 2010.”
- (b) Purpose. It is the purpose of this Ordinance to authorize the arbitration of disputes in contractual agreements and to provide for the enforcement of agreements to arbitrate, and the enforcement of resulting arbitration awards, by the dispute resolution body of the Three Affiliated Tribes (the “Tribe”), whether a tribal court, the Three Affiliated Tribes Tribal Council, or other body or forum (“Tribal Court”).

### **Section 2. Scope of Ordinance and Repeal of Inconsistent Provisions**

- (a) Scope. This Ordinance applies initially only to the loan made by to the Tribe by the Shakopee Mdewakanton Sioux Community in the amount of \$30,000,000 pursuant to the Loan Agreement dated January 29, 2010, and thereafter only to such other written contracts or other instruments, or any agreement in any contract or instrument, validly entered into by the Tribe, or by any authorized subdivision, instrumentality, component, or agency of the Tribe, or by any other person in a transaction that is subject to the jurisdiction of the Tribe, in which (1) the parties thereto agree to settle by arbitration any controversy arising out of such contract or instrument, and (2) the Tribal Council designates, by resolution validly approved, that this Ordinance shall apply.
- (b) Inconsistent provisions. Any prior legislation or other laws of the Tribe (“tribal laws”) that are inconsistent with the purpose and procedures established by this Ordinance are hereby repealed to the extent of any such inconsistency. Any prior tribal laws whose principal purpose was to authorize the arbitration of disputes in contractual arrangements or to provide for the enforcement of agreements to arbitrate, are hereby repealed.
- (c) This Ordinance may be amended at any time in accordance with the law of the Tribe; provided, however, that no such amendment shall be applicable to any contract or other instrument within the scope of Section 2(a) hereof, and this Ordinance shall apply in its un-amended form to such contract or other instrument, until the same terminates in accordance with its terms.

### **Section 3. Enforceability of Agreements to Arbitrate**

Any agreement by the Tribe or by any authorized subdivision, instrumentality, component, or agency of the Tribe, validly entered into pursuant to all applicable law and in accordance with Section 2(a) here (an “Authorized Agreement”), shall be valid and enforceable.

### **Section 4. Law to be Applied**

- (a) In any Authorized Agreement, the parties may agree upon the jurisdiction whose substantive law shall govern the interpretation and enforcement of the contract, instrument or controversy. Such choice of law shall be valid and enforceable, and not subject to revocation by one party without the consent of the other party or parties thereto.

- (b) In any proceeding in the Tribal Court relating to a contract or other instrument within the scope of Section 2(a) hereof, whenever the contract or other instrument in which an Authorized Agreement appears sets forth a choice of law provision, the Tribal Court shall apply the procedural rules of the Tribal Court and the substantive law of the jurisdiction selected in such choice-of-law provision; *provided* that no procedural rule of the Tribal Court shall bar, unreasonably delay or impair any action, proceeding or remedy where such action, proceeding or remedy would not be barred, unreasonably delayed or impaired by the procedural rules of the courts of the jurisdiction whose substantive law applies.
- (c) In any proceeding in the Tribal Court relating to a contract or other instrument within the scope of Section 2(a) hereof, whenever the contract or other instrument does not set forth a choice of law provision, the Tribal Court shall apply the substantive law of the Tribe, including any applicable choice-of-law principles.

### **Section 5. Stay of Proceedings in Tribal Court and Order to Proceed with Arbitration**

- (a) If any action for legal or equitable relief or other proceeding is brought in the Tribal Court by any party to any contract or instrument within the scope of Section 2(a) hereof, the Tribal Court shall not review the merits of the underlying action or proceeding, but shall stay the Tribal Court action or proceeding until an arbitration has been had in compliance with the agreement.
- (b) A party to any contract or other instrument within the scope of Section 2(a) hereof claiming the neglect or refusal of another party thereto to proceed with an arbitration thereunder, may make application to the Tribal Court for an order directing the parties to proceed with arbitration in compliance with their Authorized Agreement. In such event, the Tribal Court shall order the parties to arbitration in accordance with the provisions of the Authorized Agreement and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrator(s).

### **Section 6. Advice of the Court on Tribal, State or Federal Law**

At any time during an arbitration authorized hereunder, upon request of all the parties to the arbitration, the arbitrator(s) may make application to the Tribal Court for advice on any question of Tribal law arising in the course of the arbitration so long as such parties agree in writing that the advice of the Tribal Court shall be final as to the question presented and that it shall bind the arbitrator(s) in rendering any award. The arbitrator(s) may make application to any state or federal court of competent jurisdiction for advice on any question of state or federal law arising in the course of the arbitration so long as such parties agree in writing that the advice of such state or federal court shall be final as to the question presented and that it shall bind the arbitrator(s) in rendering any award.

### **Section 7. Notice to the Parties**

An arbitration award shall be in writing and signed by the arbitrator(s). The arbitrator(s) shall provide written notice of the award to each party as required by applicable law or rule or, if not otherwise so specified, by certified or registered mail, return receipt requested.

**Section 8. Application for Order Confirming Award; Record to be Filed with Clerk of Court; Effect and Enforcement of Judgment**

- (a) At any time within one year after an arbitration award has been rendered in accordance with this Ordinance and the parties to the award are notified, any party to the arbitration may make application to the Tribal Court for an order confirming the award.
- (b) Any party applying to the Tribal Court for an order confirming an arbitration award shall, at the time the award is filed with the clerk of the Tribal Court for entry of judgment thereon, file true and correct copies of the following papers with the clerk: (1) the agreement to arbitrate; (2) the Tribal Council resolution approving application of this Ordinance; (3) written identification of the arbitrator(s) and any material documenting the selection or appointment of the arbitrator(s); (4) any written agreement requiring the reference of any question as provided in Section 6 hereof; (5) each written extension of the time, if any, within which to make the award; (6) the award; and (7) evidence that all parties to the arbitration have received notice of the filing or the intent to file an application to the Tribal Court for confirmation of the arbitration award.
- (c) An arbitration award shall not be subject to review or modification by the Tribal Court, but shall be confirmed strictly as provided by the arbitrator; *provided* that the Tribal Court may nevertheless decline to enforce any arbitration award if it finds that any of the following occurred:
  - (1) the award was procured by corruption, fraud, or undue means;
  - (2) there was evident partiality or corruption in the arbitrator(s);
  - (3) the arbitrator(s) were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or were guilty of any other misbehavior by which the rights of any party have been prejudiced; or
  - (4) the arbitrator(s) exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Where an arbitration award is so vacated, the Tribal Court may, in its discretion, direct a rehearing by the arbitrator(s).

- (d) In any of the following cases where the Tribal Court is authorized to make an order regarding arbitration, the Tribal Court may make an order modifying or correcting the arbitration award upon the application of any party to the arbitration:
  - (1) where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award;
  - (2) where the arbitrator(s) have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted; or

- (3) where the arbitration award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

- (e) The judgment confirming an award shall be docketed as if it were rendered in a civil action in Tribal Court. The judgment so entered shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a judgment in a civil action, and it may be enforced as if it has been rendered in a civil action in the Tribal Court. When the award requires the performance of any other act than the payment of money, the Tribal Court may direct the enforcement thereon in the manner provided by law.

### **Section 9. Arbitration Award Not Appealable**

No further appeal may be taken from an order issued by the Tribal Court pursuant to this Ordinance enforcing an agreement to arbitrate or an award issued by an arbitrator.

### **Section 10. Jurisdiction of the Tribal Court**

To the extent allowed by federal law, the jurisdiction of the Tribal Court over any action to enforce an agreement to arbitrate, to compel arbitration pursuant to such an agreement to arbitrate, and to enforce an award made by an arbitrator pursuant to such agreement to arbitrate, contained in any contract, agreement, or other instrument described in Section 2(a) of this Ordinance, shall be concurrent with the jurisdiction of any state or federal court over such contract, agreement, or other instrument. Any consent to the jurisdiction of a state or federal court contained in an Authorized Agreement, and any waiver of the obligation of the parties to exhaust Tribal Court remedies shall be valid and enforceable in accordance with its terms when approved in writing by the Tribal Council.

### **Section 11. Police Powers and Judgment Enforcement Remedies**

The Tribe's police powers shall be available to secure and support any arbitration award rendered in accordance with this Ordinance, and all police or other law enforcement officials of the Tribe shall carry out any orders that may be entered by the Tribal Court pursuant to this Ordinance.

### **Section 12. Severability**

If any section or part of this Ordinance, or the application of any section or part, to any party shall be held invalid for any reason whatsoever by a court of competent jurisdiction or by federal legislative action, the remainder of the relevant section or part of this Ordinance shall not be affected and shall remain in full force and effect.

### **Section 13. No Waiver of Sovereign Immunity**

Nothing in this Ordinance is or shall be interpreted to constitute a waiver of the sovereign immunity of the Tribe or any of its officers, employees, or agents acting within the scope of their authority.

THREE AFFILAITED TRIBES

USURY PROVISION

TAT CODE OF LAWS

CHAPTER 21, SECTION 7(e)

**SUMMARY:** This Amendment to TAT Code of Laws Chapter 21, Section 7(e) amends the Tribe's Usury provision to exempt loans made by the Three Affiliated Tribes from any usury provision contained within the code. Usury refers to the interest charged in any loan.

First Read: March 22, 2010 (TBC)

Second Read: May 20, 2010 (TBC)

Public Comment Period \_\_\_\_\_ to \_\_\_\_\_ (30 days)

Final Read: \_\_\_\_\_

Approved as Amended: \_\_\_\_\_ (Reso. XX-XXX)

SECTION 7(e)  
OF CHAPTER 21  
OF THE CODES OF LAWS  
OF THE THREE AFFILIATED TRIBES

Usury defined; maximum interest rate; prohibition. No person, partnership, limited partnership, trust, association, corporation, or other form of business entity, either directly or indirectly, shall take or receive, or agree to take or receive, in money, goods, or things in action, or in any other way, any greater sum or greater value for the loan or forbearance of money, goods, or things in action than five and one-half percent per annum higher than the current cost of money as reflected by the average rate of interest payable on United States treasury bills maturing in six months for the six months immediately prior to the month in which the transaction occurs. No contract shall provide for the payment of interest on interest overdue, but this section shall not apply to a contract to pay interest at a lawful rate on interest that is overdue at the time such contract is made. Any violation of this section shall be deemed usury. Further, without regard to the interest rate limit set forth herein, banks may charge interest at a rate equal to the maximum allowable rate which lawfully may be charged for a particular type of loan by national, Tribal, or State banking associations or by federal, Tribal, or State savings and loan associations chartered by the United States, by the Three Affiliated Tribes, or by the State of North Dakota.

The provisions of this Section 7(e) do not apply to the loan made from the Shakopee Mdewakanton Sioux Community to the Three Affiliated Tribes of the Fort Berthold Reservation in the amount of \$30,000,000 and the documents entered into in connection therewith, including the Loan Agreement, Depository Agreement, the Note, and other collateral documents.

The provisions of this Section 7(e) do not apply to Indebtedness incurred by (i) the Three Affiliated Tribes or (ii) tribal entities, enterprises or instrumentalities wholly or majority owned by the Three Affiliated Tribes (collectively, the "Tribe").

For purposes of this Section 7(e), Indebtedness means, as to the Tribe, at a particular time, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP: (a) all obligations of the Tribe for borrowed money and all obligations of the Tribe evidenced by bonds, debentures, notes, loan agreements or other similar instruments; (b) all direct or contingent obligations of the Tribe arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments; (c) net obligations of the Tribe under any swap contract, including without limitation, any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, and confirmations related to any swap contract; (d) all obligations of the Tribe to pay the deferred purchase price of property

or services (other than trade accounts payable in the ordinary course of business); (e) indebtedness secured by a lien on property owned or being purchased by the Tribe (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by the Tribe or is limited in recourse; (f) capital leases and synthetic lease obligations; and (g) all guarantees of the Tribe in respect of any of the foregoing.



ELECTION ORDINANCE

OF THE

THREE AFFILLIATED TRIBES

First Read: March 22, 2010 (TBC)

Second Read: May 20, 2010 (TBC)

Public Comment Period May 25, 2010 to June 25, 2010

Final Read: June 28, 2010

Approved as Amended: Resolution 10-081-VJB (June 28, 2010)

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## **CHAPTER I**

### **GENERAL PROVISIONS**

#### **SECTION 1. INTENT AND CONSTRUCTION OF ORDINANCE**

The intent of this Ordinance is to establish specific procedures to ensure the conduct of fair elections and to give effect to all votes cast in elections in all instances wherein there is no appearance of fraud, tampering, or other wrongdoing. The language set forth in the provisions of this Ordinance shall be construed liberally to realize such intent. Substantial compliance in good faith with the requirements prescribed in the Ordinance shall fulfill such requirements, except in those instances wherein time limits or periods are prescribed. The time limits prescribed herein shall be strict and inflexible. The strict enforcement of other such technicalities in procedure shall not serve as a basis for interfering with or delaying an election or for causing confusion with regard to or a loss of confidence in the election process of the Three Affiliated Tribes.

#### **SECTION 2. PUBLICATION OF NOTICE OF ELECTION**

- A. The Secretary of the Tribal Business Council, as early as practicable, but no later than forty-five (45) days before the date on which primary election is to be held, shall cause to be published via posting and mail and, within the discretion of the Secretary, via newspaper and radio, notice of such election, which notice shall set forth:
1. The respective dates on which the primary and general elections are to be held;
  2. The purpose of the elections;
  3. A designation of the Tribal Offices to which candidates shall be elected;
  4. A designation of any issues to be voted on;
  5. The place at which and the period of time within which Notices of Candidacy must be filed;
  6. A designation of the locations of the respective polling places;
  7. A designation of the hours during which the polling places shall be open; and
  8. Such other information as may be deemed appropriate.
- B. Copies of such written notice shall be conspicuously posted in each segment of the Fort Berthold Reservation at such locations as may be deemed appropriate. In addition, a copy of such written notice shall be mailed via first-class mail to each qualified voter of the Three Affiliated Tribes who will be eligible to vote in the election, as provided by the Constitution.

### **SECTION 3. RESIDENCY FOR VOTING PURPOSES**

#### **A. Resident Voters**

1. Except as provided elsewhere in this Ordinance, each qualified voter who is a legal resident of the Forth Berthold Reservation on the date of an Election, whether a primary or general election, shall register to vote and cast his/her vote only for the particular segment of the Reservation of which he or she is a legal resident on the date of election. Residency for the purposes of this Ordinance shall be defined as the voter's permanent or physical residence where he/she physically resides and maintains his/her abode, house, home or dwelling. For the purposes of voting, a person may not have or claim more than one residency. For example, a voter can only maintain residence for the purposes of voting where he/she actually resides and not in the segment where he/she is from or considers their "home community or segment."
2. All voters in a primary or general election shall be required to provide proof of residency prior to receiving a voter affidavit, signing the poll book and receiving a ballot. Such proof must verify the voter's actual physical residence within the particular segment which the voter intends to cast his or her ballot for (i.e. the Segment election which he/she intends to vote for). Types of acceptable proof of residency may include but are not limited to:
  - a. Name and address on Approved Voter List.
  - b. a valid state or tribal identification card that provides a physical address within the segment in which that voter intends to cast his/her ballot,
  - c. a utility bill (i.e. electricity, phone, cable, water, propane) that provides the physical address of the voter's residence),
  - d. a copy of a lease or rental agreement with the voter's actual physical address that provides the voter's name on said document;
  - e. Any alternative proof of residency that provides proof of physical residency to the satisfaction of the Tribal Election Board and is consistent with other types of proof of residency.
3. Any voter who is unable to comply with this provision or to provide proof of residency shall be automatically challenged as a matter of law. The challenge envelope shall describe the types of proof provided by the voter at the polling place. The Tribal Election Board shall uphold the challenge of any voter who cannot provide proof of residency within the guidelines of this section.

**B. Nonresident Voters**

Each qualified voter, who is not a legal resident of the Fort Berthold Reservation on the date of an election, whether a primary or a general election, shall return to the reservation in order to vote in the election and shall register to vote and cast his/her ballot at the appropriate polling place on the date of the election. The non-resident voter shall vote in the last segment which he/she established residency for voting purposes, either by actual residency or by legally casting a ballot in the last election subsequent to the establishment of residency for voting purposes. Residency for the purposes of voting shall be binding upon such nonresident voter in subsequent elections, until such time as he/she has established and maintains legal residence on the Fort Berthold Reservation in a different segment on the date of any subsequent election.

**C. College Students**

Each qualified voter, who is enrolled in a college, university or other institution of higher learning shall vote in the segment in which he/she has established legal residency. The residency of college students shall be determined under the applicable resident/nonresident voter criteria as prescribed in this ordinance.

**D. First Time Voters**

A first time voter shall be defined as a person who by turning the legal voting age of eighteen (18) years of age has not previously voted in any prior tribal election. A resident first time voter shall vote in the segment which he or she physically resides. A non-resident first time voter shall choose which segment he or she wishes to vote for and shall by voting in the segment establish residency for voting purposes until such time that voter establishes residency in another segment.

**SECTION 4. PENALTY FOR ELECTION FRAUD OR TAMPERING**

A. It shall be a criminal offense, designated as Election Fraud or Tampering, for any enrolled member of the Three Affiliated Tribes to knowingly and willfully, in a fraudulent or deceptive manner, to commit any act or engage in any conduct which would tend to influence the outcome of an election, which acts or conduct shall include, but not be limited to:

1. Voting more than once in any one election;
2. Delivering more than one marked ballot for deposit in a ballot box;
3. Electioneering or campaigning on the date of the election;

4. Willfully attempting to cast a ballot or casting a ballot in a segment or election where he/she is not a legal resident of. This shall not apply to the provisions in Chapter V, Section 2.

Upon conviction of said offense, the offender shall be sentenced to payment of a fine not to exceed Five Hundred and 00/100 Dollars (\$500.00) and/or to a term of imprisonment not to exceed One Hundred (100) days.

- B. It shall be a criminal offense, designated as Election Fraud or Tampering, for any member of the Tribal Election Board or any member of a Segment Election Committee to knowingly and willfully, in a fraudulent or deceptive manner, fail to or improperly perform any of the duties or responsibilities inherent in such Office as prescribed by this Ordinance. Upon conviction of said offense, the offender shall be sentenced to payment of a fine not to exceed Five Hundred and 00/100 Dollars (\$500.00) and/or to a term of imprisonment not to exceed One Hundred and Eighty (180) days.

#### **SECTION 5. SEVERABILITY**

Should any portion of any provision set forth in this Ordinance or the application thereof to any person or circumstance, be held invalid by the Secretary of the Interior or by a court of competent jurisdiction, the full remainder of such provision, or the application of the provision to other persons or circumstances, shall not be affected thereby and shall remain effective, as shall all other provisions set forth in this Ordinance not so held invalid.

## CHAPTER II

### ELIGIBILITY OF VOTERS AND CANDIDATES

#### SECTION 1. CRITERIA FOR ELIGIBILITY AS VOTER

Any enrolled member of the Three Affiliated Tribes, who is eighteen (18) years of age or older on the date of an election, whether a primary or general election, shall be deemed a qualified voter of the Three Affiliated Tribes and shall be eligible to vote in the election.

#### SECTION 2. CRITERIA FOR ELIGIBILITY AS CANDIDATE

- A. **Criteria.** Any qualified voter of the Three Affiliated Tribes shall be eligible as a candidate for Tribal Office, provided that:
1. He/she, if a prospective candidate for the Office of the Tribal Business Council, has maintained his/her principal place of residence in that segment of the Reservation which he/she proposes to represent for a period of at least six (6) months next preceding the date on which the primary election is to be held. In the case of the Office of the Tribal Chairman, he/she shall maintain his/her principal place of residence in any segment of the Reservation for a period of at least six (6) months preceding the date on which the primary election is to be held; and
  2. He/she has not been removed for cause from the Office of Tribal Business Council member, as provided in Article V, Section 2 of the Constitution of the Three Affiliated Tribes, or from the Office of Chief Judge of the Fort Berthold Tribal Court, as provided in Chapter 1, Subchapter 3, Section 3 of the Code of Laws of the Three Affiliated Tribes; and
  3. He/she has not been found guilty by a court of competent jurisdiction of a felony; and
  4. He/she has not received a discharge other than an honorable discharge from any branch of the Armed Forces of the United States. He/she shall provide proof of such discharge by providing his/her DD Form 214 issued by the United States of America.
  5. He/she, at 5:00 p.m., on the date by which he/she is required to submit to the Tribal Election Board proof of his/her eligibility as a candidate in response to any challenge of eligibility made by the Election Board itself (pursuant to Chapter III, Section 2, Subsection B of this Ordinance) or by a qualified voter (pursuant



to Section 3, Subsection D of this Chapter), is not delinquent in the payment of any financial obligations in favor of the Three Affiliated Tribes, which financial obligations shall include, but not limited to:

- a. Rental and mutual self-help payments to the Fort Berthold Housing Authority,
- b. Fines and court costs due and owing to the Fort Berthold Tribal Court,
- c. Loan payments, including payments on Tribal emergency loans and loans for which the Tribes cosigned,
- d. Lease payments, including payments on farming, grazing, commercial, residential, and personal property leases,
- e. Proper reimbursement of travel and per diem advances, and
- f. Payments due and owing to any Tribal business venture.

For the purpose of this Ordinance, a delinquent payment is defined as a payment that is owing and overdue. No overdue notice is required to be provided by the Tribe.

**B. Tribal Employees.** Any employee of the Three Affiliated Tribes that intends to file his/her Notice of Candidacy for Tribal Office, shall so notify the Director of the Tribal Personnel Office and the appropriate Tribal Business Council Committee of such intention. Any such employee may continue to maintain his/her employment position; provided, however, that such employee shall, in no manner nor to any extent, engage in any form of campaigning during working hours or, at any time during the conduct of the election, use any Tribal property for the purpose of furthering his/her campaign efforts. The failure by any such employee to fully comply with this prescription shall result in his/her immediate termination from employment with the Three Affiliated Tribes. For the purposes of this section, the following are not deemed “employees” of the Three Affiliated Tribes and are not subject to the requirements prescribed herein:

1. An incumbent member of the Tribal Business Council,
2. The incumbent Chief Judge of the Fort Berthold Tribal Court,
3. Consultants of the Three Affiliated Tribes.

**C. Current Tribal Business Council Members.** In the event that an incumbent general member of the Tribal Business Council, who is not up for reelection and has two (2) years remaining in his/her elected term, should become a candidate for the Office of Chairman, such member shall continue his/her membership on the Council pending the outcome of the election for the Office of Chairman. In the event that such member should be elected as Chairman, he/she must resign as general member of the

Council on the date of the installation of the newly-elected and certified Chairman, and the newly-constituted Tribal Business Council shall appoint a qualified Tribal member from the segment in which the vacancy occurs to serve the remaining two (2) years of the unexpired term of such member, pursuant to Article V, Section 1 of the Constitution of the Three Affiliated Tribes. In the event that such member should fail to be elected as Chairman, he/she shall continue to serve as a member of the Tribal Business Council and shall serve the remaining two (2) years of his/her unexpired term.

### **SECTION 3. FILING, PUBLICATION, AND CHALLENGE OF CANDIDACY**

#### **A. Filing Notice of Candidacy**

Any qualified voter eligible for election to Tribal Office may become a candidate therefore by filing a Notice of Candidacy, together with a nonrefundable filing fee in the amount of One Hundred and 00/100 Dollars (\$100.00), with the Secretary of the Tribal Business Council at least forty (40) days before the date on which the primary election is to be held. A copy of the Notice of Candidacy form can be secured by a prospective candidate from the Secretary. The Secretary shall promptly submit to the Tribal Election Board each Notice of Candidacy so filed.

#### **B. Filing Petitions for Nominations**

1. If on the date of the initial publication of the list of candidates, as provided in Subsection C herein, a segment has two (2) or fewer candidates who have filed for a position on the Tribal Business Council, such segment may nominate one (1) or more candidates by formal written petition, each such respective petition having been executed by at least ten (10) qualified voters of such segment.
2. If on the date of the initial publication of the list of candidates, as provided in Subsection C herein, there are two (2) or fewer persons who have filed as candidates for the Office of Chairman of the Tribal Business Council, such qualified candidate(s) shall be nominated by formal written petition, each respective petition having been executed by at least twenty (20) qualified voters.
3. Each person so nominated shall satisfy the criteria for eligibility as a candidate, as prescribed in Section 2 of this Chapter. Additionally, each person so nominated shall file the Petition for Nomination, together with a nonrefundable filing fee in the amount of One Hundred and 00/100 Dollars (\$100.00), with the Secretary of the Tribal Business Council no later than seven (7) days from the date of the initial publication of the list of candidates, as

provided in Subsection C herein. A copy of the Petition for Nomination form can be secured from the Secretary. The Secretary shall promptly submit to the Tribal Election Board each Petition for Nomination so filed. Any signature which is set forth on more than one (1) Petition for Nomination filed for the same Tribal Office shall be stricken from each such Petition filed for that Office.

**C. Publication of Lists of Candidates**

1. Within a period of three (3) days from the date of the deadline for the filing of Notices of Candidacy as provided in Subsection A of this Section, the Tribal Election Board shall cause to be published throughout the Fort Berthold Reservation, via posting, newspaper and/or radio, a list setting forth the names of the person who have so filed for candidacy for Tribal Office. In addition, the Tribal Election Board shall promptly cause to be so published any and all appropriate modifications of such list, in the event that, after the initial publication thereof:
  - a. Persons have been nominated as candidates by the filing of Petitions for Nomination, or
  - b. Notices of Candidacy or Petitions for Nomination have been withdrawn voluntarily by candidates themselves or by the Tribal Election Board upon ruling that candidates are ineligible for candidacy for Tribal Office.
2. A copy of the current list of candidates can be secured, in person or by mail, by any qualified voter upon request made therefore to the Tribal Election Board.

**D. Challenge of Eligibility of Candidates.**

1. The Tribal Election Board shall promptly review each Notice of Candidacy and Petition for Nomination, upon its receipt thereof, for the purpose of ruling on the eligibility of candidates. Any qualified voter may challenge the eligibility of any candidate by filing a duly verified written affidavit with the Tribal Election Board, which sets forth the grounds for the challenge. This challenge must be received within three (3) days (excluding Sundays and holidays) from the date of the initial publication naming the challenged candidate.
2. Upon receipt of a written challenge the election Board shall notify the challenged candidate in writing via certified mail that their

candidacy has been challenged. The Board will identify the ground(s) for the challenge and that proof of eligibility must be received within three (3) days (excluding Sundays and holidays) from the date of receipt by the candidate. If proof of eligibility cannot be reasonably provided within this time period, the challenged candidate must notify the Election Board within this time frame, the reason for the delay and when proof of eligibility shall be provided.

- a. Should the challenged candidate fail to submit to the Election Board any proof of eligibility within the prescribed time period, the Election Board shall rule that such candidate is ineligible for candidacy for Tribal Office and that his/her Notice of Candidacy or Petition for Nomination shall be withdrawn and his/her name shall not be placed on the ballot. The Election Board shall notify the candidate of such ruling in writing via certified mail.
- b. If the challenged candidate provides proof of eligibility within the prescribed time period, the Election Board shall within three (3) days (excluding Sundays and holidays) from receipt of the proof review the submittal and rule on the challenge.
  - 1). If the Board determines the proof submitted is unsatisfactory, its shall rule that such candidate is ineligible for candidacy for Tribal Office and that his/her Notice of Candidacy or Petition for Nomination shall be withdrawn and his/her name shall not be placed on the ballot. The Board shall notify such candidate in writing via certified mail.
  - 2). If the Board determines the proof submitted is satisfactory, it shall rule that such candidate is eligible for candidacy for Tribal Office and shall notify such candidate in writing via certified mail, in addition to notifying the individual who made such challenge.
- c. Any ruling made by the Tribal Election Board pursuant to this Subsection may be challenged in a court proceeding by the person aggrieved thereby, pursuant to the procedures prescribed in this Ordinance.

## **CHAPTER III**

### **REGISTRATION OF VOTERS**

#### **SECTION 1. RESIDENT VOTERS**

Except as provided in Chapter VI of this Ordinance, each qualified voter, who is a legal resident of the Fort Berthold Reservation on the date of an election, whether a primary or a general election, shall be required to register to vote at the appropriate polling place, as provided in Subsection A of Section 3 of Chapter II of this Ordinance, on the date of the election in order to be entitled to vote. Each such qualified voter shall complete and execute an Affidavit for Voter Registration setting forth his/her name, address, date of birth, principal place of residence and period of such residence, and an affirmation that he/she is an enrolled member of the Three Affiliated Tribes and is eighteen (18) years of age or older.

#### **SECTION 2. NONRESIDENT VOTERS**

Each qualified voter, who is not a legal resident of the Fort Berthold Reservation on the date of an election, whether a primary or a general election, shall be required to register to vote at the appropriate polling place, as provided in Chapter I of this Ordinance, on the date of the election in order to be entitled to vote. Each such qualified voter shall complete and execute an Affidavit for Voter Registration setting forth his/her name, address, date of birth, principal place of residence and period of such residence, and an affirmation that he/she is an enrolled member of the Three Affiliated Tribes and is eighteen (18) years of age or older.

## CHAPTER IV

### TRIBAL ELECTION BOARD AND SEGMENT ELECTION COMMITTEES

#### SECTION 1. APPOINTMENT OF TRIBAL ELECTION BOARD

- A. The Tribal Business Council, on the business day next succeeding the date of the deadline for filing Notices of Candidacy as prescribed by this Ordinance, shall appoint a Tribal Election Board constituted by seven (7) qualified voters, none of whom is a member of the Tribal Business Council, an employee of the Three Affiliated Tribes, an employee of the Department of the Interior, a candidate for Tribal Office, or a close relative of a candidate. For purposes of this section a “close relative” shall be defined as:
1. Husband or Wife;
  2. Father or Mother;
  3. Brother or Sister;
  4. Brother-in- Law or Sister-in-Law
  5. Son-in-Law or Daughter-in-Law
  6. Any relative maintaining a legal, step, adoptive, or foster relationship in a degree of kinship identified immediately hereinabove.
- B. The Tribal Business Council shall designate one (1) of its seven (7) appointees as Chairman of the Tribal Election Board and shall establish the compensation to be paid to the members thereof. In addition, at least thirty (30) days before the date on which the primary election is to be held, the Tribal Business Council shall appoint a Tribal Certification Board constituted by three (3) persons from within its own membership whose terms are not due to expire in the election at issue, which Board shall certify the results of the election in the event that the Tribal Election Board should fail to do so, as provided in this Ordinance.
- C. In the event that a vacancy should occur on the Tribal Election Board or any member thereof should become unable to properly perform his/her duties, the Tribal Business Council shall promptly fill such vacancy or replace such member by appointment.
- D. Each person so appointed as a member of the Tribal Election Board shall, prior to assuming such Office, take an other as follows:

*“I, (name of that person), do solemnly swear that I shall faithfully perform the duties of a member of the tribal Election Board as*

*prescribed by the Tribal Election Ordinance and shall, to the best of my ability, endeavor to ensure a fair election.*

## **SECTION 2. DUTIES OF TRIBAL ELECTION BOARD**

### **A. Supervision of Election**

The Tribal Election Board shall perform general supervision over the election and over the respective Segment Election Committees.

### **B. Ruling on Eligibility of Candidates**

The Board shall review each Notice of Candidacy and Petition of Nomination, upon its receipt and may challenge the eligibility of any candidate based on its own authority. In challenging the eligibility of a candidate the Board shall follow the same procedures outlined in Chapter II, Section 3(D) for determining the eligibility of a candidate and make notification the same as if a qualified voter had challenged the eligibility of a candidate.

### **C. Certification of Eligibility of Candidates**

The Tribal Election Board, after ruling on all challenges of eligibility for candidacy made by the Board itself (pursuant to the preceding provision) and by qualified voters (pursuant to Chapter II of this Ordinance), shall certify the names of those persons who have been determined eligible for candidacy for Tribal Office no later than twenty-five (25) days before the date on which the primary election is to be held.

### **D. Training**

The Tribal Election Board, as early as practicable after the respective appointments of the Election Board and of the Segment Election Committees, shall cause to be conducted at least one (1) training session for all members of the Election Board and at least one (1) training session for all members of each Segment Election Committee.

### **E. Preparation of Election Materials**

The Tribal Election Board shall cause to be prepared all election materials, including ballots. The ballots shall be printed on good quality paper, including good quality colored paper, with all of the printing thereon in black ink. Only the names of those persons certified as eligible for candidacy for Tribal Office by the Election Board shall be placed on the ballot and such names shall be appropriately placed in alphabetical order. The names of such candidates shall be printed in the English language,

with a box of printed opposite each name for the purpose of marking by the voters.

**F. Delivery of Ballots to Polling Places**

The unmarked printed ballots shall be maintained in the custody of the Tribal Election Board at a secure location within the Tribal Administration Building designated thereby. On the date of the election, prior to the opening of the polling places, the Election Board shall deliver to the respective Segment Election Committees all requisite election materials, including the ballot boxes, ballots, and pollbooks, and shall secure from the first judge of each Committee a written receipt setting forth the number of ballots so delivered. There shall be maintained two (2) copies of the key to the padlock on each segment ballot box, one to be retained by the Chairman of the Election Board and the other to be retained by the first judge of the respective Segment Election Committee.

**G. Certification of Election**

Upon completion of the canvassing of the ballots, as provided in this Ordinance, the Tribal Election Board shall declare those candidates elected to Tribal Office, as provided by the Constitution of the Three Affiliated Tribes, and shall then, within a period of three (3) days from the date on which the election was held, certify the results of the election to the Tribal Business Council and to the public by written notice. Should the Election Board fail to so certify within said three (3) day period, the Tribal Certification Board shall so certify the results of the election within a period of five (5) days from the date of the election.

**H. Lottery in Tied Election**

In the event that two (2) candidates for a particular position on the Tribal Business Council should receive tie votes in two successive special runoff elections for such Office, the Tribal Election Board, immediately after the completion of the canvassing in the second runoff election, shall cause to be conducted a special lottery, in which the tied candidates shall draw straws for the purpose of determining which of the two candidates shall be declared elected to such Office.

**SECTION 3. APPOINTMENT OF SEGMENT ELECTION COMMITTEES**

- A. The Tribal Election Board, as early as practicable, but at least twenty (20) days before the date on which the primary election is to be held, shall appoint a Segment Election Committee for each segment of the Reservation in which an election is being held, each constituted by three (3) qualified voters resident within the respective segment and a Sergeant



at Arms for each such segment who will maintain order at the respective segment polling place. No person appointed as a member of a Segment Election Committee shall be a member of the Tribal Business Council, an employee of the Three Affiliated Tribes, an employee of the Department of the Interior, a candidate for Tribal Office, or a “close relative” of a candidate as defined in this Chapter. The Tribal Business Council shall establish the compensation to be paid to the members of the Segment Election Committees.

- B. In the event that a vacancy should occur on a Segment Election Committee or any member thereof should be unable to properly perform his/her duties, the Tribal Election Board shall promptly fill such vacancy or replace such member by appointment.
- C. Each person appointed as a member of a Segment Election Committee shall, prior to assuming such Office, take an oath as follows:

*“I, (name of the person), do solemnly swear that I shall faithfully perform the duties of a member of the Segment Election Committee as prescribed by the Tribal Election Ordinance and shall, to the best of my ability, endeavor to ensure a fair election.”*

#### **SECTION 4. DUTIES OF SEGMENT ELECTION COMMITTEES**

##### **A. General Responsibility**

The Segment Election Committees shall be responsible for ensuring the conduct of a fair election in their respective segments in accordance with the applicable provisions set forth in this Ordinance and shall, in particular, be ever vigilant for potential election fraud or tampering occurring at their respective polling places.

##### **B. Selection of Committee Officers**

Each Committee shall select from within its respective membership a first judge, a second judge, and a clerk.

##### **C. Provision for Voting Facilities**

Each Committee shall provide adequate private voting booths, or other reasonably private facilities, at its respective polling place, so as to provide to voters the opportunity to mark their ballots in secrecy and privacy.

**D. Reporting for Duty**

All members of each Committee and the Sergeant at Arms shall report for duty at their respective polling place on the day of the election one-half (1/2) hour before the polling places are scheduled to open and shall remain thereat until the polling places have closed and the ballot boxes have been removed there for delivery to the Tribal Election Board at the place of canvassing.

**E. Counting of Unmarked Ballots**

The first judge of each Committee shall count the ballots delivered to the Committee at its respective polling place by the Tribal Election Board and shall then give to the member of the Election Board a written receipt setting forth the number of ballots so delivered and received.

**F. Preparation and Maintenance of Ballot Boxes**

Upon the opening of the polling places and prior to delivering any ballots to the voters, each Committee shall, in view of all persons present at its polling place, remove all election materials from its ballot box, display the empty box, and close and lock the box, with the key being retained by the first judge. Thereafter, the ballot box shall not be removed from the polling place or from the view of the persons present thereat, until such time as it is removed from the polling place for delivery to the Tribal Election Board at the place of canvassing after the polling place has closed. Nor shall the ballot box be opened, until such time as it has been delivered to the Tribal Election Board at the place of canvassing and the canvassing has commenced.

**G. Performance of Clerical Duties**

The first and the second judges of each Committee shall be responsible for all record keeping duties and shall assist the voters in completing Affidavits for Voter Registration, entering their respective signatures and current addresses in the pollbook, and securing a ballot. In addition, the judges shall assist those disabled voters who request assistance in marking their ballots, as provided elsewhere in this Ordinance. The clerk shall assist in the performance of such duties as requested and directed by the judges.

**H. Challenge of Voters**

Each member of each Committee and each Sergeant at Arms shall have the absolute duty to be ever vigilant for potential improper voting, or other such actions which would tend to indicate an irregularity at their

respective polling place, and to challenge any and all such actions engaged in by voters as provided throughout this Ordinance.

## CHAPTER V

### PROCEDURES FOR VOTING AT SEGMENT POLLING PLACES

#### SECTION 1. VOTING PROCEDURES

##### A. Registration of Voters

Before being permitted to cast his/her ballot, each voter shall provide proof of residency consisted with Chapter XX, complete and execute an Affidavit for Voter Registration and enter his/her signature and current address in ink in the pollbook at the polling place.

##### B. Challenging Voter Eligibility

Before providing a registered voter with a ballot, a member of the Segment Election Committee shall review the voter's Affidavit for Voter Registration and verify that the voter's signature and current address have been entered in the pollbook.

1. If no challenge of the voter's eligibility is made by any member of the Segment Election Committee, any member of the Tribal Election Board, by the Sergeant at Arms, or by any watcher duly appointed by a candidate, the voter shall be provided with a ballot.
2. If a challenge of the voter's eligibility is made, the voter shall be permitted to furnish proof of his/her eligibility, and, if the person having made the challenge is satisfied that the voter is eligible to vote, the challenge shall be withdrawn and the voter shall be provided with a ballot.
3. If the person having made the challenge is not satisfied by the proof provided, the voter shall nonetheless be provided with a ballot and will be entitled to cast his/her ballot, but the marked ballot, upon its delivery to the Segment Election Committee, shall:
  - a. Be immediately enclosed in an envelope, on which are printed the words "CHALLENGED BALLOT."
  - b. Such envelope shall then be immediately sealed by a judge of the Committee and the front thereof shall be initialed by the first judge and the clerk, and the name of the person having made the challenge, the grounds therefore, and the proof of eligibility furnished by the voter in response to the challenge.
  - c. One of the judges shall then deposit the sealed envelope containing the challenged ballot in the ballot box. The

determination as to the validity of the challenge shall be made by the Tribal Election Board prior to the canvassing of the ballots at the designated canvassing place as provided in this Ordinance.

- d. Each ballot which has been subject to a challenge so maintained may serve as a ground for an election contest brought pursuant to the procedures prescribed elsewhere in this Ordinance.

**C. Stamping Ballots**

Before providing a registered voter with a ballot, a judge of the Committee shall stamp the words “OFFICIAL BALLOT, (name of segment) SEGMENT” and sign his/her initials on the unprinted side of the ballot, and shall then deliver the ballot so stamped and initialed to the voter.

**D. Voting in Secrecy**

Upon receipt of the ballot, the voter shall retire to a private voting booth, or other designated reasonably private facility, and mark his/her ballot in secrecy and privacy. Only one person shall occupy a voting booth at one time, except as provided in Subsection G of this Section.

**E. Marking and Folding Ballots**

In order that the marking of a box on the ballot be deemed valid and the resulting vote tallied, the voter must ensure that his/her mark is identifiable with the respective box for which it is intended. After the ballot has been marked as desired, the voter shall fold the marked ballot so that the printed and marked side thereof is completely concealed and the words “OFFICIAL BALLOT, (name of segment) SEGMENT” and the initials of the judge appear on the outside of the folded ballot.

**F. Casting Ballot**

The voter shall deliver the folded marked ballot to a judge, who shall immediately deposit the ballot in the ballot box. No ballot shall be deposited in the ballot box until the ballot has been properly folded.

**G. Assisting Disabled Voters**

Any voter, who, because of the inability to read the English language, blindness, or other physical disability, is incapable of properly marking his/her ballot, may, upon request, be assisted by both judges of the Committee in the marking of his/her ballot. If such assistance is provided,

the judges shall not, by work, expression or other conduct, influence or attempt to influence the voter in his/her choice of candidates.

**H. Spoiling Ballots**

If a voter spoils a ballot, he/she may secure new ballots successively, one at a time, not exceeding three (3) in all, upon delivery of each spoiled ballot to a judge of the Committee. Upon receipt of a spoiled ballot, the judge shall immediately enclose such ballot in a large envelope, on which are printed the words, "SPOILED BALLOTS."

**I. Write-in Voting**

The writing-in on the ballot by a voter of the name of a candidate is prohibited and any and all such votes cast for a candidate so written in shall not be tallied in the canvassing of ballots.

**J. Providing Sample Ballots**

The Tribal Election Board shall provide sample ballots to each Segment Election Committee, each of which shall be conspicuously stamped with the words "SAMPLE BALLOT" across the printed and unprinted sides thereof. Such sample ballots shall be used by the Committees exclusively for the purpose of illustrating to the voters the proper marking procedure and shall not be deposited in the ballot boxes.

**SECTION 2. OUT OF SEGMENT VOTERS.**

- A.** Any resident or non-resident voter may vote and cast a ballot for their resident segment at any polling place on the Fort Berthold Reservation. The voter shall shall:
1. Inform the Segment Election Committee where he/she intends to vote that he/she intends to vote for their resident segment;
  2. Identify what segment election he/she is intending to cast a vote for;
  3. Provide or show proof of residency for the purposes of voting pursuant to Chapter 1, Section 3 of this Ordinance.
- B.** Upon sufficient proof that the voter is a resident of the segment for which he/she intends to vote for, the voter shall be entitle to cast his/her ballot and this shall not be subject to challenge for residency purposes.

### **SECTION 3. WATCHERS**

- A. Each candidate shall be entitled to maintain one watcher at each polling place, who may observe the voting procedures on behalf of the candidate.
  - 1. The candidate's watcher shall not be him/herself, his/her spouse or the children of the candidate.
  - 2. The watcher shall be barred from any direct communication or contact with any voter in the segment voting place.
  - 3. The watcher shall bring the challenge of any voter only to the Segment Election Committee and is strictly barred from challenging the voter personally.
- B. In addition, each candidate shall be entitled to maintain one watcher, not himself/herself, his or her spouse or children, at the location of the canvassing of the ballots, who may observe the canvassing proceedings on behalf of the candidate.
- C. Any such watcher maintained at a polling place may challenge any ballot as it is cast and any such watcher maintained at the location of the canvassing may challenge any ballot as the votes thereon are tallied.
- D. The watchers of any candidate shall be strictly prohibited from contacting, communicating or any attempt to influence any voter that enters the segment voting place to cast a ballot. Any attempt to contact or communicate with the voter except in regards to the challenge of the voter shall result in immediate removal of the watcher from the segment voting place.
- E. No watcher shall be entitled to be compensated by the Three Affiliated Tribes.

### **SECTION 4. CHALLENGE OF VOTERS**

Any member of the Segment Election Committee, any member of the Tribal Election Board, any duly appointed Sergeant at Arms, and any duly appointed watcher may challenge the eligibility or conduct of any person attempting to vote at a polling place. In challenging the eligibility or conduct of a voter the Segment Election Committee shall follow the same procedures outlined in Chapter V, Section 1(B) for determining the eligibility of a voter.

**SECTION 5. ELECTIONEERING OR CAMPAIGNING**

No person shall engage in electioneering or campaigning on the date of the election.

**SECTION 6. LOITERING**

No person shall loiter in or around the polling places during voting hours. However, after the polling places have closed and all ballots have been cast, the public shall be permitted to be resent inside the polling places, provided that such presence does not interfere with the performance of the duties of the respective Segment Election Committee.

**SECTION 7. ALCOHOL**

No qualified voter deemed to be in a drunken condition at a polling place shall be permitted to vote. The members of the respective Segment Election Committees shall make all determinations herein and their majority decision shall be exclusive and final. All retail alcoholic beverage establishments situation and doing business within the exterior boundaries of the Fort Berthold Reservation shall be closed throughout the hours during which polling places are open.

**SECTION 8. POLLING PLACES**

The locations of the polling places for each segment shall be identified in the notice of election.

**SECTION 9. VOTING HOURS**

The voting hours in all segments shall extend from 8:00 a.m. to 7:00 p.m., Central Daylight Saving Time or Central Standard Time, whichever is in effect on the date of the election. No person shall be permitted to enter a polling place for the purpose of voting before 8:00 a.m. or after 7:00 p.m. Those persons, who have entered the polling places for the purpose of voting at or shortly before the time of the closing thereof, shall be permitted to cast their ballots, notwithstanding the fact that the polling places have officially closed.



## CHAPTER VI

### PROCEDURES FOR RESIDENT VOTING BY ABSENTEE BALLOT

#### **SECTION 1. RESIDENT VOTERS WHO MAY USE PROCEDURE**

- A.** A qualified voter, who is a legal resident of the Fort Berthold Reservation on the date of an election, whether a primary or a general election, may register to vote and cast his/her ballot in accordance with the procedures prescribed in this Chapter, only if one of the following conditions is satisfied:
1. He/she will be absent from the Reservation on the date on which the election is to be held and will be unable to be present at any segment polling place during the designated poll hours for only the following acceptable conditions:
    - a. Absence due to duly scheduled work related travel;
    - b. Hospitalization
    - c. Attending School where he/she is unable to travel to the Reservation on the day of election;
    - d. Extreme physical disability where traveling is physically impossible (proof shall be required)
    - e. Service in the United States Armed Forces
- B.** Any such qualified voter who satisfies any of the conditions of Part A of this Section shall hereinafter be referred to as an “absent voter.” A voter shall be required to provide proof of their absence and/or hardship to the Tribal Election Board.

#### **SECTION 2. TIME AND METHOD FOR APPLICATION FOR RECEIPT OF BALLOT**

- A.** An absent voter who feels they meet the conditions of Section 1 of this Chapter may make application for receipt of an absentee ballot at any time during the period from the date on which the Tribal Election Board has in its custody the printed ballots to a time no later than 3:00 p.m. on the day before the date on which the election is to be held, provided that such application shall have been made to or reached the Election Board by such date and time.
1. An absent voter may request receipt of an Application for an Absentee Ballot form from the Election Board either by mail, in person, or through an agent. This is the only stage of the

procedures prescribed in this Chapter in which an absent voter may use an agent.

2. It shall be the responsibility of the requesting absent voter to insure that the request for application be made to the Tribal Election Board in a timely manner to ensure the application and absentee ballot cast by no later than 4:00 pm of the day of the Election. No absent ballots received by the Tribal Election Board after 4:00 pm of the day of the election shall be considered valid or counted in any election so cast for.

**B. Application for an Absentee Ballot.** The application form shall be maintained and furnished by the Tribal Election Board and shall require the following information to be furnished by the absent voter:

1. His/her full legal name;
2. His/her current mailing address,
3. The designation of the segment of which he/she is a legal resident,
4. The reason he/she will be unable to be present at the appropriate polling place during the designated poll hours on the date on which the election is to be held;
5. An affirmation that he/she is a qualified voter of the Three Affiliated Tribes, and
6. An affirmation that he/she understands that it is a criminal offense to make a false statement in order to obtain an absentee ballot.

**C.** Upon receipt of such Application, the absent voter shall fully complete and execute the same and shall deliver such Application, by mail or in person as authorized in Section 3 of this Chapter in a timely manner as to ensure that the Application is made to or reaches the Tribal Election Board within the period prescribed in Subsection A of this Section.

### **SECTION 3. DELIVERY OF AN ABSENTEE BALLOT**

- A.** Upon the timely receipt by the Tribal Election Board of an Application for an Absentee Ballot, the Election Board shall forthwith review such Application to ensure that it has been fully completed and executed by the absent voter. The Election Board shall refer to its listing of all qualified voters who are eligible to vote in the election, so as to ensure that such absent voter is eligible to vote in the election, the Election Board shall deliver an absentee ballot and accompanying materials to the absent voter in the appropriated manner as provided for in this section.
- B.** Should an absent voter make a timely application for receipt of an absentee ballot to the Tribal Election Board in person, the Election Board,

upon confirming that such absent voter is eligible to vote in the election, shall personally deliver the absentee ballot and accompanying materials to the voter at the time such application is made. The absent voter shall not cast his/her ballot in the presence of the Election Board.

- C. Should an absent voter make a timely application for receipt of an absentee ballot to the Tribal Election Board by mail, the Election Board, upon confirming that such absent voter is eligible to vote in the election, shall, on the day of receipt of such application, deliver the absentee ballot and accompanying materials to the voter by first-class mail at the mailing address set forth on the Application for Absentee Ballot.
- D. Together with the absentee ballot, the Tribal Election Board shall deliver to each absent voter an Affidavit for Voter Registration, a small envelope, on the outside of which are printed the words "ABSENTEE BALLOT," and a large return envelope, on the outside of which is printed the address of the post office box maintained by the Election Board in New Town, North Dakota. Each absentee ballot delivered shall have affixed, thereto the official absentee ballot seal and any absentee ballot returned, not having affixed thereto such official seal, shall not be counted in the canvassing of the ballots on the date of the election.

#### **SECTION 4. PROCEDURE FOR CASTING ABSENTEE BALLOT**

- A. Upon receipt of the absentee ballot and accompanying materials, the absent voter shall strictly comply with the following procedure in casting his/her ballot:
  - 1. Mark his/her ballot and enclose the ballot so marked in the small envelope, on the outside of which are printed the words "ABSENTEE BALLOT," and seal said envelope; and
  - 2. Fully complete and execute his/her Affidavit for Voter Registration form; and
  - 3. Enclose the sealed small envelope containing only the marked ballot and enclose the completed and executed Affidavit for Voter Registration form in the large envelope, on the outside of which is printed the address of the post office box maintained by the Election Board in New Town, North Dakota, and seal said large envelope; and
  - 4. Deposit said large return envelope in the U.S. Mail with the requisite postage prepaid.

**SECTION 5.           TIMELY AND PROPER RETURN AND RECEIPT OF  
ABSENTEE BALLOT**

- A.**     Only those absentee ballots properly cast by the absent voters in compliance with the procedure prescribed in this Chapter, which are returned to and reach the post office box maintained by the Tribal Election Board, in New Town, North Dakota, on or before the date of the election, shall be counted in the canvassing of the ballots on the date of the election. The hand-delivery of an absentee ballot to the Tribal Election Board, a Segment Election Committee, or the Secretary of the Tribal Business Council is prohibited and any such attempted delivery shall not be accepted thereby. It is the responsibility of the individual(s) seeking an absentee ballot to ensure proper time for the processing of the absentee ballot, return, and the receipt of the ballot by the Tribal Election Board. The Tribal Election Board will NOT consider any absentee ballot not received by 4:00 p.m. on the date of the election. The Tribe and the Tribal Election Board accepts no responsibility for absentee ballots that are untimely and not properly counted.
  
- B.**     The Tribal Election Board shall make use of United States Postal Service or by other similar overnight mail service where warranted. However, the ballots and application materials must be received at the Tribal Election Board U.S. Post Office box. No ballots submitted or delivered to the Tribal Election Board personally or to the Tribal Election Board office shall be considered valid.

**SECTION 6.           MAINTENANCE OF RETURNED ABSENTEE BALLOTS**

All absentee ballots, together with the accompanying materials enclosed in the sealed returned envelopes, which have reached the post office box maintained by the Tribal Election Board, in New Town, North Dakota, on or before the date of the election, shall remain continuously in the custody of such United States Post Office, until such time as the absentee ballots are secured therefrom by the Tribal Election Board on the date of the election for delivery to the place of the canvassing of the ballots, as provided in Subsection A of this Chapter. The United States Postmaster shall issue to no one keys to such post office box.

## CHAPTER VII

### CANVASSING OF BALLOTS

#### SECTION 1. DELIVERY AND CANVASSING OF ABSENTEE BALLOTS

- A. The delivery and canvassing of the absentee ballots shall be conducted in the following manner:
1. After 4:30 p.m. on the date of the election, one (1) member of the Tribal Election Board, accompanied and assisted by one police officer, shall secure from the United States Post Office, in New Town, North Dakota, all absentee ballot return envelopes having reached and been maintained at said Post Office on or before said date, for delivery to the place of canvassing of the ballots at 5:00 p.m. on said date.
  2. Upon delivery of such absentee ballot return envelopes to the place of canvassing, the Tribal Election Board shall commence to perform the preliminary duties inherent in the canvassing of the absentee ballots, including but not limited to:
    - a. Opening the outer pre-addressed return envelopes, checking the respective Affidavits for Voter Registration against the official Absent Voter Application List;
    - b. Depositing those small sealed official absentee ballot envelopes, containing obviously legal ballots, in the locked absentee ballot box,
    - c. Setting aside, for subsequent ruling, each out pre-addressed return envelope which contained a potentially illegal ballot, enclosing therein any small sealed official absentee ballot envelope and any Affidavit for Voter Registration form originally enclosed therein by the respective absent voter.
  3. Upon completion of the preliminary absentee ballot duties, the Tribal Election Board shall commence to rule on those absentee ballots previously set aside as potentially illegal. The ruling on the legality of each such ballot shall be made by majority vote of the seven (7) members of the Election Board in public view. Each absentee ballot so ruled legal shall be deposited in the locked absentee ballot box for subsequent tallying. Each absentee ballot so ruled illegal shall not be deposited in the ballot box, but shall be enclosed in the outer pre-addressed return envelope in which it had been originally enclosed, together with any other related absentee ballot materials which had accompanied such ballot. The words "REJECTED FOR ILLEGALITY," the basis for the ruling of

illegality, and the initials of those members of the Board who voted in favor of the majority ruling and of those members who voted against such ruling shall be set forth on the back of each such envelope. Each such envelope shall then be enclosed in a large envelope, on which are printed the words "ABSENTEE BALLOTS REJECTED FOR ILLEGALITY."

- B.** Upon completion of the ruling on all those absentee ballots set aside as potentially illegal:
  - 1. At least three (3) members of the Election Board shall commence the tallying of the votes set forth on those absentee ballots previously deposited in the absentee ballot box;
  - 2. The tally of the absentee ballots shall be recorded both on the official absentee tally sheet and on the large absentee tally board for public viewing;
  - 3. The Election Board shall set aside, for subsequent ruling, any and all ballots which the members should deem potentially illegal on their face.
  
- C.** Upon completion by the members of the Election Board of the canvassing of all absentee ballots which have been deemed thereby as obviously legal on their face, the full Tribal Election Board shall rule on any and all ballots deemed potentially illegal on their face in the manner prescribed in Section 4 of this Chapter.
  
- D.** Upon completion of the tallying by the Election Board of the votes set forth on all of the legal absentee ballots, the final total(s) of all votes tallied for the respective Tribal Office(s) shall be computed thereby and such total(s) shall be recorded on a large summary tally board for public viewing.

## **SECTION 2. DELIVERY AND CANVASSING OF SEGMENT BALLOTS**

The delivery and canvassing of the segment ballots shall be conducted in the following manner:

- A.** After the respective segment polling places have closed and all ballots have been cast, the first judge of each Segment Election Committee shall promptly deliver to the place of canvassing the locked ballot box, together with all election materials used and maintained at its polling place. Upon such delivery, the first judge shall present to the Chairman of the Tribal Election Board the following materials and shall receive a written receipt upon presentation of each of the following items:

1. Delivery of the locked ballot box assigned to the segment;
  2. All unmarked ballots returned to the Tribal Election Board from the segment polling place. The unmarked ballots shall be enclosed in a large envelope clearly marked “UNMARKED BALLOTS – [NAME OF SEGMENT]”.
  3. All spoiled ballots returned to the Tribal Election Board from the segment polling place. The spoiled ballots shall be enclosed in a large envelope clearly labeled “SPOILED BALLOTS – [NAME OF SEGMENT]”.
  4. The first judge shall return his/her key to the lock on the ballot box to the Chairman of the Election Board. In the event that the first judge, for any reason, should be unable to perform the duties prescribed in this Subsection, the second judge shall act on his/her behalf.
- B. Upon delivery of the each of the segment ballot boxes to the place of canvassing, the Chairman and one (1) member of the Tribal Election Board shall:
1. Remove themselves from the canvassing of absentee ballots and shall commence to perform the duties inherent in checking in such segment ballot box and other election materials which include:
    - a. The duties listed in Chapter VII Section 2 A;
    - b. The opening of the ballot box to remove and set aside all sealed challenged ballot envelopes.
    - c. The Chairman and one (1) Board member shall continue to perform such duties with respect to each of the remaining segment ballot boxes in the order in which such ballot boxes are delivered to the place of canvassing.
- C. Upon completion by the two (2) members of the Tribal Election Board of the duties inherent in checking in a segment ballot box and other election materials:
1. The First or Second judge of that respective Segment Election Committee shall secure any and all challenged ballot envelopes and, together with the two (2) members of the Election Board, shall proceed to the location at which the other members of the Election Board are canvassing the absentee ballots.

2. Upon delivery, the full Tribal Election Board shall then immediately rule on each of the challenged ballots in the manner prescribed in Section 3 of this Chapter.
  3. Upon completion of such ruling, the Committee judge shall return to the location of his/her Committee and, together with the other members thereof, shall commence to perform the duty of canvassing of the respective segment ballots;
    - a. In the canvassing of its ballots, each Segment Election Committee, shall set aside any and all ballots which said Committee should deem potentially illegal on their face, for subsequent ruling by the full Tribal Election Board pursuant to Section 4 of this Chapter after the canvassing is complete.
- D.** For the purpose of the simultaneous canvassing of ballots by the Segment Election Committee shall maintain its own official tally sheet and large tally board for public viewing, on each of which the votes shall be tallied.
1. The Judge or his/her designee shall remove each ballot individually and announce twice the name of the candidate whose name is clearly marked.
  2. The Judge or his/her designee shall clearly disclose to the public the ballot announced before moving to the next ballot.
- E.** Upon completion by a Segment Election Committee of the canvassing of all its ballots which have been deemed thereby as obviously legal on their face, the full Tribal Election Board shall rule on any and all ballots deemed by such Committee as potentially illegal on their face in the manner prescribed in Section 4 of this Chapter.
- F.** Upon completion of the tallying by a Segment Election Committee of the votes set forth on all of its legal ballots, the final total(s) of all votes tallied for the respective Tribal Office(s) shall be computed thereby and such total(s) shall be recorded on a large summary tally board for public viewing.

**SECTION 3. RULING ON CHALLENGED BALLOTS**

- A.** The full Tribal Election Board shall rule, by majority vote, on each challenged segment ballot. The Election Board shall review and consider the facts surrounding the challenge as they appear on the envelope in which the challenged ballot was enclosed by the respective Segment Election Committee.



- B. Should a majority of the Board rule that the challenge is without merit and, therefore, invalid, the envelope shall be opened and the folded ballot removed to be deposited in the respective segment ballot box.
  - 1. The word “CHALLENGED,” the ruling on the challenge and the basis therefore, and the initials of those members of the Board who voted in favor of the majority ruling and of those members who voted against such ruling shall be clearly written on the back of the challenged ballot envelope.
  
- C. Should a majority of the Board rule that the challenge is valid, the envelope shall remain sealed with the challenged ballot enclosed therein.
  - 1. The word “CHALLENGED,” the ruling on the challenge and the basis therefore, and the initials of those members of the Board who voted in favor of the majority ruling and of those members who voted against such ruling shall be set forth on the back of the challenged ballot envelope.
  
- D. All such challenged ballot envelopes, with the respective rulings thereon set forth on the backs thereof, shall be enclosed in a large envelope, on which are printed the words “ELECTION BOARD, CHALLENGED BALLOTS, (name of segment) SEGMENT.”
  - 1. This Challenge Ballot Envelope shall be maintained by the Tribal Election Board during the entire canvassing process.
  - 2. Upon completion of the entire canvassing process, each segment’s Challenge Ballot Envelope shall be returned to the respective segment to be sealed with canvassed ballots in the locked ballot box.

**SECTION 4. RULING ON POTENTIALLY ILLEGAL BALLOTS**

- A. An illegal ballot shall be defined as any ballot which fails to comply with the applicable provisions set forth in this Ordinance, in the context of the casting thereof (e.g., an absentee ballot unaccompanied by an Affidavit for Voter Registration) or in the context of the marking thereof (e.g. a ballot on which the name of a candidate has been written in), or which has been so marked as to place in doubt the intention of the voter or has been otherwise incorrectly marked; provided, however, that, in the instance of mismarking, the Tribal Election Board shall rule illegal only that portion of the ballot which has been mismarked and shall cause to be tallied all votes cast on the remaining portion of the ballot.

- B.** The full Tribal Election Board shall rule, by majority vote, on each ballot which has been set aside for potential illegality, either by the Election Board or by the Segment Election Committees. The Election Board shall review and consider the circumstances surrounding the potential illegality of the ballot.
1. Should a majority of the Board rule that the ballot, in its entirety, is legal, the ballot shall set aside to be placed in the respective ballot box after all that Segment's potentially illegal ballots have been ruled upon. Those ballots shall be canvassed and tallied accordingly.
  2. Should a majority of the Board rule that the ballot, in its entirety, is illegal, the ballot shall be reject for illegality and the votes set forth thereon shall not be canvassed or tallied.
    - a. The words "REJECTED FOR ILLEGALITY," the ruling on rejection and the basis therefore, and the initials of those members of the Board who voted in favor of the majority ruling and of those members who voted against such ruling shall be written on the unprinted side of the ballot.
    - b. The ballot(s) shall then be enclosed in a large envelope, on which are printed the words "BALLOTS REJECTED FOR ILLEGALITY."
  3. Upon completion of the entire canvassing process, each segments Rejected for Illegality Ballot Envelope shall be returned to the respective segment to be sealed with canvassed ballots in the locked ballot box.
- C.** Each such ballot which has been rejected, in whole or in part, for illegality may serve as a ground for an election contest brought pursuant to this Ordinance.

## **SECTION 5. CERTIFICATION OF ELECTION RESULTS**

- A.** Upon completion of the tallying and computing of the total number of votes cast for the respective Tribal Offices by the Tribal Election Board and the Segment Election Committees shall:
1. First, certify the official tally sheets of each segment by signature of each Tribal Election Board Member.
  2. The Election Board shall then declare the unofficial winner of that respective election.

- B.** The Tribal Election Board shall have no more than three (3) days from the date of election to certify the election and the winning candidate to the Tribal Business Council and to the public by written notice.
- C.** Declaration of an unofficial winner nor certification of the election results shall not preclude any appeal brought forth under this Ordinance.

**SECTION 6. PRESERVATION OF ELECTION RECORDS**

- A.** After the results of the election have been formally certified, the Tribal Election Board shall immediately deliver and deposit the locked ballot boxes to the vault at the Fort Berthold Agency of the Bureau of Indian Affairs, New Town, North Dakota. The locked ballot boxes shall contain:
  - 1. All cast and canvassed ballots for the respective segment;
  - 2. The official envelopes containing:
  - 3. The “REJECTED FOR ILLEGIALITY”,
    - a. “UNMARKED BALLOTS”
    - b. “SPOILED BALLOTS”
    - c. “CHALLENGE BALLOTS”
    - d. “ABSENTEE BALLOTS REJECTED FOR ILLEGAILITY”
    - e. “REJECTED FOR ILLEGAILITY”
  - 4. All official tally sheets;
  - 5. Official pollbooks and voter registration sheets
- B.** In the event the Tribal Election Board shall be unable to immediately deliver and deposit the sealed ballot boxes in the BIA - Fort Berthold Agency vault, the Tribal Election Board shall deliver the ballot boxes to a secure place for immediate delivery to the BIA vault as soon as reasonably possible.
- C.** The sealed ballot boxes and the materials contained within the ballot boxes shall be preserved and maintained for a period of one hundred and eighty (180) days from the date on which the election was held or for as long as a court of competent jurisdiction continues to retain jurisdiction over a contest of the election, if such period of retained jurisdiction should exceed a period of one hundred and eight (180) days.

## CHAPTER VIII

### SPECIAL RUNOFF ELECTIONS

- A. In case of a tie vote for any position on the Tribal Business Council in a general election, such that a qualified candidate for such position is not elected, a special runoff election shall be held between the tied candidates. The candidate who secures the higher number of votes cast in the runoff election shall be declared elected to such position.
- B. In the case of a tie vote in such a runoff election, a second runoff election shall be held between the two (2) tied candidates for such position and the candidate who secures the higher number of votes cast in the second runoff election shall be declared elected to such position.
- C. In the case of a tie vote in the second runoff election, the two (2) tied candidates shall draw straws in a special lottery conducted by the Tribal Election Board for the purpose of determining which candidate shall be declared elected to the position.

## CHAPTER IX

### CONTEST OF ELECTION

#### **SECTION 1. FILING WITH TRIBAL ELECTION BOARD**

- A. A defeated candidate or ten (10) qualified voters, who desire to contest an election after the results thereof have been formally certified, shall file with the Tribal Election Board a duly verified written complaint setting forth a concise statement of the facts upon which the contest is based, together with a nonrefundable filing fee in the amount of Two Hundred and 00/100 Dollars (\$100.00) , within a period of three (3) days from the date on which the date on which the election results were certified, exclusive of Sundays and holidays.
- B. As early as practicable, but within a period no greater than three (3) days from the date of the filing of the complaint, exclusive of Sundays and holidays, the Election Board shall hold a formal hearing on the complaint, at which hearing the Election Board shall admit evidence, testimonial and documentary, presented by the complainant(s) and by other interested persons having relevant evidence to present.
- C. As early as practicable, but within a period no greater than two (2) days from the date on which the hearing was held exclusive of Sundays and holidays, the Election Board shall issue its written decision on the complaint based upon the evidence presented at the hearing.
- D. The time limits prescribed herein shall be strict and inflexible and any individual(s) that does not comply with the time requirements prescribed herein forfeits their right to contest the election to the Tribal Election Board or through Court proceedings.

#### **SECTION 2. FILING WITH FORT BERTHOLD TRIBAL DISTRICT COURT**

- A. Any complainant(s), who has exhausted the administrative remedy provided for in Section 1 of this Chapter and who is aggrieved by the decision issued by the Tribal Election Board, may filed with the Fort Berthold Tribal District Court, within a period of five (5) days from the date of the issuance of the written decision of the Tribal Election Board:
  - 1. A duly verified written complaint setting forth a concise statement of the facts upon which the contest of the election is based.

2. If the complaint is not filed within the five (5) day period described in this Chapter, the complainant forfeits their right to contest the election through Tribal District Court.

**B.** In the event that the Election Board has failed to hold a hearing or issue its written decision on a properly filed complaint within the applicable time periods prescribed in Section 1 of this Chapter, any complainant(s) aggrieved by such failure shall be entitled to file a complaint with the District Court within a period of five (5) days from the date on which the Election Board should have held the hearing or from the date on which the Election Board should have issued its written decision. Upon the filing of any such complaint, the District Court shall grant such election contest the highest priority in calendaring and shall set the matter for hearing on the earliest practicable date.

### **SECTION 3. FILING APPEAL WITH INTERTRIBAL COURT OF APPEALS**

Any complainant(s), who has properly filed a complaint with the District Court pursuant to Section 2 of this Chapter and is aggrieved by the decision issued thereby, may file an appeal from such decision with the Intertribal Court of Appeals pursuant to the rules of appellate procedure set forth in the Code of Laws of the Three Affiliated Tribes. Upon the filing of any such appeal, the Court of Appeals shall grant such appeal the highest priority in calendaring and shall set the matter for argument on the earliest practicable date.



**NOW THEREFORE BE IT RESOLVED**, The Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby approves the following new provisions and/or amendments to the Tribal Code of Law and such changes shall be effective as of the date of this Resolution:

1. Tribal Election Code (amended)
2. Tribal Arbitration Ordinance (enacted)
3. Chapter 21, Section 7(e) – Usury Provision (amended).

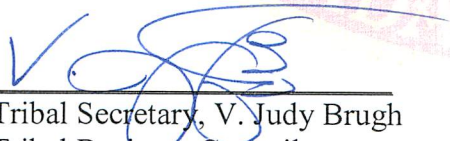
**CERTIFICATION**

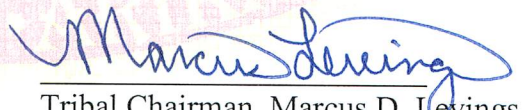
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the Tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 6 were present at a SPECIAL Meeting thereof duly called, noticed, convened and held on the 28 day of JUNE, 2010, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman [] Voting. [  ] Not Voting.

Dated this 28 day of June, 2010.

**ATTEST:**

  
 Tribal Secretary, V. Judy Brugh  
 Tribal Business Council  
 Three Affiliated Tribes

  
 Tribal Chairman, Marcus D. Levings  
 Tribal Business Council  
 Three Affiliated Tribes

