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Revised Law and Order Code of the Fort McDowell Yavapai Nation, Arizona

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CHAPTER 3 - ELECTIONS

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ARTICLE I. ELECTION BOARD

Sec. 3-1. ELECTION BOARD

A. Composition

The Election Board shall be appointed by a majority of a quorum of the Tribal Council. The Election Board shall consist of five (5) members and up to two (2) alternates all of whom are enrolled members of the Fort McDowell Yavapai Nation. The Election Board members shall be appointed for a period of four (4) years effective on the date of his or her appointment; provided that two (2) of the initial members shall be designated to serve initial terms of two years. Each member shall serve until his or her replacement has been appointed by the Tribal Council. Upon expiration of the term of an Election Board Member, the Tribal Council shall appoint a member to serve for a period of four (4) years. The Chairperson of the Election Board shall be chosen by the Election Board from within its own members. The four remaining members of the Board shall be designated as tellers.

B. Removal

By a majority of a quorum vote of the Tribal Council, any member of the Election Board may be removed for failing to uphold the duties of his position on the Election Board or for other good cause. The member shall be afforded reasonable notice and an opportunity to be heard regarding the alleged grounds for removal. The term of a member shall be automatically terminated if such member is convicted of a felony or of a misdemeanor involving moral turpitude as defined in this Election Ordinance.

C. Qualifications

No candidate for office is eligible for appointment to the Election Board. No existing member of the Election Board may run for office without prior resignation from the

Election Board. The resignation must be received no later than the 1st of September prior to the next regularly scheduled election. No person shall be eligible for appointment to the Election Board who has been convicted of a felony or who has, within five (5) years prior to appointment, been convicted of a misdemeanor involving moral turpitude as defined in this the Election Ordinance. Serving on the Election Board involves a substantial commitment, members of the Election Board must be able to dedicate the time and effort necessary to fulfill this substantial commitment. Election Board Members must be at least twenty-one years of age.

D. Compensation

The Election Board shall be compensated at a rate as set by the Tribal Council.

E. Vacancies

Vacancies for any reason shall be filled by a majority vote of a quorum of the Tribal Council for the remainder of the existing term.

F. Conflict of Interest

Unless a majority of the remaining members of the Election Board agree that the member can sit as a fair and impartial judge, no Election Board member shall participate in any election contest or appeal involving a candidate or voter who is an immediate family member. For purposes of this section, immediate family shall mean father, mother, husband, wife, son, daughter, sister or brother.

Sec. 3-2. DUTIES

A. In General

The Election Board shall have the duty of assuring that all of the relevant election dates and deadlines are met and shall possess the powers necessary to conduct an orderly and fair election. The Election Board shall ensure that all elections are conducted according to the Constitution and this ordinance. The Election Board shall hear election contests and disputes.

B. Oath

Prior to the election, each member of the Election Board shall take an oath to faithfully perform the duties imposed upon him or her by the Constitution of the Fort McDowell Yavapai Nation and Tribal Law. A Tribal Judge shall administer and certify the oath.

C. Chairman

The Chairman of the Election Board shall be responsible for the safe keeping of the ballots and ballot boxes. The Chairman shall periodically check and monitor the work of the Election Board members to insure accuracy. The Chairman shall supervise the counting of the election results.

D. Tellers

The Tellers of the Election Board shall check off the voter's names on the final list of eligible voters as they arrive to vote on election day.

E. Alternates

Alternates shall attend meetings and replace Board members as required.

F. Mailing Addresses The Election Board pursuant to a request from a candidate who has filed a petition to run for Tribal office is authorized to release to that candidate a copy of the mailing addresses of all eligible voters for that particular election. However, the Election Board may not disseminate the mailing address of an individual for a particular election where that voter has informed the Election Board in writing that his or her mailing address may not be disseminated to candidates. A voter may not allow his or her mailing address to be given to selected candidates only.

ARTICLE II. ELIGIBILITY OF VOTERS AND CANDIDATES

Sec. 3-3. VOTERS

A. Eligibility

All enrolled members of the Fort McDowell Yavapai Nation who are 21 years of age or over on the date of the Tribal election shall be eligible to vote.

B. List of Eligible Voters

A list of Eligible of voters shall be prepared by the Election Board. The list of eligible voters shall be posted at designated places within the Community by the first Friday in December before the General Election.

C. Appeals

Any enrolled member of the Fort McDowell Yavapai Nation whose name has been removed or omitted from the list of Eligible Voters may appeal in writing to the Election Board for listing. The final date for an appeal will be the second Friday in December. The Election Board shall hold a hearing within five (5) days after the second Friday in December for any filed voter eligibility appeals. If there is more than one appeal, the Election Board may consolidate the hearings of the appeals. The decision of the Election Board shall be made no later than five (5) days after the hearing and shall be final.

Sec. 3-4. ABSENTEE VOTER

A. Request for Absentee Ballot

Eligible voters who are temporarily absent or otherwise unable to cast their ballots at the polling place may request absentee ballots. Such request must be in writing and delivered to the Election Board at least twenty-one (21) days prior to the date of the election.

B. Schedule

Absentee ballots shall be mailed to eligible voters at least twelve(12) days prior to the date of the election. The absentee voter must seal his ballot in an unmarked envelope which, in turn, must be sealed in an envelope which bears the absentee voter's signature and address. The absentee voter must sign the envelope to have his or her votes counted. Ballots returned to the Election Board through the mail shall be mailed to the Election Board at the address indicated on the ballot. Absentee ballots must be received by the Election Board by 5:00 p.m. the day before the

election. If any such absentee ballot is not received by the date and time described herein, then such absentee ballot shall be rejected and not be counted.

C. Lost Absentee Ballot

If an absentee voter loses his absentee ballot, or fails to properly return his absentee ballot, he may still vote on election day. The Election Board shall check the list of persons who have voted by absentee ballot to insure that person has not already voted by absentee ballot.

D. Received Absentee Ballots

As the Election Board receives completed absentee ballots, the Election Board shall properly record the name of the absentee voter and shall remove the completed absentee ballot from its outer envelope and place the absentee ballot in a locked ballot box. The signed envelopes shall be retained with the records of the election.

Sec. 3-5. CANDIDATES

A. Qualifications

A person may run for only one elective office. Candidates for the office of President, Vice-President, Treasurer, Secretary and Council Member shall meet the minimum qualifications as listed in Article V, Section 6 of the Fort McDowell Yavapai Nation Constitution which requires that all candidates:

1. Must be an enrolled member of the Fort McDowell Yavapai Nation; and
2. Must have continuously physically resided within the Fort McDowell Yavapai Nation for at least one year immediately preceding the election date; and
3. Must be 25 years of age; and
4. Must possess a high school diploma or its equivalent**.** Proof of educational requirements must be submitted to the Election Board at the same time that Candidates submit their completed petitions to the Election Board; and
5. Must not have been convicted of a felony or been convicted of a misdemeanor involving moral turpitude. Candidates must be fingerprinted to verify the requirements of this subsection. Candidates are required to have their fingerprints inked by an authorized Tribal department no later than the 1st Monday of he November prior to the next regularly scheduled election. Results of the fingerprint record checks shall be sent by the authorized department to the Nation's Prosecutor for review.

B. Moral Turpitude

No person who has been convicted of a felony, or who has been convicted of a misdemeanor involving moral turpitude shall be eligible to hold any elected office under the Constitution. The following misdemeanors and no others shall be considered misdemeanors involving moral turpitude: bribery, embezzlement, extortion, deceit, fraud, misappropriation of funds, forgery, homicide, misbranding, perjury, rape, sexual offenses with a minor and theft.

C. Residence

Residence for the purpose of candidacy shall mean the "physical presence." The candidate must have continuously resided within the boundaries of the Fort McDowell Yavapai Nation for one year prior to the date of the election. Temporary absence from the Fort McDowell Yavapai Nation for purposes of employment, education, military service, illness or physical disability shall not otherwise affect the residence of the member, where such member has otherwise qualified under this Section.

ARTICLE III. PETITIONS

Sec. 3-6. ELECTION PETITIONS

Candidates for office shall be required to obtain the following number of signatures or more from qualified voters of the Nation:

A. For President, fifty (50) signatures;

B. For Vice-President, forty (40) signatures

C. For Treasurer, thirty (30) signatures

D. For Secretary, twenty (20) signatures

E. For At Large Council Members, thirty (30) signatures.

Tribal Members may sign more than one petition form.

Sec. 3-7. CERTIFICATION, AUTHORIZATION AND WAIVER

Any person who takes a petition for the purpose of collecting signatures for any office shall sign a certificate certifying that he or she meets the qualifications for office. The person shall also sign an authorization and waiver allowing the Tribal Council designated agency or person to conduct a background check, including a criminal records search with tribal, local, county, state, and/or federal law enforcement agencies for a conviction of felony or a conviction of a misdemeanor as defined in this ordinance. The designated tribal agency or person shall only release information concerning the criminal records check to the Election Board that relates to any felonies or misdemeanors involving moral turpitude.

Sec. 3-8. PROCEDURE FOR REVIEW AND DETERMINATION OF CANDIDACY QUALIFICATION

The Election Board shall review the candidates' qualifications and the validity of the candidates' submitted Petitions. The Election Board shall meet to review the qualifications and the Petitions. If the Election Board determines that a person is not qualified to be a candidate or a Petition is invalid, the individual affected shall immediately be notified by certified mail, or personal service or both. The notice shall be delivered no later than the 2nd Wednesday in December. The notification shall include the reason for the adverse decision.

An appeal of the Election Board's decision that a person is not qualified or a Petition is not valid may be made in writing to the Election Board within two (2) days after receipt of the decision. Along with the notice of appeal, the potential candidate shall submit his or her justifications and/or evidence indicating why the Election Board's initial determination is in

error. The Election Board shall hold a hearing within two (2) days after receipt of the notice of appeal. The hearing shall be informal and the formal rules of evidence shall not apply. The Election Board shall issue a written opinion within three (3) days after the hearing. The Election Board's decision shall include detailed findings of fact, the basis of their decision, and their decision. The individual affected shall immediately be notified by certified mail, personal service or both. If there is more than one appeal, the Election Board may consolidate the hearings.

An appeal of the decision of the Election Board may be made in writing to the Trial Court of the Tribal Court within two (2) days after receipt of the Election Board decision. The decision of the Election Board shall be given deference by the Tribal Court and the review shall be limited to whether the decision of the Election Board is sustained by sufficient evidence on the record. The Tribal Court shall decide the matter within three (3) days of receipt of the appeal. Except in rare cases with good cause shown as to why the additional evidence should be considered, the Trial Court's review will be limited to a review of the record of the Election Board proceedings and the evidence before the Election Board at the time of its decision. Unless good cause is shown for a hearing before the Trial Court, the Trial Court shall not hold a hearing. The decision of the Trial Court of the Tribal Court shall be final.

Sec. 3-9. AVAILABILITY OF PETITIONS, DEADLINE FOR THE SUBMISSION OF PETITIONS

The Election Board shall make petitions available to the candidates no later than the 3rd Monday in October. For the initial election under the new Constitution scheduled for January of 2000, Petitions shall be made available as soon as practical. All petitions shall be submitted to the Election Board on or before the 1st Monday in November. Candidates must submit a non-refundable three hundred dollar ($300) petition-filing fee at the same time petitions are submitted to the Election Board. The petition filing fee shall be deposited in the Tribe's general fund to assist the Tribal government's cost of administering elections.

Sec. 3-10. PUBLIC INSPECTION OF FILED PETITIONS

Any eligible voter may inspect all Petitions filed with the Election Board. If an eligible voter has reason to believe a Petition is invalid, the eligible voter shall immediately notify the Chairman of the Election Board for consideration. Any such notification must be received within five (5) days after the deadline to submit Petitions has passed or such notification will not be considered by the Election Board.

ARTICLE IV. ELECTION

Sec. 3-11. PREPARATION, FORM AND CONTENT OF BALLOTS

A. Ballots shall be prepared by the Election Board. Each ballot shall be headed "Official Ballot."

B. The ballots shall list the names of the candidates whose names appear on the final list of candidates as established by the Election Board. The names of the candidates on the ballots shall be listed alphabetically by last name.

C. Voters shall not be permitted to write-in candidates on the official ballot.

D. Voters may cast a vote for each open seat that is open for election. In other words, if the offices of the President, the Treasurer and one Council Member are open for election, then each voter may cast one vote for each office. The voter may also choose to vote for only one candidate for only one office on their ballot. For instance, if a voter only wanted to vote for one person for the office of Treasurer, without voting for other open offices, the voter's ballot would remain valid. However, if a person votes for more than one candidate for an office, then the entire ballot shall be spoiled (rejected) and no votes on the ballot shall be counted. A rejected ballot shall be folded and marked "REJECTED" in red ink by a designated teller. Each member of the Election Board shall sign his or her name below the marking and the rejected ballot shall be placed in the ballot box at the end of counting.

Sec. 3-12. ELECTION PROCEDURES

A. Election

Regular elections shall be held on the second Tuesday in January in even numbered years. The Election Board shall:

1. Make Petitions for Candidates available no later than the third (3rd) Monday in October before the election and inform the prospective candidates the deadline for the submission of the completed Petitions is on or before the 1st Monday in November.
2. Post voter's list on the first (1st) Friday of December before the election.
3. Post sufficient notices of the election to be held on the second (2nd) Tuesday in January before the election.
4. Post the names of qualified candidates, as verified by the Election Board, for a period of at least fifteen (15) days prior to the election, duly noting any pending appeals.
5. Post the location of the polling place in various tribal locations sufficient to provide adequate notice to eligible voters.

B. Hours of Voting

The polls shall be open from 7:00 a.m. to 6:00 p.m. Any eligible voter who, at the moment of closing, is in the line of waiting voters shall be allowed to prepare and cast a ballot.

C. Method of Voting

Each prospective voter, upon being identified as being an eligible voter of the Fort McDowell Yavapai Nation, shall be handed an unused ballot and shall sign his or her name on a form kept for that purpose to acknowledge that he or she has received that ballot.

D. Write In Candidates

Write in candidates shall not be eligible for election. Voters shall not be permitted to write-in candidates on the official ballot. If any voter actually votes for a write-in candidate despite this prohibition, the entire ballot shall be spoiled, meaning that the vote for that write-in candidate and any votes for any other candidates on the ballot

shall not be counted. A rejected ballot shall be refolded and marked "REJECTED" in red ink by a designated teller. Each member of the Election Board shall sign his or her name below the marking and the rejected ballot shall be placed in the ballot box at the end of the counting.

E. Fifty Foot Limit Notices

1. Notices

The Election Board shall make two notices stating: "Fifty Foot Limit" or "50 Foot Limit." Before opening the polls, the Election Board shall post the two (2) 50 foot limit notices approximately fifty feet in different directions from the main outside entrance of the designated polling place that the elects on is being held.

2. Campaigners

No campaigning by any person will be allowed on election day within a polling place or in a public manner within fifty (50) feet of the main outside entrance of a polling place.

3. Effect

No persons shall be allowed to remain inside the fifty (50) foot limit while the polls are open except for the purpose of voting. After a voter has cast his or her ballot, he/she shall immediately leave the boundaries of the fifty foot limit. Members of the Election Board are the only persons allowed to remain inside the fifty (50) foot limit.

F. Spoiled Ballots

If a voter spoils a ballot and obtains another, the spoiled ballot shall be folded and marked SPOILED in red ink by a designated teller. Each member of the Election Board shall sign his or her name below the marking and the spoiled ballots shall be placed in the ballot box at the end of the counting.

G. Unused Ballots

Ballots unused at the end of the voting shall be tied or stapled together, marked "UNUSED" in red ink.

H. Rejected Ballots

If during the counting of the votes, the members of the Election Board are unable to determine from a ballot the choices of the voter, that ballot shall be rejected. In other words, if three seats are on the ballot for election and the Election Board cannot determine the voter's choices, the entire ballot shall be rejected. A rejected ballot shall be refolded and marked "REJECTED" in red ink by a designated teller. Each member of the Election Board shall sign his or her name below the marking and the rejected ballot shall be placed in the ballot box at the end of the counting.

I. The Count

As soon as the polls are closed and the last ballot has been deposited in the ballot box, the Election Board shall within one half hour begin the counting the votes cast. With the exception that the Election Board may take a fifteen (15) minute break, the count shall continue until completed and the results determined and declared. After

the Election Board Chairperson unlocks the ballot box, the Chairperson shall remove and open each ballot and shall read aloud the name of each candidate voted for as indicated on the ballot which shall be duly recorded by all tellers.

J. Witnesses

The counting of the votes shall be open for public observation but the public must remain at a reasonable distance from the Chairperson, tellers, and ballot box. The public must remain quiet and in no way interfere with the orderly counting. If order cannot be kept, the Chairperson shall delay the counting until such time as order has been reestablished.

K. Tally Sheet

Four tellers shall separately write on a tally sheet the titles of the offices and underneath each title the names of the candidates for each office. They shall also place opposite the candidates' names the number of votes for each candidate as the votes are read aloud.

L. The Abstract

At the end of the count, the Election Board shall determine the total votes cast for each candidate. The lists of the Tellers must match in order to be certified. These results shall be written down together with the number of rejected and spoiled votes and shall be certified by the Chairperson.

M. Return of Ballots to the Judiciary

The Election Board shall return to the Fort McDowell Yavapai Nation Judiciary the following:

1. The official returns; and
2. The spoiled, rejected and unused ballots; and
3. The signature roster, poll list, tally sheet and abstract; and
4. The certification of Election; and
5. All other relevant election documentation.

N. Posting of Results

Immediately after the results are certified, the Election Board shall post the results.

Sec. 3-13. RESIGNATION AND NOTICE

A. Council Membership

Any member of the Fort McDowell Yavapai Nation Tribal Council who desires to run for a different office than that person is currently serving, and the member's current office is not normally scheduled for a vote in the coming election, shall be required to provide notice to the Election Board. The notice shall state that the member will be running for a different office and the member will resign from the member's current position effective on the date the newly elected officers are sworn into office. Such notice and notice of future resignation must be provided to the Election Board not less than seventy-five (75) days prior to the scheduled election. This notice is required to allow the Election Board to hold a Special

Election for the current office of the resigning member on the same date as the upcoming election.

B. Other Employment or Offices

No Council Member shall hold other employment while serving on the Tribal Council. No member of the Tribal Council shall be an employee of or hold other constitutional office in the Fort McDowell Yavapai Nation government. No member of the Tribal Council shall be employed in any branch of the United States Government nor shall any member of the Tribal Council hold any elective office in any other governmental body. This section shall not prohibit a Council Member from serving as the Council's representative on boards, associations or committees.

Upon written notice by the Tribal Council to a member of the Tribal Council or the Secretary who has violated this section, the affected person shall have fourteen (14) days to relinquish such employment or elective office prohibited by this section. If the affected person fails to relinquish such employment, such elective office shall become vacant and an election shall be held pursuant of Article X of the Constitution. This subsection shall remain in effect so long as the Tribal Council is receiving a full salary or compensation equivalent to a full salary.

Sec. 3-14. ABSENCE FROM TRIBAL EMPLOYMENT FOR THE PURPOSE OF VOTING

A person entitled to vote at a Tribal election held within the Fort McDowell Yavapai Nation shall not be liable for any penalty nor deduction from salary or wages because of absence from employment while voting. Requests shall be made for such absence prior to the date of the election, and the employer may specify the hours during which the employee may be absent.

Sec. 3-15. GROUNDS FOR CHALLENGING VOTERS

A person offering to vote may be orally challenged by the Election Board members upon any of the following grounds:

A. That he/she is not the person whose name appears on the List of Eligible Voters.

B. That he/she has already voted before in the election that is presently being held.

If the Election Board determines that the challenge is correct, the person shall be prohibited from casting any votes.

Sec. 3-16. TIE VOTES

In the case of a tie between one or more candidates, a runoff election shall be held. The Runoff election shall be held between five (5) days and ten (10) days after the election results are certified by the Election Board. In the event the Runoff election results in another tie, the winner shall be determined by drawing cards with the high card winning or, if the tied candidates agree, another similar method (e.g. a coin toss, drawing of lots) mutually agreeable to the tied candidates.

Sec. 3-17. VALIDITY OF ELECTIONS; ELECTION CHALLENGES

Any eligible candidate whose name appears on the ballot may challenge the conduct of the election. Such challenge must be filed in writing within two (2) days following the Certification of the Election by the Election Board. The challenge shall be presented in writing to the Chairperson of the Election Board. Within three (3) days following the filing of the challenge, the Election Board shall hold a hearing to determine the validity of the challenge. The hearing shall be informal and the formal rules of evidence shall not apply. If there is more than one challenge, the Election Board may consolidate those challenges. The Election Board shall ensure that all candidates in the election receive notice of the hearing either by personal service, or certified mail or both. The Election Board shall issue a written decision within five (5) days following the hearing. The Election Board's decision shall include detailed findings of fact, the basis of their decision, and their decision.

The decision of the Election Board may be appealed to the Trial Division of the Tribal Court within two (2) days after receipt of the Election Board decision. The findings and decisions of the Election Board shall be given deference by the Tribal Court and the Court's review shall be limited to whether or not the decision of the Election Board is sustained by sufficient evidence on the record. The member challenging the decision shall have the burden of proving the decision was wrong by a clear and convincing evidence standard. Except in rare cases with good cause shown as to why the additional evidence should be considered, the Trial Court's review will be limited to a review of the record of the Election Board proceedings and the evidence before the Election Board at the time of its decision. Unless good cause is shown for a hearing before the Trial Court, the Trial Court shall not hold a hearing. The Trial Court shall hear and determine the appeal within seven (7) days following the filing of the appeal. The decision of the Trial Division of the Tribal Court shall be final and no other court, including the Tribal Supreme Court, shall have jurisdiction over election contests.

Sec. 3-18. STANDARD OF REVIEW FOR AN ELECTION CONTEST

For all election contests filed pursuant to Section 3-17 above, the Election Board and the Tribal Court shall be guided by the following principles as their standard of review:

A. Election results are presumed to be regular and proper; and

B. Irregularities or misconduct in an election which does not tend to affect the result or impeach the fairness of the result will not be considered; and

C. Elections will not be set aside unless the facts definitely show that there was not a fair election; and

D. The Rule of Proportionality shall apply which requires that unless it can be shown for which candidate any illegal vote(s) were cast, the illegal vote(s) are deducted from the whole vote of the election in proportion to the votes cast, not from the candidate having the largest number of votes.

E. After an election, election provisions contained in this Ordinance and the Constitution are to be seen as directions unless the violations of the provisions either 1) obstructed a free and intelligent vote, 2) affected an essential element of a valid election.

Sec. 3-19. THE TRIBAL COUNCIL DURING THE PENDENCY OF AN ELECTION CONTEST

A. It is the custom and tradition of the Tribal Council to have a full Tribal Council (all five members) when considering and deciding major issues. If an election contest appeal has been filed, the Tribal Council existing prior to the election shall continue to hold their offices until all newly elected Council Members are sworn into office. This hold-over Tribal Council shall only hear and decide issues that must be decided due to time considerations or every day issues where inaction would adversely affect the smooth running of the Tribe. This power shall be exercised with extreme caution and the hold over Tribal Council shall refrain from deciding controversial issues.

B. If a decision of the Election Board is appealed to the Trial Division of the Tribal Court, after the decision of the Trial Division the candidates shall be sworn into office on the second Tuesday in February or if that date has passed, as soon as practicable. The Appellate Division of the Tribal Court and all other courts are prohibited from accepting jurisdiction over any election contests. If any election contest is incorrectly filed in the Fort McDowell Supreme Court or any other court despite this prohibition, no court shall issue any stay, injunction or restraining order during the pendency of the appeal, such filing shall not stay or alter the swearing in of the candidates, and such appeal shall be dismissed as soon as practicable.

Sec. 3-20. TIME

In computing any period of time prescribed or allowed by these rules the day of the act, event or default from which the designated period of time begins to run shall not be included. When the period of time prescribed or allowed under this Chapter is less than 11 days, then Saturdays, Sundays, legal holidays, Tribal holidays and official days off shall be excluded in the computation. All persons who file any appeals under this Ordinance shall provide an address where that person can be served personally. If that person is not at the designated address when personal service is attempted, the process server is authorized to either leave the notice with a person of suitable age or to post the notice at the address. The act of leaving the notice with a person of suitable age or posting the notice shall constitute receipt of the notice for purposes of this Chapter.

Sec. 3-21. REPEAL OF PREVIOUS ELECTION ORDINANCES

Any and all past election ordinances, including the election ordinance passed on January 11, 1999 pursuant to Res. No. 99-07, shall be considered superseded upon the ratification and approval of the Constitution adopted by the voters of the Tribe on October 19, 1999.

Sec.3-22 through 3-49 reserved

ARTICLE V. RECALL PROCEDURES AND SPECIAL ELECTIONS

Sec. 3-50. OFFICERS SUBJECT TO RECALL

Each elected official of the Nation is subject to recall from office by the eligible voters of the Nation. A number of eligible voters equaling forty percent (40%) of the total number of eligible voters may, by recall petition, demand a special election for the recall of a particular elected official. Not more than two (2) members elected officials may be subject to a recall election during the same period of time.

Sec. 3-51. APPLICATION FOR RECALL PETITION

A. In order to protect against fraud and deceit and to maintain the integrity of the election process pertaining to special elections, a person seeking to recall an elected official voter must first file an application with the Nation's Election Board to issue a recall petition on a form approved by the Election Board. Only eligible voters of the Nation may file an application for a recall petition and only eligible voters of the Nation may circulate recall petitions and collect signatures thereof.

B. On the application form prepared by the Election Board, the applicant must include the following information: the person's name and address; a statement of intention to circulate and submit a recall petition; and a clear and concise statement of the grounds for recall.

1. The clear and concise statement of the grounds for recall shall consist of not more than one hundred fifty (150) words. A clear and concise statement means that the statement must be understandable to an average person of voting age under the Nation's laws.

C. Each application may be directed against only one (1) elected official. If an applicant desires to subject two (2) or more elected officials to recall, the applicant must submit a separate application for each elected official. This subsection (C) does not change the rule that no more than two (2) elected officials may be subject to a Special Election during the same time period.

D. An application for a recall petition may be submitted to any member of the Election Board.

E. The member of the Election Board that receives an application shall immediately notify all members of the Election Board and the Board shall convene a meeting within twenty four (24) hours of receipt of the application. The Election Board shall assign a number to the application. If the Election Board shall assign a number to the application. If the Election Board approves the application pursuant to 3-52, the Election Board shall place this number on the lower right hand corner on each side of each signature sheet of an official recall petition form.

F. The Election Board shall maintain a record of each application received, of the date of its receipt and of the number assigned and issued to the applicant.

Sec. 3-52. APPROVAL OF APPLICATION

A. Within two (2) days of receipt of an application for a recall petition, the Election Board shall determine whether the application satisfies the requirements of Article IX of the Nation's Constitution and the requirements of this Article V.

B. Upon approval of the application, the Election Board shall have one (1) additional day to:

1. Provide written notice to the applicant and the elected official who is the subject of recall that the Election Board has approved the application

2. Prepare an official recall petition that contains signature lines for at least percent (40%) of the eligible voters of the Nation to sign and include the applicant's general statement at the top portion of each signature page; and

3. Issue the official recall petition to the applicant to begin circulating for signatures; and

C. Prior to the filing of the recall petition, the applicant may request additional official signature pages from the Election Board.

D. In the event that the Election Board determines that the application does not comply with Article IX of the Nation's Constitution or this Article V, the Election Board shall have one (1) additional day to provide written notice to the applicant that the Board will not hold a recall election and the reasons for this decision.

Sec 3-53 APPEAL OF ELECTION BOARD'S DECISION TO APPROVE OR DENY APPLICATION

A. Within five (5) days of receipt of the Election Boar's approval or denial of the application, the applicant or the elected official subject to recall may file a written appeal with the Election Board. Along with the notice of appeal, the applicant or the elected official shall submit his or her justifications and/or evidence indicating why the Election Board's decision was in error. The Election Board shall hold a hearing within seven (7) days after the receipt of the notice of appeal. The hearing shall be informal and the formal rules of evidence shall not apply. The Election Board shall issue a written opinion within seven (7) days after the hearing. The Election Board's decision shall include detailed findings of fact, the basis of their decision, and their decision. The applicant and the elected official shall immediately be notified by certified mail, personal service or both. If there is more than one appeal, the Election Board may consolidate the hearings.

B. An appeal of the decision of the Election Board may be made in writing to the Trial Division of the Tribal Court within five (5) days after receipt of the Election Board decision. The decision of the Election Board shall be given deference by the Trial Division of the Tribal Court and the review shall be limited to whether the decision of the Election Board is sustained by sufficient evidence on the record. The Trial Division of the Tribal Court shall decide the matter in an expedited manner no longer than thirty (30) days after receipt of

the record. Except in rare cases with good cause shown as to why additional evidence should be considered, the Trial Division of the Tribal Court's review will be limited to a review of the record of the Election Board proceedings and the evidence before the Election Board at the time of its decision. Unless good cause is shown for a hearing before the Trial Division of the Tribal Court, the Court shall not hold a hearing.

C. The filing of an appeal with the Trial Division of the Tribal Court automatically stays a Special Election.

Sec. 3-54. FORM OF PETITION

Each signature page of the petition must include the applicant's statement for recall. Once the application is approved, neither the Election Board nor the applicant may amend or modify the language of the applicant's statement for recall. Each signature line must contain space for an eligible voter to: print and sign the person's first and last name and to print the date that the eligible voter signed the petition. The reverse side of each signature page must include an affidavit of verification to be signed by the person who collected the information and signatures appearing on the front side of the signature page.

Sec. 3-55. FILING A PETITION; LIMITATIONS; SUBSEQUENT PETITION

A. A recall petition must be filed with the Election Board within sixty (60) calendar days after the Election Board has approved the application and issued the official recall petition to the applicant. If an official recall petition is not timely filed, it shall be deemed invalid and the Election Board shall not consider it.

B. A recall petition shall not be circulated against an elected official during the first one hundred twenty (120) days of that person's office and not within (90) days of the next general election for that office.

C. After one recall petition and election, no further application for recall may be filed against the same elected official for a period of one year after the results of the Special Election have been certified by the Election Board.

Sec. 3-56. COLLECTION OF SIGNATURES

A. For purposes of a recall petition, an "eligible voter" means a person who is eligible to vote pursuant to Section 3-3(A) as of the date the person signs a recall petition.

B. Every eligible voter signing a petition for a recall election shall do so in the presence of the person who is circulating the petition and who is to execute the affidavit of verification on the reverse side of each signature page. At the time of signing, the eligible voter shall sign and print his first and last name and shall write, in the appropriate spaces following the signature, the date on which he signed the petition.

C. The person circulating the petition (the "circulator") shall in an affidavit subscribed and sworn to by him verify that each of the names on the sheet was signed in his presence on the date indicated, and that in his belief each

signer was an eligible voter of the Nation as of the date that each particular person signed the petition. The affidavit shall be in a form prescribed by the Election Board and in addition to the statements set forth above in this subsection (C), the affidavit shall also contain a statement by the circulator that the circulator is an eligible voter.

D. Signatures obtained on recall petitions before the filing of an application for the issuance of official recall petition are void and shall not be counted in determining the legal sufficiency of the petition.

E. A person circulating the petition, may not create extra copies of the signature pages comprising the recall petition for the purpose of collecting additional signatures. However, the applicant may request and shall receive additional original signature pages from the Election Board.

Sec. 3-57. VERIFICATION PROCEDURE

A. Within five (5) business days after the submission of a recall petition to the Election Board, the Election Board shall perform the following:

1. Remove the following from the recall petition:

i. Signature pages that do not contain a circulator's affidavit that is not completed and signed by the circulator;

ii. Signature pages that do not contain the clear and concise statement of the grounds for recall;

iii. Signature pages that do not contain the Election Board's assigned number on the lower right hand corner of each side of the signature page;

iv. Signature pages that are photocopied or otherwise reproduced; and

v. Signature pages that are not original pages provided to the applicant by the Election Board.

2. Upon completing Subsection (A)(1), the Election Board shall remove the following signatures that are not eligible for verification by marking an "X" in red ink in the margin to the right side of the signature line:

i. If the signature or printed name of the eligible voter is missing;

ii. If the date on which the eligible voter signed is missing;

iii. If the date of the signature is a date that is prior to the issuance of the recall petition by the Election Board; and

iv. Signatures withdrawn by request of the signing eligible voter or the applicant. In order for the Election Board to comply with such request, the request must be made in writing

3. Upon completing Subsection (A)(2), the Election Board shall count the number of signatures for verification on the remaining signature pages.

4. If the total number of signatures eligible for verification does not equal at least forty percent (40%) of the total number of eligible voters of the Nation, the Election Board shall return a copy of the recall petition including all signature pages to the applicant. If the time period set forth in Section 3-

55(A) has not expired, the applicant may request and shall receive new signature pages from the Election Board and the applicant may submit additional signatures to the Election Board up to the last day provided for in Section 3-55(A). If the time period set forth in Section 3-55(A) has expired, the petition fails.

5. If the total number of signatures eligible for verification equals or exceeds forty percent (40%) of the total number of eligible voters of the Nation, the Election Board shall verify all signatures by the following means:

i. Determine whether each person signing the recall petition is an eligible voter of the Nation as of the date that the person signed the petition.

ii. Compare the signature of each person signing the recall petition to that person's signature on file with the Tribal government; If a signature does not appear to be similar to the applicable signature on file, the Election Board shall contact the person and verify whether the person actually signed the petition. If during the five (5) day period the Election Board, despite reasonable efforts, is not able to contact the person or the person does not respond to the Election Board's inquiry, the Election shall remove this person's name from the recall petition by marking an "X" in red ink in the margin to the right side of the signature line.

6. Upon completing Subsection (A)(5), the Election Board shall count the number of valid signatures and certify the result of the count. If the total number of signatures does not equal at least forty percent (40%) of the total number of eligible voters of the Nation, the Election Board shall return a copy of the recall petition including all signature pages to the applicant. If the time period set forth in Section 3-55(A) has not expired, the applicant may request and shall receive new signature pages from the Election Board and the applicant may submit additional signatures to the Election Board up to the last day provided for in Section 3-55(A). If the time period set forth in Section 3-55(A) has expired, the petition fails.

7. If the total number of signatures equals or exceeds forty percent (40%) of the total number of eligible voters of the Nation, the Election Board shall call a Special Election for the recall of the elected official to be held within thirty (30) calendar days pursuant to the notice requirements in Section 3-59.

i. In the event that the Election Board determines that the applicant and/or the circulators of the petition have engaged in fraud to obtain signatures, including but not limited to the act of forgery, the Election Board shall declare the entire petition invalid, unless the Board determines that certain signature pages were collected without fraudulent means. If the petition or certain signature pages of the petition are declared invalid, none of the signatures in the petition or relevant signature pages shall be counted unless the signatures are proven by the applicant to be valid using the appeal process described in Section 3-58.

Sec. 3-58 APPEAL OF ELECTION BOARD'S VERIFICATION PROCESS

A. Within five (5) days of notice of the Election Board's decision that: (1) a recall petition lacked the requisite number of signatures, (2) that the recall petition met the requirements to call a Special Election, or (3) that the petition or certain signature pages of the petition are invalid due to fraud, the applicant or the elected official subject to recall may file a written appeal with the Election Board challenging the Board's decision. Along with the notice of appeal, the applicant or the elected official shall submit his or her justifications and/or evidence indicating why the Election Board's decision was in error. The Election Board shall hold a hearing within seven (7) days after the receipt of the notice of appeal. The hearing shall be informal and the formal rules of evidence shall not apply. The Election Board shall issue a written opinion within seven (7) days after the hearing. The Election Board's decision shall include detailed findings of fact, the basis of their decision, and their decision. The appellant shall immediately be notified by certified mail, personal service or both. If there is more than one appeal, the Election Board may consolidate the hearings.

B. An appeal of the decision of the Election Board may be made in writing to the Trial Division of the Tribal Court within five (5) days after receipt of the Election Board decision. The decision of the Election Board shall be given deference by the Trial Division of the Tribal Court and the review shall be limited to whether the decision of the Election Board is sustained by sufficient evidence on the record. The Trial Division of the Tribal Court shall decide the matter in an expedited manner no longer than thirty (30) days after receipt of the record. Except in rare cases with good cause shown as to why additional evidence should be considered, the Trial Division of the Tribal Court's review will be limited to review of the record of the Election Board proceedings and the evidence before the election Board at the time of its decision. Unless good cause is shown for a hearing before the Trial Division of the Tribal Court, the Court shall not hold a hearing.

C. The filing of an appeal with the Trial Division of the Tribal Court automatically stays a Special Election

Sec. 3-59 NOTICE OF RECALL ELECTION

The Election Board shall mail written notice of the date and place of the special election and hours of voting to all eligible voters. The notice shall also include the procedures for those persons that want to vote via absentee ballot.

Sec. 3-60. RECALL ELECTION BALLOT

A. The Election Board shall prepare the official recall election ballot form. On the ballot form, the Election Board shall pose the following question: "Should _____ be removed from the Office of _____?" Following the question shall be two boxes. One box shall have the word "yes" typed inside the box and the second box shall have the word "no" typed inside the box. The ballot shall inform voters

that in order for a person to indicate his or her vote, the voter must circle either the "yes" or the "no" box to answer the question posed.

B. If there are two (2) qualifying petitions against separate officials, the Election Board shall include both officials on the same ballot and follow the instructions contained in Subsection (A) for each official.

C. Eligible voters who are temporarily absent or otherwise unable to cast their ballots at the polling place may request an absentee ballot. Such requests must be in writing and delivered to the Election Board at least twenty (20) calendar days prior to date set for the Special Election. Those rules set forth in Section 3-4 that are not in conflict with the rules in Article V shall be used for purposes of absentee ballots.

D. Rejected Ballots. If during the counting of the votes, the members of the Election Board are unable to determine from a ballot all of the choices of the voter, that ballot shall be rejected. Ballots marked both "yes" and "no" will be rejected. Ballots with neither a "yes nor "no" designation will be rejected. Ballots without clear, unambiguous designations will also be rejected. A rejected ballot shall be marked "REJECTED" in red ink by a designated teller. Each member of the Election Board shall sign his or her name below the marking and the rejected ballot shall be placed in the ballot box at the end of the counting.

1. In the event that there are two (2) elected officials subject to recall, and the Election Board is able to determine the choice of the voter pertaining to one elected official, but not the other elected official, then the Election Board shall count the portion of the Ballot for which it is able tot determine the choice of the voter and reject the portion of the Ballot for which it is unable to determine the choice of the voter.

Sec. 3-61 ELECTION CHALLENGES

A. The applicant or the elected official subject to the Special Election may challenge the Special Election. Such a challenge must be filed in writing within five (5) days following the Certification of the Special Election by the Election Board. The challenge shall be presented in writing to any member of the Election Board. Within seven (7) days following the filing of the challenge, the Election Board shall hold a hearing to determine the validity of the challenge. The hearing shall be informal and the formal rules of evidence shall not apply. If there is more than one challenge, the Election Board may consolidate the challenges. The Election Board shall ensure that both the applicant and the elected official subject to the Special Election receive notice of the hearing either by personal service, certified mail, or both. The Election Board shall issue a written decision within seven (7) days following the hearing. The Election Board's decision shall include detailed findings of fact, the basis of their decision, and their decision.

B. The decision of the Election Board may be appealed to the Trial Division of the Tribal Court within five (5) days after receipt of the Election Board decision. The findings and decisions of the Election Board shall be given deference by the Tribal Court and the Court's review shall be limited to whether or not the decision of the Election Board is sustained by sufficient evidence on the record. The person challenging the decision shall have the burden of proving the decision was wrong by a clear and convincing evidence standard. Except

in rare cases with good cause shown as to why the additional evidence should be considered, the Trial Court's review will be limited to a review of the record of the Election Board proceedings and the evidence before the Election Board at the time of its decision. Unless good cause is shown for a hearing before the Trial Court, the Trial Court shall not hold a hearing. The Trial Division of the Tribal Court shall hear and determine the appeal in an expedited manner no longer than thirty (30) days following the filing of the appeal.

C. The filing of an appeal with the Trial Division of the Tribal Court automatically stays a Special Election.

Sec. 3-62. SPECIAL ELECTIONS

The Constitution of the Fort McDowell Yavapai Nation, Article X, provides for "Initiative and Referendum." Article X Section 1. Initiative establishes the requirements for calling a vote to consider the enactment of any ordinance or resolution, or other official action. The Election Board upon receipt of a petition signed by not less than 30% of the total number of qualified voters of the Fort McDowell Yavapai Nation shall hold an election to consider the enactment of such ordinance or resolution, or other official action.

Sec. 3-63. APPLICATION FOR PETITION FOR AN INITIATIVE

A. In order to protect against fraud and deceit and to maintain the integrity of the election process pertaining to special elections, a person seeking to initiate a petition for an initiative must first file an application with the Nation's Election Board to issue a petition on a form approved by the Election Board. Only eligible voters of the Nation may file an application for an initiative petition and only eligible voters of the Nation may circulate such petitions and collect signatures thereof.

B. On the application form prepared by the Election Board, the applicant must include the following information: the person's name and address; a statement of intention to circulate and submit an initiative; and a clear and concise statement of the ordinance or resolution, or other official action to be considered.

1. The clear and concise statement of the grounds consist of not more than one hundred (100) words. A clear and concise statement means that the statement must be understandable to an average person of voting age under the Nation's laws.

C. Each application for a petition shall address only one enactment, or resolution or other official action to be considered.

D. An application for an initiative petition may be submitted to any member of the Election Board.

E. The member of the Election Board that receives an application shall immediately notify all members of the Election Board and the Board shall convene a meeting within thirty-six (36) hours of receipt of the application. The Election Board shall assign a number to the application. If the Election Board approves the application pursuant to Sec. 3-66, the Election Board shall place this number on the lower right hand corner on each side of each signature sheet of an official initiative petition form.

F. The Election Board shall maintain a record of each application received, of the date of its receipt and of the number assigned and issued to the applicant.

Sec. 3-64. APPROVAL OF APPLICATION

A. Within three (3) days of receipt of an application for an initiative petition, the Election Board shall meet to determine whether the application satisfies the requirements of Article X, Section 1, Initiative, of the Nation's Constitution and the requirements of this Chapter.

B. Upon approval of the application, the Election Board shall meet with the applicant to determine the wording of the Petition as soon as possible to:

1. Provide applicant an opportunity to discuss the petition's proposed language.

2. Clarify and answer any questions the applicant may have on procedures and requirements.

3. Within five (5) days of the meeting with applicant, issue the official initiative petition to the applicant to begin circulating for signatures; and

C. The applicant may request additional official petitions with signature pages from the Election Board to allow other eligible voters to obtain signatures with verification by collector.

D. In the event that the Election Board determines that the application does not comply with Article X of the Nation's Constitution or this Article V, the Election Board shall provide written notice to the applicant that the Board will not hold an initiative election and the reasons for this decision.

Sec. 3-65. APPEAL OF ELECTION BOARD'S DECISION TO APPROVE OR DENY APPLICATION

A. Within five (5) days of receipt of the Election Boar's approval or denial of the application, the applicant may file a written appeal with the Election Board. Along with the notice of appeal, the applicant shall submit his or her justifications and/or evidence indicating why the Election Board's decision was in error. The Election Board shall hold a hearing within three (3) days after the receipt of the notice of appeal. The hearing shall be informal and the formal rules of evidence shall not apply. The Election Board shall issue a written opinion within seven (7) days after the hearing. The Election Board's decision shall include any findings of fact, the basis of their decision, and their decision. The applicant shall immediately be notified by certified mail, personal service or both.

B. An appeal of the decision of the Election Board may be made in writing to the Trial Division of the Tribal Court within five (5) days after receipt of the Election Board decision. The decision of the Election Board shall be given deference by the Trial Division of the Tribal Court and the review shall be limited to whether the decision of the Election Board is sustained by sufficient evidence on the record. The Trial Division of the Tribal Court shall decide the matter in an expedited manner no longer than thirty (30) days after receipt of the record. Except in rare cases with good cause shown as to why additional evidence should be considered, the Trial Division of the Tribal Court's review will be limited to a review of the record of the Election Board proceedings and the evidence before the Election Board at the time of its decision. Unless

good cause is shown for a hearing before the Trial Division of the Tribal Court, the Court shall not hold a hearing.

C. The filing of an appeal with the Trial Division of the Tribal Court automatically stays a Special Election. The decision of the Tribal Court is not subject to appeal.

Sec. 3-66. FORM OF PETITION

A. Each signature page of the petition must include the applicant's statement for recall. Once the application is approved, neither the Election Board nor the applicant may amend or modify the language of the applicant's statement for recall. Each signature line must contain space for an eligible voter to: print and sign the person's first and last name and to print the date that the eligible voter signed the petition. The reverse side of each signature page must include an affidavit of verification to be signed by the person who collected the information and signatures appearing on the front side of the signature page.

Sec. 3-67. COLLECTION OF SIGNATURES

A. For purposes of a initiative petition, an "eligible voter" means a person who is eligible to vote pursuant to Section 3-3(A) as of the date the person signs a recall petition.

B. Every eligible voter signing a petition for a recall election shall do so in the presence of the person who is circulating the petition and who is to execute the affidavit of verification on the reverse side of each signature page. At the time of signing, the eligible voter shall sign and print his first and last name and shall write, in the appropriate spaces following the signature, the date on which he signed the petition.

C. The person circulating the petition (the "circulator") shall in an affidavit subscribed and sworn to by him verify that each of the names on the sheet was signed in his presence on the date indicated, and that in his belief each signer was an eligible voter of the Nation as of the date that each particular person signed the petition. The affidavit shall be in a form prescribed by the Election Board and in addition to the statements set forth above in this subsection (C), the affidavit shall also contain a statement by the circulator that the circulator is an eligible voter.

D. Signatures obtained on initiative petitions before the filing of an application for the issuance of an official petition are void and shall not be counted in determining the legal sufficiency of the petition.

E. A person circulating the petition, may not create extra copies of the signature pages comprising the recall petition for the purpose of collecting additional signatures. However, the applicant may request and shall receive additional original signature pages from the Election Board.

Sec. 3-68. VERIFICATION PROCEDURE

A. The Election Board shall follow the verification procedures in Section 3-57 of this Chapter, recognizing the different requirements in Article XI of the Nation's Constitution.

B. The appeal process to the Election Board's verification procedure shall follow the process provided for in Sec. 3-58 of this Chapter. Within five (5) business days after the submission of a recall petition to the Election Board, the Election Board shall perform the following:

1. Remove the following from the recall petition:

   i. Signature pages that do not contain a circulator's affidavit that is not completed and signed by the circulator;

   ii. Signature pages that do not contain the clear and concise statement of the grounds for recall;

   iii. Signature pages that do not contain the Election Board's assigned number on the lower right hand corner of each side of the signature page;

   iv. Signature pages that are photocopied or otherwise reproduced; and

   v. Signature pages that are not original pages provided to the applicant by the Election Board.

2. Upon completing Subsection (A)(1), the Election Board shall remove the following signatures that are not eligible for verification by marking an "X" in red ink in the margin to the right side of the signature line:

   i. If the signature or printed name of the eligible voter is missing;

   ii. If the date on which the eligible voter signed is missing;

   iii. If the date of the signature is a date that is prior to the issuance of the recall petition by the Election Board; and

   iv. Signatures withdrawn by request of the signing eligible voter or the applicant. In order for the Election Board to comply with such request, the request must be made in writing

3. Upon completing Subsection (A)(2), the Election Board shall count the number of signatures for verification on the remaining signature pages.

4. If the total number of signatures eligible for verification does not equal at least forty percent (40%) of the total number of eligible voters of the Nation, the Election Board shall return a copy of the recall petition including all signature pages to the applicant. If the time period set forth in Section 3-55(A) has not expired, the applicant may request and shall receive new signature pages from the Election Board and the applicant may submit additional signatures to the Election Board up to the last day provided for in Section 3-55(A). If the time period set forth in Section 3-55(A) has expired, the petition fails.

5. If the total number of signatures eligible for verification equals or exceeds forty percent (40%) of the total number of eligible voters of the Nation, the Election Board shall verify all signatures by the following means:

i. Determine whether each person signing the recall petition is an eligible voter of the Nation as of the date that the person signed the petition.

ii. Compare the signature of each person signing the recall petition to that person's signature on file with the Tribal government; If a signature does not appear to be similar to the applicable signature on file, the Election Board shall contact the person and verify whether the person actually signed the petition. If during the five (5) day period the Election Board, despite reasonable efforts, is not able to contact the person or the person does not respond to the Election Board's inquiry, the Election shall remove this person's name from the recall petition by marking an "X" in red ink in the margin to the right side of the signature line.

6. Upon completing Subsection (A)(5), the Election Board shall count the number of valid signatures and certify the result of the count. If the total number of signatures does not equal at least forty percent (40%) of the total number of eligible voters of the Nation, the Election Board shall return a copy of the recall petition including all signature pages to the applicant. If the time period set forth in Section 3-55(A) has not expired, the applicant may request and shall receive new signature pages from the Election Board and the applicant may submit additional signatures to the Election Board up to the last day provided for in Section 3-55(A). If the time period set forth in Section 3-55(A) has expired, the petition fails.

7. If the total number of signatures equals or exceeds forty percent (40%) of the total number of eligible voters of the Nation, the Election Board shall call a Special Election for the recall of the elected official to be held within thirty (30) calendar days pursuant to the notice requirements in Section 3-59.

i. In the event that the Election Board determines that the applicant and/or the circulators of the petition have engaged in fraud to obtain signatures, including but not limited to the act of forgery, the Election Board shall declare the entire petition invalid, unless the Board determines that certain signature pages were collected without fraudulent means. If the petition or certain signature pages of the petition are declared invalid, none of the signatures in the petition or relevant signature pages shall be counted unless the signatures are proven by the applicant to be valid using the appeal process described in Section 3-58.

Sec. 3-69. APPEAL OF ELECTION BOARD'S VERIFICATION PROCESS

A. Within five (5) days of notice of the Election Board's decision that: (1) a recall petition lacked the requisite number of signatures, (2) that the recall petition met the requirements to call a Special Election, or (3) that the petition or certain signature pages of the petition are invalid due to fraud, the applicant or the elected official subject to recall may file a written appeal with the Election Board challenging the Board's decision. Along with the notice of appeal, the applicant or the elected official shall submit his or her justifications and/or evidence indicating why the Election Board's decision was in error. The Election Board shall hold a hearing within seven (7) days after the receipt of the notice of appeal. The hearing shall be informal and the formal rules of evidence shall not apply. The Election Board shall issue a written opinion within seven (7) days after the hearing. The Election Board's decision shall include detailed findings of fact, the basis of their decision, and their decision. The appellant shall immediately be notified by certified mail, personal service or both. If there is more than one appeal, the Election Board may consolidate the hearings.

B. An appeal of the decision of the Election Board may be made in writing to the Trial Division of the Tribal Court within five (5) days after receipt of the Election Board decision. The decision of the Election Board shall be given deference by the Trial Division of the Tribal Court and the review shall be limited to whether the decision of the Election Board is sustained by sufficient evidence on the record. The Trial Division of the Tribal Court shall decide the matter in an expedited manner no longer than thirty (30) days after receipt of the record. Except in rare cases with good cause shown as to why additional evidence should be considered, the Trial Division of the Tribal Court's review will be limited to review of the record of the Election Board proceedings and the evidence before the election Board at the time of its decision. Unless good cause is shown for a hearing before the Trial Division of the Tribal Court, the Court shall not hold a hearing.

C. The filing of an appeal with the Trial Division of the Tribal Court or the Supreme Court automatically stays a Special Election

Sec. 3-70. NOTICE OF INITIATIVE ELECTION

A. The Election Board shall mail written notice of the date and place of the special election, the petition language and hours of voting to all eligible voters. The notice shall also include the procedures for those persons that want to vote via absentee ballot.

B. The Election Board may also include in the notice copies any proposed ordinance or copies of an existing ordinance or resolution that is the subject of the initiative petition.

Sec. 3-71. ELECTION BALLOT FOR AN INITIATIVE

A. The Election Board shall prepare the official election ballot form. On the ballot form, the Election Board shall pose the approved petition language as a question. Following the question shall be two boxes. One box shall have the word "yes" typed inside the box and the second box shall have the word "no" typed inside the box. The ballot shall inform voters that in order for a person to indicate his or her vote, the voter must circle either the "yes" or the "no" box to answer the question posed.

B. Eligible voters who are temporarily absent or otherwise unable to cast their ballots at the polling place may request an absentee ballot. Such requests must be in writing and delivered to the Election Board at least twenty (20) calendar days prior to date set for the Special Election. Those rules set forth in Section 3-4 that are not in conflict with the rules in Article V shall be used for purposes of absentee ballots.

C. Rejected Ballots. If during the counting of the votes, the members of the Election Board are unable to determine from a ballot all of the choices of the voter, that ballot shall be rejected. Ballots marked both "yes" and "no" will be rejected. Ballots with neither a "yes nor "no" designation will be rejected. Ballots without clear, unambiguous designations will also be rejected. A rejected ballot shall be marked "REJECTED" in red ink by a designated teller. Each member of the Election Board shall sign his or her name below the marking and the rejected ballot shall be placed in the ballot box at the end of the counting.

Sec. 3-72 ELECTION CHALLENGES

A. Challenges to Initiatives are limited to a challenge of approved petition language. Such a challenge must be filed in writing within ten (10) days following the issuance of the Notice of the Election by the Election Board. The challenge shall be presented in writing to any member of the Election Board. Within three (3) days following the filing of the challenge, the Election Board shall hold a hearing to determine the validity of the challenge. The hearing shall be informal and the formal rules of evidence shall not apply. If there is more than one challenge, the Election Board may consolidate the challenges. The Election Board shall issue a written decision within two (2) days following the hearing. The Election Board's decision shall include the challenge, any findings of fact and the basis of their decision, and their decision.

B. Challenges to the election procedures shall follow the process provided for in Section 3-61.

C. The filing of an appeal with the Trial Division of the Tribal Court or the Supreme Court automatically stays the results of a Special Election.

Sec. 3-73 APPLICABILITY OF GENERAL ELECTION RULES

As a general rule, the rules pertaining to General Elections set forth in Articles I, II, III and IV shall govern the voting procedure for recall elections unless a particular rule is in conflict with a rule set forth in Article V.

Sec. 3-74 APPLICABILITY OF GENERAL ELECTION RULES

Any eligible voter may inspect all applications and petitions filed with the Election Board. If an eligible voter has reason to believe that an application, petition or signature is invalid, the eligible voter shall immediately inform an Election Board member for consideration. Any such notification must be received within eleven (11) days after the deadline to submit the relevant application or petition. Complaints received after this period will not be considered by the Election Board.

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[i] Approved 9-18-2007