

CHAPTER 32 - TRIBAL ELECTIONS

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CHAPTER 32 -- TRIBAL ELECTIONS

32.1 SECTION 1: PURPOSE AND AUTHORITY

- 32.1.1 The purpose of this Chapter is to establish rules and regulations governing all tribal elections in accordance with Red Cliff Constitution., Art. IV, sec. 4.
- 32.1.2 Nothing in this Chapter shall be construed as inconsistent with any provisions of the Red Cliff Constitution.

32.2 SECTION 2: COMPOSITION OF ELECTION BOARD

- 32.2.1 There is hereby established an Election Board to conduct all elections and carry out the duties set forth in this Chapter.
- 32.2.2 The Election Board shall consist of one (1) Chairperson, two (2) election clerks, two (2) at large members, and two (2) alternates.
- 32.2.3 The Election Board shall be appointed by the Tribal Council no later than thirty (30) days prior to the election and shall serve until the results of the election are certified.
- 32.2.4 Election Board members must be eligible to vote in the Red Cliff Tribal Election.
- 32.2.5 If a regular member is absent from any meeting or function of the Election Board, the Chairperson of the Board, or, in their absence, the Tribal Administration, may select a person from amongst the alternates to act as a member for that meeting or function.
- 32.2.6 An Election Board member may be removed from office only for improper conduct or gross neglect of duty.

32.3 SECTION 3: DUTIES OF THE ELECTION BOARD

- 32.3.1 Generally. The Election Board shall have the following duties:
1. Supervise all tribal elections, including referenda;
 2. Certify the results of all elections and referenda

to the Tribal Council;

3. Insure that all elections are conducted fairly;
4. Determine the eligibility of candidates for office;
5. Resolve all questions regarding the eligibility of voters;
6. Provide the polling place with sufficient ballots to enable all eligible voters to cast their vote;
7. Tabulate all ballots;
8. Become thoroughly familiar with the Red Cliff Constitution and the provisions of this Chapter; and
9. Perform such additional duties as provided for in this Chapter, or as are necessary and incidental to conducting an election.

32.3.2 Chairperson. The Chairperson shall preside over all meetings and shall be responsible for the overall operation of the Election Board. The Chairperson's specific duties include, but are not limited to:

1. Safekeeping of the ballot box;
2. Maintain accurate minutes of all meetings and records pertaining to the election;
3. Calling and arranging all meetings necessary to fulfill the duties of the Election Board;
4. Reporting any violation of the provisions of this Chapter to the appropriate parties; and,
5. Receipt of any challenges to voter qualifications or election results.

32.3.3 Election Clerks. Election Clerks shall assist in conducting the election and shall distribute ballots to qualified voters. Election Clerks are responsible for tallying all ballots and must account for all unused ballots.

32.3.4 At-Large Members. At-Large Members shall assist in conducting the election as needed.

32.3.5 Alternates. Alternate members shall act only when filling a vacancy created by a regular Election Board member.

32.4 **SECTION 4: CONDUCT OF ELECTIONS**

32.4.1 All Election Board members shall be present from the opening of the polls until all ballots have been counted, tallied, properly recorded, reported and certified. An alternate may be directed to be present during elections to provide respite periods for regular members on Election Day.

32.4.2 The Election Board shall ensure that the polling place has private booths or areas where voters may mark their ballots in secret.

32.4.3 Election Board members shall provide help to voters who require assistance in completing their ballot without influencing the voter's decision in any way.

32.4.4 The polling place shall be at the Red Cliff Bingo Hall, or such other location designated by the Tribal Council.

32.4.5 The polls shall be open from 8:00 a.m. to 8:00 p.m., provided, that persons who are in line waiting to vote at the time the polls close shall be allowed to vote.

32.4.6 A Tribal Law Enforcement Officer shall provide security during the election, and shall patrol the polling place, ensure that no prohibited practices occur, protect the right to secret ballot, and guard the ballot box and vote counting process. The Tribal Law Enforcement Officer shall, at the direction of the Election Board, eject any person from the polling place who is violating this Chapter, disturbing the election process, or committing a breach of the peace.

32.4.7 No candidate for Tribal Council may campaign at the voting place or within 500 feet thereof on Election Day.

32.4.8 No person shall be permitted to interfere with the election process or inhibit the rights of another to vote. This section includes, but is not limited to, threats, acts of bribery and fraud.

32.5 **SECTION 5: BALLOTS**

32.5.1 The Secretary of the Tribal Council shall prepare and provide to the Election Board the ballots for each election, including sample ballots clearly marked "Sample". Only officially printed ballots shall be recognized as valid and have any bearing on the results of the election. Write-in candidates shall be allowed, and spaces for such candidates shall be provided on the ballot.

32.5.2 Prior to the opening of the polls, the Election Board shall ensure that ballots, sample ballots, voter's lists, and other materials required for the election are present at the polls. The Election Board members shall count and certify the number of blank ballots on hand at the polls.

32.5.3 If a voter spoils a ballot, that voter shall be entitled to receive an additional ballot provided that the spoiled ballot has not been placed in the ballot box. If a voter marks the wrong box, the election official shall inform the voter to take the ballot back to the booth and mark all the boxes. Upon return of the spoiled ballot to the Election Board, another ballot shall be issued to the voter. Spoiled ballots shall be so marked and kept separately by the Election Board. At the close of the polls the Election Board shall count the spoiled ballots and seal them in an envelope marked "Spoiled Ballots".

32.5.4 No person shall take or remove any ballot from the polling place.

32.6 **SECTION 6: VOTING PROCEDURE**

32.6.1 The Chairperson of the Election board shall verify in the presence of the other members that the ballot box is empty of all ballots and other material prior to the opening of the polls. The ballot box shall then be locked and shall not be reopened until the counting of the votes.

32.6.2 The Tribal Enrollment Clerk shall prepare a list of eligible voters for each election and shall post the voter's eligible list at least five (5) days prior to the election. This list shall be provided to the Election Board before the opening of the polls. The voter shall place his or her signature next to their name as it appears on the voters list.

If the name is not on the list, the voter's ballot shall be treated as a challenged ballot.

- 32.6.3** One member of the Election Board shall initial each ballot prior to the ballot being given to the voter. Another member of the Election board shall check the ballots after they have been marked to ensure that all ballots have been folded so that the official initial is visible.
- 32.6.4** Upon receipt of the official ballot, the voter shall promptly retire to the voting booth or designated area and there mark the ballot. In order to ensure a secret ballot, only one (1) person at a time shall occupy a booth or voting area, except where a voter requires the assistance of an Election board member.
- 32.6.5** The voter shall mark the ballot himself or herself. To be valid, the mark must be identifiable within the space intended for the candidate.
- 32.6.6** Voters are entitled to cast one vote for each open tribal council seat.
- 32.6.7** The voter shall fold his ballot and deposit it in the ballot box. The ballot shall be folded, so the official initial is visible and the ballot shall be checked by the designated member of the Election Board for the official initial prior to the placement of the ballot in the ballot box.
- 32.6.8** Each candidate shall be entitled to designate one (1) poll watcher to be present at the polling place during the election and the tallying of votes. A candidate may not serve as the poll watcher. Poll watchers must identify themselves and their candidates to the Election Board and shall in no way interfere with the conduct of the election or the tallying of votes.
- 32.6.9** If a person who is not on the voter list seeks to vote, or if the eligibility of a voter shall be questioned by the Election Board or any poll watcher, the ballot of that voter shall be enclosed in an envelope which shall be endorsed with the voter's name, the reason for the challenge, the name of the challenger, and any refutation to the challenge offered by the voter.

This envelope shall then be sealed and dropped into the ballot box. The Election Board, in consultation with the Enrollment Department, shall determine the eligibility of the challenged voters prior to certifying the election; provided, that no person whose name does not appear on the official list of eligible voters shall be allowed to vote. Challenges under this Chapter shall be made only on the basis of eligibility, as specified in Red Cliff Constitution., Art. IV, sec. 3 1936).

32.7 SECTION 7: VOTE COUNTING

- 32.7.1** If a voter shall mark the ballot with a cross mark or any mark, it shall be considered sufficient to be tallied as a vote for the candidate whose name it is opposite.
- 32.7.2** A Ballot shall be declared void if a voter votes for more than the number of candidates up for election for each respective position, there is no official initial on the ballot, or the ballot has been marked or defaced so that the intent of the voter cannot be readily determined. Only that portion of the ballot that is spoiled shall not be counted. The positions where the ballot is not spoiled shall count. If the entire ballot is spoiled, the Election Board shall then fold the ballot and shall write the word "void" on the outside, and shall write the reason for voiding the ballot. The total number of voided ballots shall be noted on the polling list and tally sheet.
- 32.7.3** After the polls close the Election Board members shall immediately proceed to count the votes cast. The count shall be open to the public and shall continue without adjournment until complete and the results thereof publicly declared.
- 32.7.4** One member of the Election Board shall read off the votes and two other members shall tally the votes on the official tally sheet.
- 32.7.5** Upon completion of the count of the undisputed ballots, all challenged and voided ballots shall be reviewed and a final determination made. The Election Board shall then prepare and sign a certification of the election results and shall publicly announce the same.

32.7.6 Upon certification of the election results the ballots shall be sealed in a container, and the sealed ballots, tally sheets, and all other election materials shall be delivered to the Election Board Chairperson for safekeeping. Ballots may be destroyed after sixty (60) days from the date of the election on motion of the Tribal Council.

32.8 **SECTION 8: SPECIAL ELECTIONS**

Vacancies. When the Tribal Council calls a Special Election to fill a vacancy on the Council, the following rules shall govern:

- a. In accordance with the Red Cliff Constitution Art. V, sec. III vacancies shall be filled by appointing the candidate who was not elected but received the next highest number of votes for that particular council seat in the election. Where the person who received the next highest number of votes in the election in question is unable to serve for whatever reason, the seat shall be filled by a special election conducted in accordance with the requirements of this Chapter. (9/23/14)
- b. For Officer Vacancies the Tribal Council shall set the date for the Special Election no sooner than sixty (60) days after the next regular or special meeting of the Tribal Council after the vacancy occurs wherever it is reasonably practical to do so. For at large vacancies the Tribal Council shall set the date for the Special Election no sooner than thirty (30) days after the next regular or special meeting of the Tribal Council after the vacancy occurs wherever it is reasonable practical to do so. Where it is not reasonably practical to meet the time guidelines set forth in this section due to concern over leaving a position vacant for an extended period of time, the Tribal Council may waive this section by motion or resolution. (9/23/14)
- c. For officer positions, a Primary Election shall be held thirty (30) days prior to the Special Election. Candidates for these positions shall notify the Secretary of the Tribal Council of their desire to have their names placed on the primary ballot sixty (60) days prior to the Special Election. At the primary election, the two (2) candidates for each of the offices listed on

the ballot as candidates for their respective office in the Special Election. In the event that there is also an open seat for at-large Council member in Special Election, candidates who do not survive the primary election shall be eligible for an at-large seat on the Council. There shall be no write-in candidates for the offices referred to in this section.

- d. In filling vacancies by Special election, the successful candidate(s) shall serve the remainder of the term on the vacancy.
- e. All other rules governing the conduct of General Elections (i.e. eligibility of voters, certification of election results, designation of polling place etc.) shall apply.

32.9 SECTION 9: ELECTION CONTESTS

- 32.9.1** Election Appeals Panel. There is hereby established an election appeals panel with the authority to hear any and all election disputes arising under this Chapter. The Election Appeals Panel shall consist of the Election Board Chairperson and the two (2) election clerks.
- 32.9.2** Complaint. A contest of election may only be initiated by submitting a written, signed complaint to the Election Board Chairperson. The complaints shall set forth a concise statement of the facts on which the contest of the election is based and indicating in what way this Code has been violated.
- 32.9.3** Time for Filing, Fees. No complaint shall be considered unless filed within three (3) days after certification of the election and accompanied by a fee of Twenty-five Dollars (\$25.00). "Days" shall be defined throughout this ordinance as calendar days.
- 32.9.4** Ruling. The Election Board Chairperson shall convene the Election Appeals Panel, which shall consider each contest and render a decision within five (5) days after the contest is filed. If there has been fraud or irregularities of a serious nature in the election, the Election Appeals Panel may order a new election. The decision of the Election Appeals Panel shall be final, and no further appeal may be taken. Upon final disposition of all contests, the results of the election shall be declared final, and a final certification issued

by the Election Appeals Panel.

32.9.5 Frivolous Appeals. If an appeal is found by the Election Appeals Panel to be frivolous, the Panel may dismiss the appeal.

32.10 **SECTION 10: RECOUNTS**

(a) A recount must be requested within three (3) days following an election. Such request must be made in writing to the Secretary.

(b) Any candidate may demand a recount as a matter of right. A date shall be set by the Election Appeals Panel for the recount.

Opposing candidates may be present, in person or by legal representative, and may challenge ballots cast if there is evidence of tampering or the ballot appears to be spoiled or void.

32.11 **SECTION 11: REFERENDUM ELECTIONS**

32.11.1 Except as provided in this section, referendum elections shall be conducted in accordance with the general provisions of this code.

32.11.2 Referendum elections shall be called for by resolution of the Tribal Council. The resolution shall establish the date of the referendum, the length of time the notice of the election and voters list must be posted (preferably seven (7) to ten (10) days), the wording of the referendum question or questions on the ballots, and who shall conduct the election pursuant to this section.

32.11.3 The Tribal Council may direct that a short explanatory statement of the referendum questions be placed on the ballot. Nothing herein shall prohibit the Tribal Council from directing persons who are familiar with the substance of the referendum questions to be present at the polls to explain the referendum questions to those who request such explanation; provided, however, that no attempt shall be made to persuade or advise a voter as to how to vote.

32.11.4 A referendum may be conducted by two (2) Election Board members, or by Enrollment Department personnel when so directed by the Tribal Council.

32.12 **SECTION 12: PENALTIES**

32.12.1 Any person who, for himself or herself, or by his or her agent, servant, or employee or another, violates this code shall be liable for Penalties as follows:

- (a) For civil remedial money penalty of not less than \$250.00 or more than \$500.00 for each violation.
- (b) For civil remedial forfeiture of any property, including without limitation vehicles, used in the commission of the violation of this code.
- (c) Court costs of \$10.00 shall be assessed against any person found to have violated this code.

32.12.2 Whoever is concerned in the commission of a violation of this code is a principal and may be charged with the violation although he or she did not directly commit it and although the person who directly committed it has been convicted of the violation.

A person is concerned in the commission of a Violation of this code if the person:

- (a) Directly commits the violation; or
- (b) Aids and abets the commission of it; or
- (c) Is a party to or conspiring with another to commit it or advises, hires, or counsels or otherwise procures another to commit it.

32.13 **SECTION 13: JURISDICTION**

32.13.1 Nothing contained in this election ordinance shall be deemed to grant subject matter jurisdiction over questions arising under this Chapter to the Red Cliff Tribal Court, or any other court, notwithstanding any other provision of the Red Cliff Code of Laws or other court rule. All questions arising under this code shall be decided by the Election Appeals Panel, in accordance with section 32.8 of this Chapter. In dealing with citations issued under this Chapter, the Election Board will utilize the provisions of Chapter IV, Red Cliff Code of Laws, where appropriate.

32.13.2 The Election Board shall also have the authority to prescribe such rules consistent with this Ordinance as

may be necessary for the conduct of Tribal Elections.

32.13.3 This code is intended to establish procedures through which fair, open and honest elections may be conducted. This code shall be interpreted liberally, in order to accomplish such intent. Substantial compliance shall satisfy this code. Technicalities shall not be used to interfere with, delay, or block elections, or to cause confusion or a loss of confidence in the election system.

32.14 **SECTION 14: REFERENDUM**

32.14.1 Any qualified member(s) of the Red Cliff Tribe, eligible to vote in a tribal election, may petition the Tribal Council to hold a mandatory, binding referendum election on any exercise of the enumerated powers of the Tribal Council, pursuant to the Red Cliff Constitution Art. VII in accordance with this section. Nothing contained in this section shall prohibit the Tribal Council from submitting advisory referenda to the membership.

32.14.2 In order to qualify for certification by the Tribal Council, the following minimum requirements must be met for any such petition:

- (a) The petition must contain the original signatures of at least twenty five percent of the total number of voters who voted at the previous regular Tribal Council election. The number of voters who voted at the previous regular Tribal Council election shall be determined by the Election Board Chairperson. In determining the exact number of signature needed to satisfy the twenty five percent requirement, fractions will be rounded up to the next whole number.
- (b) Every referendum petition shall have on its face at the top in bold print the words "**REFERENDUM PETITION**" and shall otherwise substantially comply with the requirements set forth herein.
- (c) Each referendum petition shall set forth a concise statement of the question that the petitioners seek to present to the membership for a vote at the referendum election. The Tribal Council may refuse to certify a petition for failure to meet this requirement if it determines that the question set forth by the petition is too confusing or will provide no guidance to the Tribal Council in exercising its constitutional authority.
- (d) No petition shall be offered for filing unless the

petitioner(s) first file a registration statement with the Tribal Council Secretary indicating:

1. The petitioner(s) intent to circulate a referendum petition;
2. The names and addresses of the petition's circulators, showing their eligibility to vote in the Red Cliff Tribal elections under the Red Cliff Constitution Art. IV, sec. 3;
3. The precise question that would be presented to the membership at the referendum being sought;

No petitioner may circulate a petition for a referendum prior to completing registration with the Tribal Council Secretary.

32.14.3 Upon registration with the Tribal Council Secretary, all referendum petitions must be circulated for signature and returned to the Tribal Council Secretary no later than thirty (30) calendar days after registration. Any signatures obtained either before or after registration are void, and shall not be counted in determining whether the twenty five percent requirement present in the Red Cliff Constitution Art VII has been met. After the referendum petition has been offered for filing, no name may be added or removed, except by ruling of the Tribal Council for failure to satisfy the requirements of the Red Cliff Constitution of this section.

32.14.4 An individual signature on a petition sheet may not be counted if:

- (a) The signature is not dated, or the signature is dated outside the circulation period;
- (b) The signer's name is not printed immediately below his or her signature;
- (c) The signer does not clearly print their membership number and age next to their name;
- (d) The signer is not a member of the Red Cliff Tribe, eligible to vote in the Red Cliff Tribal election at the time they sign the petition;
- (e) The signer is not otherwise qualified to vote by reason of age; or
- (f) The signer is not qualified to vote by reason of incompetency or mental incapacity as determined by a court of competent jurisdiction.

If a signer's signature appears more than once, the second and subsequent signatures may not be counted.

- 32.14.5** No signatures on a petition sheet shall be counted if:
- (a) The circulator fails to sign the affidavit of the circulator;
 - (b) A notary of the Tribal Council Secretary fails to sign the certificate on the petition;
 - (c) The notary commission or the term of office of the official administering the oath is expired.

32.14.6 Challenges. Any qualified voter, or the Tribal Secretary or Tribal Council by its own initiative, may challenge a petition to hold a referendum under the rules and using the procedures set forth herein.

- (a) The burden of proof for any challenge rests with the individual or entity asserting the challenge.
- (b) Any challenge to a petition must be brought prior to certification of the petition for a referendum by the Tribal Council.
- (c) Any challenge to the validity of signatures on the petition shall be presented by affidavit or other supporting evidence showing a failure to comply with the requirements of the Red Cliff Constitution or the rules set forth in this section.
- (d) If a challenge demonstrates that someone other than the signer signed for the signer, the signature(s) shall be deemed invalid, unless it is proven that (1) the signer is unable to sign due to physical disability; and (2) the signer authorized someone to sign on his or her behalf.
- (e) If a challenger demonstrates that the date of the signature is altered and the alteration changes the validity of the signature, the signature shall not be counted.
- (f) No signature may be stricken on the basis that the signer was not aware of the purpose of the petition, unless the purpose of the petition was misrepresented by the circulator. Nothing contained herein shall impair the right of a signer to withdraw his or her signature prior to certification of the petition for referendum election by the Tribal Council.
- (g) Challenges are not limited to the categories set forth above.

32.14.7 A petitioner may file affidavits or other proof correcting insufficiencies in the petition.

- 32.14.8** Any petition for a referendum must be filed with the Tribal Secretary within forty five (45) days of a final decision by the Tribal Council to exercise an enumerated constitutional power or be forever barred.
- 32.14.9** Once a petition is filed, the Tribal Secretary shall within fifteen calendar days determine by careful examination whether the petition is legally sufficient and meets the requirements of the Red Cliff Constitution and this section. The Tribal Secretary shall state his or her findings in a signed and dated certificate attached to the petition, which shall then be presented to the Tribal Council for action. If the petition is deemed insufficient, the certificate shall set forth the reasons for the Secretary's determination, specifically stating the insufficiency. The petition may be amended to correct any insufficiency within ten calendar days following the Tribal Secretary's determination and notice to the petition's registered circulator(s). When the original or amended petition is found to be sufficient, it shall be forwarded promptly to the Tribal Council for action.
- 32.14.10** If a petition is determined to be insufficient by the Tribal Secretary, the registered circulator(s) may appeal the Tribal Secretary's determination to the Red Cliff Tribal Council within thirty (30) days of such determination. Any such appeal shall be timely, or shall be dismissed.
- 32.14.11** If the Tribal Council concurs in the Tribal Secretary's determination concerning the sufficiency of the petition, it shall promptly schedule a referendum election no later than sixty (60) days following its decision. The Tribal Council shall rule on the sufficiency of the petition within thirty (30) days of receiving the certified petition from the Secretary.
- 32.14.12** Appeal. Final decision of the Red Cliff Tribal Council concerning the sufficiency of petitions for referenda submitted under Red Cliff Constitution Art. VII are final and non-appealable except that the Red Cliff Tribal Court may hear factual disputes concerning compliance with the provisions of this code (e.g., validity of signatures, number of valid signatures, membership and of signers, etc.) if appeal is commenced within thirty (30) calendar days of the Tribal Council's final decision on certification, using the procedures set forth at RCCL Chapter 4.