

ELECTION ORDINANCE

OF THE

THREE AFFILIATED TRIBES

FIRST READ: January 27, 2026
SECOND READ: February 9, 2026
FINAL READING: May 7, 2026

TITLE XII

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CHAPTER I:
GENERAL PROVISIONS¹

Section 12-1-1. Title.

This Ordinance shall be referred to and cited as the “Election Ordinance.”

Section 12-1-2. Legal Authority.

The Election Ordinance is adopted pursuant to Article IV, Section 5, of the Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation (“Constitution”), which provides that: “[a]ll elections shall be held under the supervision of the Tribal Business Council or an election board appointed by that council, and the Tribal Business Council or the election board appointed by it, shall make rules and regulations governing all elections, and shall designate the polling places and the election officers.”

Section 12-1-3. Intent and Construction of Ordinance.

The intent of this Election Ordinance is to establish specific procedures to ensure the conduct of fair and uniform elections and to give effect to all votes cast in Tribal elections in all instances wherein there is no appearance of fraud, tampering, or other wrongdoing. This Election Ordinance shall be interpreted in compliance with the Constitution.

Section 12-1-4. Definitions.

As used in this Election Ordinance, the following words and phrases shall have the following meanings, unless the context clearly requires otherwise:

1. “Absentee Voter” means a resident Qualified Voter who will be absent from the Reservation on the date of the election and unable to be present at any Segment polling place during the designated poll hours.
2. “Affidavit of Voter Registration” means the form completed by an Eligible or Qualified Voter to be added to the Registered Voter List or changing to a different Segment.
3. “Candidate” means a person seeking to be elected to the Tribal Business Council.
4. “Challenge” means a duly filed written statement setting forth a fact-based challenge to the right of any person to be listed as an eligible voter, the eligibility of a candidate to a Tribal office, or any other challenge to the election process.
5. “Conflict of Interest” means a direct conflict between a public official’s duty and his or her personal interests.

¹ CONST. AND BYLAWS OF THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION, ART. IV (2010).

6. “Duly called meeting” means a meeting of a body that meets the quorum and notice requirements for that body to convene and take action.
7. “Eligible Voter” means any person who is an enrolled member of the Three Affiliated Tribes of the Fort Berthold Reservation who is eighteen (18) years of age or older.
8. “Enrolled Member,” “Tribal Member,” or “Member” means an enrolled member of the Three Affiliated Tribes of the Fort Berthold Reservation pursuant to Article II of the Tribal Constitution.
9. “Felony” means an offense punishable by one year and a day or more in confinement.
10. “General Election” means the general election of the Tribal Business Council held on the Tuesday next after the first Monday in November in every even number year as described in Article IV, Section 3(a) of the Tribal Constitution.
11. “Majority” means a number greater than half of the total, in other words, more than fifty percent (50%).
12. “MHA Nation Supreme Court” means the Court of Appeals for the Three Affiliated Tribes of the Fort Berthold Reservation.
13. “Non-member” means any person or individual who is not an enrolled member of the Three Affiliated Tribes of the Fort Berthold Reservation.
14. “Non-resident” means any Eligible Voter who does not physically reside within the exterior boundaries of the Fort Berthold Reservation.
15. “Pecuniary interest” means an interest that involves an actual or potential financial (monetary) gain or loss.
16. “Primary Election” means the primary election of the Tribal Business Council held on the Tuesday next after the third Monday in September in every even numbered year as described in Article IV, Section 3(b) of the Tribal Constitution.
17. “Qualified Voter” means an Eligible Voter who has registered to vote.
18. “Referendum Election Board” means the duly appointed board granted the authority and duty to oversee and carry out referendum elections pursuant to Article VIII of the Tribal Constitution.
19. “Registered Voter List” means the list made up of Qualified Voters who have completed the Affidavit of Voter Registration, as updated.

20. “Reservation” means the Fort Berthold Reservation.
21. “Resident” means an Eligible Voter who physically resides within the exterior boundaries of the Fort Berthold Reservation. It also includes a person who is currently serving in the United States Armed Forces or attends an educational facility as a full-time student away from the Reservation but maintains the Reservation as their permanent home.
22. “Segment” means the six geographic area Segments of the Reservation, made up of White Shield, Twin Buttes, New Town/Little Shell, Mandaree, Four Bears, and Parshall/Lucky Mound, in Article III of the Tribal Constitution.
23. “Segment Election Committee” or “Committee” means the committee appointed for each Segment to carry out the election in their respective Segments on the day of the election.
24. “Tribal Business Council” refers to the governing body of the Three Affiliated Tribes of the Fort Berthold Reservation.
25. “Tribal Constitution” means the Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation.
26. “Tribal Court” or “District Court” means the Fort Berthold District Court.
27. “Tribal Election Board” or “Board” means the duly appointed board granted the authority and duty to oversee and carry out Tribal elections pursuant to Article IV of the Tribal Constitution.
28. “Tribal Employee” means any employee of a Tribal program, Tribal business, or Tribal entity. It does not include any person who solely receives payment as a consultant, contractor, or vendor. Members of the Tribal Business Council and the Chief Judge of the Fort Berthold Tribal Court are not considered Tribal Employees for purposes of this Ordinance.
29. “Tribe” or “Tribal” means the Three Affiliated Tribes of the Fort Berthold Reservation.
30. “Qualified Voter” means any person who is an Eligible Voter (enrolled member of the Three Affiliated Tribes of the Fort Berthold Reservation who is eighteen (18) years of age or older) who is registered to vote in a Tribal election.

Section 12-1-5. Severability.

Should any portion of any provision set forth in this Election Ordinance or the application thereof to any person or circumstances, be held invalid by the Secretary of the Interior or by the

District Court or MHA Nation Supreme Court, the full reminder of such provision, or the application of the provision to other persons or circumstances, shall not be affected thereby and shall remain effective, as shall all other provisions set forth in this Election Ordinance not so held invalid.

CHAPTER II:
TRIBAL ELECTION BOARD AND SEGMENT ELECTION COMMITTEES²

Section 12-2-1. Establishment of Tribal Election Board.

There is hereby established a Tribal Election Board for the purpose of carrying out Tribal Elections pursuant to the Constitution and this Election Ordinance.

Section 12-2-2. Composition; Qualifications; Vacancies of Tribal Election Board.

- A. The Tribal Election Board shall be made up of up to seven (7) Eligible Voters, none of whom is a member of the Tribal Business Council, an employee of the Three Affiliated Tribes, a contractor or independent consultant of the Three Affiliated Tribes, an employee of the Department of the Interior, a candidate for Tribal Office, or a close relative of a candidate. For purposes of this section, a “close relative” is:
1. Husband or Wife;
 2. Father or Mother, whether biological, step-, or legally adopted;
 3. Brother or Sister, whether biological full or half, step-, or legally adopted;
 4. Son or Daughter, whether biological or legally adopted;
 5. Brother-in-Law or Sister-in-Law; or
 6. Son-in-Law or Daughter-in-Law.
- B. There shall be up to seven (7) alternate members of the Tribal Election Board. Alternate members must meet the same qualifications as the Tribal Election Board. The alternate member shall be appointed to fill a vacancy on the Tribal Election Board when necessary.
- C. The Tribal Business Council may appoint the alternate members at the same time as appointing the initial Tribal Election Board members or on an as-needed basis.
- D. In the event that a vacancy should occur on the Tribal Election Board or any member thereof should become unable to properly perform his/her duties, the vacancy may be promptly filled by the Tribal Business Council by appointment of an alternate. A vacancy shall occur upon the resignation, death, or removal by the Tribal Business Council of any member of the Tribal Election Board.

² CONST., ART. IV, § 5.

Section 12-2-3. Appointment of Tribal Election Board.

- A. During the first year this Election Ordinance is adopted, the Tribal Business Council shall appoint up to seven (7) members to serve as the Tribal Election Board along with up to seven (7) alternates for the 2026 election cycle as early as possible. Subsequent Tribal Election Boards shall be appointed by the Tribal Business Council at the May Tribal Business Council meeting during each even numbered year to serve for that year's election cycle.
- B. Each member of the Tribal Business Committee and the Chairperson may nominate one (1) person and one (1) alternate to serve on the Tribal Election Board either as a member or an alternate, as appropriate.
- C. Nominees must meet the criteria set forth in Section 12-2-2.
- D. For the 2028 and 2030 election cycles, Tribal Election Board members shall not have served on the Tribal Election Board in the past four (4) years at the time of their nomination.
- E. Once nominations are made, the Tribal Business Council shall vote on the nominees, appointing up to seven (7) members to serve on the Tribal Election Board and up to seven (7) alternate members. Such appointments shall be made by resolution.

Section 12-2-4. Chairperson of the Tribal Election Board.

At its initial meeting of the election cycle for which they are appointed, the Tribal Election Board shall select, from among its members, a Chairperson. The Chairperson shall preside over meetings of the Tribal Election Board and shall be the individual designated to sign on behalf of the Tribal Election Board. The Chairperson shall have no independent authority to act on behalf of the Tribal Election Board absent valid actions of the Tribal Election Board.

Section 12-2-5. Tribal Business Council Certification Board.

At least thirty (30) calendar days before the date on which the Primary Election is to be held, the Tribal Business Council shall appoint a Tribal Business Council Certification Board made up of three (3) Tribal Business Council members whose terms are not due to expire in the election at issue, which shall certify the results of the election only in the event that the Tribal Election Board fails to do so, as provided in this Election Ordinance.

Section 12-2-6. Budget of the Tribal Election Board.

- A. The Tribal Business Council shall establish the compensation amount to be paid to the Tribal Election Board for their election cycle. Such compensation shall be included in the Tribal Election Board budget.
- B. The Tribal Business Council shall establish an election cycle budget for each election year.

- C. The Tribal Election Board shall not be employees of the Tribe but shall be consultants and paid at a set rate to carry out the duties herein.

Section 12-2-7. Oath of Office of the Tribal Election Board.

Each person appointed as a member of the Tribal Election Board shall, prior to assuming such Office, take an oath administered by any judge or magistrate judge of the Fort Berthold District Court. as follows:

“I, (name of that person), do solemnly swear that I shall faithfully perform the duties of a member of the Tribal Election Board as prescribed by the Tribal Election Ordinance and pursuant to the Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation, and shall, to the best of my ability, endeavor to ensure a fair election.”

Section 12-2-8. Authority delegated to Election Board.

The Tribal Business Council hereby delegates the authority necessary to carry out the provisions of this Election Ordinance to the Tribal Election Board, including the promulgation of rules and forms not inconsistent with this Election Ordinance or the Constitution.

Section 12-2-9. Duties of Tribal Election Board.

- A. Supervision of Election. The Tribal Election Board shall perform general supervision over the election and over the respective Segment Election Committees.
- B. Electronic Voting Machines. The Tribal Election Board is hereby authorized to utilize electronic voting machines at polling places for the purpose of tallying ballots. Such machines shall be used in accordance with the manufacturer’s instructions.
- C. Ruling on Eligibility of Candidates. The Tribal Election Board shall review each Notice of Candidacy and Petition of Nomination upon its receipt and rule on eligibility.
1. The Tribal Election Board may, by its own authority, challenge the eligibility of any candidate.
 2. In challenging the eligibility of a candidate, the Tribal Election Board shall follow the same procedures for determining the eligibility of a candidate and make notifications the same as if a Qualified Voter had challenged the eligibility of a candidate.
- D. Certification of Eligibility of Candidates. The Tribal Election Board, after ruling on all challenges of eligibility for candidacy, shall certify the names of those persons who have been determined eligible for candidacy for Tribal Office.

E. Training.

1. The Tribal Election Board, as early as practicable after the respective appointments of the Tribal Election Board, shall, in coordination with the Tribal Supervising Attorney or his/her designee, cause to be conducted at least two (2) training sessions for all members of the Tribal Election Board.
2. The Tribal Election Board, as early as practicable after the appointment of the Segment Election Committees, shall, in coordination with the Tribal Supervising Attorney or his/her designee, cause to be conducted at least two (2) training sessions for all members of each Segment Election Committee.

F. Preparation of Election Materials. The Tribal Election Board shall prepare all election materials, including ballots.

1. The ballots shall be printed on good quality paper, which may include good quality colored paper, with all of the printing thereon in black ink, unless electronic voting machines are used. In such instances, said ballots may be prepared by the manufacturer who distributes said electronic voting machines.
2. For Tribal Business Council ballots, only the names of those persons certified as eligible for candidacy for Tribal Office by the Tribal Election Board shall be placed on the ballot and such names shall be placed in alphabetical order. The names of such candidates shall be printed in the English language, with a box printed opposite of each name for the purpose of marking by the voters.

G. Legal Counsel. The Tribal Election Board shall work with the Tribal Supervising Attorney or the legal representative that the Tribal Supervising Attorney designates as may be needed in carrying out the duties under this Election Ordinance.

H. Delivery of Ballots and other Election Materials to Polling Places. The unmarked ballots shall be maintained in the custody of the manufacturer at a secure location. On the date of the election, prior to the opening of the polling places, the Tribal Election Board shall deliver to the respective Segment Election Committee all requisite election materials, including the ballot boxes, electronic voting machines, ballots, and poll books, and shall secure from the first judge of each Committee a written receipt setting forth the number of ballots so delivered. The use of electronic tabulation machines may require the ballots to be kept and used according to the manufacturer's standards.

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

Tribal Business Council Certification Board shall certify the results of the election within a period of five (5) business days from the date of the election.

- J. Lottery in Tied Election. In the event that two (2) candidates for a particular position on the Tribal Business Council should receive tie votes in two (2) successive special runoff elections for such Office, the Tribal Election Board, immediately after the completion of the canvassing in the second runoff election, shall be resolved by drawing straws in a special lottery conducted by the Tribal Election Board. The candidate who draws the longest straw shall be declared the winner.
- K. Valid Actions of the Tribal Election Board. In order for any actions of the Tribal Election Board to be valid, such actions must be made by the Tribal Election Board as whole, by majority vote, and at a duly called meeting, whereby a quorum is present.
- L. Meetings of the Tribal Election Board.
 - 1. Meetings of the Tribal Election Board may be held upon twelve (12) hours' notice given by the Chairperson of the Tribal Election Board or by request of a majority of the members of the Tribal Election Board.
 - 2. Except as otherwise provided for herein, meetings may be held in person, virtually, or by other electronic means, including by telephone; provided, however, that all attendees must be able to fully participate in the meeting. Attendees must be able to hear all other attendees and be heard by all other attendees and have access to all documents and materials discussed.
 - 3. Notice of meetings stating the time, date, place, and agenda shall be given in writing to each member of the Tribal Election Board.
 - 4. All meetings of the Tribal Election Board to certify a candidate shall be held in person.
 - 5. Certification of election results shall be held in person.

Section 12-2-10. Appointment of Segment Election Committees.

- A. The Tribal Election Board, as early as practicable, but no later than August 1 in an even numbered year, shall appoint a Segment Election Committee for each Segment of the Reservation in which an election is being held. Each Segment Election Committee shall be made up of at least three (3) qualified resident voters within the respective Segment plus a sergeant-at-arms for each Segment. The sergeant-at-arms will maintain order at the respective Segment polling place.
 - 1. The Tribal Election Board shall solicit or compile names of interested individuals to serve as members of the Segment Election Committees no later than July 1 of each even numbered year.

2. The Tribal Election Board shall review the names of interested individuals and vote to appoint each Segment Election Committee.
 3. No person appointed as a member of a Segment Election Committee shall be a member of the Tribal Business Council, an employee of the Three Affiliated Tribes, a consultant or independent contractor of the Three Affiliated Tribes, an employee of the Department of the Interior, a candidate for Tribal Office, or a “close relative” of a candidate as defined in this Chapter.
- B. The Tribal Business Council shall establish the compensation to be paid to the members of the Segment Election Committees. The compensation shall be included in the Tribal Election Board Budget established by Section 12-2-6.
 - C. The Segment Election Committees shall not be employees of the Tribe but shall be consultants and paid at a set rate to carry out the duties herein.
 - D. In the event that a vacancy should occur on a Segment Election Committee or any member thereof should be unable to properly perform his/her duties, the Tribal Election Board shall promptly fill such vacancy or replace such member by appointment.
 - E. Each person appointed as a member of Segment Election Committee shall, prior to assuming such Office, take an oath administered by any judge or magistrate judge of the Fort Berthold District Court can administer the oath as follows:

“I, (name of the person), do solemnly swear that I shall faithfully perform the duties of a member of the Segment Election Committee as prescribed by the Tribal Election Ordinance and pursuant to the Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation, and shall, to the best of my ability, endeavor to ensure a fair election.”

Section 12-2-11. Duties of Segment Election Committees.

- A. General Responsibility. The Segment Election Committees shall be responsible for ensuring the conduct of a fair election in their respective Segments in accordance with the applicable provisions set forth in this Election Ordinance and shall, in particular, be ever vigilant for potential election fraud or tampering occurring at their respective polling places.
- B. Selection of Committee Officers. Each Committee shall select from within its respective membership a first judge, a second judge, a clerk, and a Sergeant of Arms.
- C. Provision for Voting Facilities. Each Committee shall provide adequate private voting booths, or other reasonably private facilities, at its respective polling place, so as to provide voters the opportunity to mark their ballots in secrecy and privacy.

- D. Reporting for Duty. All members of each Committee and the Sergeant of Arms shall report for duty at their respective polling place on the day of the election one (1) hour before the polling places are scheduled to open and shall remain there until the polling places have closed and the ballot tabulators/boxes and electronic voting machines have been removed there for delivery to the Tribal Election Board at the place of canvassing.
- E. Counting of Unmarked Ballots. The first judge of each Committee shall count the unmarked ballots delivered to the Committee at its respective polling place by the Tribal Election Board and shall then give to the member of the Tribal Election Board a written receipt setting forth the number of unmarked ballots so delivered and received.
- F. Preparation and Maintenance of Ballot Boxes. Upon the opening of the polling places and prior to delivering any ballots to the voters, each Committee shall, in view of all persons present at its polling place, remove all election materials from its ballot box, display the empty box, and close and lock the box, with the key being retained by the first judge. Thereafter, the ballot box shall not be removed from the polling place or from the view of the persons present thereat, until such time as it is removed from the polling place for delivery to the Tribal Election Board at the place of canvassing after the polling place has closed. Nor shall the ballot box be opened, until such time as it has been delivered to the Tribal Election Board at the place of canvassing and the canvassing has commenced.
- G. Performance of Clerical Duties. The first and second judges of each Committee shall be responsible for all record keeping duties and shall assist the voters in completing Affidavits for First-Time Voter Registration, entering their respective signatures and current addresses in the poll book, and securing a ballot.
- H. Assistance of Disabled Voters. In addition, the judges shall assist those disabled voters who request assistance in marking their ballots, as provided elsewhere in this Election Ordinance. The clerk shall assist in the performance of such duties as requested and directed by the judges.
- I. Challenge of Voters. Each member of each Committee and each Sergeant of Arms shall have the absolute duty to be ever vigilant for potential improper voting, or other such actions which would tend to indicate an irregularity at their respective polling place, and to challenge any and all such actions engaged in by voters as provided throughout this Election Ordinance.

CHAPTER III: **NOTICES**

Section 12-3-1. Notice of Election.³

- A. The Secretary of the Tribal Business Council, as early as practicable, but no later than June 15 of each even numbered year, shall cause to be published via posting and, within the discretion of the Secretary, via newspaper and radio, notice of such election, which notice shall set forth:⁴
1. The respective dates on which the Primary and General Elections are to be held;
 2. The purpose of the elections;
 3. A designation of the Tribal Offices to which candidates shall be elected;
 4. A designation of any issues to be voted on;
 5. The place at which and the period of time within which Notices of Candidacy must be filed;
 6. A designation of the locations of the respective polling places;
 7. A designation of the hours during which the polling places shall be open; and
 8. Such other information as may be deemed appropriate.
- B. The Secretary of the Tribal Business Council and the Tribal Election Board shall ensure that copies of such written notice shall be conspicuously posted on the MHA Nation website and in each Segment of the Fort Berthold Reservation at such locations as may be deemed appropriate.
- C. For the Primary and General Elections held during the first year this ordinance is adopted, the Secretary shall include additional information regarding the election process, including timeline and procedures for candidate eligibility and filing.

Section 12-3-2. Notice to Tribe and Tribal Entities of Obligation to Prepare List of Outstanding Financial Obligations Owed.

- A. No later than August 1 in each even numbered year, the Tribal Election Board or its designee shall submit to the Tribe and applicable Tribal entities a notice of their obligation to compile updated and accurate information on prospective candidates who have outstanding debt or financial obligations owed to the Tribe that are in late payment,

³ CONST., ART. IV, § 3(d)

⁴ Document: Notice of Election.

delinquent, default, foreclosure, repossession, and/or have been sent to collections as of August 1 of that year.⁵ The notice shall include a list of those individuals who have requested and received a Notice of Candidacy packet from the Tribal Election Board.

- B. Upon receipt of such request, the Tribe and all Tribal entities shall immediately prepare the information. The Tribal Election Board may promulgate a form for use by the Tribe or applicable Tribal entity to complete, compile, and transmit such information. The completed document shall be provided to the designated personnel in the Finance Office no later than August 10 of each even numbered year. If August 10 falls on a weekend or holiday, then the completed document shall be due on the following business day. If the Tribal department or Tribal entity has no outstanding debt or financial obligations due to it from any of those potential candidates, then the Tribal department or Tribal entity shall provide a written statement confirming the same.
 - 1. The Tribal Election Board shall request the information from the designated personnel in the Finance Office regarding those individuals who have requested a Petition for filing a Notice of Candidacy.
 - 2. The designated personnel in the Finance Office shall provide information related to those specific individuals on the list to the Tribal Election Board at the request of the Tribal Election Board.
- C. Upon request of any individual at any time, the Tribe or any of its entities shall notify that individual of the status of their financial obligations to the Tribe or its entities in writing, including the amount(s) due, department or entity to whom the financial obligation is owed, and due date.
- D. All individuals shall be entitled to written confirmation that such outstanding financial obligation is settled at such time as payment is made.
- E. Written confirmation of such settlement shall be provided directly to the Tribal Election Board by the Tribe or entity upon request of the Tribal Election Board; provided that such individual has provided written authorization of its release.
- F. Each Tribal department and Tribal entity shall provide updates, including whether the financial obligation has been paid so that it is no longer outstanding or resolved by a full and final settlement in Tribal Court, to the designated personnel in the Finance Office on each Friday on a weekly basis through September 1.
- G. Outstanding debt or financial obligations shall include any money owed to the Tribe, Tribal department, or Tribal entity that is:

⁵ Document: Notice to Prepare List of Outstanding Financial Obligations Owed.

1. Past due and owing as of that date;
2. Delinquent;
3. In default;
4. In foreclosure or repossession;
5. Has been sent to collections; or
6. Represents an amount that is in default, such that the rights and responsibilities are accelerated.

It includes any amount owed to the Tribe due to an agreement (including payments for rent), a loan, a fine, a penalty, or court judgment.

Section 12-3-3. Notice to Finance Office of Duties to Compile Information.

No later than August 1 in each even numbered year, the Tribal Election Board or its designee shall submit to the designated personnel in the Finance Office, along with a list of prospective candidates, a notice of their duties for receipt and compilation of information regarding (a) outstanding debt or financial obligations due to the Tribe or Tribal entity and (b) credit card reconciliation and/or travel reimbursement status of current Tribal employees and Tribal Business Council members.⁶ The Tribal Election Board may promulgate a form for use by the Finance Office to complete, compile, and transmit such information.

Section 12-3-4. Dates of Elections.

- A. The Primary Election shall be held on the Tuesday next after the Third Monday in September in every even numbered year.
- B. The General Election shall be held on the Tuesday next after the first Monday in November in every even numbered year.

⁶ Document: Notice to Finance Office of Duties to Compile Information.

CHAPTER IV: **VOTER ELIGIBILITY**⁷

Section 12-4-1. Criteria For Eligibility as Voter.

Any enrolled member of the Three Affiliated Tribes, who is eighteen (18) years of age or older on the date of an election, whether a Primary or General Election, shall be deemed an Eligible Voter of the Three Affiliated Tribes and shall be eligible to vote in the election. Any Eligible Voter may become a Qualified Voter by registering to vote.

Section 12-4-2. Resident and Non-Resident Voters.

All Qualified Voters are eligible to vote in an election; however, only resident voters are eligible to vote by absentee ballot.

Section 12-4-3. Eligibility of Resident Voters.

A. Residency.

1. Except as provided elsewhere in this Election Ordinance, each Qualified Voter who is a legal resident of the Fort Berthold Reservation on the date of an Election, whether a Primary or General Election, shall be registered to vote with and cast his/her vote only for the particular Segment of the Reservation of which he or she is a legal resident on the date of the election.
2. Residency for the purposes of this Election Ordinance shall be defined as the voter's permanent or physical residence where he/she physically resides and maintains his/her abode, house, home, or dwelling.
 - a. For the purposes of voting, a person may not have or claim more than one residence.
 - b. Residence means where he/she actually resides and not in the Segment where he/she is from or considers their home community or Segment.

B. Acceptable Proof of Residency.

1. Types of acceptable proof of residency may include but are not limited to:
 - a. Name and address on Registered Voter List.
 - b. A valid, unexpired state or Tribal identification card that provides a physical address within the Segment in which that voter intends to cast his/ her ballot.
 - c. A utility bill (i.e., electricity, phone, cable, water, propane) that provides the physical address of the voter's residence).

⁷ CONST., ART. IV, § 2.

- d. A copy of a lease or rental agreement with the voter's actual physical address that provides the voter's name on said document.
 - e. Any alternative proof of residency that provides proof of physical residency to the satisfaction of the Tribal Election Board and is consistent with other types of proof of residency.
2. Any voter who is unable to comply with this provision or to provide proof of residency shall be automatically challenged as a matter of law by the Election Judge. The challenge envelope shall describe the types of proof provided by the voter at the polling place. The Tribal Election Board shall uphold the challenge of any voter who cannot provide proof of residency within the guidelines of this section.

Section 12-4-4. Eligibility of Non-Resident Voters.

- A. Each Eligible Voter, who is not a legal resident of the Fort Berthold Reservation on the date of the election, whether a Primary or a General Election, shall return to the Reservation in order to vote in the election. Non-resident voters shall be registered to vote with a Segment prior to casting his/her ballot at any polling place on the date of the election.
- B. The non-resident voter shall vote in the last Segment which he/she established residency for voting purposes, either by actual residency or by legally casting a ballot in the last election subsequent to the establishment of residency for voting purposes.
- C. If the non-resident voter has never established residency for voting purposes, the Eligible Voter must elect a Segment to register for. Once registered, the Segment may not be changed unless they establish on-reservation residency in a new Segment.
- D. A resident voter who moves to a different Segment shall be a resident of the new Segment to which they move.

Section 12-4-5. Eligibility of College Student Voters.

- A. Each Eligible Voter, who is enrolled in a college, university, or other institution of higher learning shall vote in the Segment in which he/she has established legal residency. The residency of college students shall be determined under the applicable resident/nonresident voter criteria as prescribed in this ordinance.
- B. If a college student has never established residency on the Reservation, the college student may register to vote for any Segment. Once registered, the Segment may not be changed unless they establish on-reservation residency in a new Segment.

Section 12-4-6. Eligibility of First Time Voters.

- A. A first-time voter is a Tribal member who is eighteen (18) years of age or older and has not previously voted in any prior Tribal election.

- B. A resident first time voter shall vote in the Segment which he or she physically resides.
- C. A non-resident first time voter shall choose which Segment he or she wishes to vote for at his/her initial registration and shall establish residency by voting as a member of that Segment until such time that voter establishes residency in another Segment.

Section 12-4-7. Eligibility of Resident Active-Duty Military Voters or Their Eligible Voter Spouses.

- A. Each Eligible Voter, who is currently serving in the United States Armed Forces as an Active-Duty Service Member or eligible voter spouses shall vote in the Segment in which he/she has established legal residency. The residency of Active-Duty Military Voters or their eligible voter spouses shall be determined under the applicable resident/nonresident voter criteria as prescribed in this ordinance. No Eligible Voter shall be deemed to have lost their residence solely by reason of his/her service in the United States Armed Forces.
- B. If an Active-Duty Military Voter or their eligible voter spouses have never established residency on the Reservation for voting purposes, the Active-Duty Military Voter or their eligible voter spouses may register to vote for any Segment. Such Segment shall be binding on the voter until they establish residency in another Segment.

Section 12-4-8. Out of Segment Voting.

A Qualified Voter, who is registered to vote, may cast his/her ballot at any polling location in any Segment, irrespective of residency status. However, the Qualified Voter shall be provided a ballot specific to their Segment and is only permitted to vote as allowed for their respective Segment.

CHAPTER V:
REGISTRATION OF VOTERS⁸

Section 12-5-1. Registration Required.

Each Qualified Voter must be registered in order to vote in any election. Registration may occur onsite at the time of voting in an election. Registered Qualified Voters, whether residents or non-residents, may vote at a different Segment polling place than where they are registered.

Section 12-5-2. Registration of Resident Voters.

- A. Each Qualified Voter who is a legal resident of the Fort Berthold Reservation on the date of the election shall be registered to vote with the Segment in which they reside in order to vote.
- B. For first time voters and for voters who change their residency status or Segment, an Affidavit for Voter Registration must be completed, setting forth his/her name, address, date of birth, principal place of residence and period of such residence, and an affirmation that he/she is an enrolled member of the Three Affiliated Tribes and is eighteen (18) years of age or older.

Section 12-5-3. Registration of Non-resident Voters.

- A. Each Eligible Voter who is not a legal resident of Fort Berthold Reservation on the date of an election shall be required to register to vote at any polling place in order to be entitled to vote. An initial registration AND VOTING need not occur at the polling place located in the Segment for which they are registering.
- B. Each such Eligible Voter shall complete and execute an Affidavit for Voter Registration setting forth his/her name, address, date of birth, principal place of residence, and an affirmation that he/she is an enrolled member of the Three Affiliated Tribes and is eighteen (18) years of age or older.

Section 12-5-4. Registered Voter List.

- A. There shall be a Registered Voter List maintained by the Tribal Election Board which shall contain the names of those Qualified Voters that have completed the Affidavit of Voter Registration, as updated.
- B. Whenever an Eligible Voter registers to vote, the Registered Voter List shall be updated by the Tribal Election Board.
- C. Names of deceased individuals shall be removed from the Registered Voter List.

⁸ CONST., ART. IV, § 2.

- D. Individuals who are no longer enrolled members of the Tribe shall be removed from the Registered Voter List.

CHAPTER VI: **CANDIDATES⁹**

Section 12-6-1. Criteria For Eligibility as Candidate.

- A. **Criteria.** Any Eligible Voter of the Three Affiliated Tribes shall be eligible as a candidate for Tribal Office, upon a showing that:
1. He/she is an enrolled member of the Three Affiliated Tribes;
 2. He/she is at least eighteen (18) years of age or over;
 3. He/she has a blood quantum of at least $\frac{1}{4}$ Mandan, Hidatsa, and/ or Arikara Tribes; and
 4. He/she meets the residency requirements for that position:
 - a. He/she, if a prospective candidate for the Office of the Tribal Business Council, has maintained his/her principal place of residence in that Segment of the Reservation which he/she proposes to represent for a period of at least six (6) months preceding the date on which the Primary Election is to be held.
 - b. In the case of the Office of the Tribal Chairperson, he/she must be a bona fide resident of any Segment of the Reservation. For purposes of this Ordinance, “bona fide resident” shall mean maintained his/her principal of residence for a period of at least six (6) months preceding the date on which the Primary Election is to be held.
 5. Has filed their Notice of Candidacy with the Tribal Election Board on behalf of the Secretary of the Tribal Business Council by the deadline for that election year; and¹⁰
 6. He/she meets the additional requirements for Tribal Office set forth in Section 12-6-2(A) and, if applicable, Section 12-6-3.
- B. All candidates must provide proof that he/she meets the above criteria.
1. Proof of enrollment may be shown through a valid, unexpired Tribal Enrollment Card issued by the TAT Enrollment Office or a Certificate of Degree of Indian Blood showing the requisite degree of Indian blood necessary for enrollment issued by the Bureau of Indian Affairs along with that person’s enrollment number. Evidence of enrollment with the TAT Enrollment Office shall be de facto proof that an individual meets the enrollment criteria set forth in Article II of the Constitution.

⁹ CONST., ART. IV, § 6.

¹⁰ Document: Notice of Candidacy.

2. Proof of age may be shown by a birth certificate; an unexpired, valid driver's license; an unexpired, valid state or Tribal identification card showing date of birth; or an unexpired, valid U.S. passport.
3. Proof of blood quantum may be shown through an official document from the TAT Enrollment Office or a CDIB from the Bureau of Indian Affairs. The document must clearly show that the individual possesses at a blood quantum of least $\frac{1}{4}$ Mandan, Hidatsa, and/or Arikara Tribes.
4. Documents supporting proof of residency include: account statement from a bank or other financial institution issued within the last ninety (90) calendar days; pay stub or earnings statement issued within the last ninety (90) calendar days with the name and address of the employer; valid, unexpired driver's license; valid, unexpired Tribal or state identification card; valid, unexpired U.S. passport; federal, state, or Tribal government documents issued within the last ninety (90) calendar days; valid vehicle registration; valid life, health, auto, or home insurance policy or card showing the address; utility bill issued within the last ninety (90) calendar days; and/or current mortgage lease, or rental agreement (lease or rental agreement must include the landlord's name and contact information).

Section 12-6-2. Additional Requirements for Tribal Office.

- A. Additional Requirements. Members of the Tribal Business Council are expected to adhere to the highest standard of conduct. In addition to the criteria set forth in Section 12-6-1 above, all of the following additional requirements for Tribal Office apply:
1. He/she has not been removed for cause from the Office of Tribal Business Council Member, as provided in Article V, Section 2 of the Constitution of the Three Affiliated Tribes, or from the Office of Chief Judge of the Fort Berthold Tribal Court, as provided in Chapter 1, Subchapter 3, Section 3 of the Code of Laws of the Three Affiliated Tribes.
 2. He/she has not been found guilty by a court of competent jurisdiction of a felony.
 3. He/she has not received an Other than Honorable discharge (or Less than Honorable), a bad conduct discharge, or a dishonorable discharge from any branch of the Armed Forces of the United States. He/she shall provide proof of such discharge by providing his/her DD Form 214 issued by the United States of America.
 4. He/she has no delinquent or outstanding financial debt or obligations to the Tribe or any of its entities.
 5. If he/she is a current Tribal employee or Tribal Business Council member, the additional eligibility requirements of Section 12-6-3 apply.

6. He/she must complete and submit an accurate Disclosure of Financial Interest as part of the Notice of Candidacy package. If elected, upon taking office a Candidate must comply with the requirements of the Mandan, Hidatsa & Arikara Nation Ethics in Government Ordinance for ownership and/or pecuniary interest in any company that contracts and/or subcontracts for goods or services with an oil & gas producing company on the Fort Berthold Indian Reservation.

B. Outstanding Debt or Financial Obligations. Candidates shall have no delinquent or outstanding financial debt or obligations to the Tribe or any of its entities **at the time of filing** his/her Notice of Candidacy. All candidates must provide a declaration under penalty of perjury that he/she meets the financial obligation requirement in a format established by the Tribal Election Board.¹¹ In order to comply with the requirements of the Election Ordinance, the Tribal Election Board may promulgate additional forms for certification by the designated personnel in the Finance Office of the status of financial obligations owed by a potential candidate.

1. Outstanding debt or financial obligations shall include any money owed to the Tribe, Tribal department, or Tribal entity that is:
 - a. Past due and owing as of that date;
 - b. Delinquent;
 - c. In default;
 - d. In foreclosure or repossession;
 - e. Has been sent to collections; or
 - f. Represents an amount that is in default, such that the rights and responsibilities are accelerated.

It includes any amount owed to the Tribe due to an agreement (including payments for rent), a loan (including emergency loans, small loans, business loans, and home mortgage loans), lease payments, a fine, a penalty, or court judgment. Owing and overdue includes all payments that are unpaid as of the next day following their due date, whether or not an overdue notice has been provided by the Tribe.

2. This includes all delinquent and outstanding debt or financial obligations in favor of the Tribe due to:
 - a. lease payments;
 - b. education programs;
 - c. rental or mutual self-help payments;
 - d. emergency loans;
 - e. small loans;
 - f. business loans;
 - g. home mortgage loans;
 - h. any loan on which the Tribe is a co-signer;
 - i. overdue court fines, costs, or fees;

¹¹ Document: Declaration of No Outstanding Debt or Financial Obligations.

- j. unpaid penalties;
- k. settlement agreements; and
- l. court judgments.

This also includes proof that the candidate who is a Tribal employee or Tribal Business Council member is not delinquent in any credit card reconciliation, travel reimbursement, or other financial obligation of the Tribe.

- 3. It is the responsibility of the Candidate to confirm with the Tribe and its entities that no such outstanding financial obligation exists prior to filing his/her Notice of Candidacy.
 - 4. Each completed Notice of Candidacy must include a written document on a form approved by the Tribal Election Board that the candidate declares, under penalty of perjury, that he/she has no outstanding financial obligation due to the Tribe or Tribal entities as of the date signed. Candidates must also provide written authorization for the Tribal Election Board to discuss with and receive confirmation information from the Finance Office on the status of the outstanding financial obligation.
 - 5. The Tribal Election Board may, at any time, require a candidate to submit proof of eligibility that he/she did not have any outstanding debt or financial obligations in favor of the Three Affiliated Tribes on the date he/she filed his/her Notice of Candidacy.
 - 6. The Tribal Election Board may, at any time, require a candidate to submit proof of eligibility that he/she is not delinquent in the payment of any financial obligations in favor of the Tribe and was not delinquent on the date he/she filed his/her Notice of Candidacy.
 - 7. In addition to the above, all candidates who are Tribal employees and Tribal Business Council members must declare, under penalty of perjury, that the Tribal employee or Tribal Business Council member is not delinquent in any credit card reconciliation, travel reimbursement, or other financial obligations of the Tribe as of the date he/she files his/her Notice of Candidacy.
 - 8. All financial obligations must be cured and up to date at the time the candidate submits their Notice of Candidacy, not by the deadline for filing a Notice of Candidacy, and be accurately reflected in all declarations filed. Any delinquencies must be paid in full to qualify for candidacy. The extension of any delinquent amount shall NOT be allowed.
 - 9. The Tribal Election Board shall require declarations, under penalty of perjury, along with receipt and proof of payment attached as needed.
- C. Mandan, Hidatsa & Arikara Nation Ethics in Government Ordinance. If elected, upon taking office a Candidate must comply with the requirements of the Mandan, Hidatsa &

Arikara Nation Ethics in Government Ordinance for ownership and/or pecuniary interest in any company that contracts and/or subcontracts for goods or services with an oil & gas producing company on the Fort Berthold Indian Reservation. All potential candidates must complete and submit a Disclosure of Financial Interest, under penalty of perjury, as part of his/her Notice of Candidacy packet.¹²

Section 12-6-3. Additional Eligibility Requirements for Tribal Office for current Tribal Employees and Tribal Business Council Members.

- A. Tribal Employees. Any member of the Three Affiliated Tribes that intends to file his/her Notice of Candidacy for Tribal office shall notify the Director of the Tribal Personnel Office and the appropriate Tribal Business Council Committee of such intention. Any such employee may continue to maintain his/her employment position; provided, however, that such employee shall, in no manner or to any extent, engage in any form of campaigning during working hours.
1. During the conduct of the election, the candidate may NOT use any Tribal property for the purpose of furthering his/her campaign efforts. The failure by any such employee to fully comply with this prescription shall result in his/her immediate termination from employment with the Three Affiliated Tribes.
 2. Solely for the purposes of this subsection (A), the following are not deemed “employees” of the Three Affiliated Tribes:
 - a. Any incumbent member of the Tribal Business Council;
 - b. The incumbent Chief Judge of the Fort Berthold Tribal Court; and
 - c. Consultants of the Three Affiliated Tribes.
- B. Current Tribal Business Council Members. In the event that an incumbent general member of the Tribal Business Council, who is not up for the re-election and has two (2) years remaining in his/her elected term, should become a candidate for the Office of the Chairman, such member shall continue his/her membership on the Council pending the outcome of the election for the Office of Chairman.
1. In the event that such member should be elected as Chairman, he/she must resign as general member of the Council on the date of the installation of the newly-elected and certified Chairman, and the newly-constituted Tribal Business Council shall appoint a qualified Tribal member from the Segment in which the vacancy occurs to serve the remaining two (2) years of the unexpired term of such member, pursuant to Article V, Section 1 of the Constitution of the Three Affiliated Tribes.
 2. In the event that such member fails to be elected as Chairperson, he/she shall continue to serve as a member of the Tribal Business Council and shall serve the remaining two (2) years of his/her unexpired term.

¹² Document: Disclosure of Financial Interest.

- C. Credit Card Reconciliation and/or Travel Reimbursement. All candidates who are also current Tribal employees or Tribal Business Council members must not be delinquent in any credit card reconciliation and/or travel reimbursement upon the date he/she files his/her Notice of Candidacy.
1. Upon receipt of the list of names of individuals who have requested a Notice of Candidacy packet, the Tribal Finance Office shall prepare an updated and accurate list of those potential candidates who are also Tribal employees and Tribal Business Council members who are delinquent or late on any credit card reconciliation and/or travel reimbursement as of August 1 of that year. The Tribal Finance Office shall complete the list within five (5) business days of receipt of the notice from the Tribal Election Board.
 2. The Finance Office shall provide written notice to all potential candidates who are also a Tribal employee or Tribal Business Council member of the current status of their credit card reconciliation and/or travel reimbursement.
 3. The Finance Office shall provide written confirmation to the potential candidate of resolution of their delinquent credit card reconciliation and/or travel reimbursement within twenty-four (24) hours of such resolution.
 4. The candidate must provide a declaration under penalty of perjury that he/she meets the credit card reconciliation and travel reimbursement requirement in a format established by the Tribal Election Board.

Section 12-6-4. Filing, Publication, and Challenge of Candidacy.

- A. Requesting Notice of Candidacy Petition. Beginning on June 15 and ending on July 31 on each even numbered year, an Eligible Voter eligible for election may request a Notice of Candidacy petition from the Tribal Election Board. Such request must be made in person and by the individual seeking to file the Notice of Candidacy. At the time of requesting the petition, the potential candidate shall acknowledge:
1. By requesting and receiving the petition, the Tribal Election Board is authorized to request and receive information from the Tribe and any of its entities regarding delinquent and outstanding financial obligations owed to the Tribe and its entities prior to the filing of the Notice of Candidacy.
 2. It is the individual's responsibility to confirm that all financial obligations are resolved and settled prior to the date the individual files their Notice of Candidacy, regardless of whether the Tribal Election Board receives such information directly from the Tribe or Tribal entity.
 3. Beginning on June 15 and ending on the first Friday in August of an even numbered year, the Tribal Election Board shall cause a list of the names of the individuals who have requested and received a Notice of Candidacy petition to be published on the

Tribe's website and posted at the Tribal Council Headquarters. The list shall be updated on no less than a weekly basis.

4. Candidates must confirm and acknowledge that, if elected, upon taking office the Candidate must comply with the requirements of the Mandan, Hidatsa & Arikara Nation Ethics in Government Ordinance for ownership and/or pecuniary interest in any company that contracts and/or subcontracts for goods or services with an oil & gas producing company on the Fort Berthold Indian Reservation.

B. Filing Notice of Candidacy. Any Eligible Voter eligible for election to Tribal Office may become a candidate therefore by filing a Notice of Candidacy, including all required documents, together with a nonrefundable filing fee in the amount of Two Hundred and Fifty Dollars (\$250.00), with the Secretary of the Tribal Business Council or their delegee no later than forty (40) calendar days prior to the date of the Primary Election of an even numbered year.

1. All potential candidates must consent to and authorize a complete background check by the Tribal Election Board in order to confirm a candidate's eligibility.
2. All potential candidates must complete a Disclosure of Financial Interest.
3. The potential candidate must complete all forms or releases necessary to authorize the Tribal Election Board to receive information in order to confirm candidate eligibility.¹³
4. All potential candidates must complete and attach a declaration affirming under penalty of perjury that they have no outstanding financial obligations owed to the Tribe or any of its entities.
5. Current Tribal employees or Tribal Business Council members must also complete and attach a declaration affirming under penalty of perjury that they are current and up to date on credit card reconciliation, travel reimbursement, or other financial obligations to the Tribe.¹⁴
6. No potential candidate may run for more than one position in the same election cycle.
7. Potential candidates must include a valid email address and agree to receive notice from the Tribal Election Board via email at that address.
8. The Secretary of the Tribal Business Council or his/her delegee shall ensure that the Tribal Election Board receives all Notice of Candidacy documents filed by each potential candidate within twenty-four (24) hours of their filing on a rolling basis.

¹³ Document: Release of Information.

¹⁴ Document: Declaration of Status of Credit Card Reconciliation and Travel Reimbursement.

C. Filing Petitions for Nomination.

1. If on the date of the initial publication of the list of candidates, a Segment has two (2) or fewer candidates who have filed for a position on the Tribal Business Council, such Segment may nominate one (1) or more candidates by formal written petition, each such respective petition having been executed by at least ten (10) Qualified Voters of such Segment.¹⁵
2. If on the date of the initial publication of the list of candidates, there are two (2) or fewer persons who have filed as candidates for the Office of the Chairman of the Tribal Business Council, a qualified candidate(s) may be nominated by formal written petition, each respective petition having been executed by at least twenty (20) Qualified Voters.
3. Each person nominated shall satisfy the criteria for eligibility as a candidate, as set forth in this Election Ordinance. Additionally, each person nominated shall file the Petition for Nomination, along with required documents, together with a nonrefundable filing fee in the amount of Two Hundred and Fifty Dollars (\$250.00), with the Tribal Election Board no later than three (3) calendar days from the date of the initial publication of the list of candidates.
4. Any signature that is set forth on more than one (1) Petition for Nomination filed for the same Tribal Office shall be stricken from each such Petition filed for that Office.

D. Tribal Election Board Certification of Candidates. The Tribal Election Board shall, at a duly called meeting, each Notice of Candidacy and Petition for Nomination, promptly after its receipt thereof, for the purpose of ruling on the eligibility of candidates.

1. Immediately upon receipt of a Notice of Candidacy packet, the Tribal Election Board shall review for completeness. A written record of the review, including a list of the items received from the individual shall be kept and signed by each Tribal Election Board member present.
2. If any required document is incomplete or missing, then the Notice of Candidacy packet shall be rejected as incomplete and the individual shall not be certified. The individual shall be notified in writing of the decision. Such decision shall be delivered via electronic mail and may be delivered in-person.
3. If the Notice of Candidacy packet is complete, then the Tribal Election Board shall immediately begin the process for review and certification by requesting information from third parties.

¹⁵ Document: Petition for Nomination.

- a. The Tribal Election Board shall cause a complete background check to be completed.
 - b. The Tribal Election Board may request confirmation of information from the designated personnel in the Finance Office regarding the status of the candidate's financial obligation requirement.
 - c. The Tribal Election Board may request confirmation of information from the designated personnel in the Finance Office regarding the status of the candidate's credit card reconciliation and travel reimbursement requirement.
 - d. The Tribal Election Board may request confirmation of information from any other third party as may be necessary to confirm the declarations and materials contained in the Notice of Candidacy packet.
4. Immediately following the Tribal Election Board's initial review for completeness, and after the deadline for filing Notice of Candidacy has passed, the Tribal Election Board shall publish the List of Uncertified Candidates. This list must be published no later than three (3) days after the deadline for filing a Notice of Candidacy.
5. Once the Tribal Election Board has received all materials requested from third parties, the Tribal Election Board shall convene in a duly called meeting to review the packet and materials.
6. Certification of each potential candidate shall be voted on by the Tribal Election Board, one at a time, as either certified or not certified.
7. A written record of the Tribal Election Board's action shall be kept, including the materials reviewed and the vote, and signed by each Tribal Election Board member present.
8. The Tribal Election Board shall notify each potential candidate, in writing, of the Tribal Election Board's decision on whether the candidate is certified or not certified. Such decision shall be delivered via electronic mail and may be delivered in-person.
9. Immediately following the Tribal Election Board's review and certification or non-certification of all of the candidates who have filed a Notice of Candidacy packet, the Tribal Election Board shall cause a List of Certified Candidates to be published.

E. Publication of Lists of Candidates.

1. Within a period of three (3) calendar days from the date of the deadline for the filing of Notices of Candidacy, the Tribal Election Board shall cause to be published throughout the Fort Berthold Reservation, via posting, newspaper and/or radio, a list setting forth the names of the persons who have successfully filed for candidacy

for Tribal Office.¹⁶ In addition, the Tribal Election Board shall promptly cause any and all appropriate modifications of such list to be published, in the event that, after the initial publication:

- a. Persons have been nominated as candidates by the filing of Petitions for Nomination, or
- b. Notices of Candidacy or Petitions for Nomination have been withdrawn voluntarily by candidates themselves or by the Tribal Election Board upon ruling that candidates are ineligible for candidacy for Tribal office.

A copy of the current list of candidates shall be posted on the MHA Nation website and provided to any Qualified Voter upon request to the Tribal Election Board.

2. Immediately upon the establishment of the List of Certified Candidates by the Tribal Election Board, the Tribal Election Board shall publish such list.¹⁷ The list shall be posted on the MHA Nation website and throughout the Reservation at locations determined by the Tribal Election Board. This list shall replace the initial list of candidates

F. Challenge of Eligibility of Candidates. Any Qualified Voter may challenge the eligibility of any candidate by filing a duly verified written affidavit with the Tribal Election Board, which sets forth the grounds for the challenge and submits a Two Hundred and Fifty Dollar (\$250.00) filing fee.¹⁸ This challenge must be received within three (3) calendar days from the date of the initial publication naming the challenged candidate.

1. Upon receipt of a written challenge, the Tribal Election Board shall determine if the challenge can be substantiated based on the information provided or received by the Tribal Election Board. If the Tribal Election Board finds that the challenge is unsubstantiated, it shall reject the challenge in writing and provide notice to the person who filed the challenge within twenty-four (24) hours via electronic mail and certified mail. If the Tribal Election Board is unable to determine that the challenge is unsubstantiated, it shall notify the challenged candidate that their candidacy has been challenged, in writing, via electronic mail and may be delivered in-person. The Tribal Election Board will identify the ground(s) for the challenge and state that the challenged candidate's response must be received within three (3) calendar days from the date of receipt of notice by the candidate.
 - a. Should the challenged candidate fail to submit to the Tribal Election Board a response to the challenge within the prescribed time period, the Tribal Election Board shall rule that such candidate is ineligible for candidacy for Tribal Office and that his/her Notice of Candidacy or Petition for Nomination shall be withdrawn and his/her name must not be placed on the

¹⁶ Document: List of Uncertified Candidates.

¹⁷ Document: List of Certified Candidates.

¹⁸ Document: Challenge of Candidate Eligibility.

ballot. The Election Board shall notify the candidate of such ruling, in writing, via electronic mail and may be delivered in-person.

- b. If the challenged candidate provides a response to the challenge within the prescribed time period, the Tribal Election Board shall within three (3) calendar days from receipt of the proof review the response and rule on the challenge and provide notice in accordance as set forth in subsections (F)(2) and (F)(3) below.
2. If the Tribal Election Board determines the response submitted is unsatisfactory, it shall rule that such candidate is ineligible for candidacy for Tribal Office and that his/her Notice of Candidacy or Petition for Nomination shall be withdrawn and his/her name shall NOT be placed on the ballot. The Election Board shall notify the candidate of such decision in writing within twenty-four (24) hours of its decision. Such decision shall be delivered via electronic mail and certified mail and may be delivered in-person. In addition, the Tribal Election Board shall notify the individual who made such challenge of the decision in writing.
3. If the Tribal Election Board determines the response submitted is satisfactory, it shall rule that such candidate is eligible for candidacy for Tribal Office. The Election Board shall notify the candidate of such decision in writing within twenty-four (24) hours of its decision. Such decision shall be delivered via electronic mail and may be delivered in-person. In addition, the Tribal Election Board shall notify the individual who made such challenge of the decision in writing.
4. Any ruling made by the Tribal Election Board pursuant to subsection (F) may be challenged in a court proceeding by the person aggrieved thereby, pursuant to the procedures prescribed in this Election Ordinance. In order for any appeal of the Tribal Election Board's decision to be valid it must be filed with the Fort Berthold District Court within two (2) business days of the Tribal Election Board's decision. The person aggrieved must provide a copy of the appeal to the Tribal Election Board at the same time. Upon receipt of the appeal, the Tribal Election Board shall submit the administrative record to the Fort Berthold District Court within twenty-four (24) hours.
5. The Fort Berthold District Court shall review the appeal and administrative record and rule on the appeal. It may, but need not, hold a hearing or rule on the record before it. The Fort Berthold District Court shall rule on the appeal within three (3) business days of receipt of the administrative record. The ruling of the Fort Berthold District Court shall be final.
6. If the Fort Berthold District Court finds in favor of the appellant, then it shall order the Tribal Election Board to certify the candidate for the Primary Election and place the candidate's name on the ballot.

Section 12-6-5. No Write-In Candidates.

- A. Write-in Candidates shall not be permitted.
- B. Any ballot containing a write-in candidate shall be considered spoiled.

CHAPTER VII:
PROCEDURES FOR VOTING AT SEGMENT POLLING PLACES¹⁹

Section 12-7-1. Voting Procedures.

- A. Registration of Voters. Before being permitted to cast his/her ballot, each voter shall provide proof of residency, complete, and execute an Affidavit for Voter Registration and enter his/her signature and current address in ink in the poll book at the polling place.
- B. Challenging Voter Eligibility. Before providing a registered voter with a ballot, a member of the Segment Election Committee shall review the voter's Affidavit for Voter Registration and verify that the voter's signature and current address have been entered in the poll book.
1. If no challenge of the voter's eligibility is made by any member of the Segment Election Committee, any member of the Tribal Election Board, by the Sergeant-at-Arms, or by any watcher duly appointed by a candidate, the voter shall be provided with a ballot.
 2. If a challenge of the voter's eligibility is made and a One Hundred Dollar (\$100.00) challenge filing fee is paid, the voter shall be permitted to furnish proof of his/her eligibility. If the proof is satisfactory or if the challenge is withdrawn, the voter shall be provided with a ballot. Neither the Segment Election Committee nor the Tribal Election Board shall be required to pay the challenge fee.
 3. If the person having made the challenge is not satisfied by the proof and has paid the One Hundred Dollar (\$100.00) challenge filing fee, the voter shall be supplied with a ballot and will be entitled to cast his/her ballot, but the marked ballot, upon its delivery to the Segment Election Committee, shall:
 - a. Be immediately enclosed in an envelope, on which are printed the words "CHALLENGED BALLOT."
 - b. Such envelope shall then be immediately sealed by a judge of the Committee, and the front thereof shall be initialed by the first judge and the clerk, and the name of the person having made the challenge, the grounds thereof, and the proof of eligibility furnished by the voter in response to the challenge.
 - c. One of the judges shall then deposit the sealed envelope containing the challenged ballot in the ballot box. The determination as to the validity of the challenge shall be made by the Tribal Election Board prior to the canvassing as provided in this Election Ordinance.
 - d. Each ballot which has been subject to a challenge so maintained may serve as a ground for an election contest brought pursuant to the procedures prescribed elsewhere in this Election Ordinance.

¹⁹ CONST., ART. IV, § 5.

- C. Stamping Ballots. In case electronic tabulated ballots cannot be used, before providing a registered voter with a ballot, a judge of the Committee shall stamp the words “OFFICIAL BALLOT, [name of Segment] SEGMENT” and sign his/her initials on the unprinted side of the ballot and shall then deliver the ballots so stamped and initialed to the voter.
- D. Voting in Secrecy. Upon receipt of the ballot, the voter shall retire to a private voting booth, or other designated reasonably private facility, and mark his/her ballot in secrecy and privacy. Only one person shall occupy a voting booth at one (1) time, except as provided in Subsection G of this section.
- E. Marking Ballots. In order that the marking of a box on the ballot be deemed valid and the resulting vote tallied, the voter must ensure that his/her mark is identifiable with the respective box for which it is intended. After the ballot has been marked as desired, the voter shall ensure that the printed and marked side thereof is completely concealed and the words “OFFICIAL BALLOT, [name of Segment] SEGMENT” and the initials of the judge appear on the outside of the ballot.
- F. Casting Ballot. The voter shall deliver the marked ballot to the judge, who shall immediately deposit the ballot in the ballot box.
- G. Assisting Disabled Voters. Any voter, who, because of the inability to read the English language, blindness, or other physical disability, is incapable of properly marking his/her ballot, may, upon request, be assisted by both judges of the Committee, in the marking of his/her ballot. If such assistance is provided, the judges shall not, by word, expression, or other conduct, influence, or attempt to influence the voter in his/her choice of candidates.
- H. Spoiling Ballots. If a voter spoils a ballot, he/she may secure new ballots successively, one (1) at a time, not exceeding three (3) in all, upon delivery of each spoiled ballot to a judge of the Committee. Upon receipt of a spoiled ballot, the voter shall immediately enclose such ballot in a large envelope, on which are printed words, “SPOILED BALLOTS.”
- I. Write-in Voting. The write-in on the ballot by the voter of the name of a candidate is prohibited and any and all such votes cast for a candidate so written in shall not be tallied in the canvassing of ballots.
- J. Providing Sample Ballots. The Tribal Election Board shall provide sample ballots to each Segment Election Committee, each of which shall be conspicuously stamped with words “SAMPLE BALLOT” across the printed and unprinted side thereof. Such sample ballots shall be used by the Committees exclusively for the purpose of illustrating to the voters the proper marking procedure and shall not be deposited in the ballot boxes.

Section 12-7-2. Out of Segment Voters.

- A. Any resident or non-resident voter may vote and cast a ballot for their resident Segment at any polling place on the Fort Berthold Reservation. The voter shall:

1. Inform the Segment Election Committee where he/she intends to vote that he/she intends to vote for their resident Segment;
 2. Identify what Segment election he/she is intending to cast a vote for; and
 3. Provide or show proof of residency for the purposes of voting.
- B. Upon sufficient proof that the voter is eligible to vote for the Segment of which he/she intends to vote for, the voter shall be entitled to cast his/her ballot, and this shall not be subject to challenge for residency purposes.

Section 12-7-3. Watchers.

- A. Each candidate shall be entitled to maintain one (1) watcher at each polling place, who may observe the voting procedures on behalf of the candidate. The candidate has two (2) weeks prior to election to submit the list of their poll watcher(s) to the Tribal Election Board.
1. The candidate's watcher shall not be him/herself, his/her spouse, or the children of the candidate.
 2. The watcher shall be barred from any direct communication or contact with any voter in the Segment voting place.
 3. The watcher shall bring the challenge of any voter and a One Hundred Dollar (\$100.00) filing fee only to the Segment Election Committee and is strictly barred from challenging the voter personally.
 4. Poll watchers cannot have substitutes.
- B. In addition, each candidate shall be entitled to maintain one (1) watcher, not himself/herself, his/her spouse or children, at the location of the canvassing of the ballots, who may observe the canvassing proceedings on behalf of the candidate.
- C. Any watcher maintained at a polling place may challenge any ballot cast, and any watcher maintained at the location of the canvassing may challenge any ballot as the votes are tallied. The One Hundred Dollar (\$100.00) challenge-filing fee must be paid at the time of the challenge.
- D. The watchers of any candidate shall be strictly prohibited from contacting, communicating, or any attempt to influence any voter that enters the Segment voting place to cast a ballot. Any attempt to contact or communicate with the voter except in regard to the challenge of the voter shall result in immediate removal of the watcher from the Segment voting place.
- E. No watcher shall be entitled to be compensated by the Three Affiliated Tribes.

Section 12-7-4. Challenge of Voters.

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

Section 12-7-5. Electioneering or Campaigning.

No person shall engage in electioneering or campaigning on the date of the election within one hundred (100) yards of a polling place.

Section 12-7-6. Loitering.

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

Section 12-7-7. Intoxication.

No Qualified Voter deemed to be in an intoxicated condition or under the influence at a polling place shall be permitted to vote. The members of the respective Segment Election Committee shall make all determinations herein and their majority decision shall be exclusive and final.

Section 12-7-8. Polling Places.

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

Section 12-7-9. Voting Hours.

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

CHAPTER VIII:
PROCEDURES FOR RESIDENT VOTING BY ABSENTEE BALLOT²⁰

Section 12-8-1. Resident Voters Who May Use Absentee Ballot Procedure.

- A. A Qualified Voter, who is a legal resident of the Fort Berthold Reservation on the date of an election, whether a Primary or a General Election, may register to vote and cast his/her ballot in accordance with the procedures prescribed in this Chapter, only if he/she will be absent from the Reservation on the date on which the election is to be held and will be unable to be present at any Segment polling place during the designated poll hours.
- B. An absentee ballot may only be mailed to a qualified resident voter outside the exterior boundaries of the Fort Berthold Reservation if he/she will be absent from the Reservation on the date on which the election is to be held and unable to be present at any Segment polling place during the designated poll hours due to:
1. Hospitalization outside the exterior boundaries of the Reservation;
 2. Attending school outside the exterior boundaries of the Reservation;
 3. Extreme physical disability where traveling is physically impossible (proof shall be required); or
 4. Active service in the United States Armed Forces by them or their spouse.
- C. Any such Qualified Voter who satisfies any of the conditions of this section shall hereinafter be referred to as an “absent voter.” A voter shall be required to provide proof of their absence and/or hardship under subsection (B) to the Tribal Election Board.

Section 12-8-2. Time And Method for Application for Receipt of Ballot.

- A. Application for an Absentee Ballot. An absent voter who feels they meet the conditions of section 12-8-1 may make application for receipt of an absentee ballot at any time during the period from the date on which the Tribal Election Board has in its custody the printed ballots to a time no later than 3:30 p.m. on the day before the date on which the election is to be held, provided that such application shall have been made to or reached the Tribal Election Board by such date and time.
1. An absent voter may request receipt of an Application for an Absentee Ballot from the Tribal Election Board either by mail, in person, or through an agent. An agent is a person with a formal written request from an eligible absentee voter. This is the only stage of the procedures prescribed in this Chapter in which an absent voter may use an agent.

²⁰ CONST., ART. IV, § 2(b).

2. It shall be the responsibility of the requesting absent voter to ensure that the request for application be made to the Tribal Election Board in a timely manner to ensure the application and absentee ballot is cast by no later than 4:00 p.m. on the day of the Election. No absent ballots received by the Tribal Election Board after 4:00 p.m. on the day of the election shall be considered valid or counted in any election so cast for.
- B. Application for an Absentee Ballot. The Application form shall be maintained and furnished by the Tribal Election Board and shall require the following information to be furnished by the absent voter:
1. His/her full legal name;
 2. His/her current mailing address;
 3. The designation of the Segment of which he/she is a legal resident;
 4. An affirmation that he/she will be unable to be present at the appropriate polling place during the designated poll hours on the date on which the election is to be held;
 5. An affirmation that he/she is a Qualified Voter of the Three Affiliated Tribes, and
 6. An affirmation that he/she understands that it is a criminal offense to make a false statement in order to obtain an absentee ballot.
- C. Completion of Application. Upon receipt of such Application, the absent voter shall fully complete and execute the same and shall deliver such Application, by mail or in person as authorized in section 12-8-3 in a timely manner as to ensure that the Application is made to or reaches the Tribal Election Board within the period prescribed in subsection (A).

Section 12-8-3. Delivery of an Absentee Ballot.

- A. Upon the timely receipt by the Tribal Election Board of an Application for an Absentee Ballot, the Tribal Election Board shall forthwith review such Application to ensure that it has been fully completed and executed by the absent voter. The Election Board shall refer to its listing of all Qualified Voters who are eligible to vote in the election, so as to ensure that such absent voter is eligible to vote in the election, and the Tribal Election Board shall deliver an absentee ballot and accompanying materials to the absent voter in the appropriate manner as provided for in this section.
- B. Should an absent voter make a timely application for receipt of an absentee ballot to the Tribal Election Board in person, the Tribal Election Board, upon confirming that such absent voter is eligible to vote in the election, shall personally deliver the absentee ballot and accompanying materials to the voter at the time such application is made. The absent voter shall not cast his/her ballot in the presence of the Tribal Election Board.

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

Section 12-8-4. Procedure For Casting Absentee Ballot.

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

Section 12-8-5. Timely and Proper Return and Receipt of Absentee Ballot.

- A. Only those absentee ballots properly cast by the absent voters in compliance with the procedure prescribed in this Chapter which are returned to and reach the post office box maintained by the Tribal Election Board, in New Town, North Dakota, on or before the date of the election, shall be counted in the canvassing of the ballots on the date of the election.
- B. The hand-delivery of an absentee ballot to the Tribal Election Board, a Segment Election Committee, or the Secretary of the Tribal Business Council is prohibited, and any such attempted delivery shall not be accepted thereby. It is the responsibility of the individual(s) seeking an absentee ballot to ensure proper time for the processing of the absentee ballot,

return, and the receipt of the ballot by the Tribal Election Board. The Tribal Election Board will NOT consider any absentee ballot not received by 4:00 p.m. on the date of the election. The Tribe and the Tribal Election Board accept no responsibility for absentee ballots that are untimely and not properly counted.

- C. The Tribal Election Board shall make use of United States Postal Service or by other similar overnight mail service where warranted. However, the ballots and application materials must be received at the Tribal Election Board U.S. Post Office box. No ballots submitted or delivered to the Tribal Election Board personally or to the Tribal Election Board office shall be considered valid.

Section 12-8-6. Maintenance of Returned Absentee Ballots.

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

CHAPTER IX:
CANVASSING OF BALLOTS²¹

Section 12-9-1. Delivering and Canvassing of Absentee Ballots.

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

²¹ CONST., ART. IV, § 5.

of the majority ruling and those members who voted against such ruling shall be set forth on the back of each envelope.

- e. Each such envelope shall then be enclosed in a large envelope, on which are printed the words "ABSENTEE BALLOTS REJECTED FOR ILLEGALITY."

- B. Upon completion of the ruling on all those absentee ballots set aside as potentially illegal:
 - 1. At least three (3) members of the Tribal Election Board shall commence the tallying of the votes set forth on those absentee ballots previously deposited in the absentee ballot box.
 - 2. The tally of the absentee ballots shall be recorded both on the official absentee tally sheet and on the large absentee tally board for public viewing.
 - 3. The Election Board shall set aside, for subsequent ruling, any and all ballots which the members should deem potentially illegal on their face.
- C. Upon completion by the members of the Tribal Election Board of the canvassing of all absentee ballots which have been deemed thereby as obviously legal on their face, the full Tribal Election Board shall rule on any and all ballots deemed potentially illegal on their face in the manner prescribed in section 12-9-4.
- D. Upon completion of the tallying by the Tribal Election Board of the votes set forth on all the legal absentee ballots, the final total(s) of all votes tallied for the respective Tribal Office(s) shall be computed thereby and such totals(s) shall be recorded on a large summary tally board for public viewing.
- E. Electronic Ballots and Electronic Tabulation Machines may be used for absentee ballot tabulation.

Section 12-9-2. Delivery and Canvassing of Segment Ballots.

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

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

2. All unmarked ballots returned to the Tribal Election Board from the Segment polling place. The unmarked ballots shall be enclosed in a large envelope clearly marked “UNMARKED BALLOTS- [NAME OF SEGMENT];”
3. All spoiled ballots returned to the Tribal Election Board from the Segment polling place. The spoiled ballots shall be enclosed in a large envelope clearly labeled “SPOILED BALLOTS- [NAME OF SEGMENT].”

The first judge shall return his/her key to the lock on the ballot box to the Chairperson of the Tribal Election Board. In the event that the first judge, for any reason, should be unable to perform the duties prescribed in this subsection (B), the second judge shall act on his/her behalf.

- C. Upon delivery of each of the Segment ballot boxes to the place of canvassing, the Tribal Election Board Chairperson and one (1) other Tribal Election Board member shall remove themselves from the canvassing of absentee ballots and commence to perform the duties inherent in checking in such Segment ballot box and other election materials which include:
 1. The duties listed in this Election Ordinance;
 2. The opening of the ballot box to remove and set aside all sealed challenged ballot envelopes; and
 3. They shall continue to perform such duties with respect to each of the remaining Segment ballot boxes in the order in which such ballot boxes are delivered to the place of canvassing.
- D. Upon completion by the two (2) members of the Tribal Election Board of the duties inherent in checking in a Segment ballot box and other election materials:
 1. The first or second judge of that respective Segment Election Committee shall secure any and all challenged ballots envelopes and, together with the two (2) members of the Tribal Election Board, shall proceed to the location at which the other members of the Tribal Election Board are canvassing the absentee ballots.
 2. The full Tribal Election Board shall then immediately rule on each of the challenged ballots in the manner prescribed herein.
 3. Following such ruling, the Segment Election Committee judge shall return to the location of his/her Segment Election Committee and, together with the other members thereof, shall commence to perform duties assigned, if any, to each Segment Election Committee for canvassing of the respective Segment ballots.
 4. Each Segment Election Committee shall set aside any and all ballots which said committee should deem potentially illegal on their face, for subsequent ruling by

the full Tribal Election board pursuant to section 12-9-4 after the canvassing is complete.

- E. Each Segment Election Committee shall maintain its own official tally sheet and large tally board for public viewing, on each of which the votes shall be tallied.
- F. Upon completion of the canvassing of all its ballots which have been deemed thereby as obviously legal on their face, the full Tribal Election Board shall rule on any and all ballots deemed as potentially illegal on their face.
- G. The final total(s) of all votes tallied for the respective Tribal Office(s) shall be computed and recorded on a large summary tally board for public viewing.

Section 12-9-3. Ruling On Challenged Ballot.

- A. The full Tribal Election Board shall rule, by majority vote, on each challenged Segment ballot. The Tribal Election Board shall review and consider the facts surrounding the challenge as they appear on the envelope in which the challenged ballot was enclosed by the respective Segment Election Committee.
- B. Should a majority of the Tribal Election Board rule that the challenge is without merit and, therefore, invalid, the envelope shall be opened and the ballot removed to be deposited in the respective Segment ballot box.
 - 1. The word “CHALLENGED”, the ruling on the challenge and the basis therefore, and the initials of those members of the Board who voted in favor of the majority ruling and of those members who voted against such ruling shall be clearly written on the back of the challenged ballot envelope.
- C. Should a majority of the Board rule that the challenge is valid, the envelope shall remain sealed with the challenged ballot enclosed therein.
 - 1. The word “CHALLENGED,” the ruling on the challenge and the basis therefore, and the initials of those members of the Board who voted in favor of the majority ruling and of those members who voted against such ruling shall be set forth on the back of the challenged ballot envelope.
- D. All such challenged ballot envelopes, with the respective rulings thereon set forth on the backs thereof, shall be enclosed in a large envelope, on which are printed the words “ELECTION BOARD, CHALLENGED BALLOTS, (name of Segment) SEGMENT.”
 - 1. This Challenge Ballot Envelope shall be maintained by the Tribal Election Board during the entire canvassing process.
 - 2. Upon completion by a Segment Election Committee of the canvassing of all its ballots which have been deemed thereby as obviously legal on their face, the full

Tribal Election Board shall rule on any and all ballots deemed by such Committee as potentially illegal on their face in the manner prescribed in section 12-9-4 of this chapter.

Section 12-9-4. Ruling On Potentially Illegal Ballots.

- A. An illegal ballot shall be defined as any ballot which fails to comply with the applicable provisions set forth in this Election Ordinance, in the context of the casting therefor (e.g., an absentee ballot unaccompanied an Affidavit for Voter Registration) or in the context of the marking thereof (e.g. a ballot on which the name of a candidate has been written in), or which has been so marked as to place in doubt in the intention of the voter or has been otherwise incorrectly marked; provided, however, that, in the instance of mismarking, the Tribal Election Board shall rule illegal only that portion of the ballot which has been mismarked and shall cause to be tallied all votes casts on the remaining portion of the ballot. A ballot that does not have any selection marked for one, some, or all vacancies is not illegal by virtue of not having any candidate marked.
- B. The full Tribal Election Board shall rule, by majority vote, on each ballot which has been set aside for potential illegality, either by the Tribal Election Board or by the Segment Election Committees. The Election Board shall review and consider the circumstances surrounding the potential illegality of the ballot.
 - 1. Should a majority of the Board rule that the ballot, in its entirety, is legal, the ballot shall be set aside to be placed in the respective ballot box after all Segment's potentially illegal ballots have been ruled upon. Those ballots shall be canvassed and tallied accordingly.
 - 2. Should a majority of the Board rule that the ballot, in its entirety, is illegal, the ballot shall be rejected for illegality and the votes set forth thereon shall be canvassed or tallied.
 - a. The words "REJECTED FOR ILLEGALITY," the ruling on rejection and the basis therefore, and the initials of those members of the Board who voted in favor of the majority ruling and of those members who voted against such ruling shall be written on the unprinted side of the ballot.
 - b. The ballot(s) shall then be enclosed in a large envelope, on which are printed the words "BALLOTS REJECTED FOR ILLEGALITY."
 - 3. Upon completion of the entire canvassing process, each Segment's Rejected for Illegality Ballot Envelope shall be returned to the respective Segment to be sealed with canvassed ballots in the locked ballot box.
- C. Each ballot that has been rejected, in whole or in part, for illegality may serve as a ground for election contest brought pursuant to this Election Ordinance.

Section 12-9-5. Certification Of Election Results.

- A. Upon completion of the tallying and computing of the total number of votes cast for the respective Tribal Offices by the Tribal Election Board and the Segment Election Committees shall:
 - 1. First, certify the official tally sheets of each Segment by signatures of each Tribal Election Board Member.
 - 2. The Election Board shall then declare the unofficial winner of that respective election.
- B. The Tribal Election Board shall have no more than three (3) calendar days from the date of election to publish the certified results of the election to the public by written notice.
- C. The Tribal Election Board shall certify the election and the winning candidate(s) to the Tribal Business Council and to the public by written notice.
- D. Declaration of an unofficial winner or certification of the election results shall not preclude any appeal brought forth under this Election Ordinance.
- E. The incumbent and the challengers shall treat each other with the upmost respect and dignity during and after the election.

Section 12-9-6. Preservation Of Election Records.

- A. After the results of the election have been formally certified, the Tribal Election Board shall immediately deliver and deposit the locked ballot boxes to the vault at the Fort Berthold Agency of the Bureau of Indian Affairs, New Town, North Dakota, or other such location as determined by the Tribal Business Council. The locked ballot boxes shall contain:
 - 1. All cast and canvassed ballots for the respective Segment;
 - 2. The official envelopes containing:
 - a. “UNMARKED BALLOTS”
 - b. “SPOILED BALLOTS”
 - c. “CHALLENGED BALLOTS”
 - d. “ABSENTEE BALLOTS REJECTED FOR ILLEGALITY”
 - e. “REJECTED FOR ILLEGALITY”
 - 3. All official tally sheets; and
 - 4. Official poll books and voter registration sheets.

- B. In the event the Tribal Election Board shall be unable to immediately deliver and deposit the sealed ballots boxes to the BIA-Fort Berthold Agency vault, the Tribal Election Board shall deliver the boxes to a secure place for immediate delivery to the BIA vault as soon as reasonably possible.
- C. The sealed ballot boxes and the materials contained within the ballot boxes shall be preserved and maintained for a period of one hundred and eighty (180) days from the date on which the election was held or for as long as a court of competent jurisdiction continues to retain jurisdiction over a contest of the election, if such period of retained jurisdiction should exceed a period of one hundred and eighty (180) days.

Section 12-9-7. Primary Election Results

- A. If there are only two qualified candidates for a position on the Tribal Business Council for the Primary Election, such candidates shall both advance to the General Election.
- B. The two (2) qualified candidates for each position on the Tribal Business Council who secure the highest number of votes in the Primary Election shall be placed on the ballot for the General Election.
 - 1. In the event that there are more than two (2) candidates who received the same highest number of votes in the Primary Election (such as a three-way tie for first place), then all such candidates shall be placed on the ballot for the General Election.
 - 2. In the event that there are two (2) or more candidates who received the same number of votes for the second highest number of votes in the Primary Election (such as a tie for second place), then all such candidates shall be placed on the ballot for the General Election.
- C. In the event that any one qualified candidate for a particular position on the Tribal Business Council receives a majority of the total votes cast for that position in the Primary Election, that candidate shall be declared elected to the position. In such cases, the General Election shall not be held for such position.

CHAPTER X:
SPECIAL RUNOFF ELECTIONS²²

Section 12-10-1. Special Runoff Election in the Case of a Tie Vote.

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

²² CONST., ART. IV, § 3(a).

CHAPTER XI:
CONTEST OF ELECTION²³

Section 12-11-1. Contest of Election; Filing with Tribal Election Board.

- A. A defeated candidate or ten (10) Qualified Voters, who desire to contest an election after the certified results thereof have been posted, shall file with the Tribal Election Board a duly verified written complaint setting forth a concise statement of the facts upon which the contest is based, together with a nonrefundable filing fee in the amount of Five Hundred Dollars (\$500.00), within a period of three (3) calendar days from the date on which the certified election results were posted.
- B. As early as practicable, but within a period no greater than three (3) calendar days from the date of the filing of the complaint, the Tribal Election Board shall hold a formal hearing on the complaint, at which hearing the Tribal Election Board shall admit evidence, testimonial and documentary, presented by the complainant(s) and by other interested persons having relevant evidence to present.
- C. As early as practicable, but within a period of no more than twenty-four (24) hours from the date on which the hearing was held, the Tribal Election Board shall issue its written decision on the complaint based upon the evidence presented at the hearing.
- D. The time limits prescribed herein shall be strict and inflexible and any individual(s) that does not comply with the time requirements prescribed herein forfeits their right to contest the election to the Tribal Election Board or through District Court proceeding.
- E. All filing fees including candidacy, challenges, and any other filing fees in this Election Ordinance shall go to the Tribal Election Board account.

Section 12-11-2. Appeal of Contest of Election.

- A. Any complainant(s), who has exhausted the administrative remedy provided for in Section 12-11-1 and who is aggrieved by the decision issued by the Tribal Election Board may file with the Fort Berthold District Court, within a period of one (1) business day from the date of issuance of the written decision of the Tribal Election Board:
 - 1. A duly verified written complaint setting forth a concise statement of the facts upon which the contest of the election is based.
 - 2. The complainant shall provide a copy of the complaint to the Tribal Election Board within the one (1) business day period.

²³ CONST., ART. IV, § 5.

3. Upon receipt of the complaint, the Tribal Election Board shall immediately submit a complete copy of the administrative record relating to the complaint to the District Court.
4. If the complaint is not filed within the one (1) business day period, the complainant forfeits their right to contest the election through District Court.

In the event that the Tribal Election Board has failed to hold a hearing or issue its written decision on a properly filed complaint within the applicable time periods prescribed in Section 12-11-1 of this Chapter, any complainant(s) aggrieved by such failure shall be entitled to file a complaint with the District Court within one (1) business day from the date on which the Tribal Election Board should have issued a written decision. Upon filing of any such complaint, the District Court shall grant such election contest the highest priority in calendaring and shall set the matter for hearing on the earliest practicable date, but no later than three (3) business days upon filing of the complaint.

- B. Decisions of the District Court shall be issued within one (1) business day of the hearing date.

Section 12-11-3. Remedies for Election Challenges that Affect the Outcome of a General Election.

- A. In the event that election irregularities are found to have affected the outcome of a General or Special Election by either the Tribal Election Board or the District Court, either in whole or in part, due to the irregularities, the Tribal Election Board shall:
 1. Conduct an immediate recount of the affected Segment ballots; or
 2. Request the District Court declare the election partially or wholly invalid and, upon such declaration, call a Special Election.
- B. Any Special Election so called shall occur within thirty (30) calendar days.
- C. If an election is declared wholly invalid, the certified results shall be declared null and void by court order.
- D. If an election is declared partially invalid, the certified results for the portion not declared invalid by the District Court shall not be disturbed.

Section 12-11-2. Appeal of District Court Decision.

- A. Any Party may appeal a decision of the District Court to the MHA Nation Supreme Court within a period of one (1) business day from the date of the issuance of the decision.
- B. The MHA Nation Supreme Court, in its discretion, may schedule an oral argument or make a decision on the appeal based on the record before it. In either event, the MHA

Nation Supreme Court shall issue its decision within three (3) business days of the filing of the appeal.

CHAPTER XII: **REFERENDUM ELECTIONS²⁴**

Section 12-12-1. Referendum Elections Permitted.

Pursuant to Article VIII of the Constitution and Bylaws of the Three Affiliated Tribes, upon the Petition signed by at least ten (10) percent of the Qualified Voters of each community, demanding a referendum on any proposed or enacted ordinance or resolution of the Tribal Business Council, the Council shall call a Referendum Election and the vote of a majority of the Qualified Voters voting in such referendum shall be binding upon the Tribal Business Council, provided that at least thirty (30) percent of the eligible voters shall vote in such referendum.

Section 12-12-2. Definitions.

As used in this Chapter:

- A. “Invalid ballot” means an official ballot, discovered at the time of the canvassing of ballots, which does not comply with the requirements for voting or a ballot which is not an official ballot.
- B. “Mutilated ballot” means an official ballot that has been damaged to the extent that it is not possible to determine the choice the voter intended to make.
- C. “Official ballot” means a ballot printed on behalf of and prepared by the Tribal Election Board for use in an election conducted pursuant to this Chapter.
- D. “Spoiled ballot” means an official ballot that has been marked by a voter in such a manner that it is not possible to determine the choice the voter intended to make or an official ballot that has not been marked at all by the voter.

Section 12-12-3. Intent and Construction.

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

²⁴ CONST., ART. VIII.

Section 12-12-4. Calling of Election.

The Tribal Business Council shall call a referendum election upon having made a formal determination that a petition filed pursuant to Article VIII of the Tribal Constitution fully satisfies the specific requirements prescribed by said Article. The Tribal Business Council shall establish and designate an election date which shall fall within the period of one hundred and twenty (120) days from the date on which the petition was filed with the Secretary of the Council; provided, however, that the Tribal Business Council shall have the authority to extend the date of the election to a date no greater than thirty (30) days beyond said one hundred and twenty (120)-day period, based upon a reasonable justification for such an extension.

Section 12-12-5. Conduct by Mail.

The registration to vote and casting of ballots by Tribal voters shall be conducted entirely and exclusively by mail in any referendum election held pursuant to Article VIII of the Tribal Constitution. This procedure shall apply to all eligible Tribal voters, whether residents or nonresidents of the Fort Berthold Reservation; there shall be no polling places established in the conduct of any referendum election.

Section 12-12-6. Eligibility to Register to Vote and Eligibility to Vote.

Any enrolled member of the Three Affiliated Tribes, who will be eighteen (18) years of age or older on the date of a referendum election, shall be eligible to register to vote in the election. Any such Tribal member shall also be eligible to vote in such referendum election, provided that he or she has duly registered to vote in accordance with the procedures governing voter registration prescribed in this Chapter (i.e., eligibility to vote in the election is absolutely conditioned on prior registration to vote).

Section 12-12-7. Requisite Percentage of Cast Ballots.

In accordance with Article VIII of the Tribal Constitution, the validity and binding effect of any referendum election shall be conditioned on the satisfaction of the requirement that valid ballots be cast by at least thirty percent (30%) of the total number of duly registered voters. The determination of the total number of duly registered voters shall be based upon the number of Tribal voters whose names are included on the eligible voters list compiled by the Tribal Election Board after the date of the deadline for receipt of voter registration forms. In determining whether the thirty percent (30%) requirements has been satisfied, any invalid ballots cast shall not be counted in the calculation of the total number of ballots cast in the election; however, any and all mutilated ballots and spoiled ballots cast shall be counted in such calculation. Provided that the thirty percent (30%) requirements has been satisfied, the determination by the Tribal voters on any issue included on the referendum election ballot shall be based upon a majority of the total votes cast on the respective issue.

Section 12-12-8. Election Fraud or Tampering.

- A. It shall be a criminal offense, designated as Election Fraud or Tampering, for any enrolled member of the Three Affiliated Tribes to knowingly and willfully, in a fraudulent or deceptive manner, commit any act or engage in any conduct which would tend to influence the outcome of an election. Upon conviction of said offense, the offender shall be sentenced to payment of a fine not to exceed Five Hundred and 00/100 dollars (\$500.00) and/or to a term of imprisonment not to exceed One Hundred (100) days.
- B. It shall be a criminal offense, designated as Election Fraud or Tampering, for any member of the Tribal Election Board to knowingly and willfully, in a fraudulent or deceptive manner, fail to or improperly perform any of the duties or responsibilities inherent in such Office as prescribed by this Chapter. Upon conviction of said offense, the offender shall be sentenced to payment of a fine not to exceed Five Hundred and 00/100 Dollars (\$500.00) and/or to a term of imprisonment not to exceed One Hundred and Eighty (180) days.

Section 12-12-9. Severability.

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

Section 12-12-10. Notice of Referendum Election.

- A. The Tribal Business Council, at least forty (40) calendar days prior to the date of the election, shall cause to be mailed, by regular first class mail, a copy of the official notice of referendum election to each enrolled member of the Three Affiliated Tribes who will be eighteen (18) years of age or older on the date of the election. Such notice shall be mailed to respective Tribal member's last known address as it appears in the records maintained by the Aberdeen Area Office of the Bureau of Indian Affairs.
- B. The Tribal Business Council shall, in addition to mailing the notice, cause the notice of election to be published through the Tribal radio and the Tribal newspaper, provided that such media are in operation. Within its discretion, the Council may cause the notice of election to be further published by any non-Tribal media and by other methods such as posting at appropriate locations throughout the Fort Berthold Reservation.
- C. The official notice of referendum election shall contain the following information concerning the election:
 - 1. The date of the referendum election;
 - 2. A statement of each issue to be voted on in the referendum election;

3. A statement describing the manner in which a voter may secure more detailed information or documentation concerning each issue to be voted on in the referendum election;
4. A statement that the referendum election will be conducted entirely by mail and voting will be secret ballot;
5. A statement that a voter must register to vote in order to be eligible to vote in the referendum election;
6. A statement describing the manner in which a voter must register to vote;
7. An identification of the date of the deadline for registration to vote;
8. A statement that a referendum election ballot will be mailed to each duly registered voter;
9. An identification of the date, time, and location for the canvassing of the ballot duly cast;
10. The telephone number of the office to which any questions concerning the referendum election may be directed; and,
11. Such other information as may be deemed appropriate by the Tribal Business Council.

Section 12-12-11. Eligibility to Vote Conditioned on Registration to Vote.

Eligibility to vote in a referendum election shall be absolutely conditioned on prior registration to vote. Only those Tribal voters, who have duly registered to vote in accordance with the procedures governing voter registration prescribed in this Part, shall be eligible to vote in a respective referendum election.

Section 12-12-12. Mailing of Voter Registration Forms.

The Tribal Business Council shall cause to be mailed, together with the official notice of referendum election, a voter registration form to each Tribal member who will be eighteen (18) years of age or older on the date of the election. The voter registration form shall be enclosed in the same envelope in which the notice of election is mailed to respective Tribal voter. In addition to the registration form, enclosed in such envelope shall be a return envelope on the outside of which is set forth the post office address maintained by the Referendum Election Board for the purpose of receiving completed and returned voter registration forms.

Section 12-12-13. Delivery of Substitute Voter Registration Forms.

A Tribal voter may request from the Tribal Business Council or its agent a substitute voter registration form, in the event that such voter has misplaced or spoiled the registration form originally received by mail or has not received at all the registration form originally mailed to him. Any such request may be made personally, by mail, by telephone, or through an agent. The Tribal Business Council shall promptly comply with any such request received and shall cause the requested substitute voter registration form to be delivered to the voter personally or by mail. In all instances in which a substitute voter registration form has been delivered to a voter, no extension of time shall be granted to the respective voter for the submission of the completed substitute registration form to the Referendum Election Board beyond the date officially established as the deadline for the timely receipt of completed voter registration forms.

Section 12-12-14. Contents of Voter Registration Form.

The voter registration form shall contain the following:

- A. Spaces in which the voter will set forth his or her full name (and maiden name, if applicable), full mailing address, and date of birth;
- B. A statement, with signature and date lines, certifying that the voter is an enrolled member of the Three Affiliated Tribes and is at least eighteen (18) years of age or will be eighteen (18) years of age on the date of the referendum election;
- C. A statement that the completion and timely return of the voter registration form is necessary if the voter desires to become qualified to vote in the election;
- D. A statement that the voter registration form, upon completion and return to the Referendum Election Board, shall serve as the basis for determining whether the voter qualifies to have his or her name included on the list of eligible voters and to receive a ballot;
- E. A statement that the completion and return of the voter registration form is voluntary;
- F. An identification of the date of the deadline for the return for the voter registration form to the Referendum Election Board; and
- G. Such other information as may be deemed appropriate by the Tribal Business Council.

Section 12-12-15. Establishment of Voter Registration Forms.

Prior to the mailing of the voter registration forms to Tribal voters, the Tribal Business Council shall establish and designate the date of the deadline for the receipt by the Referendum Election Board of completed and returned voter registration forms. The date of the deadline so established shall be at least twenty (20) calendar days prior to the date of the referendum election.

Section 12-12-16. Completion and Timely Return of Voter Registration Forms.

Each Tribal voter who desires to vote in the referendum election shall fully complete and sign the voter registration form delivered to him or her. In order for his or her name to be included on the list of eligible voters to whom ballots will be directed, the respective voter must return his or her completed in timely manner, so as to ensure that the form reaches the post office box maintained by the Referendum Election Board by the date of the deadline for receipt of completed and returned voter registration forms. Only those Tribal voters whose registration forms have been so received shall be entitled to have their respective names included on the list of eligible voters and shall, therefore, be entitled to the delivery of a ballot. The completed voter registration form must be mailed by the respective voter to the post office address maintained by the Referendum Election Board; the form may not be hand delivered to the Referendum Election Board or to any other entity or individual.

Section 12-12-17. Appointment of Referendum Election Board.

Subsequent to the calling of the election and prior to the date of the deadline for the return of completed voter registration forms, the Tribal Business Council shall appoint the members of a Referendum Election Board consisting of three (3) enrolled members of the Three Affiliated Tribes who are eligible to register to vote in the election. The Council shall also appoint at least one (1) other such Tribal voter as an alternate who will promptly replace any initially appointed to the Referendum Election Board who should become unwilling or unable to serve on the Referendum Election Board. One of the three persons initially appointed shall be designated by the Council as Chairman of the Referendum Election Board. No person so appointed as an initial Referendum Election Board member or an alternate shall be a member of the Tribal Business Council, an employee of the Three Affiliated Tribes, or an employee of the Fort Berthold Agency of the Bureau of Indian Affairs. The Tribal Business Council shall additionally establish an amount of reasonable compensation to be paid to the members of the Referendum Election Board.

The members of the Referendum Election Board may, but need not, be individuals who served on the Tribal Election Board.

Section 12-12-18. Duties of Referendum Election Board.

Upon its appointment, the Referendum Election Board shall perform general supervision over the conduct of the election, generally conduct the election in compliance with the procedures prescribed hereinafter in this Chapter, and specifically perform the following duties:

- A. As soon as practicable after their appointment, the members of the Referendum Election Board shall participate in appropriate training conducted on behalf of the Tribal Business Council, so as to ensure that each member becomes familiar with and understands all procedures governing the conduct of referendum elections as prescribed in this Chapter.
- B. The Referendum Election Board shall cause to be prepared and secured all election documents and other materials necessary for the conduct of the election, including the ballots. The ballot format shall be prepared clearly and simply so that it will be easy for

Tribal voters to indicate a choice between no more than two (2) alternatives presented in relation to each issue to be voted on in the election. The ballot format shall additionally provide the voter with the choice of marking either “yes” or “no” in relation to each such issue. Included in the language printed on the ballot shall be a clear and concise, but complete, statement of each issue to be voted on. The ballot format shall be printed on good quality paper, including colored paper, with all printing thereon to be in black. The unmarked ballots shall be maintained in the exclusive custody of the Referendum Election Board and shall be kept locked thereby in a secure location in the Tribal Administration Building, except in those instances in which ballots are being prepared for mailing to Tribal voters.

- C. Upon completion of the canvassing of the ballots cast in the Referendum Election, the Referendum Election Board shall officially certify the results of the election to the Tribal Business Council and to the public by written notice. Copies of the official written notice shall, as early as practicable after completion of the conduct of the election, be conspicuously posted in the Tribal Administration Building, at the Fort Berthold Agency and in each of the segments of the Fort Berthold Reservation.
- D. Upon having canvassed the ballots cast in the election and having certified the results of the election to the persons present at the canvassing, the Referendum Election Board shall forthwith place all cast ballots, the official tally sheet, the eligible voters list, all completed and returned voter registration forms, and all other documentation relation to the conduct of the election in the ballot box used in conjunction with the canvassing and shall then lock the box. At least one member of the Referendum Election Board, accompanied by an officer of the Bureau of Indian Affairs Police Department, shall then transport and deposit the locked ballot box in the vault located at the Fort Berthold Agency of the Bureau of Indian Affairs. The locked ballot box shall be maintained and preserved at such location for a period of one hundred and eighty (180) calendar days from the date of the election or for as long as a court of competent jurisdiction continues to retain jurisdiction over a contest of the election, if such period of retained jurisdiction should continue beyond the termination of such one hundred and eighty (180) day period.

Section 12-12-19. Securing Returned Voter Registration Forms.

On the day next succeeding the date of the deadline for the return of completed voter registration forms, the Referendum Election Board shall secure from the United States Post Office, in New Town, North Dakota, all return envelopes containing completed voter registration forms which reached the post office box maintained by the Referendum Election Board at such Post Office on or before the date of such deadline. The post office box may, but need not, be the same post office box maintained by the Tribal Election Board; provided that access to the post office box is limited only to those persons who are members of the Referendum Election Board.

[**Note:** The New Town Post Office shall not issue any keys to the post office box maintained by the Referendum Election Board for the receipt of returned voter registration forms. Until such time as the Referendum Election Board secures the return envelopes as provided in this Section, neither the Tribal Business Council, the

Referendum Election Board, nor any other entity or individual shall have access to the return envelopes containing completed voter registration forms, except the New Town Post Office personnel.]

Section 12-12-20. Determination of Eligibility to Vote.

The Referendum Election Board shall carefully review each voter registration form returned in a timely manner and make a determination as to whether each person who has so returned a registration form qualifies as a Tribal voter [i.e., the respective person is an enrolled member of the Three Affiliated Tribes and will be eighteen (18) years of age or older on the date of the election]. Any such person who is not determined to be so qualified shall not be entitled to have his or her name included on the list of eligible voters and shall not be entitled to the delivery of a ballot.

Section 12-12-21. Preparation of Eligible Voters List.

The Referendum Election Board shall prepare an official eligible voters list where in shall be set forth the names and mailing addresses of all those persons determined to be qualified to vote in the Referendum Election. The names of such persons shall be set forth on the list in alphabetical order based upon surname. The respective mailing address of such persons shall be set forth on the list as they appear on the respective voter registration forms.

Section 12-12-22. Delivery of Copy of Eligible Voters List Upon Request.

The official eligible voters list prepared and maintained by the Referendum Election Board shall be a matter of public record. The Referendum Election Board shall deliver a photostatic copy of such list to any Tribal voter who requests receipt of the same.

Section 12-12-23. Resolution of Issues of Inclusion on or Exclusion from Eligible Voters List of Name of Particular Persons.

In the event that any Tribal voter should question the inclusion on or exclusion from the official eligible voters list of the name of a particular person, such question shall be promptly directed to the Referendum Election Board. Upon the receipt of notification of any such question raised by a Tribal voter, the Referendum Election Board shall promptly provide to such Tribal voter appropriate proof, by reference to and/or the production of official documentation, supporting the inclusion on or exclusion from the eligible voters list of the identified name questioned by the Tribal voter.

Section 12-12-24. Securing Returned Voter Registration Forms Received After the Deadline.

On a daily basis, the Referendum Election Board shall secure from the New Town Post Office any and all return envelopes containing completed voter registration forms which have reached said Post Office subsequent to the deadline for receipt of the same. The Referendum Election Board shall indicate on the face of each such registration form the respective date on

which the form reached the post office box maintained by the Referendum Election Board at the New Town Post Office. The Referendum Election Board shall maintain all such voter registration forms throughout the conduct of the election.

Section 12-12-25. Maintenance of Returned Voter Registration Forms.

All completed voter registration forms, whether returned in a timely or an untimely manner, shall be maintained in the exclusive custody of the Referendum Election Board and shall be kept locked thereby in a secure location in the Tribal Administration Building.

Section 12-12-26. Mailing of Ballots.

- A. The Referendum Election Board shall mail a ballot to each eligible Tribal voter, whose mailing address is located outside the State of North Dakota, at least eighteen (18) days prior to the date of the election. The Election Board shall mail a ballot to each eligible Tribal voter, whose mailing address is located within the State of North Dakota, at least fourteen (14) calendar days prior to the date of the election. A ballot shall be mailed to each eligible Tribal voter at his or her mailing address as it appears on his or her voter registration form. The mailing of all ballots shall be by regular first-class mail.
- B. The Referendum Election Board shall mail ballots only to those Tribal voters deemed eligible to vote in the election. A Tribal voter shall be deemed eligible to vote in the election only if he or she has returned to the Referendum Election Board a completed voter registration form in a timely manner and his or her name is included on the official eligible voters list.
- C. The Referendum Election Board shall maintain a record of the respective date on which a ballot was mailed to each eligible Tribal voter. Such record shall be a matter of public record and any Tribal voter shall be granted the opportunity to review such record upon request made to the Referendum Election Board.

Section 12-12-27. Contents and Preparation of Ballot Packet for Mailing to Eligible Tribal Voters.

The Referendum Election Board shall mail to each eligible Tribal voter a ballot packet which shall include the following items:

- A. The official printed ballot on the face of which in the same location the Referendum Election Board has stamped in black ink the term “Official Ballot” and has impressed the official ballot seal;
- B. A photostatic copy of the written instructions for casting the ballot which shall include, in addition to any other information deemed appropriate by the Referendum Election Board, (1) a clear and concise description of the procedure for casting the ballot; and (2) an identification of the date of the deadline for the return of the marked ballots to the Referendum Election Board;

- C. A small envelope bearing on the outside the term “Official Ballot”; and
- D. A large return envelope bearing (1) on the front side, the post office address maintained by the Referendum Election Board for the purpose of receiving marked and returned ballots and (2) on the reverse (back) side, the following certification:

I, _____, HEREBY CERTIFY THAT I AM AN ENROLLED MEMBER OF THE THREE AFFILIATED TRIBES; THAT I WILL BE 18 YEARS OF AGE OR OLDER ON THE ELECTION DATE; THAT I AM ELIGIBLE TO VOTE IN THE ELECTION TO BE HELD ON (DATE OF ELECTION); AND THAT I MARKED THE ENCLOSED BALLOT IN SECRET.
SIGNED: _____

Section 12-12-28. Delivery of Substitute Ballot Packets.

An eligible Tribal voter may request from the Referendum Election Board the receipt of a substitute ballot packet, in the event that such voter has misplaced, spoiled, or permitted to be mutilated the ballot originally received by mail or has not received at all the ballot packet originally mailed to him or her. Any such request may be initially made personally, by mail, or by telephone. However, each such request shall be reduced to writing, which written request shall be dated and signed by the voter and directed to the Referendum Election Board. Each such written request shall specifically set forth the reason that a substitute ballot packet is needed by the eligible Tribal voter. In those instances, in which the need for a substitute ballot packet is based upon the spoiling or mutilation of the ballot originally received by mail, the respective Tribal voter shall specifically represent in his or her written request that he or she has destroyed the spoiled or mutilated ballot at issue. The Referendum Election Board shall promptly comply with any such request received and shall deliver the requested ballot packet to the voter personally or by mail. The Referendum Election Board shall maintain and preserve all written requests for substitute ballots packets. In all instances in which a substitute ballot packet has been delivered to an eligible Tribal voter, no extension of time shall be granted to the respective voter for the return of the marked ballot to the Referendum Election Board beyond the date established as the deadline for the timely receipt of marked ballots.

Section 12-12-29. Procedure for Casting Ballots.

Upon receipt of the ballot and accompanying materials, each eligible Tribal voter shall strictly comply with the following procedure in casting his or her ballot:

- A. Carefully and clearly mark the ballot as desired and fold the marked ballot so that the printed side is concealed;
- B. Enclose the folded ballot, in the small envelope bearing on the outside the term “Official Ballot” and seal the envelope;
- C. Encloses the small envelope containing the ballot in the large return envelope bearing on

the outside the post office address maintained by the Referendum Election Board and seal the envelope;

- D. Read the certification printed on the reverse side of the large return envelope and print his or her name on the line at the beginning of the certification and sign his or her name on the line at the end of the certification; and
- E. Apply the required postage to the large return envelope and deposit the envelope in the United States Mail. A Tribal Voter must enclose only his or her ballot in his or her own large return envelope (i.e., only one ballot shall be enclosed in a single large return envelope).

Section 12-12-30. Deadline for Casting Ballots.

The date of the deadline for the receipt by the Referendum Election Board of marked ballots shall be the day next preceding the date of the election. Such date shall be specifically identified in the written instructions for casting the ballot, a copy of which is included in the ballot packet delivered to each Tribal voter eligible to vote in the election.

Section 12-12-31. Timely Casting of Ballots.

In order for his or her ballot to be canvassed on the date of the election, the respective Tribal voter must return his or her marked ballot to the Referendum Election Board in a timely manner, so as to ensure that the ballot return envelope reaches the post office box maintained by the Referendum Election Board by the date of the deadline for receipt of marked ballots. Any and all marked ballots reaching such post office box after the date of such deadline shall not be counted in the election. The marked ballot must be mailed by the respective voter to the post office address maintained by the Referendum Election Board; the ballot may not be hand delivered to the Referendum Election Board or to any other entity or individual.

Section 12-12-32. Maintenance of Cast Ballots.

All return envelopes containing marked ballots, which have reached the post office box maintained by the Referendum Election Board in New Town, North Dakota, on or before the date of the deadline for receipt of marked ballots, shall remain continuously in the exclusive custody of the New Town Post Office, until such time as such envelopes are secured therefrom by the Referendum Election Board on the date of the election for delivery to the place of canvassing of the ballots. The New Town Post Office shall not issue to any entity or individual any keys to such post office box. Nor shall such Post Office permit access to the ballot return envelopes maintained in such box by any person other than its own personnel.

Section 12-12-33. Securing Ballot Return Envelopes and Delivery to Place of Canvassing.

On the day of the Referendum Election, at least one member of the Referendum Election Board, accompanied by an officer of the Bureau of Indian Affairs Police Department, shall secure from the United States Post Office, in New Town, North Dakota, all ballot return envelopes which reached the post office box maintained by the Referendum Election Board at such Post Office on or before the date of the deadline for receipt of marked ballots. The ballot return envelopes shall be so secured one half hour prior to the time of the commencement of the canvassing of the ballots. The ballot return envelope shall be deposited by the New Town Post Office personnel in an empty ballot box supplied by the Referendum Election Board and the ballot box containing all such deposited envelopes shall then be locked at the Post Office prior to transport to the place of canvassing. The Referendum Election Board member(s) and the Bureau of Indian Affairs police officer shall then transport the locked ballot box directly to the place of canvassing.

Section 12-12-34. Performing Preliminary Canvassing Duties.

Upon delivery of the ballot return envelopes to the place of canvassing, the Referendum Election Board shall commence performance of the following preliminary duties inherent in the canvassing of the ballots:

- A. Count the number of ballot return envelopes received and record the total number thereof;
- B. Check against the official eligible voter list the name appearing on the certification set forth on the reverse side of each ballot return envelope, so as to verify that the respective name is that of an eligible Tribal voter;
- C. Upon verifying that the respective name is that of an eligible Tribal voter, open the respective ballot return envelope and view the contents thereof; provided that only one small inner official ballot envelope is contained in the ballot return envelope, remove the small ballot envelope from the return envelope, deposit said official ballot envelope in the ballot box, and set aside the ballot return envelope to be maintained as an official election document; and
- D. Set aside, for subsequent review and ruling by the full Referendum Election Board, any and all ballot return envelopes, with their respective contents enclosed, which are deemed by the Referendum Election Board to contain potentially invalid ballots.

Section 12-12-35. Ruling on Potentially Invalid Ballots.

Upon completion of checking the name appearing on the certification set forth on each ballot return envelope against the eligible voters list, the Referendum Election Board shall rule on any and all ballots previously set aside in their respective return envelopes, having been deemed potentially invalid. Without opening the small inner official ballot envelopes contained in the return envelopes, the Referendum Election Board shall comply with the following procedure in ruling on such ballots:

- A. Review the respective ballot return envelope and its contents to determine the extent of the respective voter's failure to fully comply with the specific procedure for casting the ballot;
- B. Rule on the potential invalidity by majority vote, ruling that the respective ballot is either valid or invalid;
- C. In the case of ruling that a ballot is valid, remove the small inner official ballot envelope from the return envelope, deposit said envelope in the ballot box, and set aside the ballot return envelope to be maintained as an official election document;
- D. In the case of ruling that a ballot is invalid, the ballot shall not be deposited in the ballot box, but shall be retained in the return envelope in which it is enclosed and said return envelope and its contents shall be enclosed in a large envelope bearing on the outside the term "INVALID BALLOTS";
- E. In the case of ruling that a ballot is invalid, the Referendum Election Board shall set forth on the front side of the respective ballot return envelope the following: (1) the ruling that the ballot is invalid, (2) the basis for the ruling, and (3) the initials of those members of the Referendum Election Board who voted in favor of the majority ruling and, if applicable, the initials of that member who voted against such ruling; and
- F. Count the number of ballots ruled invalid and record the total number thereof.

Section 12-12-36. Tallying of Votes Set Forth on Ballots.

Upon completion of ruling on all potentially invalid ballots, the Referendum Election Board shall comply with the following procedure in tallying the votes set forth on all unspoiled valid ballots deposited in the ballot box:

- A. Remove the respective small inner official ballot envelope from the ballot box, open such envelope and remove the ballot, and carefully review the face of the ballot to determine whether or not the ballot is an official ballot and whether or not the ballot is potentially spoiled in whole or in part;
- B. Having determined that the respective ballot is clearly an unspoiled official ballot, tally the vote(s) set forth on the ballot;
- C. Record all votes on both an official tally sheet and a large tally sheet prepared for public viewing; and
- D. Check the accuracy of the tallying by periodically comparing the respective number of votes set forth on the two tally sheets. During the course of so canvassing the ballots, the Referendum Election Board member reviewing the ballots shall set aside, for subsequent review and ruling by the full Referendum Election Board, any and all ballots deemed to be potentially unofficial and/or spoiled in whole or in part. Upon having reviewed and ruled on all such ballots set aside, the Referendum Election Board shall tally the votes set forth

on all such ballots ruled to be official and unspoiled in whole or in part; provided, however, that in the case of any such ballot ruled to be official and unspoiled only in part, only the vote(s) set forth on the unspoiled portion of the ballot shall be tallied.

Section 12-12-37. Ruling on Potentially Unofficial and/or Spoiled Ballots.

Upon completion of tallying the votes set forth on all ballots determined to clearly be official and entirely unspoiled, the Referendum Election Board shall rule on any and all ballots previously set aside, having been deemed potentially unofficial, and/or spoiled in whole or in part. In the case of potentially invalid ballots, the Referendum Election Board shall comply with the following procedure in ruling on such ballots:

- A. Carefully review the respective ballot in its entirety;
- B. Rule on the potential invalidity by majority vote, ruling that the respective ballot is either valid or invalid;
- C. In the case of ruling that a ballot is valid (and unspoiled), deposit the ballot in the ballot box for later tallying;
- D. In the case of ruling that a ballot is invalid, the Referendum Election Board shall set forth on the unprinted side of the respective ballot for the following: (1) the ruling that the ballot is invalid, (2) the basis of the ruling, and (3) the initials of those members of the Referendum Election Board who voted in favor of the majority ruling and, if applicable, the initials of that member who voted against such ruling; and
- E. Count the number of ballots ruled invalid and record the total number thereof. In the case of ballots potentially spoiled in whole or in part, the Referendum Election Board shall comply with the following procedure in ruling on such ballots:
 - 1. Carefully review the respective ballot in its entirety;
 - 2. Rule on the potential spoiling by majority vote, ruling that the respective ballot is either entirely unspoiled, spoiled in whole, or spoiled in part;
 - 3. In the case of ruling that a ballot is entirely unspoiled (and official), deposit the ballot in the ballot box for later tallying;
 - 4. In the case of ruling that a ballot is spoiled in whole, the ballot shall not be deposited in the ballot box, but shall be enclosed in a large envelope bearing on the outside the term “SPOILED BALLOTS”;
 - 5. In the case of ruling that a ballot is spoiled in whole, the Referendum Election Board shall set forth on the unprinted side of the respective ballot the following: (1) the ruling that the ballot is spoiled in whole, (2) the basis for the ruling, and (3) the initials of those members of the Referendum Election Board who voted in favor of

the majority ruling and, if applicable, the initials of that member who voted against such ruling;

6. In the case of ruling that a ballot is spoiled in part (and official), the Referendum Election Board shall set forth on the unprinted side of the respective ballot the following: (1) the ruling that the ballot is spoiled in part, specifically identifying that portion of the ballot which is spoiled, (2) the basis for the ruling on each portion of the ballot determined to be spoiled, and (3) the initials of those members of the Referendum Election Board who voted in favor of the majority ruling and, if applicable, the initials of that member who voted against such ruling;
7. In the case of ruling that a ballot is spoiled in part (and official), the Referendum Election Board shall deposit the ballot in the ballot box for later tallying, tally only the vote(s) set forth on that portion of the ballot deemed unspoiled, and enclose the ballot in a large envelope bearing on the outside the term “SPOILED BALLOTS”; and
8. Count the number of ballots ruled spoiled in whole or in part (and official) and record the total number thereof.

Section 12-12-38. Treatment of Mutilated Ballots.

During the course of canvassing the ballots cast in the election, the Referendum Election Board shall treat mutilated ballots in the same manner as spoiled ballots are treated pursuant to the applicable Sections set forth above in this Part; provided, however, that any and all ballots ruled mutilated in whole or in part shall be enclosed in a large envelope bearing on the outside the term “MUTILATED BALLOTS.”

Section 12-12-39. Determining Whether Thirty Percent Requirement Satisfied.

Upon completion of canvassing all ballots cast in the election, the Referendum Election Board shall make an official determination as to whether the thirty percent (30%) requirement, prescribed in Article VIII of the Tribal Constitution, has been satisfied. This determination shall be based upon the calculation of the total number of Tribal voters whose names are included on the eligible voters list, the total number of invalid ballots cast in the election, and the total number of valid ballots cast in the election (which total number shall include all valid ballots which have been ruled spoiled or mutilated in whole or in part). Upon having made such official determination, the Referendum Election Board shall certify the determination to the Tribal Business Council and to the public by written notice.

Section 12-12-40. Canvassing Open to Public.

The canvassing of the ballots cast in a Referendum Election shall be open to the public. In addition to identifying the date, time, and location of the canvassing of the ballots in the official notice of the election, the Referendum Election Board shall cause such information to be published through the appropriate media during the period between the date of the deadline for return of

completed voter registration forms and the date of the election.

Section 12-12-41. Contest of Election.

- A. Any Tribal voter, who was eligible to register to vote in the referendum election and who desires to contest the election after the results thereof have been formally certified, shall file such contest in the first instance with the Referendum Election Board. Such Tribal voter shall file with the Referendum Election Board a duly verified written complaint setting forth a concise statement of the facts upon which the contest is based, together with a nonrefundable filing fee in the amount of One Hundred and 00/100 dollars (\$100.00), within a period of three (3) business days (exclusive of weekends and holidays) from the date on which the election results were formally certified by the Referendum Election Board. As early as practicable, but within a period no greater than three (3) business days (exclusive of weekends and holidays) from the date on which the written complaint was filed, the Referendum Election Board shall hold a formal hearing on the complaint, at which hearing the Referendum Election Board shall admit evidence, testimonial and documentary, presented by the complaint and by other interested persons having evidence to present which is relevant to the issue(s) raised in the complaint. As early as practicable, but within a period no greater than three (3) business days (exclusive of weekends and holidays) from the date on which the hearing was held, the Referendum Election Board shall issue its written decision on the complaint based upon the evidence present at the hearing.
- B. Any complainant, who has exhausted the administrative remedy provided for in Section (A) above and who is aggrieved by the decision issued by the Referendum Election Board, may file with the Fort Berthold Tribal District Court, within a period of five (5) business days (exclusive of holidays) from the date of the issuance of the written decision of the Referendum Election Board, a duly verified written complaint setting forth a concise statement of the facts upon which the contest of the election is based. In the event that the Referendum Election Board has failed to hold a hearing or issue its written decision on a properly filed complaint within the applicable time periods, any complaint aggrieved by such failure shall be entitled to file a complaint with the District Court within a period of five (5) business days (exclusive of holidays) either from the date on which the Referendum Election Board should have issued its written decision, whichever is applicable. Upon the filing of any such complaint, the District Court shall grant such election contest the highest priority in calendaring and shall set the matter for a hearing on the earliest practicable date.

CHAPTER XIII:
MISCELLANEOUS²⁵

Section 12-13-1. Penalty for Election Fraud or Tampering.

- A. It shall be a criminal offense, designated as Election Fraud or Tampering, for any enrolled member of the Three Affiliated Tribes to knowingly and willfully, in a fraudulent or deceptive manner, to commit any act or engage in any conduct which would tend to influence the outcome of an election, which acts or conduct shall include, but not be limited to:
1. Voting more than once in any one election;
 2. Delivering more than one marked ballot for deposit in a ballot box;
 3. Electioneering or campaigning on the date of the election;
 4. If a resident, willfully attempting to cast a ballot or casting a ballot for a Segment or election where he/ she is not a legal resident of.

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

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

Section 12-13-2: No Waiver of Sovereign Immunity.

By adoption of this Ordinance, the Tribe does not waive its sovereign immunity or consent to suit in any court, federal, tribal, or state, and the adoption of this Ordinance shall not be construed to be a waiver of the sovereign immunity of the Tribe or a consent to suit against the Tribe in any such court.

²⁵ CONST., ART. IV, § 5.