



**HO-CHUNK NATION CODE (HCC)  
TITLE 2 – GOVERNMENT CODE  
SECTION 6 – ELECTION CODE**

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*This Code supersedes the Ho-Chunk Nation Election Code enacted February 10, 1995 by the Legislature and most recently amended and restated by Ho-Chunk Nation Legislative Resolution 1/19/99A, Resolution 06/23/09C, Resolution 7/21/09H, Resolution 11/17/09K, Resolution 01/04/11G, Resolution 01/08/13G, Resolution 9/07/16F, Resolution 10/30/18P and Resolution 12/04/18H.*

*This Code also supersedes the Recall Petition and Recall Meeting Procedures adopted by the Legislature on April 8, 1997.*

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## CHAPTER I GENERAL

### 1. **Authority.**

a. *Article VIII, Section 3 of the Constitution* requires the Legislature to enact an Election Code governing all necessary election procedures at least one hundred and twenty (120) calendar days before the election. In *Ho-Chunk Nation Election Board, Ho-Chunk Nation v. Aurelia Lera Hopinkah* Case No. Su 98-08 (April 7, 1999), the Ho-Chunk Nation Supreme Court interpreted Article VIII, Section 3 of the Ho-Chunk Nation Constitution and whether or not it prevents amendments to the *Election Code* one hundred and twenty (120) calendar days before an election. The Supreme Court held that “[t]he Supreme Court interprets, Article VIII, Section 3, the Election Code provision to mean the original Election Code governing all necessary election procedures at least one hundred and twenty (120) days before the first election. . . Amendments to the original Election Code are not subject to one hundred and twenty (120) days as required of the first enactment.”

b. *Article VIII, Section 4 of the Constitution* requires the Legislature to enact a law creating an Election Board.

c. *Article V, Section 6 of the Constitution* requires that Members of the Legislature shall be elected by a majority vote of the eligible voters from their respective Districts.

d. *Article VI, Section 5 of the Constitution* requires that the President shall be elected by a majority vote of eligible voters of the Ho-Chunk Nation.

e. *Article VII, Section 10 of the Constitution* requires that Supreme Court Justices shall be elected by a majority vote of the eligible voters of the Ho-Chunk Nation, in accordance with General Election provisions in Article VIII, Section 1, unless otherwise provided.

f. *Article VII, Section 11 of the Constitution* requires that the Chief Judge and any Associate Judges of the Trial Court shall be elected by a majority vote of the eligible voters of the Ho-Chunk Nation, in accordance with the General Election provisions in Article VIII, Section 1, unless otherwise provided.

2. **Purpose and Construction.** The *Election Code* (2 HCC § 6) is enacted to provide basic rules and establish election procedures to ensure that all elections are conducted in a fair and proper manner. The *Election Code* (2 HCC § 6) shall be interpreted liberally in order to accomplish this purpose. Substantial compliance will satisfy the *Election Code* (2 HCC § 6).

3. **Definitions.** The following definitions will be applicable with respect to the interpretation of the *Election Code* (2 HCC § 6). All other words shall have their commonly understood definition:
- a. “Absentee Ballot” means a legal document utilized by a voter in order to cast a vote for a particular election from a location other than the Polling Place on the day of the election. ~~This Absentee Ballot~~ will be requested ~~in advance before~~ of the election and mailed to the appropriate location to be received prior to or on the day of the election. The Election Board shall only utilize and a voter may only utilize an Absentee Ballot when the Election Board, pursuant to *Section 14*, has determined to not use Mail Balloting for the Election.
  - b. “Affidavit of Non-Resident Voter Form” Election Board Form Appendix A is for an Eligible Voter voting outside his or her respective District. This form is used in extenuating circumstances when the Election Board is unable to communicate with other polling sites to ensure the voter has not physically voted in his or her District. Affidavit of Non-Resident Voter Forms shall only be available during General Elections, Primary Elections, or Special Elections in which the Election Board, pursuant to *Section 14*, determines to not use Mail Balloting for the Election.
  - c. “Appeal” means a formal request to a higher authority requesting a change in or confirmation of a decision.
  - d. “Ballot” means a legal form or document created for the purpose of allowing a voter to cast a vote in a particular election.
  - e. “Business Day” means Monday through Friday, excluding holidays recognized as such by the Nation’s employment law, known as the *Employment Relations Act* (6 HCC § 5).
  - f. “Calendar Days” mean the timeline consisting of all days, including holidays and weekends, with day one (1) in any time line being the first day after a particular event. For instance, a document is received on Monday with five (5) calendar days to respond, with day one (1) being Tuesday. Due dates that fall on a weekend or holiday are set to the next following working day. For purposes of the preceding sentence, a date is considered a holiday if it is recognized as such by the Nation’s employment law currently the *Employment Relations Act* (6 HCC § 5).
  - g. “Candidate” means somebody who is being considered for a political office or an official position.
  - h. “Certified Mail” means mail that must be signed for on delivery.
  - i. “Chairperson” means the person the Election Board will select from the Tribal Membership pursuant to *Section 6.a(2)* as Chairperson to perform the duties, obligations, and responsibilities that include but are not limited to the *Election Code* (2 HCC § 6), *Constitution* or other relevant law(s) enacted by the Ho-Chunk Nation

Legislature.

- j. “Challenge of voter” means to call into question by proof of an Eligible Voter.
- k. “Challenges to Election Results” mean to call an election result into question by demanding an explanation, justification, or proof.
- l. “Code” means this *Election Code*, cited as 2 HCC § 6.
- m. “Conflict of Interest” means a situation in which a person has a duty to more than one person or organization, but cannot do justice to the actual or potentially adverse interest of both parties. This can occur if someone has a significant financial interest, is representing two individuals with divergent interests, or has a close personal or familial relationship with those involved.
- n. “Constitution” means the Constitution of the Ho-Chunk Nation which was approved on November 1, 1994.

~~o. “Constitutional Election” means an Election to amend the *Constitution of the Ho-Chunk Nation*, pursuant to *Article XIII of the Ho-Chunk Nation Constitution*.~~

~~p.o. “Criminal Background Check” means a name-based criminal history check of information held by ~~the and~~ any and all state governments and the federal government that is publicly available, consistent with applicable Ho-Chunk Nation Law and approved Policy.~~

~~q. “Cycle” means, for the purposes of this Code, all elections that take place during (1) a regularly scheduled General Election, to include primaries, run-offs, and/or any subsequent Special Elections which are held as a result of court rulings regarding any of these aforementioned elections; and (2) any Special Elections, to include primaries, run-offs, and/or any subsequent Special Elections which are held as a result of court rulings regarding any of these aforementioned elections.~~

~~r.p. “Designee” means a person who has been designated to perform a duty, act, or carry out a specific role.~~

~~s.q. “Disqualification” or “Disqualified” means a person who is or has become ineligible for elected office.~~

~~t.r. “District” means Legislative Districts or Areas of the Ho-Chunk Nation, currently totaling four (4) distinct Districts. The number of Districts may change as a result of a Special Election called for pursuant to *Article V, Section 4 of the Constitution*.~~

~~u.s. “Duties” mean obligations by Election Board Members to perform a task by their respective Districts.~~

~~v.l. “Election Board Administrator” means the individual employed under the legislatively approved “Election Board Office Administrator” job description.~~

u. “Election Board Members” mean Ho-Chunk Members appointed or otherwise chosen to serve on the Election Board, with one (1) Member and one (1) alternate from each polling location.

w.v. “Election Cycle” means, for the purposes of this Code, all elections that take place during (1) a regularly scheduled General Election, to include primaries, run-offs, and/or any subsequent Special Elections which are held as a result of court rulings regarding any of these aforementioned elections; and (2) any Special Elections, to include primaries, run-offs, and/or any subsequent Special Elections which are held as a result of court rulings regarding any of these aforementioned elections.

x.w. “Election Fraud” means unlawful or otherwise improper conduct committed in an election, including but not limited to fraudulent voting such as voting twice, voting under another person’s name, or similar dishonest conduct. It also includes violations of the election process or the *Election Code* (2 HCC § 6) in order to subvert the legitimate election results.

y.x. “Election Procedures” mean the established or correct method of procedures for an Election.

z.y. “Electioneering” means to take an active part in an election campaign, especially as, or on behalf of, a candidate for political office, which may be viewed as attempting to influence or persuade a voter.

aa.z. “Eligible Voter” means any Ho-Chunk Enrolled Member the age of eighteen (18) or older, regardless of competency, on the day of or prior to the day of any particular Election, unless otherwise prohibited by other statute or law from voting.

aabb. “Entitled Voter” means those voters who are eligible to vote.

eebb. “Facsimile” means an exact copy or reproduction of something such as a document; same as a “Fax”.

ddcc. “Felony” means a crime that has a greater punishment imposed by statute than that imposed on a misdemeanor.

eedd. “Fines” mean monetary penalty imposed by the Election Board under the terms and conditions of the *Election Code* (2 HCC § 6).

ffee. “Fraudulent” means conduct involving bad faith, dishonesty, or misrepresentation.

ggff. “Frivolous claim” means a claim which has no reasonable merit or reasonable expectation of success. A frivolous claim is one in which the claimant knows there is no merit and makes the claim for the sole purpose of delay, harassment, or undue hardship upon respondent party or parties.

hhgg. “General Election” means the final election held to choose a person to serve as an

elected official that shall be held on the first (1<sup>st</sup>) Tuesday in June of odd numbered years.

~~hh~~. “Good Cause” means a failure by an Election Board Member or Chairperson to follow their Duties and Obligations set forth in this Code, or a failure to follow any provisions of this Code.

~~jj~~. “Mail Ballot” means a legal document used by a voter to cast a vote for a particular election from a place other than a polling place when the Board, pursuant to Section 14, uses mail balloting.

~~kk~~. “Meetings” means as stated within the *Open Meetings Act 2 HCC § 2*.

~~kk~~. “Minutes” means as stated within the *Open Meetings Act 2 HCC § 2*.

~~mm~~. “Lineal Descendant” means a blood relative in the direct line of descent. The children, grandchildren, great-grandchildren etc. of a person. This is distinguished from a “collateral” descendant, which would be from the line of a brother, sister, aunt, or uncle.

~~mm~~. “Location” means the Districts within the Ho-Chunk Nation. Unless changed as a result of a Special Election called for pursuant to *Article V, Section 4 of the Constitution*, the Districts are comprised of Black River Falls (District 1); Tomah, La Crosse, Wisconsin Dells/Baraboo (District 2); Wittenberg, Green Bay, Wisconsin Rapids, Madison and Milwaukee (District 3); and Chicago and Minneapolis/St. Paul (District 4).

~~nn~~. “Nomination Petition” means a written request or official document signed by ten (10) or more Tribal Members (eligible voters) supporting a candidate.

~~pp~~. “Notary Public” means a public officer who acknowledges, attests or certifies signatures and writings, administers oaths, takes affidavits or depositions, in order to give them credit and authenticity within a jurisdiction.

~~oo~~. “Oath” means a formal or legally binding pledge.

~~pp~~. “Oath of Office” means the Oath of Office to Swear in a newly elected official, which will be done on the fourth (4<sup>th</sup>) Wednesday following the General or a Special Election.

~~qq~~. “Official Declaration of Candidacy” means a legal document used for informing the Election Board of a candidate’s intention to run for eligible office.

~~rr~~. “Official Recall Petition” means an official form (see Election Board Form 7 at Appendix A) used by a person to initiate the recall process to remove an elected official.

~~ss~~. “Pardon” means to use the executive power of a State Governor or the United States President to forgive a person convicted of a felony, thus removing any remaining penalties or punishments, and preventing any new prosecution of the person for the crime for which the pardon was given.

~~vvtt~~. “Penalty” means a punishment or adverse action imposed by the Election Board for violations of election rules or the *Election Code* (2 HCC § 6). Penalties, whether monetary or other, are not exclusive to the *Election Code* (2 HCC § 6) and a person’s conduct may result in further civil or criminal charges or penalties.

~~wwwuu~~. “Polling Place” means a Building where voters cast ballot in elections.

~~xxvv~~. “Poll Watchers” mean approved person(s) authorized to observe polling places. Poll Watchers shall only be used during General Elections, Primary Elections, or Special Elections in which the Election Board, pursuant to *Section 14*, determines to not use Mail Balloting for the Election.

~~yyww~~. “Poll Workers” mean those individuals who are designated workers that are appointed by an Election Board Member to assist during an Election. Poll Workers shall only be used during General Elections, Primary Elections, or Special Elections in which the Election Board, pursuant to *Section 14*, determines to not use Mail Balloting for the Election.

~~zzxx~~. “Primary Elections” mean a preliminary election held prior to General Elections and/or a Special Election.

~~aaayy~~. “Prohibit” means to prevent something or somebody from doing something by passing a law or rule that forbids it.

~~bbzz~~. “Qualifications” mean skills, qualities, conditions or —requirements that a person must meet to become eligible for a job or elected position.

~~eeeeaa~~. “Recount” means a second (2<sup>nd</sup>) or more tabulation of votes entered in a particular election and occurring when the margin of victory for an election is less than one percent (1%) or as otherwise set forth in the *Election Code* (2 HCC § 6). A manual recount shall be conducted when there has been a voting machine malfunction.

~~bbb~~. “Referendum” means a vote on an issue, which provides a non-binding advisory opinion to the Legislature.

~~dddccc~~. “Residency” means the permanent physical address (not a P.O. Box) stated on the periodic Address Verification Forms provided by the Nation’s Office of Tribal Enrollment ~~with respect to per capita distributions~~. Except that in the case of candidates or voters in military service or full time registered students, “residency” will be the last permanent physical address of such person before he or she entered military service or school.

~~eedddd~~. “Resignation” means the act of surrendering or relinquishing an office, right, claim, or position, which may include formal notification of such relinquishment.

~~fffeee~~. “Secretarial Election” means an ~~Constitutional~~ Election held to amend the Constitution consistent with Article XIII, Sections One and Two.

gggfff. “Social Media” means the Ho-Chunk Nation official electronic media outlets including, but not limited to, the Nation’s internet web site, Facebook page, or similar means for communication.

hhhggg. “Special Election” means an Election other than the General Election or Primary Election that is called for by the General Council, the Legislature, or by the Constitution or appropriate ordinance.

ihhh. “Spoiled Ballot” means a ballot reflecting a vote that cannot be counted for whatever reason, typically because of marks outside of areas designated within the ballot form, rejection by a voting machine, or physical damage to the form itself.

jjjii. “Spousal Relationship” means the state of being a married couple voluntarily joined for life, or until divorce, as recognized by the laws of the jurisdiction where the couple married or live.

kkkjji. “Term” means the length of time that something lasts, with a fixed beginning and end, often a period during which a person holds an appointment of office.

Hkkk. “Tie Vote” means when a vote results in exact or equal number of votes between two (2) or more alternatives.

mmml. “Vote” means a formal expression of preference for a candidate for office or for a proposed resolution of an issue by ticket, ballot, voice, or other means by which it is expressed.

mmmm. “Vice-Chairperson” means to perform the duties as the Chairperson in meetings and elections only, if said Chairperson is unable to perform the duties and responsibilities required by the Election Code (2 HCC § 6), *Constitution* or other relevant law(s) enacted by the Ho-Chunk Nation Legislature.

oenn. “Witness” means a U.S. Citizen eighteen (18) years of age or older who witnesses the absentee or mail-in Vote of an Eligible Voter by signing the envelope and providing their address.

ooo. “Write-In” means a vote cast for an alternative not prelisted on a ballot wherein the voter physically adds the alternative of choice to the ballot. Write-in candidates are prohibited in all elections, except a Primary Election.

**4. Internal Operating Rules.** The Election Day Guide and Standard Operating Procedures (hereinafter, “Election Day Guide”) shall govern election activities consistent with this *Election Code* (2 HCC § 6) and *Article VIII, Section 4 of the Constitution*, which states in pertinent part: *At least sixty (60) days before the election, the Election Board may adopt rules and regulations governing elections.* For purposes of the preceding sentence a day shall mean a business day. The Election Board shall review the Election Day Guide on a regular basis and revise as necessary and, for any election, shall post a copy of the Election Day Guide on the Nation’s website and/or social media, have it available for tribal members to review at the Election Board Office, and provide a copy to the Legislature.

5. **Elections.** The *Constitution* prescribes two (2) types of elections: General Elections and Special Elections. ~~There shall be a Primary Election followed by a~~ ~~When three (3) or more candidates run for a seat in a General or a Special Election, there shall be a Primary Election and, if required, a Runoff Election as described in Section 5, paragraph d., below.~~ In the case of a Special Election, there shall be no Primary.

a. Primary Election.

(1) Primary Elections shall be held prior to the General Election ~~and/or Special Elections, whenever there are three (3) or more candidates running for the same position in order to ensure compliance with the majority vote requirement as provided in Section 1, subparagraphs c. through f., above.~~

(2) If no candidate in any Primary Election receives more than fifty percent (50%) plus one (1) of the votes cast in such Election, the two (2) candidates with the highest vote totals from the Primary Election (any candidate(s) tied with the lower of such totals) shall appear on the ballot in the Runoff Election.

(3) Any candidate who receives fifty percent (50%) plus one (1) of the total votes cast will be deemed as the winner.

(4) Primary Elections will be conducted in the manner prescribed by the *Election Code* (2 HCC § 6) and in accordance with the timetable adopted by the Election Board.

(5) Only Primary Elections may have write-in candidates.

b. General Elections.

(1) General Elections shall be held in accordance with *Article VIII, Section 1 of the Constitution*, which states: “*Section 1. General Elections. General Elections shall be held on the first Tuesday in June of odd numbered years. Offices of the Legislature, Executive, and Judiciary shall be filled at General Elections.*”

(2) No write-ins will be allowed in General Elections.

c. Special Elections. Special Elections shall refer to all elections other than the General Election including, but not limited to Redistricting/Reapportionment Elections, Recall Elections, elections to fill vacancies in the Legislature, Judiciary, and the Office of President, and elections to decrease or increase the number of Legislators serving on the Legislature when required as a result of adoption of a District Plan as a result of a Redistricting Special Election. Special Elections shall be held in accordance with *Article VIII, Section 2 of the Constitution*, which states: “*Section 2. Special Elections. Special Elections shall be held when called for by the General Council, the Legislature, or by this Constitution or appropriate ordinance. In all Special Elections, notice shall be provided to the voters.*”

d. Runoff Elections. Runoff Elections shall be conducted in the manner prescribed by the *Election Code* (2 HCC § 6) and in accordance with the timetable adopted by the Election Board.

Runoff Elections shall only occur in the following circumstances:

(1) The two (2) candidates in the Primary or Special Election who received the first (1<sup>st</sup>) and second (2<sup>nd</sup>) most number of votes will participate in a runoff election if after a Primary or Special Election no candidate receives the required fifty percent (50%) plus one (1) of the total votes cast to be deemed as the winner. The runoff will have three (3) candidates on the ballot; if there is a tie in the candidates who received the second (2<sup>nd</sup>) and third (3<sup>rd</sup>) most number of votes in the Primary or Special Election, ~~are tied in the number of votes received by these candidates.~~

(2) In any election that is not a Primary Election when there is a tie amongst the candidates who received the highest number of votes. A Primary Election shall only have a runoff election pursuant to the requirements of *Section 5, subparagraph d. (1)*.

(3) In a Special Election for Redistricting/Reapportionment when two (2) or more Redistricting Scenarios receive the highest number of votes and are tied.

e. ~~Constitutional Secretarial Elections~~. A ~~Constitutional Secretarial~~ Election may be called for pursuant to *Article XIII of the Ho-Chunk Nation Constitution* which states:

*“Section 1. **Requirements.** This Constitution may be amended by a majority vote of the qualified voters of the Ho-Chunk Nation voting at an election called for that purpose by the Ho-Chunk Nation Election Board, provided, that at least thirty (30) percent of those entitled to vote shall vote in such election.*

*Section 2. **Requests for a ~~Constitutional Secretarial Election.~~** “It shall be the duty of the Ho-Chunk Nation Election Board to call and hold an election on any proposed amendment to this Constitution at the request of two thirds (2/3) of the entire Legislature, at the request of the General Council, or upon presentation of a petition signed by thirty (30) percent of the eligible voters of the Ho-Chunk Nation.”*

## CHAPTER II PRE-ELECTION DAY PROCEDURES

### 6. Election Board.

a. Appointment of Election Board. As required by *Article VIII, Section 4 of the Constitution* there is hereby created an Election Board. *Article VIII, Section 4 of the Constitution* further states: *The Election Board shall conduct all General and Special Elections. At least sixty (60) days before the election, the Election Board may adopt rules and regulations governing elections. Election Board Members shall serve for two (2) years. Election Board Members may serve more than one term. The Legislature may remove Election Board Members for good cause.*

(1) The Election Board will consist of eleven (11) Delegate Members and eleven (11) Alternate Members, including an Election Board Chairperson (“Chairperson”) and Vice-Chairperson. The Chairperson and Vice-Chairperson will be elected from the sitting eleven (11)

Delegate members. Two (2) year terms of all Election Board Delegates, Alternates, and Chairperson will be staggered. District 1, 3 and 4 Delegates and Alternates will be appointed within the same year and District 2 Delegates and Alternates and the Chairperson will be appointed in the next alternate year to ensure the maintenance of staggered terms. The Chairperson and Vice-Chairperson will retain the ability to vote.

(2) The Election Board will select by vote of at least six (6) Members the Chairperson from the Delegate members to serve for a two (2) year term and until the Chairperson's replacement is selected and commences his or her service, provided that if the Election Board shall be unable to select a Chairperson by a vote of at least six (6) Members within thirty (30) calendar days of the end of the term of the Chairperson or within thirty (30) calendar days after a vacancy in the office of Chairperson occurs, the Legislature will select a Chairperson for a two (2) year term in the case of the expiration of the prior term or for the remainder of the existing term in the case of a vacancy.

(3) The Chairperson will set a deadline for the nomination of eleven (11) Election Board Members and eleven (11) Alternate Election Board Members ("Alternate Members"). The Chairperson will post the deadline for the nomination of Election Board Members and Alternate Members in each District.

(4) Unless modified as a result of a Special Election called for pursuant to *Article V, Section 4 of the Constitution*, the eleven (11) Election Board Members and the eleven (11) Alternate Election Board Members will be nominated as follows:

(a) District 1 will have a total of two (2) Members and two (2) alternate members, with one (1) Member and one (1) alternate member being nominated at the Black River Falls and Minneapolis/St. Paul District meetings.

(b) District 2 will have a total of three (3) Members and three (3) alternate members with one (1) Member and one (1) alternate being nominated at the Tomah, La Crosse, Wisconsin Dells/Baraboo District meetings.

(c) District 3 will have a total of five (5) Members and five (5) alternate members with one (1) Member and one (1) alternate being nominated at the Wittenberg, ~~Wisconsin Rapids~~Nekoosa, Madison, Milwaukee, and Green Bay District meetings.

(d) District 4 will have a total of one (1) Member and one (1) alternate member ~~with nominations accepted~~being nominated at the Chicago District meeting.

(5) Each District will nominate the appropriate number of Election Board Members and Alternate Election Board Members, subject to the requirement that a nominated Member must be a resident within fifty (50) miles of the polling site from which they are nominated by of the District. If a District fails to nominate an Election Board Member(s) or Alternate Election Board Member(s), or if a dispute arises as to the final choice(s) made by a District, then the Legislature will make the final selection of an Election Board Member(s) and Alternate Election Board Member(s) from the respective District.

(6) All District nominations for Election Board Members and Alternate Election Board Members will be subject to a background check, which shall be conducted by the Department of Justice. Election Board members shall not be eligible to serve on the Election Board if they have any of the following, unless a waiver is granted by the Legislature:

(a) A felony;

(b) Prior removal from the Election Board.

(6)(7) All District nominations for Election Board Members and Alternate Election Board Members will be subject to confirmation by the Legislature.

(7)(8) All Election Board Members shall serve terms of two (2) years or until their successors have been chosen. Election Board Members may serve no more than ~~one~~two (2) consecutive terms.

b. Duties and Obligations of Election Board.

(1) Duties. The Election Board shall:

(a) Conduct all General and Special Elections in a fair and impartial manner.

(b) Carry out their duties consistent with the *Ho-Chunk Nation Code of Ethics Act* (2 HCC §1), as Public Officials.

(c) Carry out their duties consistent with the *Ho-Chunk Nation Open Meetings Act* (2 HCC §2).

(d) Determine, pursuant to *Section 14*, whether or not the General or Special Election shall be conducted by Mail Balloting or be held at polling places.

(e) Ensure that all candidates meet the qualifications for office and/or verify that all documents to be true and accurate. Prior to an Election, the Election Board shall hold a meeting to certify that all candidates meet the qualifications for office and/or verify that all documents to be true and accurate. Background checks shall be done by the Ho-Chunk Nation ~~Compliance Department~~Department of Justice or its designee.

(f) The Election Board shall determine whether each candidate for elective office meets the appropriate qualifications listed in the *Constitution* and any other qualifications required under the laws of the Ho-Chunk Nation, including *Section 8, subparagraph d.*, below, and the *Ho-Chunk Nation Code of Ethics Act* (2 HCC § 1).

(g) Background checks conducted to determine if a candidate meets these qualifications for office shall be made available and seen by all Election Board Members prior to the Election Board making the determination as to whether or not the candidate meets these qualifications for office. Background checks shall all be submitted at the same time to the Election Board for review prior to certification. Unless precluded by something beyond its control, the

Election Board shall make the decision regarding certification of candidates at the same time for all candidates.

(h) After the Election Board makes the determination as to whether or not the candidate meets the qualifications for office, the background check will be immediately returned to the Election Board office. The Election Board office shall make a record of which Election Board Members viewed the background checks ~~and when they returned it to the Election Board office~~. The Election Board office shall then maintain the background checks in a secure location until all potential legal challenges to the determination have been exhausted.

(i) Ensure that the election runs smoothly and that order is maintained at all times, including at Election Board Meetings and at all other Election Board activities.

(j) Ensure the safe keeping of all Official Ballots including Absentee Ballots. Except if the Election Board determines to conduct the election by Mail Balloting the Election Board office staff will process new envelopes for Absentee Ballots for every election. After each election, the Election Board office staff will shred all unused Absentee Ballots and envelopes.

(k) Prepare and approve all Official Ballots including, if necessary, Absentee Ballots. No Ballots will be changed without approval from the Election Board.

(2) Obligations.

(a) No Election Board Member, ~~Election Board Chairperson~~, or Election Board staff may actively campaign for the nomination, election, recall or removal of any elected official.

(b) No Election Board Member, ~~Election Board Chairperson~~, or Election Board staff may be a candidate for elective office.

(c) The Election Board Members, ~~Election Board Chairperson~~, and Election Board staff shall seek to maintain a neutral and impartial position on all election activities in order to ensure a fair and proper election.

(d) The Election Board Members, ~~Election Board Chairperson~~, and Election Board staff shall uphold and adhere to the terms of the *Election Code* (2 HCC § 6).

(e) Attend Meetings. The Delegate shall attend all meetings. If the Delegate cannot attend, the Alternate shall attend in their place. Once the Election Cycle has begun, the Delegate and Alternate will both attend all meetings. Two (2) consecutive unexcused absences from duly called Election Board Meetings shall result in an automatic vote on whether the Election Board should recommend to the Legislature to remove the Election Board Member. Prior to the Election Board voting on whether or not to recommend removal of the Election Board Member, the Election Board Member shall have the opportunity to establish, to the satisfaction of the Election Board, good reason for his or her absence. The Election Board Member's opportunity to establish good- reason for his or her absence shall occur after the Election Board Member is

provided written notice that the Election Board will be voting on whether or not to recommend to the Legislature to remove the Election Board Member. Even if the Election Board recommends removal, the Legislature retains the authority to determine whether or not to proceed with removal proceedings against the Election Board Member.

(f) All Election Board Members shall give verbal or written reports of the Election Board meeting at their respective monthly District meeting ~~at the request~~ of the Legislature.

(g) Any Election Board Member or the Election Board Chairperson shall abstain from voting during the portion of the Election Board meeting pertaining to an immediate family member's interest if an immediate family member is running for office. If an Election Board Member abstains from voting because of the requirements of the preceding sentence, the alternate Election Board Member selected from the same District area meeting may vote for the Election Board Member who abstained. If the Election Board Chairperson must vote to break a tie and the matter involves an immediate family member of the Chairperson, the Vice-Chairperson will break the tie. For purposes of the preceding sentences "immediate family member" means any of the following:

1. An individual's spouse.
2. An individual's relative by marriage, lineal descendant or adoption who receives, directly or indirectly, more than one-half (1/2) of his or her support from the individual.
3. Any person living in a spousal relationship with another.
4. A son or daughter (including adopted child(ren), brother, sister, mother, father, grandmother, grandfather, grandson, or granddaughter.

c. Improper Conduct by the Election Board or Election Board Chairperson. The Election Board will strictly adhere to the duties and obligations set forth above.

(1) The Election Board Chairperson will report to the Legislature any and all acts and circumstances, which come to the attention of the Chairperson regarding the conduct of Election Board Members that, in the Chairperson's judgment, may be reasonably construed as a violation of the *Election Code* (2 HCC § 6), whether or not the Chairperson recommends removal under *Section 6, subparagraph c. (1) (a)*, below. Failure of the Chairperson to report such conduct shall amount to a violation of this Code and is good cause for removal.

~~(a)-(a)~~ If the Election Board or the Election Board Chairperson finds that an Election Board Member(s) has violated any provision of this *Election Code* (2 HCC § 6) or that an Election Board Member(s) has engaged in any activity which constitutes good cause for removal, the Election Board and/or Election Board Chairperson may recommend in writing to the Legislature that the Election Board Member(s) or Election Board Chairperson in question be removed. Any Election Board Member subject to a finding, and recommendation, for removal before the Board will be informed of the charges against them in writing at least ten (10) calendar days before the

Board considers the charges, and such Member will be given an opportunity to respond to the charges at an Election Board meeting. The Board will make a record of any removal hearing in support of any recommendation to the Legislature for removal.

(b) Subject to and consistent with the terms of the *Constitution*, including without limitation, *Article VIII, Section 4*, the Legislature may, independent of the Election Board and based upon verifiable information, consider the removal of an Election Board Member, including ~~or the~~ Election Board Chairperson, for good cause.

(c) Any Election Board Member or Election Board Chairperson subject to removal by the Legislature will be informed of the charges in writing at least ten (10) calendar days before the legislative hearing to consider the charges and will be given an opportunity to respond to the charges.

(d) The Legislature may, in addition to or in lieu of removal, take such action or make such referral to any designated authority with respect to the conduct of an Election Board Member or Election Board Chairperson as may be permitted or required under the Nation's *Code of Ethics Act* (2 HCC § 1).

d. Election Board Stipends. Members of the Election Board shall be provided a stipend at a rate set forth in or controlled by the *Finance Manual* (5 HCC § 5) of the Ho-Chunk Nation.

e. Compliance. Members of the Election Board will abide by all HCN laws and policies in regards to compliance with all drug, alcohol and controlled substance policies as detailed within the Nation's *-Employment Relations Act* (6 HCC § 5), *-Drug, Alcohol, and Controlled Substance Code* (6 HCC § 10) and *Code of Ethics Act* (2 HCC § 1). Election Board members shall abstain from drugs, alcohol, and controlled substances while receiving a hotel room for an Election Board meeting.

## **7. Elective Offices and Terms.**

a. Legislature.

### **Legislative Districts**

(a) Unless modified as a result of a Special Election called for pursuant to *Article V, Section 4 of the Constitution*, the Legislature shall be composed of twelve (12) Representatives elected from the following Districts that were established by the October 18, 2024 Special Election for Redistricting and Reapportionment:

District 1: Wisconsin Counties of Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Iron, Jackson, Pepin, Pierce, Polk, Price, Rusk, St. Croix, Sawyer, Taylor, Trempealeau, Vilas, and Washburn; and Minnesota Counties of Aitkin, Anoka, Benton, Blue Earth, Brown, Carlton, Carver, Cass, Chisago, Cottonwood, Crow Wing, Dakota, Goodhue, Hennepin, Hubbard, Isanti, Itasca, Kanabec, Kandiyohi, Lake, Le Sueur, McLeod, Meeker, Mille Lacs, Morrison, Nicollet, Pine, Ramsey, Redwood, Renville, Rice, St. Louis, Scott, Sherburne, Sibley, Stearns,

Todd, Wabasha, Wadena, Washington, Watonwan, Winona, and Wright; and Michigan Counties of Alger, Baraga, Delta, Dickinson, Gogebic, Houghton, Iron, Marquette, Menominee, and Ontonagon.

District 2: Wisconsin Counties of Adams, Columbia, Crawford, Grant, Iowa, Juneau, La Crosse, Lafayette, Monroe, Richland, Sauk, and Vernon; and Minnesota Counties of Dodge, Faribault, Fillmore, Freeborn, Houston, Jackson, Martin, Mower, Olmsted, Steele, and Waseca; and Iowa Counties of Allamakee, Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cerro Gordo, Chickasaw, Clay, Clayton, Delaware, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Greene, Grundy, Hamilton, Hancock, Hardin, Howard, Humboldt, Kossuth, Linn, Marshall, Mitchell, Palo Alto, Pocahontas, Sac, Story, Tama, Webster, Winnebago, Winneshiek, Worth, and Wright.

District 3: Wisconsin Counties of Brown, Calumet, Dane, Dodge, Door, Florence, Fond du Lac, Forest, Green, Green Lake, Jefferson, Kenosha, Kewaunee, Langlade, Lincoln, Manitowoc, Marathon, Marinette, Marquette, Menominee, Milwaukee, Oconto, Oneida, Outagamie, Ozaukee, Portage, Racine, Rock, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago, and Wood; and Illinois Counties of Boone, Lake, McHenry, Stephenson, and Winnebago.

District 4: All counties, states and countries not included in District 1, 2 and 3.

(b) Unless modified in accordance with Article V, Section 4 of the Constitution, the Districts shall be:

<u>District</u>	<u>Number of Legislators</u>	<u>Seat Number</u>
1	3	1, 2, 3
2	3	1, 2, 3
3	3	1, 2, 3
4	<u>3</u> <del>4</del>	1, 2, 3, <del>4</del>

(c) If the below events occur, the Legislature shall use the Quick Passage procedures of the *Legislative Organization Act* (2 HCC § 11) to pass Legislation to amend *Section 7, subparagraphs (a) and (b)* if:

1 Ho-Chunk Nation Members approve new Districts at a Special Election for Redistricting and Reapportionment pursuant to *Article V, Section 4 of the Constitution*; and

2 All legal challenges to the results of the Special Election have been exhausted.

*i* Legislator Terms of Office. The terms of office for Legislators shall be set forth in accordance with *Article V, Section 6 of the Constitution*, which

states:

*“Section 6. Terms of Office. Members of the Legislature shall serve four (4) year terms not to exceed two (2) consecutive four (4) year terms, which shall be staggered, unless the Legislator’s first term is filling a vacancy under Article IX of Constitution, it will not count as a term for purposes of this section. Legislators shall represent their respective Districts until their successors have been sworn into office except if the Legislator has been successfully removed or recalled in accordance with this Constitution.*

*Members of the Legislature shall be elected by a majority vote of the eligible voters from their respective Districts.”*

b. Executive.

i. Office of the President. The Executive power of the Ho-Chunk Nation shall be vested in the President in accordance with Article VI, Section 1(a) of the Constitution, which states: *“(a) The Executive power of the Ho-Chunk Nation shall be vested in the President of the Ho-Chunk Nation.”*

ii. Term of Office for President. The term of office for President will be set in accordance with Article VI, Section 5 of the Constitution, which states:

*“Section 5. Term of Office. The President shall serve four (4) year terms not to exceed two (2) consecutive four (4) year terms, which shall be staggered unless the President’s first term is filling a vacancy under Article IX of Constitution, it will not count as a term for purposes of this section. The President shall serve until a successor has been sworn into office. The President shall be elected by a majority vote of eligible voters of the Ho-Chunk Nation.”*

c. Judiciary.

i. Composition of the Judiciary. The Judiciary shall be composed of a Supreme Court and a Trial Court, such lower courts of special jurisdiction as deemed necessary by the Legislature, and other forums of special jurisdiction for traditional dispute resolution as deemed necessary by the Legislature in accordance with Article VII, Sections 1, 2, and 3 of the Constitution, which states:

*“Section 1. Composition of the Judiciary. There shall be a Supreme Court of the Ho-Chunk Nation, a Trial Court of the Ho-Chunk Nation, such lower courts of special jurisdiction as deemed necessary by the Legislature, and other forums of special jurisdiction for traditional dispute resolution as deemed necessary by the Legislature.*

*Section 2. Composition of the Supreme Court. There shall be one Chief Justice and two Associate Justices of the Supreme Court.*

*Section 3. Composition of the Trial Court. There shall be one Chief Judge of the Trial Court and other Associate Judges as deemed necessary by the Legislature.”*

- ii. Terms of Office for Justices and Judges. The terms of office for Justices and Judges shall be set in accordance with Article VII, Sections 9, 10 and 11 of the Constitution, which states:

*“Section 9. Terms of Office. The Chief Justice of the Supreme Court shall be elected to serve for six (6) years and until such time as an election is held and a successor has been sworn into office. At the first election for positions on the Supreme Court, the candidate receiving the highest number of votes for the position of Associate Justice shall serve a four year term; the candidate receiving the second highest number of votes shall serve a two year term. Thereafter, Associate Justices shall serve for four (4) year staggered terms. A Supreme Court Justice shall serve until a successor has been sworn into office.*

*Section 10. Election of Supreme Court Justices. Supreme Court Justices shall be elected by a majority vote of the eligible voters of the Ho-Chunk Nation, in accordance with the General Election provisions of Article VIII, Section 1, unless otherwise provided.*

*Section 11. Election of Trial Court Judges. The Chief Trial Judge and any Associate Judges to the Trial Court shall be elected by a majority vote of the eligible voters of the Ho-Chunk Nation in accordance with the General Election provisions in Article VIII Section 1, unless otherwise provided. All candidates shall be a member of the Ho-Chunk Nation. Trial Judges shall serve staggered four (4) year terms and shall serve until a successor has been sworn into office except if the Trial Court Judge has been successfully recalled or removed. In the event a Trial Court Justice is removed, the Legislature may appoint an Interim Trial Court Judge, until a successor has been sworn into office.”*

## **8. Qualifications.**

All candidates for elective office shall meet all qualifications for their respective office at the time the Election Board certifies candidates. The Election Board may certify candidates pending the return of a background check that the Board finds to be consistent with the Constitution and this Code.

- a. Qualifications of Legislators.

i. All candidates for a position on the Legislature shall meet the qualifications listed in *Article V, Section 7 of the Constitution*, which states: *Section 7. Qualifications. Members of the Legislature shall be at least twenty five (25) years old and eligible to vote. No person shall become a Member of the Ho-Chunk Nation Legislature if otherwise employed by the Ho-Chunk Nation. No person convicted of a felony shall serve as a Legislator unless pardoned.*

ii. Pardon shall be made by the jurisdiction that issued the felony conviction.

iii. Residency Requirement for Legislative Candidates. A candidate for Legislature shall be eligible to run for office in the District in which the candidate has resided for at least one (1) year immediately prior to filing the petition declaring his or her candidacy. When redistricting as occurred prior to an Election, the Legislative Candidate must have resided within the new boundaries of the District for one (1) year prior to the date the Special Election on Redistricting. Residency shall be determined in accordance with Section 3. bbb.

iv. Except for as provided in *Section 20* for holdover Legislators, a Legislator must maintain residency in the District that elected him or her during his or her entire term. A holdover Legislator, as defined in *Section 20*, must maintain residency in the geographic region that originally elected him or her to the Legislature during his or her entire term.

b. Qualifications of the President.

i. All candidates for the position of President shall meet the qualifications listed in *Article VI, Section 3 of the Constitution*, which states: *Section 3. Qualifications. The President shall be at least thirty-five (35) years old and eligible to vote. No person convicted of a felony shall serve as President unless pardoned.*

ii. Pardon shall be made by the jurisdiction that issued the felony conviction.

c. Qualifications of Supreme Court Justices.

i. All candidates for a position on the Supreme Court shall meet the qualifications listed in *Article VII, Sections 8(a) and 8(b) of the Constitution*, which states: “(a) *The Chief Justice of the Supreme Court shall be at least forty (40) years old, an attorney admitted to practice in any State and before the Ho-Chunk courts, a member of the Ho-Chunk Nation and shall possess all qualifications required by enactment of the Legislature. No person convicted of a felony shall serve as Chief Justice of the Supreme Court unless pardoned.*

*ii. Associate Justices of the Supreme Court shall have been admitted to practice before the Ho-Chunk courts and shall possess all qualifications required by enactment of the Legislature. No person convicted of a felony shall serve as Associate Justice of the Supreme Court unless pardoned.”*

iii. Pardon shall be made by the jurisdiction that issued the felony conviction.

d. Qualifications of Trial Court Judges.

i. All candidates for a position on the Trial Court shall meet the qualifications listed in *Article VII, Section 8(c)* of the *Constitution*, which states: “(c) *The Chief Judge and Associate Judges of the Trial Court shall possess all qualifications required by enactment of the Legislature. No person convicted of a felony shall serve as Chief Judge or Associate Judge of the Trial Court unless pardoned.”*

e. Disqualification Following Removal. Any person who has been removed from office by General Council or the Legislature under *Article IX of the Constitution* shall be disqualified from and ineligible to participate as a candidate in any Election, General or Special, occurring within four (4) years of the date of removal. This provision shall not limit any other action, which may be taken by General Council consistent with the Constitution with respect to any removal.

f. Certification of Qualifications.

(1) Prior to an Election, the Election Board will hold a meeting to certify that all candidates meet the qualifications for office and/or verify that all documents to be true and accurate.

(a) Background checks will be done by the Ho-Chunk Nation Department of Justice or its designee.

(b) The Election Board will determine whether each candidate for elective office meets the appropriate qualifications listed in the *Constitution* and any other qualifications required under the laws of the Ho-Chunk Nation, including *Section 8, subparagraph d.*, above, and the Ho-Chunk Nation *Code of Ethics Act* (2 HCC § 1). The Board shall determine whether a candidate has already served two (2) consecutive four (4) year terms prior to the current Election Cycle. Background checks are conducted to determine if a candidate meets these qualifications for office will be made available and seen by all Election Board Members prior to the Election Board making the determination as to whether or not the candidate meets these qualifications for office.

(c) In reviewing qualifications, the Election Board is authorized to obtain information from or through the Nation’s Department of Justice related to any

pending investigation or violation of the Nation's laws concerning a candidate, and the Board may rely on such information when making an eligibility determination. The Election Board will inform all candidates of this when they complete the Official Nomination Petition Form ~~necessary documents~~ to run for office. Unless precluded by something beyond its control, the Election Board shall make the decision regarding the certification of candidates at the same time for all candidates.

(d) After the Election Board makes the determination as to whether or not the candidate meets the qualifications for office, the background check shall be immediately returned to the Election Board office. The Election Board office shall make a record of which Election Board Members viewed the background checks and when they returned it to the Election Board office. The Election Board office shall then maintain the background checks in a secure location until all potential legal challenges to the determination have been exhausted.

(2) The Election Board shall ~~immediately~~ notify a candidate in writing within three (3) business days in writing by certified mail if the candidate does not meet the qualifications of office and provide an explanation for the disqualification. The candidate will have five (5) business days from the date of receipt of notice to appeal the eligibility determination to the Election Board. The Election Board shall issue a decision within five (5) business days of receipt of the appeal. The candidate/appellant may appeal the decision of the Election Board to the Trial Court within five (5) business days of the decision only upon the grounds that it is inconsistent with the *Election Code* (2 HCC § 6) and/or the *Constitution*.

(3) It is the candidate's responsibility to have his or her Address updated through the Nation's Office of Tribal Enrollment.

g. No candidates For Office.

(1) If a particular elected position does not have any certified candidates for the office after the Election Board meets to certify candidates, then the Election Board will place that position on the primary ballot with only a place for a write-in candidate.

## 9. Notice of Election.

a. The Election Board will post an *Official Notice of Election* at the location of the eleven (11) Polling Places and any other appropriate locations at least ninety (90) calendar days before the election, except that an *Official Notice of Special Election* will be published in the Nation's newsletter (currently the *Hocak Worak*) and on the Nation's website/social media as early as practicable before a Special Election. For purposes of the preceding sentence the appropriate locations will be specified in the Election Board's internal operating rules provided for in *Section 4*.

b. The Election Board shall use an *Official Notice of Election*. The Notice will include

the following information:

- i. Type of Election (General Primary, General, or Special), and if a Special Election, the issue(s) to be decided in the Special Election.
- ii. Date of Election.
- iii. Candidate filing deadline.
- iv. If the Election Board, pursuant to *Section 14*, does not hold the election by Mail Balloting, the locations of polling places. If the Election Board determines, pursuant to *Section 14*, to hold the election by Mail Balloting, the date Official Ballots will be mailed to Eligible Voters.
- v. Last day an Eligible Voter may request a replacement ballot, if necessary.
- vi. If the Election Board pursuant to *Section 14*, does not hold the election by Mail Balloting, the absentee voting procedures and deadlines.
- vii. If the Election Board, pursuant to *Section 14*, holds the election by Mail Balloting, the date and time that ballots must be received back by the Election Board to count in the Election.
- viii. If the Election Board, pursuant to *Section 14*, holds the election by Mail Balloting, a notice that it is the responsibility of the voter to ensure a completed Ballot is returned to the Election Board by the date and time determined by the Election Board.
- ix. Other important information as determined by the Election Board consistent with the *Constitution*, the *Election Code* (2 HCC § 6), other applicable laws of the Nation, and Election Board's rules and regulations governing elections.

## 10. Nominations.

- a. Official Nomination Petition. The Election Board will provide an *Official Nomination Petition Form* (Election Board Form 1 at Appendix A) to any eligible person who wishes to be nominated for elective office. The Election Board will make the *Official Nomination Petition Form* and Official Declaration of Candidacy Form available on the Ho-Chunk Nation website. The candidate may also make the request for the official nomination papers in writing, facsimile, mail, e-mail, or in person. An *Official Nomination Petition Form* may be circulated by or on behalf of a candidate after the posting of the *Official Notice of Election*.
- b. Candidates Limited to One Office. A candidate may not run for more than one (1)

elective office or seat in any single General or Special Election cycle.

c. Official Nomination Petition Form Signed by Eligible Voters. An *Official Nomination Petition Form* for a Legislator must be signed and completed by a minimum of ten (10) eligible voters from the candidate's respective District who meet the residency requirement to be an eligible voter in that District. An *Official Nomination Petition Form* for President, Trial Court Judge, or Supreme Court Justice must be signed and completed by a minimum of ten (10) eligible voters who may be from any District. Only Ho-Chunk Members who are age eighteen (18) years or older and who are eligible voters may sign an *Official Nomination Petition Form*. The eligible voter must sign and complete the Petition in his or her own handwriting. The eligible voter must print and sign; provide their full physical address including street number, city, state, and zip code; provide their enrollment number; their district; and the date of signature. ~~Failure to fully complete the petition will result in the voter's name being stricken, and not counting towards the minimum of ten. The Election Board will review the Petition to cross reference the voter with Voter List. If the Election Board is able to match the voter and their enrollment number with the Voter List and verify they are in the correct district, the signature will be accepted. If the Election Board cannot locate the voter, or the district is incorrect, or enrollment number is incorrect, the Election Board will strike that signature.~~ Any eligible voter may sign and complete multiple nomination forms. Any fraudulent signatures obtained by the candidate and submitted to the Election Board office will disqualify the candidate from running for office.

d. Deadline for Return of Official Nomination Petition. A candidate for elective office will submit an *Official Nomination Petition Form* to the Election Board at least forty- five (45) calendar days before the date of the election as noted in the *Official Notice of Election*. The petition needs to be submitted to the Election Board office and/or to an Election Board Member by four thirty (4:30 p.m.) Central Time on the deadline date.

The Election Board shall specify the deadline for return of the *Official Nomination Petition Form*.

e. Late Nomination Petition. The Election Board will verify all *Official Nomination Petition Forms*. An *Official Nomination Petition Form* received after the deadline will be rejected by the Election Board and no additional time for completion of the *Official Nomination Petition Form* will be granted. The sole responsibility to meet the above deadlines lies with the candidate.

f. Incomplete Nomination Petition. The Election Board Chairperson, or designee will review all *Official Nomination Petition Forms*. An incomplete *Official Nomination Petition Form* shall be rejected and returned immediately for needed information. The Chairperson, or designee will look only to information that the petitioner is able to complete, such as their signature, seat being ran for, etc. The Chairperson, or designee shall not verify the accuracy or completeness of any signatures from eligible voters; as only the full Election Board may determine if a signature is complete. Upon

returning the rejected incomplete *Official Nomination Petition Form*, the Election Board Chairperson, or designee will notify the petitioner of the deadline date. It will then be the responsibility of the petitioner to return his or her *Official Nomination Petition Form* before the official deadline.

g. Official Declaration of Candidacy. A candidate for elective office will submit an *Official Declaration of Candidacy Form* (Election Board Form 2 at Appendix A) to the Election Board at least sixty (60) calendar days before the date of the election except as practicable for Special Elections. A candidate will include any applicable documentation with the *Official Declaration of Candidacy Form*. An *Official Nomination Petition Form* (Election Board Form 1 at Appendix A) will not be valid unless accompanied by a completed *Official Declaration of Candidacy Form* and a cash filing fee, which amount shall be determined by the Legislature, after a recommendation by the Election Board.

h. Final List of Candidates. The Election Board will certify all valid *Official Nomination Petition Forms* and *Official Declaration of Candidacy Forms*. The Election Board will post the final list of candidates for each elective office at appropriate locations and on the Nation's website/social media at least thirty (30) calendar days before the date of the election.

i. Challenge to Candidacy. Regardless of any pending background check, any Eligible Voter may challenge the qualifications of a candidate who has been certified by the Election Board. Any such challenge to the eligibility determination by the Election Board must be filed within five (5) business days of when the Election Board posts a final list of candidates. The Election Board shall consider any such challenge and issue a decision within five (5) business days of receipt of said challenge. The Eligible Voter who filed the challenge may appeal the decision of the Election Board to the Trial Court within five (5) business days of the decision, only upon the grounds that it is inconsistent with the Election Code (2 HCC §6) and/or the Constitution.

j. Candidate Responsibility. It will be the responsibility of the Candidate(s) to return all necessary documents to the Election Board office and ensure that these documents are true and accurate. Any signatures obtained pursuant to the requirements for candidacy by fraudulent means will disqualify the Candidate.

k. Withdrawal of Candidate. If a candidate wishes to withdraw from the race, any such withdrawal will be in writing to the Election Board. If the withdrawal occurs before the printing of the ballots, the Candidate's name will not be placed on the ballot and Election Notices will be reissued. If the withdrawal occurs after the printing of ballots, the Candidate's name will appear on the ballot. It will be the Candidate's responsibility to inform voters that they have withdrawn from the race.

## 11. Eligible Voters.

- a. Age Requirement. The voting age in all elections will be set in accordance with *Article VIII, Section 5 of the Constitution*, which states: *Section 5. Eligible Voters.*

*Any Member of the Ho-Chunk Nation who is at least eighteen (18) years old and who meets all other requirements established by the Ho-Chunk Nation shall be eligible to vote.*

- b. Residency Requirement for Voters. A voter will be eligible to vote in the District in which the voter has resided for at least three (3) months prior to the General or Special Election.

- c. List of Eligible Voters.

i. The Office of Tribal Enrollment will prepare and maintain a master list of all Tribal Members age eighteen (18) and over by District based upon the permanent physical address appearing in Enrollment Records. The Election Board will compile a list of eligible voters from each District based upon Enrollment Records. The Enrollment Office will accurately provide the information to the Election Board on a timely basis. The Enrollment Office and Election Board will add the names of eligible persons who have reached or who will reach the age of eighteen (18) by Election Day, for any election, to the list of eligible voters. At least one staff person from the Office of Tribal Enrollment will be available to verify such information for the Election Board at meetings when the Board certifies election candidates, results and on Election Day.

ii. The Election Board will post the list of eligible voters ~~at locations determined by the Election Board, inclusive of at least one (1) such posting within each Legislative District of the Nation at the Election Board Office~~, at least thirty (30) calendar days before the election. Voters may review the list at the Election Board Office, or contact the Office by phone or e-mail for verification. The Election Board will accept written challenges to the list of eligible voters until twenty (20) calendar days before the election. The Election Board will rule on all written challenges to the list of eligible voters immediately after the close of the challenge period.

iii. The Election Board will prepare the list of all registered voters. If, pursuant to *Section 14*, the Election Board determines to not hold the election by Mail Balloting, the registration may occur at the Polling Places on Election Day. Each person seeking to vote must register at the Polling Places before receiving an Official Ballot. If a person cannot write, he or she may sign his or her name with a mark before two (2) witnesses.

- d. Voters Requiring Assistance. The Election Board shall develop procedures as part of its Internal Operating Rules to assist Eligible Voters who need assistance due to physical disability, infirmity, or illiteracy.

### CHAPTER III ELECTION DAY PROCEDURES

#### 12. Official Ballots.

- a. The Election Board and Department of Justice Attorney will approve an Official Ballot, including an Absentee Ballot. For purposes of the preceding sentence the Election Board only needs to approve Absentee Ballots, if, pursuant to *Section 14*, the Election Board does not hold the election by Mail Balloting.
- b. All Official Ballots and Absentee Ballots will list the name(s) of the candidate(s) alphabetically by last name, as written on the declaration of candidacy form, and/or will describe the issue(s) to be decided in the Election, as well as whether a proposed Amendment to the Constitution is on the Ballot, pursuant to Section 21.c, along with the text of the Amendment and relevant voting instructions.
- c. Voters shall be permitted to write-in candidates on Primary Election Ballots only including Absentee Ballots for a Primary Election. Write-in candidates will not be allowed on any General or Runoff Election Ballot.

**13. Poll Place Voting.** *Section 13* shall only be applicable when the Election Board, pursuant to *Section 14*, does not hold the election by Mail Balloting.

- a. Absentee Voting Permitted. If the Election Board, pursuant to *Section 14*, does not hold the election by Mail Balloting, then absentee voting will be permitted in all elections.
  - i. Any eligible voter will be entitled to vote by Absentee Ballot by submitting a written or email request to the Election Board by four (4:00) p.m. Central Time no less than ten (10) calendar days before the day of a General Election and five (5) days before the day of a Special Election. Requests by e-mail ~~and facsimile (FAX)~~ shall be allowed. The Election Board will not accept a completed Absentee Ballot from any person who has not submitted a written request for an Absentee Ballot by the above deadline. Requests must include the Eligible Voter's name printed or typed, ~~(with signature), physical address where the ballot will be delivered (UPS Next Day air will not deliver to a P.O. Box), mailing address,~~ daytime telephone number and enrollment number. A Voter may make a request to receive all ballots for elections during the calendar year. If the voter moves, it shall be their responsibility to update their address with the Enrollment Office.

- ii. The Election Board shall use diligent efforts to send out Absentee Ballots in a timely manner to each eligible voter who has requested an Absentee Ballot. Since the Election Board cannot control the timing of requests or the sending and receipt of Absentee Ballots, the Election Board will not be held responsible for Absentee Ballots which are received beyond the deadline for receipt of Absentee Ballots.
- iii. All Absentee Ballots must be received by the Election Board no later than the close of polls on Election Day.

b. Voting Procedures for Absentee Ballots.

(1) The Election Board will mail out an Absentee Ballot Packet to each eligible voter who has properly requested an Absentee Ballot. The Election Board will use an approved Absentee Ballot Packet, which will contain the following items:

- (a) An Official Absentee Ballot.
- (b) An inner enveloped marked “ABSENTEE BALLOT.”
- (c) An outer envelope identifying the election, addressed to the Election Board, and containing a certificate for the absentee voter to print and sign his or her name.
- (d) An instruction page for completing the Absentee Ballot.

(2) The voter shall vote by marking the Absentee Ballot. The voter will seal the ballot in the envelope marked “ABSENTEE BALLOT” which, in turn, must be sealed in the outer envelope. The voter will print and sign the certificate on the outer envelope, and it must also be signed by a Witness. ~~The voter’s signature on the outer envelope must be notarized to be valid.~~

(3) It is the responsibility of the voter to ensure a completed Absentee Ballot is returned to the Election Board. An Absentee Ballot may be returned to the Election Board by mail, or in person at the Election Board office, including by someone other than the absentee voter. If mailed, the Absentee Ballot must be actually received at the Election Board office or at an official polling place no later than the close of polls on Election Day:

- i. When the Election Board office receives a completed Absentee Ballot, the Election Board will record the name of the voter and keep the completed Absentee Ballot in a secure location.
- ii. The Election Board will keep a list of persons who have voted by Absentee Ballot to ensure that an absentee voter does not physically vote in person a second (2<sup>nd</sup>) time on Election Day.
- iii. If a voter loses the Absentee Ballot, or fails to properly return an Absentee Ballot, the voter may still vote on Election Day. In such cases, the Election Board will check the list of persons who have voted by Absentee Ballot

to ensure that the person has not already voted by Absentee Ballot. The Election Board will provide an Official Ballot in lieu of an Absentee Ballot to the voter.

- iv. The Election Board will issue another Absentee Ballot to an individual who has lost, spoiled, or mutilated his or her Absentee Ballot.

c. Polling Places.

(1) Unless modified in accordance with *Article V, Section 4 of the Constitution*, there shall be eleven (11) Polling Places as follows:

- (a) District 1 shall have one (1) in Black River Falls and Minneapolis/St. Paul for a total of two (2).
- (b) District 2 shall have one (1) in Tomah, Baraboo, and La Crosse for a total of three (3).
- (c) District 3 shall have one (1) in ~~Wisconsin Rapids~~ Nekoosa, Madison, Milwaukee, Wittenberg, and Green Bay for a total of five (5).
- (d) District 4 shall have one (1) in Chicago for a total of one (1).

(2) In the following circumstances, at the discretion of the Election Board, all polling places do not have to be open on the day of an election:

(a) Pursuant to *Article IX, Section 10 of the Constitution*, there is a Special Election to fill a vacancy in a seat on the Legislature.

(b) Pursuant to *Article IX, Section 5 or 6 of the Constitution*, there is recall vote of a Legislator.

(c) Pursuant to *Section 20*, subparagraph c. as a result of Redistricting Special Election, there is a need for a Special Election to either increase or decrease the number of Legislators on the Legislature.

(d) The Election Board shall develop procedures to determine which polling places shall be open on the day of an election if there is a Special Election or recall vote of a Legislator pursuant to *Article IX, Section 10 or Article IX, Section 5 or 6*; respectively, or as a result of a Special Election necessary as a result of the District Plan adopted in a Redistricting Special Election.

(3) In the event that a Polling Place must be relocated prior to the election, the Election Board may only take such action if a situation exists which: (1) may prevent an eligible voter from casting their vote; or (2) may prevent the Election Board from carrying out its duties or conducting a fair election. If a Polling Place is moved at any time prior to the election, the Election Board or Election Board office shall post a notice of such change at the old and new

locations, and post the same on the Nation’s website and official social media outlets. In such a circumstance, the Election Board or Election Board office shall ensure that a designee of the Board is located at the Polling Place from where the voting was to previously occur, in order to assist voters that appear.

d. Voting Machine Pickup. Election Board Members will be required to sign a Responsibility Form for the voting machine at the time of pickup.

e. Voting Procedures. An eligible voter may vote as follows:

i. At ~~the local~~any Polling Place ~~in the District in which he or she resides~~.

ii. By Absentee Ballot.

~~iii. Except if the Election Board determines that all polling places do not have to be open as provided for in Section 13, subparagraph c. (2) at any Polling Place provided the Affidavit of Non Resident Voter Form (Election Board Form 3 at Appendix A) is completed by the voter at the time of voting.~~

f. Hours and Day of Voting.

(1) Each Polling Place that is open will be open from eight (8:00 a.m.) Central Time to seven (7:00 p.m.) Central Time. Any voter in line at a polling place by seven (7:00 p.m.) Central Time will be allowed to finish voting.

(2) Administrative Leave may be granted to Eligible Voters, consistent with the *Ho-Chunk Nation Employment Relations Act*.

(3) Unless it would violate the Constitution, the Election Board shall attempt to hold elections on a Saturday, but the selection of the day of the election remains discretionary with the Election Board as long as the selection does not violate the *Constitution*, the *Election Code* (2 HCC § 6), other laws of the Nation, ~~or the *Election Day Guide and Standard Operating Procedures*~~.

g. Method of Voting.

i. Each prospective voter, upon being identified as an eligible voter, will sign the list of eligible voters and will be handed an Official Ballot.

ii. Each voter will vote in privacy by placing a mark in ink opposite the name of the candidate or candidates whom the voter selects or by indicating the voter’s position on the issue being voted on. Upon completion, the voter will deposit the Official Ballot in the ballot box.

iii. A voter may not cast more than one (1) vote for a single office or cast more than one (1) vote on a particular issue and may only vote for candidates for the Legislature from the District where the voter is registered to vote.

h. Poll Watchers.

(1) Each of the candidates shall be entitled one (1) poll watcher at ~~the~~ official polling sites and at the certification meeting. Such watchers will in no way interfere with the conduct of the election. A watcher will not be a Member of the Election Board. All poll watchers must be Ho-Chunk Nation tribal member eligible voters and will adhere to the *Open Meetings Act* (2 HCC § 2).

(2) The following rules will apply to all Poll Watchers:

(a) Must register with Election Board and submit their name two (2) working days prior to Election Day.

(b) Must be there when the polls open.

(c) Cannot leave, if they do, they cannot return.

(d) Cannot interrupt the election.

(e) ~~Cannot use any communications device or any device to connect to the internet.~~

i. Electioneering Prohibited. Electioneering will be prohibited within fifty (50) feet of the Polling Places.

(1) If there is a suspected violation of this section, the Election Board will bring a legal action in the Ho-Chunk Nation Trial Court with the burden of proof being clear and convincing evidence of a violation. An attorney within the Ho-Chunk Nation Department of Justice, or attorney selected by the Attorney General of the Ho-Chunk Nation, if the Department of Justice has a conflict with such legal action, shall serve as counsel for the Election Board in any legal action brought as a result of this Election Code (2 HCC § 5). If an attorney that is not employed by the Nation is selected by the Attorney General, the attorney contract shall be approved by the Legislature in accordance with the Constitution and applicable law.

(2) All penalties for electioneering shall be in accordance with Section 16.b. Election Fraud. Penalties.

±j. Challenge of Voter. If the eligibility of a voter is questioned by a poll worker, watcher, or an Election Board Member, the ballot of that voter will be enclosed in an envelope which will be endorsed with the voter's name, the reason for the challenge, and any refutation of the challenge. The Election Board will make the final determination of the eligibility of the voter in the election and will count the votes of those determined to be eligible to vote.

±k. Spoiled Ballots. If a voter spoils an Official Ballot, the Election Board Member may issue another Official Ballot to the voter. The Election Board will retain all spoiled ballots.

~~k.l.~~ Counting Ballots.

(1) After the Polling Places close, poll workers will tally the Official Ballots.

(2) The Election Board will post ~~the unofficial results of the election for each polling place on the *Unofficial Election District Tally Sheet Form* (Election Board Form 4 at Appendix A) a copy of the unofficial results tape at the Polling Place.~~

(3) Absentee Ballots will be tallied by the Election Board ~~by the third day after the election at the meeting set for certification.~~

(4) The official tallying of the votes will be open for public observation. The public must remain quiet and in no way interfere with the orderly tallying of the ballots.

**14. Mail Ballot Voting.**

a. Mail Ballot Voting.

(1) Determination as to whether to conduct an Election by mail balloting.

(a) ~~Upon a recommendation by the Election Board to the Legislature, and approval by the Legislature, elections shall be conducted by mail ballot. The Election Board, in their discretion, may choose to conduct an election entirely by mail.~~

(2) Procedures for Mail Balloting.

(a) The Election Board will designate a Post Office Box rented by the Board as the place where Ballots will be returned. Ballots must be received at the Post Office Box designated by the Election Board not later than the close of business on Election Day.

(b) The Election Board will send by United States Mail a ballot to each eligible voter or Ho-Chunk Member who will be an eligible voter by the date of the election. The Election Board will mail ballots forty-five (45) calendar days before the date of the election; and, if said date falls on a weekend, then on the first working day thereafter. In the event that a Special Election is conducted via mail balloting, then the Election Board will mail the ballots fifteen (15) calendar days before the election.

(c) A Voter may obtain a replacement ballot from the Election Board if his or her ballot is destroyed, spoiled, lost or not received by the Voter.

(d) The Election Board will not mail a replacement ballot later than ten (10) business days before the day of an Election. If pursuant to *Section 14, subparagraph a.(2)(c)*, a voter requests a replacement ballot, the Election Board will only give a replacement ballot if the request for the replacement ballot is made fifteen (15) business days before the day of the Election. In the event that a Special Election is conducted via mail balloting, the board will give a replacement if the request is made seven (7) business days before the election, and will mail it

no later than five (5) business days before the election. It will be the responsibility of the voter to ensure that the replacement ballot is returned in time.

b. Ballots. The Ballot package mailed out by the Election Board will consist of a ballot which otherwise meets the requirements of *Section 12*, an outer envelope, instruction sheet, ballot secrecy envelope, and return envelope.

c. Voting Procedure. The Voter will mark the ballot and place it in the ballot secrecy envelope and seal it. The Voter will then place the ballot secrecy envelope inside the return envelope and seal it. The return envelope will be signed by the Voter as his or her name appears on the return envelope and signed by a Witness. and he or she ~~The voter~~ will return it by United States Mail to the location designated by the Election Board.

d. Returns. The Board will verify that the returned envelope bears the signature of the voter and Witness. If the envelope is not signed, the ballot will be rejected. The entire rejected ballot will be deposited unopened in a separate, secure box for invalid ballots. If the envelope is signed, the ballot will be deposited in the locked ballot box. For ballots placed in the locked ballot box, the Election Board will make a notation in the poll book, next to the Voter's name, that indicates that the Voter has returned his or her ballot.

e. Multiple Ballots. If a Voter to whom a replacement ballot has been issued pursuant to *Subsection a. (2)(c) of this Section* votes more than once, only the ballot with the earliest postmark will be counted. If there are two (2) or more ballots with the same postmark date for one (1) Voter, neither ballot will be counted.

f. Security of Ballots. Returned Ballots shall remain in the designated Post Office Box until retrieved by an Election office staff member. The Election Board Administrator will retrieve returned ballots on a daily basis and the day after the Election. Upon picking up returned ballots, the Election Administrator will place the returned ballot in the Ballot Security Box located at the Ho-Chunk Nation Election Board Office. Following the counting of ballots, the Election Board will maintain returned ballots in a secure location.

g. Rejected Ballots.

(1) The Election Board will count only the choice(s) which can be determined.

(2) The Election Board will keep and retain all partially or completely rejected ballots for a period of at least three (3) years.

h. Election Results.

(1) Unofficial results may be released only if they are indicated as being unofficial results will not be released.

(2) The Election Board will determine the official results of the election and will use the *Official Ballot Accounting Form* (Election Board Form 5 at Appendix A). The official tallying

of the votes will be open for public observation. The public must remain quiet and in no way interfere with the orderly tallying of the ballots.

~~(3) The absentee or mail ballot of any voter who was an Eligible Voter at the time the ballot was cast shall be deemed invalid if they became ineligible to vote by reason of demise up to the date of the Election. In such case, that Eligible Voter's ballot shall not be tallied in the official results.~~

~~(4)~~(3) The Election Board will post the official results on the *Official Certificate of Election Results Form* (Election Board Form 6 at Appendix A). The *Official Certificate of Election Results Forms* will be signed by each Member of the Election Board. The Election Board will post the Certificate at the Polling Places within three (3) calendar days after the date of election.

~~(5)~~(4) After the Election Board has certified the official election results, the Election Board will retain the election records. These records will include the counted ballots, the unused ballots, and the spoiled or rejected ballots, if any. The Election Board will retain the election records for at least three (3) years.

## 15. Recounts.

(a) A recount of ballots will automatically occur whenever there is a one percent (1%) or less difference between the votes received by the candidates affecting the determination of the winner or who will proceed to the General or Runoff Election. If there is any malfunction of a voting machine, the ballots from that machine shall be manually recounted.

(b) A request for a recount from a candidate or eligible voter shall be granted upon a showing of substantial evidence and valid reasons for the recount, as determined by the Election Board, which shall provide a response to the candidate or eligible voter within three (3) calendar days.

## 16. Election Fraud.

### a. Violations.

(1) It will be an offense for any person to verbally or physically threaten an Election Board Member, Election Board Chairperson, Election Board staff, ~~or~~ elected official or candidate, or intentionally tamper with the voting process including, but not limited to: voting more than once in the same election, posing as another person for the purpose of voting at an election, altering a ballot, fraudulently obtaining signatures, and forging or falsifying documents relating to an election.

- i. It will be an offense for any elected official or candidate to verbally or physically threaten an Election Board Member, Election Board Chairperson, or Election Board staff or intentionally tamper with, manipulate, or disrupt the Election Board or voting process including, but not limited to: coercing or bribing any Election board official(s), and/or the manipulation, coercion or bribing of any voter(s) prior to voting in any

election.

- ii. If there is a suspected violation of this section, the Election Board will bring a legal action in the Ho-Chunk Nation Trial Court with the burden of proof being clear and convincing evidence of a violation. An attorney within the Ho-Chunk Nation Department of Justice, or ~~an~~ attorney selected by the Attorney General of the Ho-Chunk Nation, if the Department of Justice has a conflict with such legal action, shall serve as counsel for the Election Board in any legal action brought as a result of this *Election Code* (2 HCC § 5). If an attorney that is not employed by the Nation is selected by the Attorney General, the attorney contract shall be approved by the Legislature in accordance with the Constitution and applicable law.

b. Penalties.

(1) In addition to any other fine or penalty provided by the Nation's other laws, whoever violates *Section 16* may be assessed any, or more, of the following by the Trial Court:

(a) A fine.

1 Fines for violations under *Section 16, subparagraph a. (1)* ~~is~~ are not to exceed one- thousand dollars (\$1,000.00).

2 Fines for violations under *Section 16, subparagraph a. (1)* ~~is~~ are assessed at fifty dollars (\$50.00) per offense.

(b) Additional costs to the Nation resulting from the violation as determined by the Court.

(2) Ballots received under violation of this section will be declared void by the Election Board.

(3) Any person found guilty under ~~paragraph~~ *Section 16, subparagraph a. (1)* will be disqualified from running for any elective office for a period of four (4) years. The commencement date of this period will coincide with the date of the Trial Court's final decision.

**17. Tie Votes.** Pursuant to the requirements of *Section 5, subparagraph d.*, a Runoff Election will be held in the case of a tie.

**18. Challenges to the Election Results.**

a. The results of an election may only be challenged in accordance with *Article VIII, Section 7 of the Constitution*, which states: "*Section 7. Challenge of Election Results. Any Member of the Ho-Chunk Nation may challenge the results of any election by filing suit in the Trial Court within ten (10) days after the Election Board certifies the election results. The Trial Court shall*

*hear and decide a challenge to any election within twenty (20) days after the challenge is filed in the Trial Court.”*

b. The person challenging the election results will need to prove by clear and convincing evidence that (1) the Election Board violated this *Election Code* (2 HCC § 6) or otherwise conducted an unfair election and (2) that the outcome of the election would have been different but for the violation. A filing fee may be charged.

c. Standards and penalties the court shall use in making a determination that a challenge is frivolous and/or wholly without merit:

(1) The Court may make a finding that a challenge is frivolous and without merit if an individual or his or her attorney can present no rational argument based upon the evidence or law in support of that claim.

(2) If the Court finds the challenge is frivolous and/or wholly without merit, the party challenging shall be assessed costs of the action in an amount to equal five hundred dollars (\$500.00). The Court may also assess attorney’s fees against an individual whose challenge is deemed by the Court to be frivolous and/or wholly without merit. Said amount shall be considered a debt owed to the Nation.

d. If the Trial Court invalidates the election results, a new election will be held as soon as feasible, to be in compliance with the *Election Code* (2 HCC § 6) and the *Ho-Chunk Nation Constitution*.

**19. Prohibition on Outside Influence on Elections.** It will be unlawful for:

a. An individual who is not a Member of the Nation or any outside organization that is non-charitable or commercial in nature to make:

(1) A contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with an election;

(2) A contribution or donation to a candidate for office; or

(3) An expenditure, independent expenditure, or disbursement for an electioneering communication; or

b. A person to solicit, accept, or receive a contribution or donation described in *Section 19, subparagraph (1), (2), or (3)* of paragraph a. from an individual who is not a Member of the Nation or any outside organization that is non-charitable or commercial in nature. Any person found to have solicited, accepted, or received a contribution or donation described in *Section 19, subparagraph (1), (2), or (3)* of paragraph a. will be disqualified from running for any elective office for a period of four (4) years. The commencement date of this period will coincide with the date of the Trial Court’s final decision.

c. The Attorney General shall be charged with enforcing the provisions of *Section 19* through the Ho-Chunk Nation Court upon a determination by the Attorney General that there is reasonable suspicion that an individual who is not a member of the Nation, an outside organization, or person has violated the provisions of *Section 19*. Including the penalties provided in *Section 19, subparagraph b.* an individual found guilty of violating these provisions will be ordered to pay up to ten thousand dollars (\$10,000.00) per violation in monetary penalties to the Nation.

## 20. Special Election for Redistricting/Reapportionment.

a. Definitions. For purposes of this Section only the following terms shall have the following meaning:

(1) “District Plan” means the Redistricting Scenario receiving the highest number of votes in a Redistricting Special Election, but only after all legal challenges have been exhausted.

(2) “Holdover Legislator” means a Legislator who is not facing re-election in the upcoming or next General Election after the Election Board certifies the results of a Special Election for Redistricting. The *Constitution* mandates that any Redistricting or reapportionment will be completed at least six (6) months prior to the next election. A holdover Legislator is a Legislator whose term will not expire prior to the next General Election and will not be required in the next General Election to run for re-election if he or she will remain on the Legislature.

(3) “Redistricting” means the process of bringing about a realignment, discontinuance, or change in legislative Districts due to changes in population, while including such factors as, but not limited to, contiguity, keeping a community together, and standard deviation, which is ~~and~~ mandated by the constitutional requirement of equality of representation.

(4) “Redistricting Scenario” means a proposal or plan that outlines proposed legislative Districts for the Ho-Chunk Nation. The Legislature may submit multiple Redistricting Scenarios as part of its final proposal and the Redistricting Scenario receiving the highest number of votes, after all legal challenges have been exhausted, will become the District Plan of the Ho-Chunk Nation.

b. Constitutional Requirements. *Article V, Section 4 of the Constitution* provides:

**“Section 4. Redistricting or Reapportionment.** *The Legislature shall have the power to Redistrict or reapportion including changing, establishing, or discontinuing Districts. The Legislature shall maintain an accurate census for the purposes of Redistricting or reapportionment. The Legislature shall Redistrict and reapportion at least once every ten (10) years beginning in 1995, in pursuit of one-person/one-vote representation. The Legislature shall exercise this power only by submitting a final proposal to the vote of the People by Special Election which shall be binding and which shall not be reversible by the General Council. Any Redistricting or reapportionment shall be completed at least six (6) months prior to the next election, and notice shall be provided to the voters.”*

c. Redistricting procedures.

(1) Census requirements:

(a) The Ho-Chunk Nation Office of Tribal Enrollment will keep an accurate census of all Tribal Members ~~who are eligible to vote~~. If the Legislature determines to have the Election Board conduct a Special Election for Redistricting, the Legislature or its designee will obtain from the Office of Tribal Enrollment an accurate census of all Tribal Members ~~who are eligible to vote~~.

~~(b) For purposes of determining the numbers for Redistricting, the census shall only include Tribal Members who are age eighteen (18) or older and eligible to vote.~~

~~(e)(b)~~ The Legislature shall pass a Resolution determining the date that the Ho-Chunk Nation Office of Tribal Enrollment shall use for determining the census for purposes of the Special Election for Redistricting.

(2) Final Proposal:

(a) The Legislature shall submit a final proposal to the Election Board who will conduct the Special Election for Redistricting.

(b) The final proposal submitted by the Legislature may include multiple Redistricting Scenarios.

(c) Requirements for the Redistricting Scenario(s):

1 The Legislature does not have to use the best Redistricting Scenario to promote the objective of one-person/one-vote representation, but any Redistricting Scenario that furthers that objective.

2 The Legislature cannot submit a Redistricting Scenario that calls for no action or no change in the geographic regions covered by the Legislative Districts.

3 A Redistricting Scenario may change, establish, or discontinue electoral Districts.

4 A Redistricting Scenario must propose at least two (2) electoral Districts.

(d) Each Redistricting Scenario submitted will include at a minimum and will be available at the Polling Place:

1 A map of the Redistricting Scenario;

2 How many Legislator(s) would be in each proposed District;

3 How many Tribal Members ~~who are age eighteen (18) or older and eligible to vote~~ there would be for each proposed District;

4 How many Tribal Members ~~eligible to vote~~ there would be per Legislator for each proposed District;

5 The percentage deviation, either positive or negative, each proposed District has from the ideal with respect to the Constitutional goal of the one-person/one-vote representation; and

6 An implementation plan. The implementation plan will include at a minimum:

a The District each holdover Legislator will serve for the remainder of his or her respective term.

b In the next General Election what District(s) will have an election(s) and if a District has an Election what seat(s) within that District would be up for election.

c If as a result of Redistricting Scenario the total number of Legislators on the Legislature will decrease, whether or not there will be a Special Election to decrease the number of Legislators presently serving and, if so, which Legislators would be subject to the Special Election. Whether or not there will be a Special Election as a result of the number of Legislators decreasing on the Legislature will be controlled by *Section 20, subparagraph c. (5) (c)*.

d If as a result of the Redistricting Scenario the total number of Legislators on the Legislature will increase, whether or not there will be a Special Election to increase the number of Legislators presently serving and, if so, which District(s) would have a Special Election. Whether or not there will be a Special Election as a result of the number of Legislators increasing on the Legislature will be controlled by *Section 20, subparagraph c. (5) (d)*.

(3) Notice Requirements. Notice of the Special Election for Redistricting will be accomplished in the following manner:

(a) All normal procedures used by the Election Board to provide notice of any Special Election;

(b) Production and distribution of a Special Edition of the Nation's newsletter (currently the *Hocak Worak*) providing at a minimum a map of the Redistricting Scenario(s) and the implementation plan for each of the Redistricting Scenario(s). The distribution of a Special Edition may be waived by the Legislature, but only if it passes a Resolution to waive production and distribution of the Special Edition; and

(c) Any other method determined appropriate by the Legislature.

(4) Special Election Requirements:

(a) The Election Board must hold the Redistricting Special Election prior to the General Election in order that it may certify the results at least six (6) months before the next General Election.

(b) All other Special Election Requirements shall be followed to conduct the Special Election on Redistricting.

(5) Committee Members and Legislators:

(a) A Tribal Member serving on a public body who no longer resides in the District that nominated him or her to the public body may continue to serve on that public body until such time as that Tribal Member's term expires. For purposes of the preceding sentence "Public Body" means any official entity in which a quorum is required to conduct public business and which performs a governmental function for the Nation and includes Commissions, Boards, or Committees (other than Legislative ~~Committees~~Commissions).

(b) Holdover Legislator. Until March 1 of the year immediately after the Special Election on Redistricting, a holdover Legislator shall continue to represent the District and constituents living in the District that originally elected him or her to the Legislature and attend the same District Meeting(s) that he or she attended before the Special Election on Redistricting. After such time, the boundaries approved in the Special Election on Redistricting as the adopted District Plan will govern Legislator representation and attendance at District Meeting(s). The only exception to the preceding sentence is if the newly adopted District Plan results in a fewer number of Legislators in which case the holdover Legislator may be subject to a Special Election pursuant to the requirements of *Section 20, subparagraph c. (5) (c)* immediately below. Legislators who are not holdover Legislators will follow the same timeline to March 1 as stated above.

(c) Decrease in number of Legislators on the Legislature.

1 Article VII, Section 2 of the Constitution provides:

*"Special Elections shall be held when called for by the General Council, the Legislature, or by this Constitution or appropriate ordinances. In all Special Elections, notice shall be provided to the voters."*

2 The Election Board will hold a Special Election if:

a As a result of a Special Election for Redistricting the number of Legislators who are supposed to serve on the Legislature is decreased who live in a particular District; and

b Either of the following two (2) circumstances exist:

i. There are seven (7) months or more until the next General Election when the Election Board certifies the result of the Redistricting Special Election; or

ii. The following two (2) circumstances both exist:

aa. There are less than seven (7) months until the next General Election when the Election Board certifies the results of the Redistricting Special Election, and

bb. In the next General Election for that newly created District the number of seats that are up for election is less than should be provided for by the newly certified District Plan. In this case only those Legislators whose term is not up within seven (7) months will be in the Special Election. For example, there would be a Special Election if:

i. A previous Legislative District had four (4) legislators;

ii. The newly approved District Plan calls for that Legislative District to have two (2) Legislators;

iii. All four (4) of the Legislators live in that newly approved District;

iv. There is a General Election in six and a half (6 ½) months when the Election Board certifies the results of the Redistricting Special Election; and

v. Only one of the four (4) Legislators is up for re-election in that General Election. In this case, the three (3) other Legislators would run in the Special Election and only one (1) would remain on the Legislature for his or her respective term.

3 The Special Election will have the following requirements:

a It will occur within sixty (60) calendar days of when all legal challenges have been exhausted to the results of the Redistricting Special Election.

b The Special Election will solely be between those Legislators living in that District to determine which of the Legislator(s) will remain on the Legislature for the remainder of his or her (their) respective term(s).

c A voter will be able to vote for only one (1) Legislator who the voter wants to remain on the Legislature.

d All other Special Election Requirements will be followed in conducting this Special Election.

4 The Special Election will determine which of those Legislator(s) will remain on the Legislature for the remainder of his or her (their) respective term(s) in office. Upon the Election Board certifying the results of the Special Election and all legal challenges to the Special

Election being exhausted, the Legislator(s) who received the most votes will remain on the Legislature for the remainder of his or her (their) respective term(s) in office. The number of Legislators who will remain will correspond to the number of Legislators who are supposed to serve in that District pursuant to the District Plan.

(d) Increase in the number of Legislators on the Legislature.

1 The Election Board will call for a Special Election to elect a Legislator for a particular District under the following circumstance:

a The District Plan increases the total number of Legislators on the Legislature;

b The District Plan provides for that particular District to have more Legislators than currently serving on the Legislature. In determining whether or not a particular District should have more Legislators, holdover Legislators will be counted as representing the District; and

c There are seven (7) months or more until the next General Election when the Election Board certifies the results of the Redistricting Special Election.

2 The Legislator elected to the particular District will serve until the next General Election and if he or she desires to continue to serve must win re-election in that General Election.

(6) The date the Election Board certifies the results of the Redistricting Special Election will be notated in the Legislative History of this *Election Code* (2 HCC § 6) and a record of the results of the Redistricting Special Election will be placed in the back of the *Constitution*.

## 21. **Constitutional Secretarial Elections.**

a. **Constitutional Secretarial** and other Legal Requirements.

(1) *Article XIII of the Constitution* provides: “Section 1. **Requirements.** *This Constitution may be amended by a majority vote of the qualified voters of the Ho-Chunk Nation voting at an election called for that purpose by the Ho-Chunk Nation Election Board, provided, that at least thirty (30) percent of those entitled to vote shall vote in such election.*

(2) *The Election Code* (2 HCC § 6); and

(3) *Article XIII of the Constitution* provides: “**Section 2. Requests for a Secretarial Election.** *It shall be the duty of the Ho-Chunk Nation Election Board to call and hold an election on any proposed amendment to this Constitution at the request of two thirds (2/3) of the entire Legislature, at the request of the General Council, or upon presentation of a petition signed by thirty (30) percent of the eligible voters of the Ho-Chunk Nation.*”

b. Requirements for Petition for Secretarial Election.

(1) All Secretarial Elections will be administered by the Election Board.

(2) An eligible voter(s) initiating a Secretarial Election will submit a written request for *Official Secretarial Election Petition Form* to the Election Board. A written request for each amendment is required. Each request will include the text of the proposed amendment to the Constitution.

(3) A separate *Official Secretarial Election Petition Form* will be circulated for each proposed amendment. To avoid confusion, a separate *Petition* must be circulated for each proposed amendment.

(4) The Election Board will issue an *Official Secretarial Election Petition Form* to the person(s) initiating the Secretarial Election.

(a) The number of *Official Secretarial Election Petition Forms* issued will be the number requested or, at a minimum, a number sufficient to enable the petitioner to obtain the signatures of thirty percent (30%) of the eligible voters of the Nation.

(b) The Election Board will issue the requested *Official Secretarial Election Petition Form* without unreasonable delay and sign each *Official Secretarial Election Petition Form* on the date of issuance. The petitions will be numbered in sequence.

(c) Once a petitioner receives the *Official Secretarial Election Petition Forms* the Election Board will create an *Official Election Board Posting Notice*. This *Notice* will be posted in the Nation's newsletter, at the Election Board Office, and on the Nation's social media sites. This *Notice* will include all current *Petitions* circulating, the text of the proposed amendment, the due date for signatures, and the name of the petitioner(s) to enable interested tribal members to sign the *Petition*.

(d) The petitioner(s) will have ninety (90) calendar days from the *Official Election Board Posting Notice* to collect the required number of signatures.

(e) The *Official Secretarial Election Petition Forms* will be submitted to the Election Board before the expiration of the ninety (90) calendar day deadline. Forms cannot be copied; only original forms will be accepted. The *Official Secretarial Election Petition Form* may be returned by certified mail, return receipt requested. Envelopes must be postmarked no later than the last day to submit the *Official Secretarial Election Petition Form*. The Election Board will provide a receipt to person(s) hand delivering *Official Secretarial Election Petition Forms*.

(f) The Election Board or designee will stamp and initial the *Official Secretarial Election Petition Form* to verify the date of receipt.

(g) The Election Board, with the assistance of the Ho-Chunk Office of Tribal Enrollment, will verify the signatures on the *Official ~~Recall~~ Secretarial Election Petition Form*

within thirty (30) calendar days of receipt of the Official Secretarial Election Petition Form at a meeting called for that purpose. For purposes of signature verification, the Election Board will obtain and use a current master list of eligible voters. The list will contain the names of those voters who meet the age requirement on the date that the *Official Secretarial Election Petition Form* was issued.

(h) The Election Board will publish a Notice at the Election Board's Office and in the Nation's newsletter (currently the *Hocak Worak*), informing the voters whether or not an *Official Secretarial Election Petition Form* has been determined valid and the reasons for that decision. Eligible voters will have five (5) working days following the posting of the Notice to challenge the decision of the Election Board by filing a challenge with the Election Board. The Election Board will issue a decision within five (5) working days of receipt of the appeal challenge. The decision of the Election Board may be appealed to the Ho-Chunk Trial Court within five (5) working days of the decision only upon the grounds that it is inconsistent with the *Election Code* (2 HCC § 6) and/or the *Ho-Chunk Nation Constitution*.

c. Requirements for Legislative Request.

(1) Any request by the Legislature to amend the Constitution will be in the form of a Resolution. This Resolution will include the full text of the proposed Amendment. The Resolution will also contain language indicating that Legislative Counsel has reviewed the amendment and certifies that the amendment does not conflict with other constitutional provisions. The certification of the resolution will contain the full vote of the Legislature, indicating which legislators were in favor, opposed, or abstained. The Legislature shall present a copy of the Resolution to the Election Board before the Board will act upon any such Resolution. Upon receipt of the Resolution, the Election Board will certify that a full 2/3 of the then sitting Legislators voted for the Resolution.

d. Requirements for General Council Request.

(1) In an instance of a Resolution passed by the General Council, the General Council Secretary will provide the Resolution to the Election Board. The Resolution will contain the full language of the proposed amendment; the name of any attorney consulted in drafting the amendment; a vote count showing the full number of voters at the General Council; and the tally of those in favor, opposing, abstaining, and not voted. Upon receipt, the Election Board will verify that there was quorum at the time the vote occurred and that a majority of voters at the General Council voted for the Constitutional Amendment.

e. Secretarial Election Procedures.

(1) Upon certification of a request via petition under Section 21.b, or General Council under Section 21.d, the Attorney General will be given thirty (30) days in which to formulate an Attorney General's opinion as it relates to the constitutionality and legality of the proposed amendment. Once the Attorney General has formulated that opinion, it will be posted in the Nation's newsletter for two consecutive printings

along with the text of the proposed Amendment.

- (2) After the publication of the Attorney General opinion in Section 21.e.(1) the Election Board will then post *Notice* at the Election Board office, the Nation's Newsletter, and on the Nation's social media as to the Secretarial Election(s). The *Notice* will contain the following:
  - (a) The full text of any proposed Amendments and, if more than one, their Amendment Number using Arabic numerals (Amendment Number 1, Amendment Number 2, etc);
  - (b) The day when Ballots will be mailed, if applicable;
  - (c) The day, time, and location of certification;
  - (d) The day of the Election when Ballots must be returned;
  - (e) Information related to voting at General Council, if applicable.
- (3) Secretarial Elections will be conducted by mail, or in conjunction with a General Council Election, or in conjunction with the annual General Council meeting, as specified herein. Secretarial Elections conducted by mail will be those initiated through the process set forth in Section 21.b (by petition), or in Section 21.d (by the General Council). A Secretarial Election requested by the Legislature, pursuant to Section 21.c, may be held in conjunction with a General Election, or in conjunction with the Annual General Council meeting, or by mail, as determined within the Legislative Request.
  - (a) If a request for Secretarial Election made pursuant to Section 21.c requests that such election be held in conjunction with a General Election, the full text of the proposed Amendment will be placed on the Official Ballot of the General Election, an indication of the Amendment number, as well as an option for Eligible Voters to vote in favor of, or against, the Amendment. The Election Board can apply the process set forth in Section 21.f for the counting of ballots and results.
  - (b) If a request for Secretarial Election made pursuant to Section 21.c does not specify that it is to be made in conjunction with a General Election or in conjunction with the Annual General council meeting, then the mail ballot procedures set forth in the provisions of Section 21 shall apply.
- (4) Secretarial Elections conducted by mail will be conducted within sixty (60) calendar days of the posting of the Notice of the Secretarial Election.
- (5) The Election Board will hold a Secretarial Election once a year to coincide with the annual General Council Meeting if there have been any requests for a Secretarial Election to occur at a General Council meeting. Once the President has announced the date of the annual meeting, the Election Board will post a *Notice* as soon as practicable consistent with section 21.e.(2). The date of the election shall be the day of the annual General Council. This election shall contain all requests for a Secretarial Election, which are to be conducted in conjunction with the Annual General Council meeting, that were received by the Election Board under sections 21.b., c., and d., at least sixty (60) days before the General Council date. Any requests received after that point shall be held on the following General Council or the next General Election,

whichever occurs first.

- (6) For Secretarial elections held by mail or in conjunction with the annual General Council meeting, the Election Board will mail out Ballots to each voter at their mailing address on file with the Office of Tribal Enrollment no later than thirty (30) calendar days before the Election.
  - (a) Each Ballot will be accompanied by a packet containing the language for each proposed amendment along with the amendment number, instructions, ballot, an outer envelope, ballot secrecy envelope, and return envelope.
  - (b) The Voter will mark the ballot and place it in the ballot secrecy envelope and seal it. The Voter will then place the ballot secrecy envelope inside the return envelope and seal it. The return envelope will be signed by the Voter as his or her name appears on the return envelope, and signed by a witness who is a U.S. Citizen 18 years or older along with the address of said witness, and he or she will then return it by mail to the location designated by the Election Board pursuant to Section 14.a.(2).(a), in-person to the Election Board Office or in-person at the annual General council meeting if applicable.
  - (c) The Board will verify that the returned envelope bears the signature of the voter and is witnessed. If the envelope is not signed by both the voter and witness, the ballot will be rejected. The entire rejected ballot will be deposited unopened in a separate, secure box for invalid ballots. If the envelope is signed, the ballot will be deposited in the locked ballot box.
- (7) A voter may make a request to replace a lost ballot no later than ten (10) days before the Election. Upon the request of the voter, the Election Board will replace the lost ballot within twenty-four (24) hours by sending a new ballot by overnight shipment. The Election Board will not be held responsible for ballots which are received beyond the deadline for receipt of ballots. It will be the voter's responsibility to ensure the ballot is returned by the due date.
- (8) The Election Board will also make available the ability to vote at General Council in accordance with Section 21.e.(3). The Election Board will set up a number of voting locations in and around the location of General Council as the Board deems necessary to allow voting to occur with a reasonable wait time. Such in-person elections will be done consistent with the procedures listed in Section 13.g, j, and k of the Election Code.
  - (a) Hours for voting at General Council will be from eight a.m. until seven p.m., unless quorum is not achieved or if General Council adjourns before the close of polls, then the polls will close two hours after adjournment or failure to achieve quorum, but no later than seven p.m. Any voter still in line at close of polls shall be allowed to vote.

- (b) The Election Board will make attempts to prevent electioneering on the issues of the Secretarial Elections from occurring within fifty (50) feet of the locations where voters are queued to receive their ballots, so long as those attempts do not interfere with the Board's ability to timely assist voters. Advocacy of the issues for consideration for a Secretarial Election does not carry the same concern as a candidate electioneering for their own office. Therefore, such advocacy in and of itself within fifty (50) feet of the voting location shall not be sufficient to challenge the results of a Secretarial Election.
- (c) If the annual General Council meeting is cancelled for a reason outside of the Election Board's control, such as an emergency or pandemic, the Election Board will postpone the Election until the next annual General Council or General Election, whichever occurs first.
- (d) Given their unpredictable nature, the Election Board will not hold Secretarial Elections at special General Council events, and will only hold Secretarial Elections at the annual General Council.

f. Counting Ballots and Results.

- (1) The Election Board will meet and count the ballots by the third day after the election. When tallying results, the Election Board will do the following:
  - (a) The Election Board will compare the votes received by mail to the poll book of voters who voted in person at General Council if applicable. If any such voter who voted by mail also voted in person at General Council, their returned mail ballot shall be set aside and not counted. The Election Board will then compare the number of in person votes and mail votes not set aside to the total number of eligible voters as verified by the Office of Tribal Enrollment. If the number of total votes in a Secretarial Election does not equal 30% of the eligible voters of the Nation, then the Amendment will be declared as rejected. In an instance where thirty percent of the ballots is a fractional number, the Board will round up to the nearest whole number in determining the thirty percent threshold.
  - (b) If at least 30% of the eligible voters cast a vote, the Election Board will then count the ballots. If a majority of voters voted in favor of the Amendment, it will be declared adopted. If a majority of voters voted against the Amendment, it will be declared rejected.

g. Challenges to Results; Amendments.

- (1) Challenges to the results of the Election may be made pursuant to Section 18 of this CODE.
- (2) The Election Board is not responsible for the legality or constitutionality of any

amendments. If a member believes that an adopted amendment is in violation of the CONSTITUTION, or applicable federal law such as the *Indian Civil Rights Act of 1968 25 USC Ch. 15*, such suit will be brought against the proponent of the Amendment, either the petitioner, Legislature, or General Council.

### **Section 22. Referendum.**

a. The Legislature may request by resolution that the Election Board conduct a non-binding referendum vote in conjunction with a General or Special Election. The Legislative resolution shall include the text of the referendum for the ballot and which Election (General or Special) the referendum is to be on the ballot. The Legislature must make such request for a referendum vote prior to the printing of the ballots for the Election. Upon such request from the Legislature, the Election Board shall include on the ballot of the General or Special Election the language of the referendum. The Election Board shall include notice of the referendum on the Office Notice for the General or Special Election, along with the text of the referendum vote. The Legislature shall be responsible for education and outreach concerning the referendum.

## **CHAPTER IV ELECTED OFFICIALS**

### **22.23. Oath of Office.**

a. The Election Board will administer the Oath of Office in accordance with *Article VIII, Section 8 of the Constitution*, which states: “*Section 8. Oath of Office. The Election Board shall administer the oath for the offices of President, Legislature, and Judiciary on the 4<sup>th</sup> Wednesday following the election after the Election Board certifies the Election results.*”

b. The Election Board will administer the Oath of Office to all duly elected officials of the Ho-Chunk Nation as follows: *I, \_\_\_\_\_, do solemnly swear that I will uphold the Constitution of the Ho-Chunk Nation; that I will secure our rights, advance the general welfare, safeguard our interests, sustain our culture, promote our traditions and perpetuate our existence and secure the natural and self-evident right to govern ourselves, as I perform the duties of my office on behalf of the Ho-Chunk Nation with honor, dignity and sincerity.*

### **23.24. Resignations of Elected Officials.**

a. All resignations from the Legislature, President, or Judiciary will be done by the official in writing or memorialized by the Legislature, President or Judiciary to confirm the resignation of such official(s) and submitted to the Election Board. A voluntary resignation, once ~~accepted~~submitted, cannot be withdrawn.

b. The person resigning may remain in office until his or her successor is chosen and sworn in as provided in *Article V, Section 6; Article VI, Section 5; and Article VII, Section 9 of the Constitution*, or if he or she so elects may refuse to continue to serve in office and leave his or her seat vacant. Notwithstanding delivery of a resignation, a person remains subject to a hearing

before a body constitutionally empowered with removal authority. The body can determine whether sufficient grounds for removal existed prior to the resignation. If the body confirms the existence of sufficient grounds for removal, the person will be disqualified from running for other offices in accordance with the terms in *Section 8, subparagraph e*. of the *Election Code* (2 HCC § 6).

## **24.25. Recall Elections.**

### **a. Constitutional Requirements.**

(1) The General Council may initiate a Recall Election against Legislators, the President and Members of the Judiciary in accordance with *Article IX, Section 5 of the Constitution*, which states: *Section 5. Recall by General Council. The President, Legislators, and Members of the Judiciary shall be removable by recall vote at a Special Election requested by the General Council. At the request of the General Council, the Election Board shall hold a Special Election not less than thirty (30) days and not more than ninety (90) days from the date of the General Council request. If the Election Board fails to hold such Special Election within ninety (90) days, any eligible voter of the Nation may request the Trial Court to order such Special Election. In any Special Election, no more than three (3) persons shall be subject to recall vote.*

(2) An eligible voter(s) from a District may initiate a Recall Election against a Legislator(s) in accordance with *Article IX, Section 6 of the Constitution*, which states: *Section 6. District Recall of Legislators. A Member of the Legislature shall be removable by a recall vote called by a petition of thirty (30) percent of an [all] eligible voters of the District which elected such Member of the Legislature. A petition shall be submitted to the Election Board, which shall hold a Special Election not less than thirty (30) days and not more than ninety (90) days from the date a petition is duly submitted. If the Election Board fails to hold such Special Election within ninety (90) days, any eligible voter of the Nation may request the Trial Court to order such Special Election.*

### **b. Recall Election Procedures.**

(1) All Recall Elections will be administered by the Election Board.

(2) An eligible voter(s) initiating a recall will submit a written request for *Official Recall Petition Form* (Election Board Form 7 at Appendix A) to the Election Board. A written request for each person to be recalled is required.

(3) A separate *Official Recall Petition Form* will be circulated for each person who is subject to recall.

(4) The Election Board will issue an *Official Recall Petition Form* to the person(s) initiating the recall.

(a) The number of *Official Recall Petition Forms* issued will be the number requested

or, at a minimum, a number sufficient to enable the petitioner to obtain the signatures of thirty percent (30%) of the eligible District voters.

(b) The Election Board Chairperson or designee will issue the requested *Official Recall Petition Form* without unreasonable delay and sign each *Official Recall Petition Form* on the date of issuance. The petitions will be numbered in sequence and will include the District number.

(c) ~~(b)~~ Once a petitioner receives the *Official Recall Petition Forms*, the Election Board will create an *Official Election Board Posting Notice*. This Notice will be posted in the Nation's newsletter, at the Election Board Office, and on the Nation's social media sites and provided to the Elected Official being recalled. This Notice will include all current *Petitions* circulating, the due date for signatures, and the name of the petitioner(s) to enable interested tribal members to sign the *Petition*.

(d) ~~(e)~~ The petitioner(s) will have forty-five (45) calendar days from the *Official Election Board Posting Notice* to collect the required number of signatures.

(e) ~~(d)~~ The *Official Recall Petition Forms* will be submitted to the Election Board Chairperson or designee before the expiration of the forty-five (45) calendar day deadline. Forms cannot be copied; only original forms will be accepted. The *Official Recall Petition Form* may be returned by certified mail, return receipt requested. Envelopes must be postmarked no later than the last day to submit the *Official Recall Petition Form*. The Election Board will provide a receipt to person(s) hand delivering *Official Recall Petition Form*.

(f) ~~(e)~~ The Election Board or designee will stamp and initial the *Official Recall Petition Form* to verify the date of receipt.

(g) ~~(f)~~ The Election Board with the assistance of the Ho-Chunk Nation Enrollment Office will verify the signatures on the *Official Recall Petition Form* within ten (10) calendar days of receipt of *Official Recall Petition Form*. For purposes of signature verification, the Election Board will obtain and use a current master list of eligible voters in the District. The list will contain the names of those voters who meet the residency requirements on the date that the *Official Recall Petition Forms* were issued. The Election Board will attempt to contact any voter whose signature or residency appears questionable to verify his or her signature or residency.

(h) ~~(g)~~ The Election Board will publish a Notice at prominent locations in the affected District and in the Nation's newsletter (currently the *Hocak Worak*), informing the voters whether or not an *Official Recall Petition Form* has been determined valid and the reasons for that decision. Eligible voters will have five (5) working days following the posting of the Notice to challenge the decision of the Election Board to the Election Board. The Election Board will issue a decision within five (5) working days of receipt of the appeal challenge. The decision of the Election Board may be appealed to the Trial Court within five (5) working days of the decision only upon the grounds that it is inconsistent with the *Election Code* (2 HCC § 6) and/or the *Ho-Chunk Nation Constitution*.

~~(H)~~(i) Each eligible voter shall have the right to freely and without constraint or coercion of any kind sign an *Official Recall Petition Form*.

c. Conduct of Recall Elections.

(1) The *Constitution* requires that a Recall Election be held not less than thirty (30) calendar days and not more than ninety (90) calendar days from the date an *Official Recall Petition Form* is duly submitted.

(2) A Recall Election will be conducted in accordance with the provisions of the *Election Code* (2 HCC § 6) except as provided:

(a) The Election Board Chairperson or designee will prepare the *Notice of Recall Election* and ensure it is posted in prominent locations within the affected District at least forty-five (45) calendar days before the date of the election. The Notice will inform the voters of the purpose of the election, the hours of voting, and

1 The location of the poll(s), if ~~the Election Board,~~ pursuant to *Section 14*, ~~determines to not conduct~~ the Recall Election will not be conducted by Mail Balloting, or

2 The last day to receive Mail Ballots, if ~~the Election Board,~~ pursuant to *Section 14*, ~~determines to conduct~~ the Recall Election will be conducted by Mail Balloting.

(b) The Official Recall Ballot will ask the question whether the person subject to the recall should be removed from office.

(c) Upon certification by the Election Board, the person subject to recall will be removed from office if the votes cast in favor of recall total fifty percent (50%) plus one (1). In the event of a tie vote, the person subject to recall will remain in office. There shall not be a Runoff Election.

~~25.26.~~ Vacancies.

a. Vacancies in the Judiciary. A judicial vacancy for a Supreme Court Member shall be filled in accordance with *Article IX, Section 8 of the Constitution*, which states: “*Section 8. Vacancies in the Judiciary. If a vacancy occurs in an office of the Supreme Court because of death, mental or physical incapacity, removal or recall vote, resignation, felony conviction, or any other reason, such vacancy shall be filled in the following manner:*

(a) *If twelve (12) months or more remain before the next General Election, the Election Board shall call a Special Election in accordance with Article VIII.*

(b) *If less than twelve (12) months remains before the next General Election, the Legislature shall fill the office by appointment.”*

b. Vacancy of the Office of President. A Presidential vacancy shall be filled in accordance

with Article IX, Section 9 of the Constitution, which states: “Section 9. Vacancy of the Office of President. If the office of the President becomes vacant by reason of death, mental or physical incapacity, removal or recall vote, resignation, felony conviction, or for any other reason, such vacancy shall be filled in the following manner:

(a) If twelve (12) months or more remain before the next General Election, the Vice President shall serve as President pro tempore and the Election Board shall call a Special Election in accordance with Article VIII. Upon election of a President at a Special Election, the Vice President shall reassume his seat on the Legislature for the remainder of his term, if any.

(b) If less than twelve (12) months remain before the next General Election, the Vice President shall serve as President pro tempore. If less than twelve (12) months but more than three (3) months remain before the next General Election, the Election Board shall call a Special Election in the appropriate District within thirty (30) days to fill the seat vacated by the Vice President. Upon election of a President at the next General Election, the Vice President shall reassume his seat on the Legislature for the remainder of his term, if any.

(c) If less than three (3) months remain before the next General Election, the office shall remain vacant.

(d) A Vice President serving in the capacity of President pro tempore shall not vote in the Legislature except to cast the deciding vote in case of a tie.

c. Vacancies in the Legislature. A vacancy in the Legislature will be filled in accordance with Article IX, Section 10 of the Constitution, which states: “Section 10. Vacancies in the Legislature. If a vacancy occurs in the Legislature because of death, mental or physical incapacity, removal or recall vote, resignation, felony conviction, or for any other reason, such vacancy shall be filled in the following manner:

(a) If three (3) months or more remain before the next General Election, the Election Board shall call a Special Election in the appropriate District to be held within thirty (30) days.

(b) If less than three (3) months remain before the next General Election, the seat shall remain vacant, except when the Vice President assumes the office of the President pursuant to Section 9(b) of this Article, an election to fill that vacancy shall be held within thirty (30) days.”

e.d. Terms for Vacancies. The terms for the individual selected to fill the vacancy will be set in accordance with Article IX, Section 11 of the Constitution, which states: “Section 11. Terms for Vacancies. Persons elected or appointed to fill a vacancy in the Judiciary, the Office of the President, or the Legislature shall serve out the term of the person whom they are replacing.”

## CHAPTER V ELECTION BOARD AND JUDICIAL CONSTRUCTION

**26-27. Interpretation and Application of Code by the Election Board.** The Election Board

will not possess any substantive rule making authority, but shall retain the ability to interpret and apply the *Election Code* (2 HCC § 6) unless such interpretation or application is found by the Trial Court to be contrary to the *Constitution* and laws of the Nation.

**27-28. Severability.** If any provision or provisions of this Code shall in the future be declared invalid by the Judiciary, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

**28-29. Sovereign Immunity.**

a. Except for the limited waiver of sovereign immunity contained within Sections 16, 18, and 19 of the *Election Code* (2 HCC § 6), nothing in this Code will be deemed to waive the sovereign immunity of the Ho-Chunk Nation or any of its enterprises, officers, agents, or employees.

b. The limited waiver of sovereign immunity contained within Sections 16, 18, and 19 will be narrowly construed as only being applicable to individuals who violate Sections 16, 18, and 19.

**29-30. Savings Clause.** All actions of the Election Board taken before the effective date of any amendments to the Election Code shall remain in full force and effect, to the extent that they are consistent with the *Constitution* and this Code.

**Appendix A (Election Board Forms) (To Be Published by Election Board)**

- Election Board Form 1 (Official Nomination Petition Form)
- Election Board Form 2 (Official Declaration of Candidacy Form)
- Election Board Form 3 (Affidavit of Non-Resident Voter Form)
- Election Board Form 4 (Unofficial Election District Tally Sheet Form)
- Election Board Form 5 (Official Ballot Accounting Form)
- Election Board Form 6 (Official Certificate of Election Results Form)
- Election Board Form 7 (Official Recall Petition Form)

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Legislative History:

- 02/08/95 Tabled by full Legislature.
- 02/10/95 Adopted by Resolution 2/10/95-A.
- 01/13/97 Amendments referred by Administrative Rules/Elections Committee to the full Legislature.
- 01/14/97 Legislature adopts amendments affecting Secs 2.01(c); 5.05(a); 9.01(c) and 10.01(b).
- 04/08/97 Legislature adopts Recall Petition and Recall Meeting Procedures.
- 09/01/98 Legislature adopts by Resolution 9/01/98A the Amended and Restated Ho-Chunk Nation Election Ordinance (HCC 95-002).
- 01/19/99 Amended by Legislative Resolution 1/19/99A.
- 04/07/99 In *Ho-Chunk Nation Election Board, Ho-Chunk Nation v. Aurelia Lera Hopinkah* Case No.

SU 98-08 (April 7, 1999), the Ho-Chunk Nation Supreme Court interpreted Article VIII, Section 3 of the Ho-Chunk Nation Constitution and whether or not it prevents amendments to the Election Code one hundred and twenty days before an election. Article VIII, Section 3 of the Constitution provides that the “[t]he Legislature shall enact an Election Code governing all necessary procedures at least one hundred and twenty (120) days before the election.” The Supreme Court held that “The Supreme Court interprets, Article VIII, Section 3, and the Election Code provision to mean the original Election Code governing all necessary election procedures at least one hundred and twenty (120) days before the first election. Amendments to the original Election Code are not subject to one hundred and twenty (120) days as required of the first enactment.”

- 11/19/02 Enacted as 2 HCC § 6 by Legislative Resolution 11/19/02A amending language as to Districts that were established by the January 12, 2002 Special Election for Redistricting and Reapportionment and incorporating amending language from the Recall Petition and Recall Meeting Procedures.
- 02/06/08 Revised by Department of Justice Attorney as approved and amended by Election Board on 01/26/08.
- 09/10/08 Reviewed by Legislative Counsel’s Office in preparation for Off-Site.
- 11/19/08 Election Board certifies result of Special Election on Redistricting after Scenario 5 receives the most votes.
- 11/25/08 Legislature holds Off-Site and Election Board Members participate in the Off- Site.
- 12/22/08 Legislature passes Resolution to place out for forty-five day publiccomment.
- 01/10/09 Election Board, during Election Board Meeting, goes over Election Code with Legislative Attorney.
- 01/25/09 Election Board, during Election Board Meeting, goes over implementation plan for Redistricting developed by the Legislative Counsel’s Office.
- 06/23/09 Legislature passes Resolution on 06-23-09-C amending Election Code.
- 06/26/09 Legislative Counsel’s Office receives notification that the Eufrona O’Neil, Acting Regional Director, Midwest Regional Office, Bureau of Indian Affairs, recognized and approved by operation of law Amendment IV and Amendment V to the Constitution of the Ho-Chunk Nation. The effective date of the amendment is June 20, 2009.

Amendment IV amends Article V, Section 4 of the Constitution to provide:

The Legislature shall have the power to redistrict or reapportion including changing, establishing, or discontinuing Districts. The Legislature shall maintain an accurate census for the purposes of redistricting or reapportionment. The Legislature shall redistrict and reapportion at least once every **ten (10)** years beginning in 1995, in pursuit of one-person/one-vote representation. The Legislature shall exercise this power only by submitting a final proposal to the vote of the People by Special Election which shall be binding and which shall not be reversible by the General Council. Any redistricting or reapportionment shall be completed at least six (6) months prior to the next election, and notice shall be provided to the voters.

Amendment V amends Article V, Section 7 of the Constitution to provide:

Members of the Legislature shall be at least twenty five (25) years old and eligible to vote **and shall possess a four-year baccalaureate degree conferred by an accredited institution of higher education.** No person shall become a member of the Ho-Chunk Nation Legislature if otherwise employed by the Ho-Chunk Nation. No person convicted of a felony shall serve as a Legislator unless pardoned.

- 08/08/09 Legislative Counsel’s Office presents to Election Board proposed changes to Election Code

to address required changes to Code as a result of Secretarial Election results. Election Board passes motion that the Legislative Counsel's Office should present proposed changes as is with the addition of adding a definition of the term "accredited institution of higher education"

- 07/21/09 Legislature passes Resolution 07-21-09 H increasing the number of District meetings from eleven to twelve and then passes a motion to refer the Election Code and Code of Ethics Act to the Administration Committee to address need to amend laws to have selection of members to boards created by this law correspond to the number of District Meetings.
- 08/06/09 Administration Committee presented two options regarding how to address issue of increased number of District Meetings. The August 6, 2009 Administration Committee meeting minutes provide "**MOTION by Rep. Smith** to approve 'Option B' and to refer the funding portion to the Finance Committee. Second by Rep. TwoBears. 4-0-0. **MOTION CARRIED**"
- 08/25/09 Finance Committee passes a motion to refer this to the full Legislature.
- 09/09/09 Legislature via Resolution 09-09-09 B places proposed amendment to increase the number of election board members and polling sites from eleven to twelve out for forty-five day public comment.
- 10/05/09 Legislative Counsel's Office presents proposed amendments required by Secretarial Election to Administration Committee.
- 11/05/09 Legislative Counsel's Office presents proposed amendments necessitated by Secretarial Election to Administration Committee, intended to conform to HCN Constitutional amendment (regarding Accreditation). Administration Committee approves motion to table the amendment to the HCN Election Code.
- 11/17/09 Legislature passes Resolution 11-17-09 K adopting amendments to increase Election Board Members and Polling Sites from eleven to twelve.
- 12/10/09 December 10, 2009 Administration Committee Meeting minutes provide: **MOTION by Vice President Brown** to table the Ho-Chunk Nation Election Ordinance and to invite the Election Board Members to the next Administration Committee Meeting. Second by Rep. Walker, Jr. 5-0-0. **MOTION CARRIED**.
- 01/07/10 Election Board and Legislative Counsel's Office present proposed amendments to the Election Code necessitated by the Secretarial Election to Administration Committee, intended to conform to HCN Constitutional amendment (regarding Accreditation). Administration Committee approves motion to refer to the Legislature the amendment to the Election Code in reference to the definition of "accreditation."
- 01/04/11 Legislature adopts Resolution 01/04/11G Adopting Conforming Amendments to the Election Code (2 HCC §6) Consistent with the Ho-Chunk Nation Constitution.
- 12/06/11 HCN Election Board presents proposed amendments to the Election Code regarding the federal Secretarial Election, and prior fingerprinting problems, to the Legislature for consideration. Legislature places the Code out for forty-five day public comment.
- 05/08/12 Legislature adopts Resolution 5/8/12C, accepting amendments to the Election Code to stagger the terms of Election Board members, and to amend the process for Federal background checks by fingerprint scan.
- 05/22/12 Legislature rescinds and re-states Resolution 5/08/12C, by adopting Resolution 5/22/12J; this affirmed most of the amendments to the Election Code accomplished by Resolution 5/08/12C, but referred the second set of proposed amendments (noted in Resolution 5/08/12C) back to the Election Board for further review.
- 11/06/12 Legislature placed the Election Code out for forty-five day public comment in Resolution 11/06/12K.
- 01/08/13 Legislature adopts Resolution 1/08/13G, adopting amendments to the Election Code regarding Chapter II, Section 8e. Certification of Qualifications, adding language in sub. (1) to allow the Election Board to obtain information from the Nation's Compliance Department related to any pending investigation or violation of the Nation's laws concerning a candidate, and

allowing the Board to rely on such information when certifying a candidate; and, further, Chapter IV, Section

23. Resignations of Elected Officials was amended to require that the resigning official do so in writing, or allow the Legislature, President, or Judiciary to confirm such resignation in writing.

- 07/09/13 Legislature adopts Resolution 7/09/13M, establishing Legislative Workgroup to Review the Election Code.
- 10/09/13 Legislative Election Code Workgroup holds first meeting with Election Board and other necessary staff and counsel to review and update Election Code. Additional Workgroup meetings held on 11/06/13, 12/04/13, and 2/14/14.
- 07/21/14 Legislative Workgroup meeting with Election Board to review comments received during forty- five day public comment period, which expired on April 18, 2014.
- 07/22/14 Legislature adopts amendments to Election Code in Resolution 7/22/14C, as set forth in final prepared “redline” version and in Summary document prepared for Workgroup and Legislature.
- 07/01/16 The Election Code is placed out for 45-day public review and comment, pursuant to Legislative authorization. Comment period to end on August 15, 2016.
- 08/30/16 Election Code Workgroup meeting with Election Board to review comments and ideas for amending the Code.
- 09/07/16 Legislature adopts amendments to Election Code by Resolution 9/07/16F
- 05/23/17 Legislature places the Election Code, with proposed amendments, out for public review and comment via Resolution 5-23-17I.
- 11/07/17 Legislature adopts amendments to the Election Code, including provisions regarding the process for conducting an election to amend the Ho-Chunk Nation Constitution (as proposed by the Election Board).
- 10/12/18 Ho-Chunk Nation Election Board conducts Special Election on Redistricting Scenarios 4, 6 and 10 (previously selected as the final proposal by the Legislature for Redistricting pursuant to Article V, Section 4 of the Nation’s Constitution).
- 10/13/18 Ho-Chunk Nation Election Board certifies results of Special Election on Redistricting, certifying that Scenario 10 received the most votes.
- 10/30/18 Legislature adopts Resolution 10-30-18P, approving Quick Passage amendments to the Election Code consistent with the changes to Legislative District boundaries, numbers, and polling sites brought about by Scenario 10.
- 11/20/18 Legislature considers adoption of Quick Passage Amendment to Election Code, to have holdover Legislators (and all Legislators) attend District Meetings only within the new boundaries of their Legislative Districts pursuant to approved Redistricting Scenario 10, effective December 1, 2018; but the proposed Amendments are defeated for lack of sufficient number of votes. *See Defeated Resolution 11-20-18M.*
- 12/04/18 Legislature reconsiders date by which to have holdover Legislators (and all Legislators) begin to adhere to new District boundaries for purposes of attendance at District Meetings and holdover representation; *Resolution 12-04-18H* is adopted, by Quick Passage, amending the Election Code at Section 20.c.(5)(b).
- 09/07/22 Legislature adopts Resolution 09-07-22M, placing the Election Code out for public review and comment, including proposed amendments to the Code.
- 11/15/22 Legislature enacts the Drug, Alcohol & Controlled Substance Code by Resolution 11-15-22N.