

# TRIBAL CONSTITUTION HANDBOOK



A PRACTICAL GUIDE TO WRITING OR  
REVISING A TRIBAL CONSTITUTION

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**TILDEN MCCOY + DILWEG, LLC**

with

**NATIVE AMERICAN RIGHTS FUND**



# Tribal Constitution Handbook

*Native American Rights Fund's Tribal Constitution Handbook*

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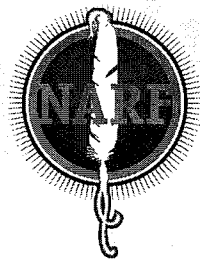
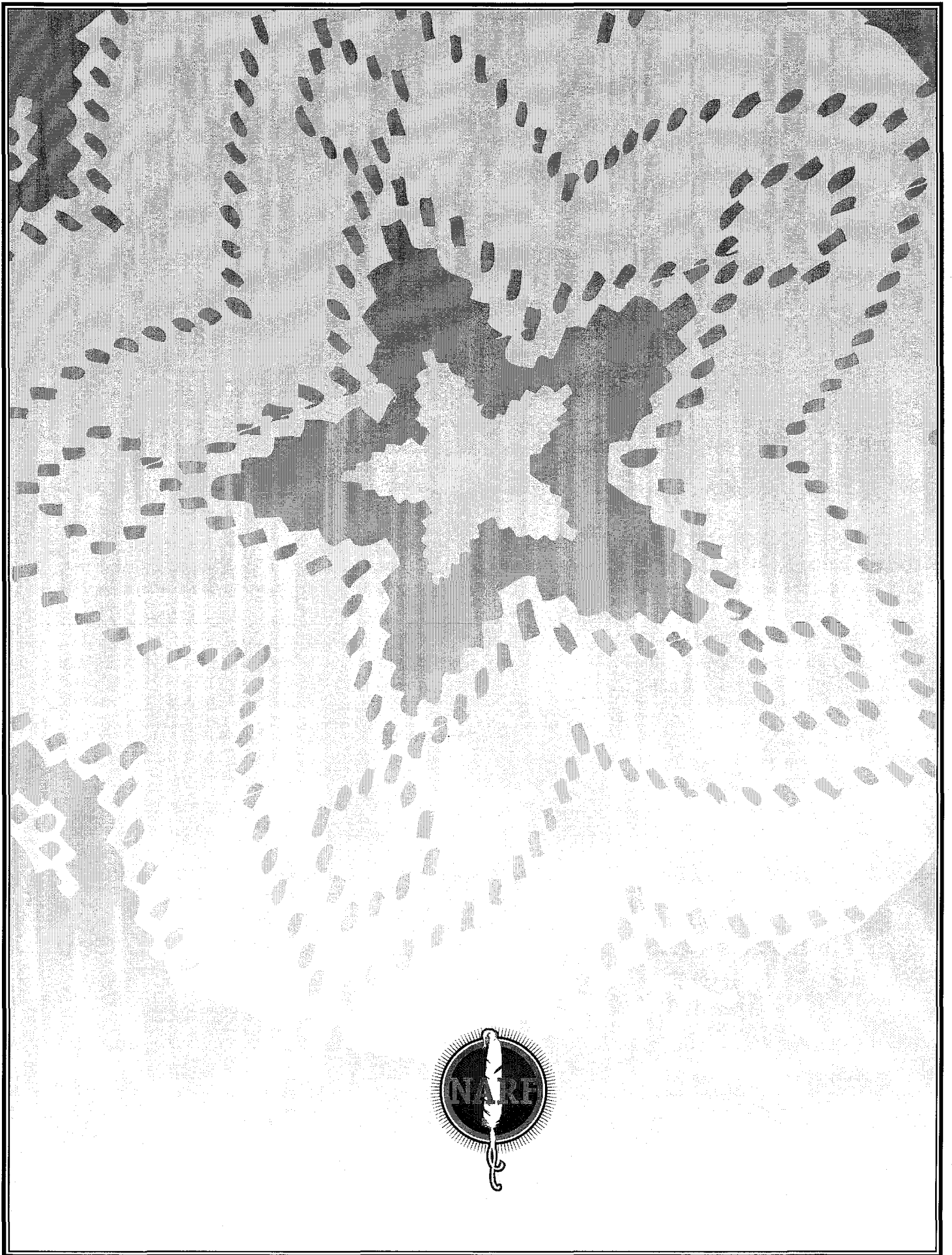
## ACKNOWLEDGMENTS

During my employment at the Native American Rights Fund (NARF), I conceived of the idea to develop and publish this Practical Guide based on my work at NARF with my tribal clients in the area of tribal constitutional law. In addition, NARF often received requests for assistance, and still does, for such work. The requests clearly indicated an unmet legal need in Indian country with respect to developing and fostering sound tribal constitutional law. I commenced the work on the Practical Guide in 2006, then departed NARF in January, 2010, but continued my work in conjunction with NARF until the Practical Guide was finished.

I would like to thank my colleagues at NARF whose contribution and funding has made this publication possible. In particular, I'd like to thank former NARF attorney Yvonne Knight (Ponca) whose tribal constitution work provided the starting point for this publication. I have incorporated on a significant level into this publication her work throughout the book. During her 35 years of working at NARF, she was an outstanding warrior for Indian peoples and her tribal clients. She represented them with such passion, dedication and skill. Her contribution to Indian law, including the contribution to this publication, is a legacy to her dedication to the development of Indian law. She is such a good lawyer.

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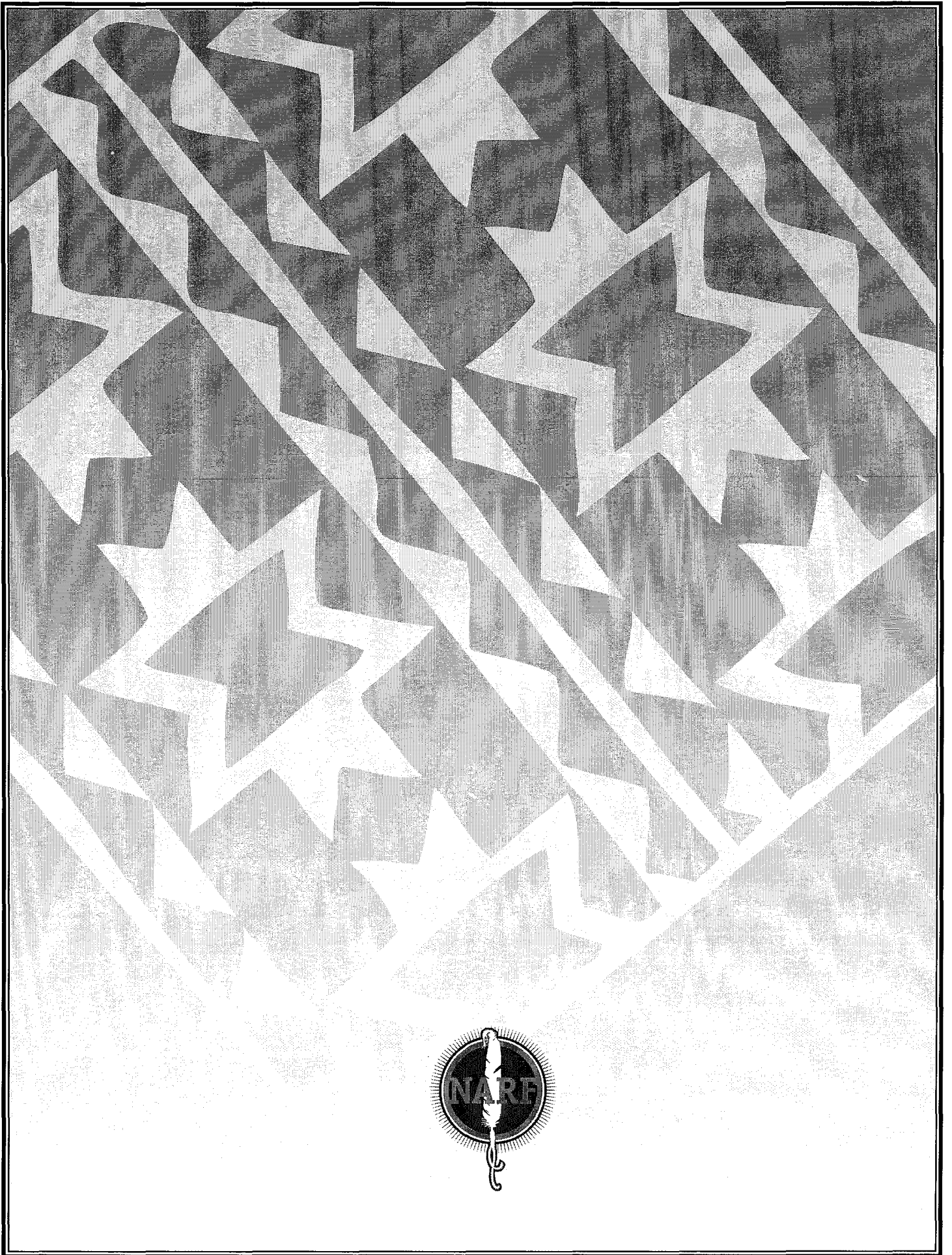
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## TABLE OF CONTENTS

<b>I. Introduction .....</b>	<b>2</b>
<b>II. General Background .....</b>	<b>7</b>
<b>III. Draft Articles .....</b>	<b>12</b>
A. Preamble .....	17
B. Name .....	25
C. Jurisdiction .....	29
D. Membership .....	37
E. Elections .....	59
F. Tribal Government Powers .....	84
G. Ethics in Tribal Government .....	112
H. Tribal Governing Body .....	121
I. Executive and Legislative Powers .....	125
J. Duties of Officers .....	153
K. Vacancies and Removal of Tribal Officials .....	177
L. Procedures of the Governing Body .....	206
M. Tribal Judiciary .....	254
N. Rights of Individuals .....	265
O. Initiative and Referendum .....	281
P. Non-Impairment of Contracts .....	303
Q. Amendments .....	307
R. Certificate of Results of Election and Savings .....	321
<b>IV. Sample Constitutions .....</b>	<b>331</b>
A. Constitution of the Absentee-Shawnee Tribe of Indians of Oklahoma .....	332
B. Constitution of the Jamestown Klallam Tribe of Indians .....	352
C. Constitution of the Timbisha Shoshone Indian Tribe .....	364
D. Constitution of the Mohegan Tribe of Indians of Connecticut .....	393



## I. INTRODUCTION

**Nation Building.** Those words define the relentless efforts of tribal peoples to build a solid foundation for their tribal governments. A tribal constitution can provide the bedrock upon which to build a strong and prosperous tribe, both as a peoples and a government. This Practical Guide is intended to guide the user through a number of considerations when writing or revising a tribal constitution in order to foster and generate ideas on the kinds of mechanisms that may work for the particular tribe's governance structure.

I encourage you, in the process of figuring out what will work, to consider the legacy of colonialism, IRA constitutions, the federal policies of warfare, assimilation and termination, or other such historical events and their effect on tribes and how it ultimately changed how tribes governed themselves. From my perspective, it is important to understand those events, especially federal efforts in the 1930s when many tribes adopted a constitution under the Indian Reorganization Act (IRA), in order to gain an understanding of the reasons why those constitutions contain certain provisions and why they may no longer be relevant in contemporary times. This understanding may also help you to avoid replicating those problematic areas if your tribe is adopting a constitution or revising its existing constitution.

As a backdrop to your work on a tribal constitution, the most fundamental act of tribal sovereignty is the adoption of a form of government that is an expression of your tribe's cultural identity, values and beliefs. Formation of a government that is a reflection of your tribal community's understanding of the fundamental laws that inform its world view, the community's system of decision making and allocation of authority is an arduous task. There are two parts to understanding the process for undertaking the creation or reformation of a tribal governance system under a tribal constitution. One is a community based process that ensures the legitimacy of the result. The other involves the nuts and bolts of assuring that the governance structure incorporates all the essential elements necessary to perform the functions of an operable government.

Community process and input for adoption or reformation of a constitution or other system of governance must ensure legitimacy in the results. Structuring a tribal governance system that is a genuine reflection of a tribe's culture, language and values requires incorporating ample input, review and accord with the result by all the various constituents of the community. It may be more difficult where the process must overcome historical animosities or rivalries within the community. Thus, a process that has a neutral arbiter to convene meetings and manage the integrity of the process may be desired. It is, however, far better for the community to institute its own process for consensus that incorporates the core cultural traditions and values of that community that will likely be reflected in the final governance structure. An extensive community process that assures opportunity for involvement and the assurance of legitimate feedback may be seen as a three step process:

1. Accept that adoption of reform of a governmental structure needs to be done, and such reform must have legitimacy in the eyes of the community, rather than a few individuals. The community must see it as an opportunity to explore the possibilities for a better tomorrow through the adoption and implementation of a strong constitution reflecting the values of the tribal community.
2. Adopt a community-authenticated process that will assure legitimacy of the result.
3. Emphasize community review, comment, edits and approval from start to finish.

I offer a few practical considerations. At the outset, a group of interested individuals from the community must be assembled to prepare recommendations to the tribal community. This group often will call itself such names as a constitution committee, taskforce or commission. The constituents of the group will vary, depending on the inclinations and needs of your tribe. Sometimes it may be the governing body of the tribe, a committee of the governing body, a group of tribal members or a combination of various individuals representing different parts of tribal government and the community. You should be sure to include individuals who are prepared to devote a considerable amount of time to the process for a long time, even years. In some ways, it is disruptive to the process to have individuals come and go since it takes time to educate new individuals about what has already been discussed and decided. It makes it easier when presenting your recommendations to the tribal community to have individuals who have knowledge of the process from beginning to end.

From beginning to end, I recommend including every segment of your tribal community in the process. This inclusive process may involve inviting groups such as the elders, women's groups, medicine people, youth groups, clan leaders, traditional leaders such as a chief, tribal governmental officials or entities such as a representatives from the tribe's gaming enterprise, police and fire departments, housing entities, ICWA program officials and tribal leaders. This inclusive process can be done at appropriate times. For example, if you're considering the judiciary, then you may want to invite individuals from the community that serve the role of traditional peacemakers, judges and other personnel from the courts, police officers, probation officers, juvenile justice program staff, ICWA staff, social workers, the judiciary committee of the governing body, youth groups and any other interest group that interacts, or would interact, with the tribal judiciary.

Aside from receiving input from the tribal community, you may want to seek the advice of professionals such as lawyers, even to consider a single issue such as election law, especially if you're creating or re-evaluating districts. Other possible experts you may want to consult include an anthropologist or sociologist who can help in the area of defining social contact issues related to evaluating whether a person is a member of the tribal community under a proposed membership criteria that uses that standard or local judges to explain the role of a judicial branch of government and a judge's day-to-day activity in order to give perspective. These are a just few examples.



In the end, when presenting to the community, there are options to consider. The group that invested their time and effort may want to present their findings and recommendations to the community. The governing body may want to undertake the task. If disagreements of whatever nature exists in the community, the group and/or governing body may feel that a neutral party is needed to moderate the community presentation. In this way, any hostilities related to long-standing controversial issues or personality differences between individuals or groups are minimized and the process can progress more easily. There may be other options for the presentation to the community depending on your tribe.

Turning to the handbook, it has been compiled to assist a tribe in reviewing and revising its constitution and bylaws or in drafting a new constitution. The handbook presents information and ideas on each article for a tribe to consider so it can make informed decisions. Based upon such considerations, a tribe can identify existing sections of its constitution and bylaws needing revision and/or consider a suggested provision in its new constitution, proceed to revise old sections or tailor the language in its new constitution, and coordinate them into a complete document for public comment by its tribal members. It also gives examples for each article from a variety of tribal constitutions to present a comprehensive view of possibilities, to present information on tribal government, to summarize information, and to present information generally on tribal constitutions.

An Indian tribe can be defined in two ways: (1) as a society of people bound together by a common history and culture, and (2) as a government.

At the outset, a tribe must recognize that many of the constitution provisions that will be revised, or adopted, will be based upon the form of government it adopts. This handbook assumes that a separation of power exists, or will exist, in the tribal government. In particular, it focuses on the constitution required in the establishment of a two-branch government. Thus, certain articles contained in this handbook might change significantly if a form of government based on a three-branch government, a government with no separation of powers, theocracy, or other forms are adopted by it.

The task of revising or drafting a constitution is an act of self-governance, an exercise of inherent tribal sovereignty. It is a difficult task. The tribe must decide on a framework of its government and then it must decide on the many details, the constitutional provisions that will form the structure of the government. The tribe must at all times consider how its plan will operate in reality and long into the future. Thus, the task requires a great deal of foresight and creativity, as well as the time to make the many detailed decisions required. Hopefully, the efforts of the tribe will ultimately result in a tribal constitution that will serve it well for a long time.

I wish you the best in your endeavors.  
Mark C. Tilden

Tilden McCoy + Dilweg, LLC



Research help is available from the National Indian Law Library . The National Indian Law Library at the Native American Rights Fund is available for research assistance relating to drafting tribal law. Visit the library's Tribal Law Gateway at:  
<http://www.narf.org/nill/triballaw/index.htm> or contact the library for free assistance:

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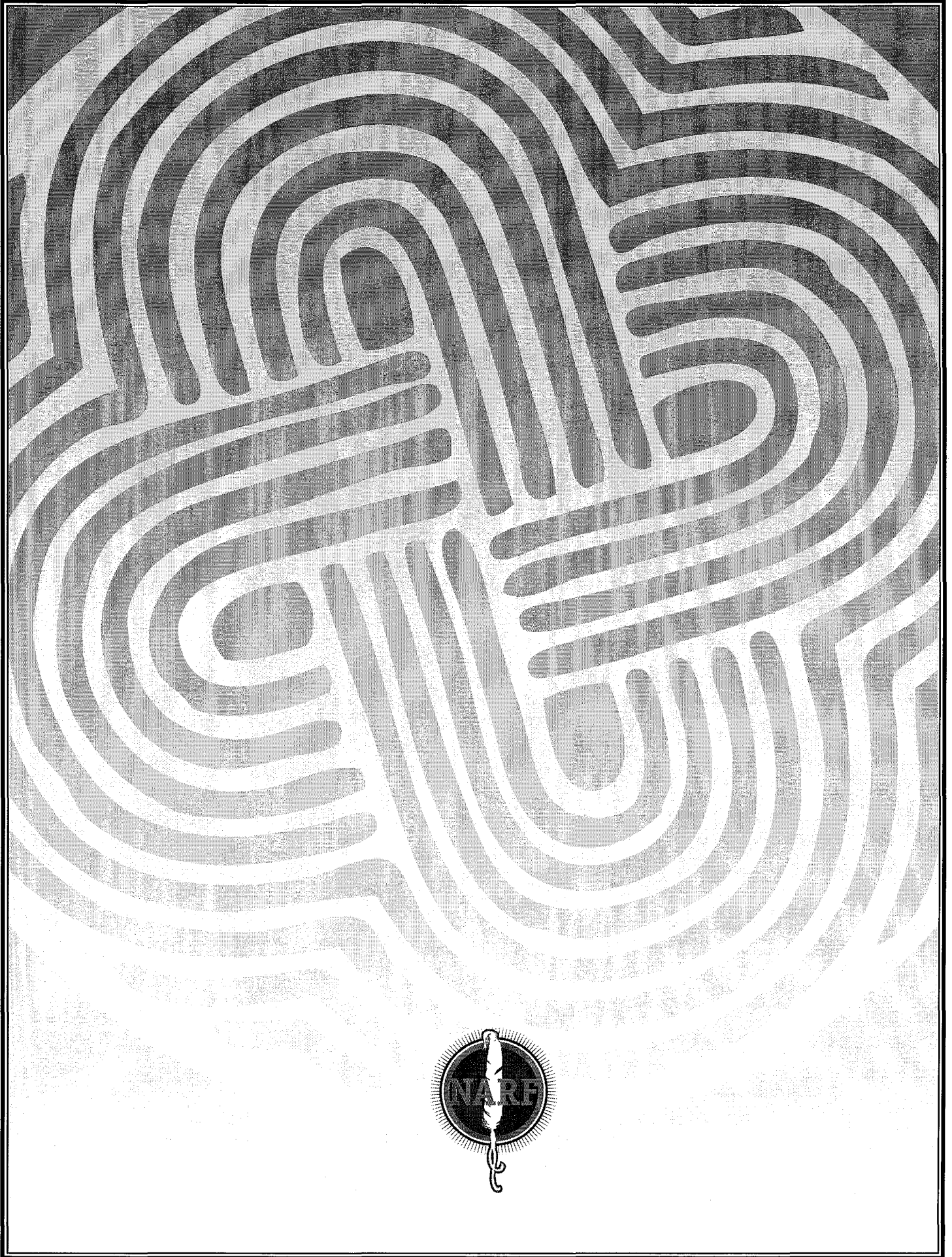
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## II. GENERAL BACKGROUND

### A. The Importance Of A Constitution To The Sovereignty of Tribal Governments

Tribes, Pueblos, and Alaskan Villages (tribe) are sovereign governments whose inherent sovereignty has existed since time immemorial. This sovereignty includes the authority of the tribe to exercise its powers over its members and territory. The extent of the exercise of that sovereignty may be limited by the imposition of federal laws and case decisions, not because the tribes have surrendered their sovereignty, but because the superior military strength of the federal government makes acquiescence to that power irresistible.

Tribal ability to protect and exercise their sovereignty may be limited by two separate sources. The foundational principle of federal Indian law is that tribes retain the right to exercise all their powers of sovereignty except those that have been expressly limited by the laws of the United States. The first source of limitation is, therefore, the imposition of limits by the United States through either statutes or case decisions. In addition to a limitation on the powers of the tribe, federal laws can result in expanding the application of the laws of state and local governments on the people and activities within the tribe's territory. This externally imposed limitation is ever evolving and requires continuous vigilance by tribes to seek to limit provisions in federal legislation or cases brought before the federal courts which could result in further limitations on tribal sovereignty. The second is more subtle and involves the failure of a tribe fully to express and exercise its powers of self-government. This failure is occasionally expressed in constitutional provisions, most often seen in constitutions adopted pursuant to and shortly after the passage of the Indian Reorganization Act of 1934 (IRA), that subject tribal sovereignty to "approval" or oversight from the Secretary of the Interior or other self-imposed limitations.

A significant protection for tribal sovereignty is the insulation of the tribes and their members from the imposition of state and local laws on the people, property and activities within Indian Country, including all lands legitimately set aside under federal supervision. These protections are, however, available to tribal governments that are "recognized" as having a government-to-government relationship with the United States. The experience of non-recognition has shown that without the protection of federal laws, tribal governments and tribal sovereignty struggle to protect their rights, territory and members from the imposition of laws by the stronger and significantly more populous state and local governments. Thus, federal recognition of a tribal government grants to a tribe federal protection from imposition of most state and local laws and the right to the exercise of its tribal sovereignty.

The second danger to tribal sovereignty, namely the failure of a tribe to establish a government empowered to and capable of exercising fully and fairly the powers of government, is probably a greater danger than the first. It occurs gradually without the drama that accompanies the sudden effect of the passage of a federal law or issuance of a federal court decision. Therefore, it is not as easily recognized as the first danger and results when two situations are allowed to occur in a tribe's government. First, when a tribal government is restricted by its tribal constitution in its authority to exercise the powers of self-government, it is unable to fully serve the needs and

wants of its tribal peoples. Inevitably, services the tribe requires but the tribal government cannot provide will be provided by other governments. If the federal government fills that role, then tribal government loses one of its most important reasons for existence and, thus, a great deal of its importance to its tribal peoples. If the state and local governments fill in instead, then they establish claim to the gratitude and loyalty of the tribal peoples as well as a claim that certain duties are owed by the tribal peoples to that government in return for the services provided. Thus, to the extent that a tribal constitution inhibits its own powers and relinquishes them to external governments increases, a tribe's ability to exercise its own sovereignty and the ability of the tribal leadership to govern diminishes.

Second, tribal peoples are likely to become dissatisfied with a tribal government that is disrespectful of what they consider to be basic rights of tribal members. When this situation occurs to any great extent, internal disorder may result in an invitation to the federal government to interfere in tribal governance to substitute their judgment for that of the tribe concerning what is the greatest good of the tribal people.

The best protection from this second danger is the drafting and adopting of a constitution designed to express the fullest possible exercise of tribal powers of self-governance, while providing the fullest possible protection for tribal members against misuse of that power. This is especially true for a constitution that is the full expression of the will of the tribal membership resulting from a process of expensive consultation and validation.

A tribal constitution is an important document that is the expression of the basic values and beliefs of a people, which can make tribal sovereignty a reality in their daily lives. It can facilitate the fullest possible exercise of the tribe's sovereign powers of self-governance to serve the needs and wants of its tribal members. It can assure its tribal members that their government will be a reflection of their culture and beliefs, be responsive to their will and fair in its dealings with them.

## B. Government By Constitution - Basic Principles and Guidelines.

### 1. The Role of Government.

Generally governments are formed for two purposes. The first is to enable a group of people to resolve their differences and to find acceptable solutions to their common problems so that the people can live together as a community and as a tribe in peace and security. This is the political function of government. The second purpose for establishing a government is to provide certain services. For example, police protection, fire protection and recreation can be provided by a government more economically or effectively than by individuals or private agencies. The government provides services such as sewage disposal, zoning, licensing or protection of public health because individuals or private agencies cannot or have no authority to provide such services. This is the service function of government. A government should be well structured to perform both the political and the service functions.

To enable the government to accomplish these purposes, the people grant to the government those powers that they believe to be necessary. The powers may be broad in scope, giving the government flexibility to respond to the needs of the people. Alternatively, the powers may be enumerated and narrowly defined, thus limiting possible abuses of power, but also limiting the flexibility of the government to respond to the needs of the people.

Powers granted to the agencies of government are exercised through constitutional provisions or through the adoption of laws. But laws are not effective until two and sometimes three of the following actions are taken:

- (1) The law is enacted – by the legislative arm of the tribe;
- (2) The law is enforced or put into effect – by the executive arm of the tribe; and
- (3) If necessary, the meaning or scope of the law is interpreted or clarified – by the judicial arm of the tribe.

Each of these actions is a power in itself. Each is a necessary step in the exercise of governmental powers. If one unit of government is granted the authority to take all three of these actions, it has the authority to exercise all governmental powers. No separation of government powers exists in this form of government. Complete authority in one unit of government has the potential to lead to abuse of such powers. This has persuaded many tribal communities to divide their government into more than one branch, each branch having authority to perform one, or at the most, two of the above these actions. The most obvious example of this is the Constitution of the United States, which has three branches, each granted the authority to perform one of the three actions: Congress enacts laws, the President's office enforces them, and the federal courts interpret them. Many smaller governments such as cities, which possess lesser powers than the government of the United States or a state, are governed by a council which possesses the authority to both enact and enforce laws. Many tribes also have a governing body with a tribal council with this dual authority, while tribal courts have the power to interpret or clarify the tribal law.

## 2. The Role of the Constitution.

A constitution is the basic operating plan for a government. It contains the essential parts of the plan that, in the judgment of the people, will best carry out the purposes for which the government is established.

Generally, a constitution should do the following:

- (1) Establish a government that responds to and reflects the will of the tribal peoples;
- (2) Establish the structure by which the powers granted to the government can be best exercised for the welfare of the tribal peoples; and
- (3) Establish protections for the tribal peoples against misuse of power by the government.

It is not the role of a constitution to attempt to resolve all the current problems of society. That is the role of the government once it is established by a constitution. The government will be in a much better position to study the problems of the community and to decide upon the best solutions to fix them. The government will also be in a better position to repeal or revise those solutions if they are not working. And, finally, the government will be able to respond much more quickly to resolve the changing problems or priorities of the community.

Thus, in addition to establishing the basic operating plan or structure of the government, a tribal constitution should include only laws that are intended to be permanently binding on the tribal government or on the tribal peoples. Such laws would include those that guarantee certain fundamental and basic rights of individuals and of the tribe, such as freedom of speech and religion, and the right to prevent sales of tribal land. Because a constitution is difficult to change, such rights will have an extraordinary kind of protection granted by such provisions, and assure the stability desired of governmental structure.

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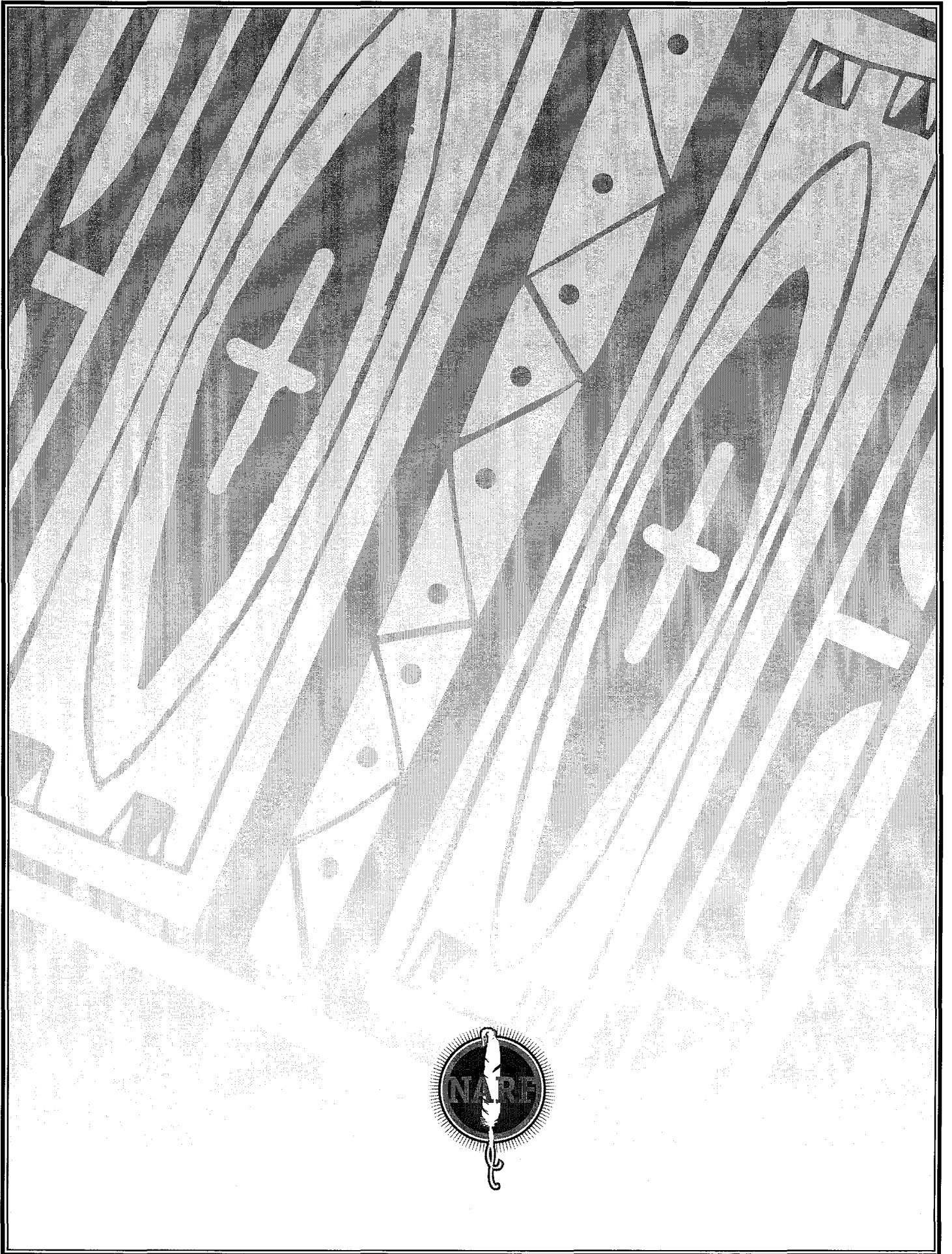
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### III. DRAFT ARTICLES

This Practical Guide contains a preamble and eighteen articles of a proposed constitution. Each article has several sections. The first section of each article discusses considerations that should be taken into account in drafting the article. The considerations are followed by the existing provision, if any, contained in the tribe's current constitution (and by-laws) that is under revision and are filled in by the drafters of the revision. A suggested provision follows. It is important to recognize that the suggested provision is just that – a suggestion. The suggested provision is a starting point to initiate the discussion and deliberation surrounding each Article. As the discussion progresses, it is likely to turn to the specifics needs of the tribe which will lead to the drafters tailoring the suggested provisions to meet the unique needs of the tribe.

To foster and enhance the discussion and deliberation, each article includes a number of examples from other tribal constitutions (and by-laws) that are listed after the suggested provision to give the user a broad perspective of the many possibilities to consider. A few of the draft articles contain additional, self-explanatory sections. Part IV contains four sample constitutions to help offer the user a sampling of constitutions ranging from the early twentieth century to the present time. The reader is encouraged to contact the National Indian Law Library, a subsidiary of the Native American Rights Fund, which contains a collection of tribal constitutions to obtain more constitutions or other reference materials in order to help in your efforts to draft or revise a tribal constitution. In the end, it is important to keep in mind that any language considered should be strictly tailored to meet the tribe's needs. The following is a summary explanation of the preamble and seventeen articles.

- Article A. Preamble.** The preamble states at the beginning of the Constitution those basic and fundamental purposes for which the Tribe is establishing the government as set forth in the Constitution.
- Article B. Name.** This Article sets forth the name of the Tribe.
- Article C. Jurisdiction.** This Article sets forth the tribal government's authority to exercise its sovereign powers over its territory and members.
- Article D. Membership.** This Article establishes those basic requirements that a person must meet to be a member of the tribe. It also provides that no person is eligible to be a tribal member if that person is enrolled in another Indian tribe. If any tribal member voluntarily relinquishes (resigns) tribal membership that person is ineligible to reapply for membership for a period of years from the date of such relinquishment.
- Article E. Elections.** This Article generally sets forth procedures for the conduct of elections. It establishes an election board separate from the control of the tribal governing body. It also requires an election ordinance to be enacted to deal with each of the several types of tribal elections and also includes such provisions as on-going voter registration, majority voting, absentee voting and secret balloting. It includes a

provision that will govern the first election under a new Constitution.

- Article F. Tribal Government Powers.** This Article can establish a separation of tribal government powers between the Governing Body and Tribal Judiciary. If the tribe is a non-recognized tribe and is later recognized, then the separations of powers will be effective upon the appointment of the three Judges of the Tribal Supreme Court. This Article defines those tribal powers which the Governing Body and Tribal Judiciary are authorized to exercise. The Governing Body is authorized to exercise all power now vested in, or which in the future may be vested in, the tribe, excepting powers of the Tribal Judiciary. The Tribal Judiciary is authorized to exercise all tribal judicial powers. This Article also includes an ethics provision prohibiting tribal public officials from participating in decision-making in which they have a conflict of interest.
- Article G. Ethics In Tribal Government.** This Article, to be considered with Article F, prohibits public officials from participating in decision-making in which they have a conflict of interest.
- Article H. Tribal Governing Body.** This Article establishes the number of members of the Governing Body to be elected including the Chairperson, Vice-Chairperson, Secretary and Treasurer (other titles may apply) and how such members are elected, the qualifications for a tribal member to run for elective office, the terms of office for such elective office, and the officers of the governing body.
- Article I. Executive & Legislative Powers.** This Article, to be considered with Article H, defines those tribal powers that the Governing Body is authorized to exercise. There are two options: first, the Governing Body may be authorized to exercise any and all power now vested in, or which in the future may be vested in, the Tribe, except as limited by the tribal constitution or federal law. Second, the Governing Body may be authorized to exercise only certain enumerated tribal powers with all other powers, including future tribal powers, reserved to the members of the tribe. The tribal members may, by future constitutional amendments, authorize the Governing Body to exercise certain of these reserved powers.
- Article J. Duties of Officers.** This Article sets forth the duties of the governing body's officers: the Chairperson, Vice-Chairperson, Secretary and Treasurer (other titles may apply). If other offices or committees are established, the Governing Body will set forth their duties in the resolution that establishes the office or committee.
- Article K. Vacancies and Removal of Tribal Officials.** This Article provides for the removal of elected tribal officials from office. There are three methods for removing tribal elected officials from office before their term expires: recall, expulsion, and automatic forfeiture. The recall provision provides a means by which the registered voters of the tribe may by petition force an election to be held to decide whether a specific elected official should be removed from office. The expulsion provision allows elected tribal officials to remove for cause from office



another tribal elected official. The automatic forfeiture provision provides that a tribal official automatically forfeits his office if he dies, resigns, or is convicted of a major crime. It also provides for the filling of vacancies in office. This Article is inapplicable to the tribal judiciary. It also includes a provision explaining the succession to the head tribal leader's office in the event it becomes vacant.

**Article L. Procedures of the Governing Body.** This Article sets forth procedures for the conduct of meetings of the Governing Body including regular meetings, special meetings, emergency meetings, open meetings, and voting. It provides that the Governing Body shall enact a tribal law establishing procedures for adopting, amending, or rescinding ordinances, resolutions and motions, and handling of tribal records. It sets forth posting procedures that the Governing Body must follow in posting any notice or other document as required by the constitution or by tribal ordinance.

**Article M. Tribal Judiciary.** This Article describes the structure of the tribal judiciary as composed of one supreme court consisting of three judges, and such lower courts as established by the governing body. It explains that the supreme court will have jurisdiction over appeals from lower tribal courts. It provides for appointment of judges: lower court judges for a term of years and supreme court judges for a term of years. It states that tribal judges will receive for their services a reasonable compensation. It sets forth qualifications to hold a judgeship and criteria for ineligibility. It provides for removal of judges for cause and under what circumstance an office of a tribal judge becomes automatically vacant. The supreme court is authorized to establish written rules of court procedures and ethics for all tribal courts. It must also implement a system of record keeping. The Governing Body is to give priority to funding the Tribal Judiciary and is to enforce this Article by ordinance.

**Article N. Rights of Individuals.** This Article places certain limitations upon the exercise of tribal powers by the tribal government by conferring civil rights upon individuals. The civil rights listed are very similar to the Bill of Rights of the United States Constitution and include rights such as free exercise of religion, freedom of speech, and the right to be free against unreasonable search and seizures. There is a provision that explains that the civil rights listed are not exclusive.

**Article O. Initiative and Referendum.** This Article sets forth the initiative and referendum provision. An initiative allows one or more tribal members to initiate a law drafted by them and to put that law to a vote of tribal voters, thereby bypassing entirely the governing body. A referendum allows one or more tribal members to require the Governing Body to refer a tribal law for approval by tribal voters. The referendum provision (1) permits tribal members to require that a vote be taken on a law in order for that law to be effective or to require that certain types of laws be submitted to a vote of tribal voters; and (2) to permit tribal government officials at their option to refer important policy questions to a vote of the tribal voters.

- Article P. Non-Impairment of Contracts.** This Article prohibits the Governing Body from enacting any law that retroactively impairs contract rights. It applies only to tribal legislation, not to tribal judicial decisions.
- Article Q. Amendments.** This Article establishes the way in which the tribal constitution can be amended. There are two options.
- Article R. Certificate of Results of Election and Savings.** This Article states the conditions upon which the new Constitution will become effective. It also states that when the new Constitution is adopted that current tribal law remains effective so long as it is consistent with the new Constitution.

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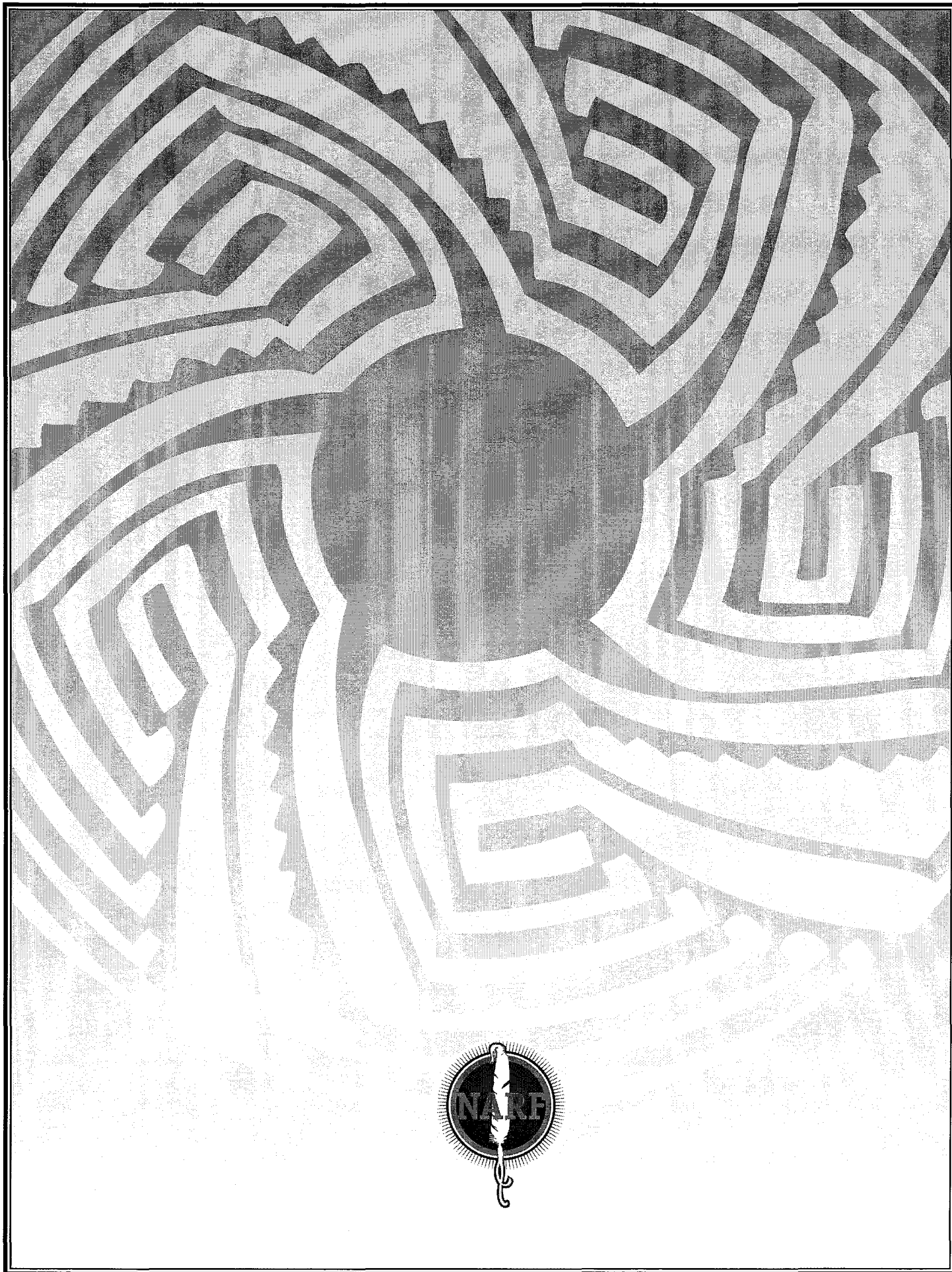
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## A. PREAMBLE

### A. Considerations.

The purpose of a preamble is to state at the very beginning of the Constitution those basic and fundamental purposes for which the tribe is establishing the government as set forth in the Constitution. It is also the place to express the sense of the community's core cultural traditions and values. This is the place where the tribe can say, "This is who we are, where we come from, and what we stand for."

### B. Existing Provision. [to be filled in by tribe]

### C. Suggested Provision.

We, the members of the Tribe, being a sovereign native people, do establish and adopt this Constitution in order to organize for the common good, to protect our inherent right to govern ourselves under our own laws and customs, to maintain and foster our tribal culture, to protect our homeland, to conserve and develop our natural resources, to promote the social and economic well-being of our people, and to govern, protect, and advance the common good of the Tribe and members of this Tribe.

### D. Examples.

*Example 1: Constitution of the United States of America*

WE THE PEOPLE of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the General Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

*Example 2: Pueblo of Laguna*

#### Preamble

In 1863, Abraham Lincoln, President of the United States of America, recognized and confirmed the right of the Pueblo of Laguna to govern itself, and solemnly pledged the full faith of the United States of America that the customs and rights of said Pueblo, and the liberties and religions of its members, shall forever be protected by the United States of America and forever remain inviolate. As evidence of said recognition, confirmation, and solemn pledge, President Abraham Lincoln, gave the then Governor of the Pueblo of Laguna a cane, which is the staff and symbol of the office of the Governor of the Pueblo.

In 1908 the Pueblo of Laguna adopted its first written Constitution. It was replaced by a Constitution adopted under the provisions of the Act of Congress of June 18, 1934, known as the Indian Reorganization Act, which Constitution was approved by the Secretary of the Interior on December 21, 1949. That Constitution was then replaced by the Amended Constitution and Bylaws, approved November 10, 1958. It is now the consensus of the membership of the Pueblo of Laguna to adopt this Constitution for the Pueblo of Laguna.

Now, therefore, we the members of the Pueblo of Laguna, New Mexico, in order to establish justice, to preserve and protect our Pueblo self-government and our rights, including land and water rights, liberties, benefits, traditional practices and customs, and to protect our common welfare, do ordain and establish this Constitution of the Pueblo of Laguna.

*Example 3: Jamestown Klallam Tribe of Indians*

Preamble

We, the Indians of the Jamestown Klallam Tribe, create and adopt this constitution for the Jamestown Klallam Tribe for the purpose of forming a better tribal government, establishing a tribal community organization, promoting the social and economic well-being of our people, securing our aboriginal land and any and all natural resources therein, preserving our culture and institutions, fostering justice and freedom, and advancing our mutual welfare.

*Example 4: Confederated Tribes of the Warm Springs Reservation of Oregon*

Preamble

We, the Confederated Tribes of the Warm Springs Reservation of Oregon, in order to establish a more responsible and effective organization to promote our general welfare, conserve and develop our lands and other resources, and secure to ourselves and our posterity the power to exercise certain rights of self-government not inconsistent with existing Federal and State laws, do ordain and establish this Constitution of the Confederated Tribes of the Warm Springs Reservation of Oregon.

Article I - Objectives

Oregon:

It shall be the object of the Confederated Tribes of the Warm Springs Reservation of

- (a) To establish and maintain, with the aid of the Federal Government, a form of home rule that shall promote the advancement and welfare of the Indians of the Warm Springs Reservation.
- (b) To establish and enforce such rules as may be necessary to safeguard Indian property and resources for the use of present and future generations.
- (c) To obtain for all Indians of this Reservation of the present and future generations lands needed



for homes and livelihood.

*Example 5: Fort Belknap Indian Community of the Fort Belknap Indian Reservation -Montana*

Preamble

We, the duly enrolled members of the Fort Belknap Reservation in the State of Montana, in order to secure to ourselves and our descendants the management of our own affairs, and to perpetuate this reservation as an abiding place for the members of this community, do establish this constitution of the Fort Belknap Indian Community.

Article I - Objectives

It shall be the object of the Fort Belknap Indian Community:

- (a) To establish and maintain, with the aid of the Federal Government, a form of home rule that shall promote the advancement and welfare of the Indians of the Fort Belknap Reservation.
- (b) To establish and enforce such rules as may be necessary to safeguard Indian property for the use of present and future generations.
- (c) To obtain for all Indians of this community, of the present and future generations, lands needed for home and livelihood.

*Example 6: Colorado River Indian Tribes of the Colorado River Indian Reservation Arizona and California*

Preamble

We, the members of the Colorado River Indian Tribes of the Colorado River Indian Reservation, in order to make the government established by the original constitution and bylaws approved August 13, 1937, a more responsive legal tribal organization and to secure all privileges and powers offered to us by the Indian Reorganization Act, establish justice, promote the general welfare, safeguard our interests, encourage educational progress, conserve and develop our lands and resources, and to secure the blessings of freedom and liberty for ourselves and our posterity, do ordain and establish this constitution and bylaws for the Colorado River Indian Tribes of the Colorado River Indian Reservation.

*Example 7: Chippewa Cree Indians of the Rocky Boy's Reservation, Montana*

We, the original and adopted members of the Rocky Boy's Band of Chippewas enrolled upon the Rocky Boy's Reservation in the State of Montana, in order to exercise our rights to self-government, to administer all tribal affairs to the best advantage of the individual members, and to preserve and increase our tribal resources, do ordain and establish this Constitution of the Chippewa Cree Tribe of the Rocky Boy's Reservation, Montana.

*Example 8: Assiniboine And Sioux Tribes of The Fort Peck Indian Reservation*

Article I - Preamble And Name

We, the adult members of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana, in order to establish a recognized and approved tribal organization to handle our Reservation affairs and business, to protect the sovereignty and the vested interest of our Tribes and members under treaties, agreements, and laws heretofore enacted, to procure for our Tribes and our members and our posterity social, educational, and industrial assistance, also, to procure assistance in all matters of interest to the Tribes, and to preserve peaceful and cooperative relations with the United States Government, its subdivisions, and its offices, do hereby establish this Constitution and Bylaws, with the legal name: "The Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana." (Where used herein, the "Reservation" refers to the Fort Peck Indian Reservation in Montana; the "Tribes" to the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation; the "Board" to the Tribal Executive Board; the "Secretary" to the Tribal Executive Board Secretary; "General Council" refers to an assembly of the qualified Electors of the Tribes).

*Example 9: Three Affiliated Tribes of the Fort Berthold Reservation*

Preamble

We, the Arickara, Gros Ventres, and Mandan Indians of the Fort Berthold Reservation, in North Dakota, eagerly embrace the opportunities for self-rule, and in order to enjoy the blessings of liberty and justice; to intelligently protect our vested rights under existing treaties and the constitution of the United States; to guarantee to our posterity a more hopeful future; to preserve and develop our real estate and resources; to promote educational efficiency for the enhancement of good citizenship; to promote the general welfare of the three tribes; to make possible a more hopeful, self-sustaining, and honorable living, socially and economically, do with deep consciousness of God, as our sovereign, ordain and establish this constitution for the Three Affiliated Tribes of this reservation.

*Example 10: The Confederated Salish And Kootenai Tribes of The Flathead Reservation*

We, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, in order to establish a more responsible organization, promote our general welfare, conserve and develop our lands and resources, and secure to ourselves and our posterity the power to exercise certain rights of self-government not inconsistent with Federal, State, and local laws, do ordain and establish this Constitution for the Confederated Tribes of the Flathead Reservation.

*Example 11: The Confederated Tribes of the Goshute Reservation, Utah*

Preamble

We, the people of the Goshute Reservation, in order to establish justice, promote the common welfare and preserve the advantages of self-government, do ordain and establish this constitution.

Article I — Purpose

Our purpose shall be to develop and use our resources, to promote and protect the interests of the Confederated Tribes of the Goshute Reservation, and to secure and preserve peaceful and cooperative relations with the Office of Indian Affairs, its officers and appointees.

*Example 12: Constitution and Bylaws of the Chitimacha Tribe of Louisiana*

Preamble

We, the Chitimacha Indians of Louisiana, desiring to establish an organization for our common welfare and benefit, do hereby adopt and proclaim the following constitution.

*Example 13: Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, Colorado*

Preamble

We, the members of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation in Colorado, in order to exercise our inherent rights of self-government as confirmed by the constitution and bylaws approved November 4, 1936 to administer our tribal affairs, to preserve and increase our tribal resources, do ordain and establish this constitution.

*Example 14: Constitution and Bylaws of the Upper Skagit Indian Tribe*

We, the members of the Upper Skagit Tribe of Indians of the State of Washington, in order to establish a tribal organization and to secure the powers and privileges available to recognized tribes through the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), do ordain and establish this constitution and bylaws.

*Example 15: Constitution for The Pueblo of Isleta, New Mexico*

Preamble

We, the Indian people of the Pueblo of Isleta, in order to preserve our customs and traditions, to make the government established by the original constitution approved March 27, 1947, more responsive to our needs and, the general welfare, to secure the blessings of liberty to ourselves and our posterity, to provide for our economic and social betterment through cooperative effort, industry and enterprise, to promote security and provide for law and order, do establish this constitution for the Pueblo of Isleta.

*Example 16: Constitution of the Cherokee Nation of Oklahoma*

Preamble

We, the people of the Cherokee Nation, in order to preserve and enrich our tribal culture, achieve and maintain a desirable measure of prosperity the blessings of freedom, acknowledging, with humility and gratitude, the goodness of the Sovereign Ruler of the Universe in permitting us so to do, and imploring his aid and guidance in its accomplishment—do ordain and establish this Constitution for the government of the Cherokee Nation. The term “Nation” as used in this Constitution is the same as “Tribe.”

*Example 17: Constitution of the Skokomish Indian Tribe*

Preamble

We, the members of the Skokomish Indian Tribe, acting pursuant to the Indian Reorganization Act of 1934, 43 Stat. 984, as amended, do hereby adopt this constitution in order to form a better tribal organization, secure the rights and powers inherent in our sovereign status and guaranteed to us by treaty and by Federal Law, to preserve our culture and tribal identity, promote the social and economic welfare of our people, protect and develop our common resources, maintain peace and order, and safeguard individual rights. This constitution shall revoke and replace the constitution and bylaws approved by the Secretary of the Interior on May 3, 1938, as amended, and shall govern the Skokomish Indian Tribe from its effective date on.

*Example 18: Constitution of the Kickapoo Traditional Tribe of Texas*

We, the members of the Texas Band of Kickapoo, by virtue of our sovereign rights as an Indian Tribe and pursuant to the authorities conferred by the Indian Reorganization Act of June 18, 1934, (48 Stat. 984), and Public Law 97-429, do hereby organize as a Tribe separate and apart from the Kickapoo Tribe of Oklahoma for the well-being of the Band and its members, to direct and control our own affairs, to protect and develop our land and resources for ourselves and our children, and to ensure the political integrity and cultural identity of the Band, and for these purposes do adopt this Constitution for the Texas Band of Kickapoo, henceforth to be known as the Kickapoo Traditional Tribe of Texas.

*Example 19: Constitution of The Mohegan Tribe of Indians of Connecticut*

Preamble

We, The Mohegan Tribe of Indians of Connecticut, answerable to our ancestors, in order to secure to ourselves and our descendants the management of our own affairs as a sovereign American Indian Nation, to ensure the maintenance of our basic human rights, to exercise our sovereign rights as a federally recognized Indian tribe, including the right of self-determination and self-governance, and to promote the general welfare of The Mohegan People, do hereby establish, adopt and proclaim this Constitution.

*Example 20: Constitution of the Choctaw Nation of Oklahoma*

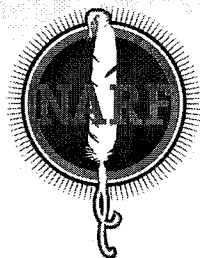
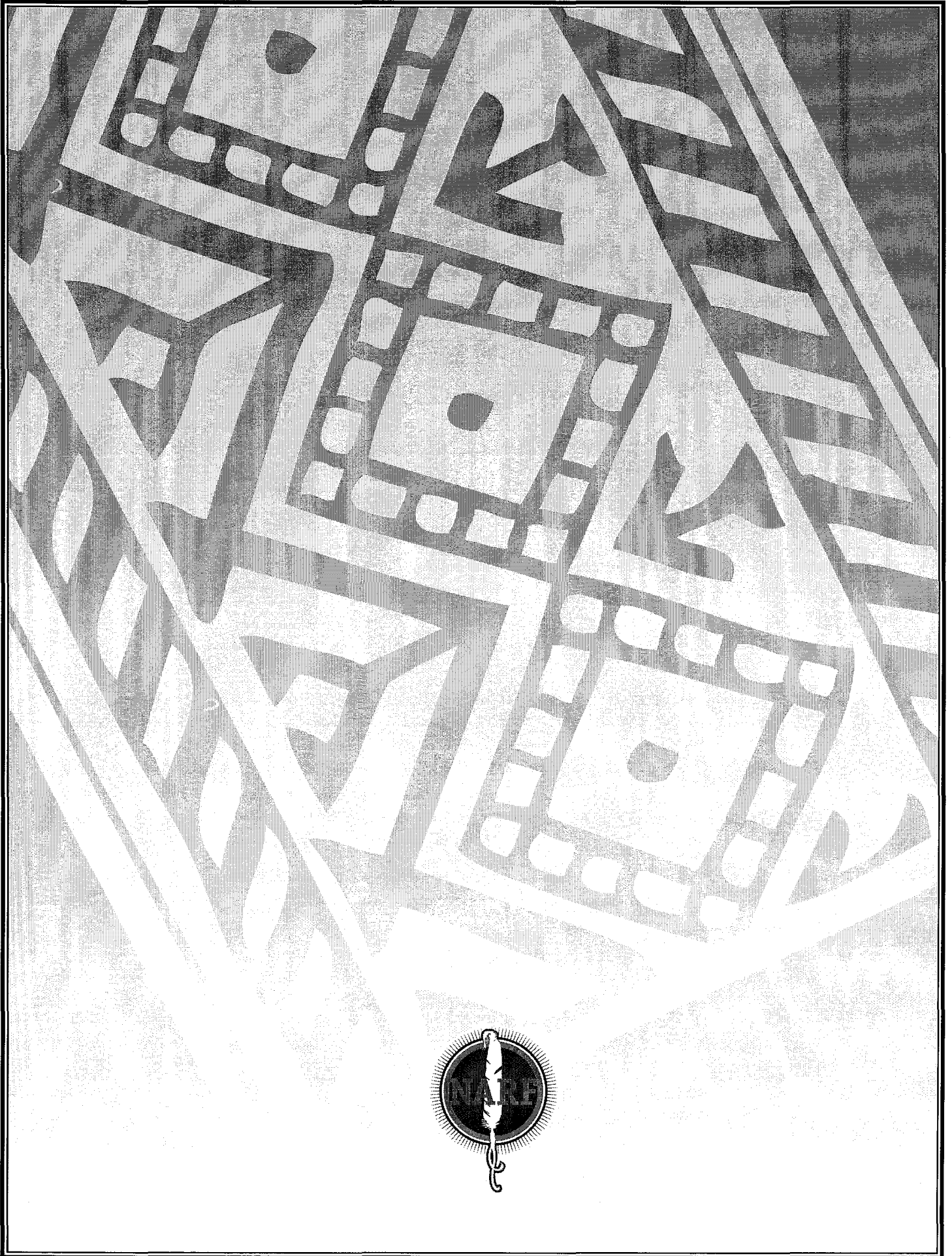
Preamble

We, the members of the Choctaw Nation of Oklahoma, invoking the will and guidance of Almighty God in order to promote the general welfare, to insure tranquility and to secure to ourselves and our posterity the blessings of our ancestral heritage, culture and tribal sovereignty, do hereby ordain and establish, pursuant to the inherent tribal sovereignty of the Choctaw Nation of Oklahoma, this Constitution for the Choctaw Nation of Oklahoma.

*Example 21: Constitution and Bylaws of the Menominee Indian Tribe of Wisconsin*

Preamble

We, the members of the Menominee Indian Tribe of Wisconsin, being a sovereign nation, in order to organize for the common good, to govern ourselves under our own laws and customs, to maintain and foster our tribal culture, to protect our homeland and to conserve and develop its natural resources, and to insure our rights guaranteed by treaty with the Federal Government, do establish and adopt the following Article and Bylaws of this Constitution and Bylaws for the government, protection, and common welfare of the Menominee Indian Tribe of Wisconsin and its members.





## B. NAME

### A. Considerations.

The purpose of setting forth the name of the tribe is to ensure the continuity of self-identification to outsiders. It is especially important where a tribe has political factions that use a similar name to identify themselves. For non-recognized tribes it becomes even more important since the federal, state and local governments often want assurances that its relationship with a tribe is consistently with the same entity and that the tribe is related to a historic tribe rather than a newly-formed association of individuals with or without Indian ancestry.

The identification of the tribe has significance for self-identification beyond these concerns. It is a place for the community to express who you are as a sovereign nation. While “recognition” of the government-to-government status with the United States has significant legal and important funding implications, the identity of the tribe does not derive from such “recognition”. Your status as a sovereign is inherent and this is a good place to recite the core values and cultural imperatives that inform the unique place that your tribe holds in the world.

### B. Existing Provision. [to be filled in by tribe]

### C. Suggested Provision.

#### Article – Name

The name of this Tribe shall be \_\_\_\_\_.

### D. Examples.

#### *Example 1: Constitution of The Jamestown Klallam Tribe of Indians*

#### Article I – Name And Territory

##### Section 1. Name.

The legal name of the tribal organization shall be the Jamestown Klallam Tribe of Indians.

#### *Example 2: Constitution And Bylaws of The Assiniboine And Sioux Tribes of The Fort Peck Indian Reservation*

#### Article I – Preamble And Name

We, the adult members of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana, in order to establish a recognized and approved tribal organization to handle our Reservation affairs and business, to protect the sovereignty and the vested interest of our Tribes and members under treaties, agreements, and laws heretofore enacted, to procure for our Tribes and our members and our posterity, social, educational, and industrial assistance, also, to procure assistance in all matters of interest to the Tribes, and to preserve peaceful and

cooperative relations with the United States Government, its subdivisions, and its offices, do hereby establish this Constitution and Bylaws, with the legal name: “The Assiniboiné and Sioux Tribes of the Fort Peck Indian Reservation, Montana.” (Where used herein, the “Reservation” refers to the Fort Peck Indian Reservation in Montana; the “Tribes” to the Assiniboiné and Sioux Tribes of the Fort Peck Indian Reservation; the “Board” to the Tribal Executive Board; the “Secretary” to the Tribal Executive Board Secretary; “General Council” refers to an assembly of the qualified Electors of the Tribes).

*Example 3: Constitution and Bylaws of the Seneca-Cayuga Tribe of Oklahoma*

Article I – Name

The name of this organization shall be the Seneca-Cayuga Tribe of Oklahoma.

*Example 4: Constitution of the Absentee-Shawnee Tribe of Indians of Oklahoma*

Article I: Name

The name of this federally recognized Indian tribe shall be the Absentee-Shawnee Tribe of Indians of Oklahoma.

*Example 5: Constitution and Bylaws of the Agua Caliente Band of Cahuilla Indians, California*

Article I: Name

The name of the organization shall be the AGUA CALIENTE BAND OF CAHUILLA INDIANS.

*Example 6: Constitution and Bylaws of the Chitimacha Tribe of Louisiana*

Article I – Name

The name of this organization shall be the Chitimacha Tribe of Louisiana.

*Example 7: Constitution and Bylaws of the Upper Skagit Indian Tribe*

Article I – Name and Territory

Section 1. Name. The name of this organized body shall be the Upper Skagit Indian Tribe.

*Example 8: Constitution of The Mohegan Tribe of Indians of Connecticut*

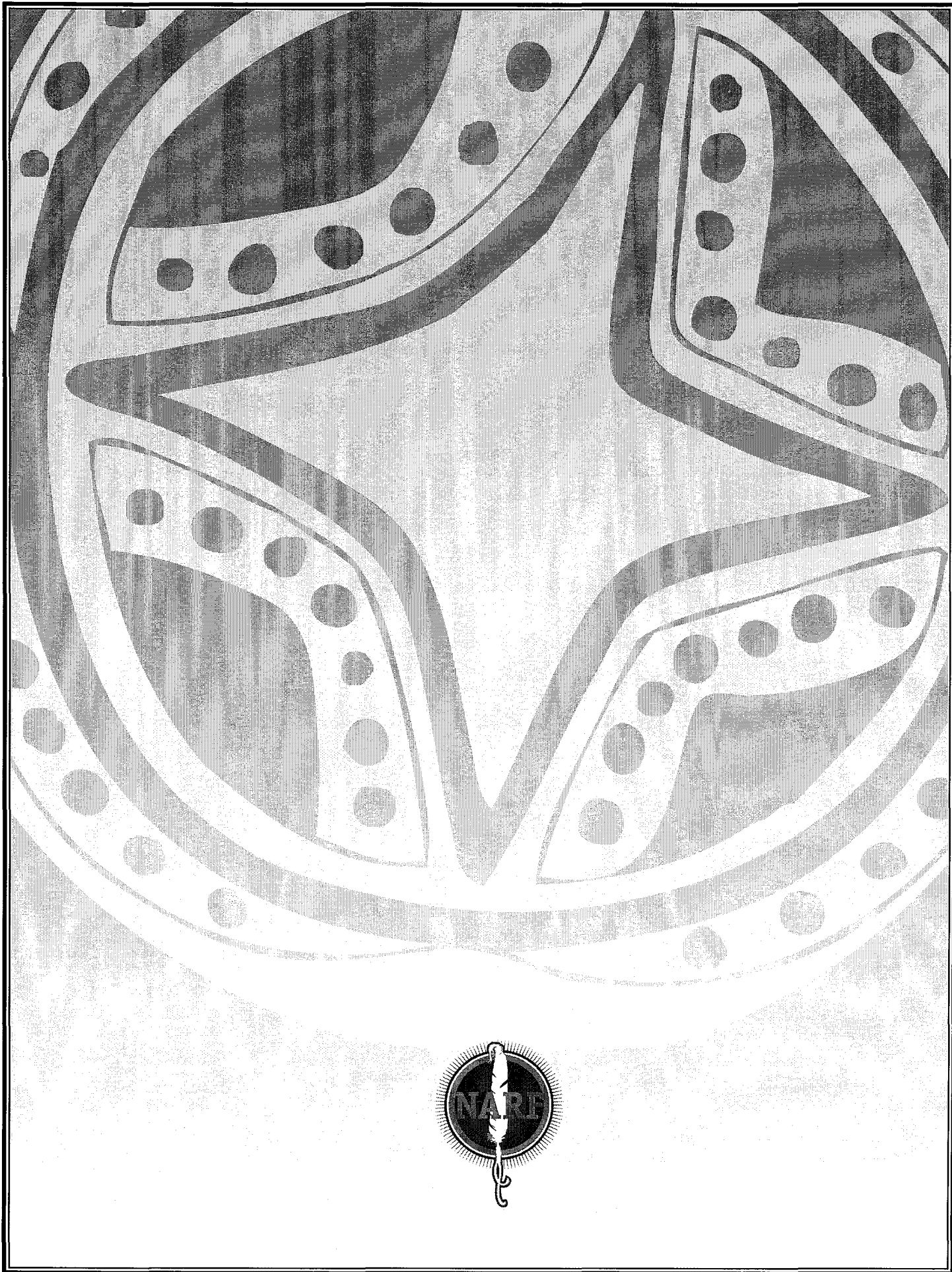
Article I – Name

The name of this organization shall be The Mohegan Tribe of Indians of Connecticut (hereinafter “The Mohegan Tribe” or “The Tribe”) and the members thereof shall be known as The Mohegan Nation.

*Example 9: Constitution of the Choctaw Nation of Oklahoma*

Article I – Name and Geographical Area

Section 1. The name of this body shall be “The Choctaw Nation of Oklahoma.”



## C. JURISDICTION

### A. Considerations.

Jurisdiction is a legal term referring to the extent of the tribal government's authority to exercise its sovereign powers over its tribal members and its territory. It is thus advisable for the Tribe to claim jurisdiction to the fullest extent. Having said that, there are limitations imposed on the exercise of tribal sovereignty by federal statutory and case laws. While the tribe may be bound by these limitations it isn't necessary to expressly adopt them in the constitution or other governance document of the tribe. These limitations apply in any event.

### B. Questions.

1. What is the effect if the tribe lacks a formal agreement, Executive Order, treaty, or other federal legislation with the United States defining a land base?
2. What if land is donated or purchased by the tribe? Does the tribe have jurisdiction over that tribally-owned land?
3. Should the Constitution also mention jurisdiction over water, airspace, minerals, or other natural resources?
4. Should the Constitution mention jurisdiction over persons or activities?

### C. Existing Provision. [to be filled in by tribe]

### D. Suggested Provision.

To the full extent not limited by Federal law, and unless restricted by tribal law, the Tribe's jurisdiction shall extend over its members and all territory of the Tribe which constitutes Indian Country or its equivalent under federal law, and to any person, property, subject and activity within this territory. The Tribe's jurisdiction shall also extend to any person, property, subject and activity provided for under federal law outside the Tribe's Indian Country territory or its equivalent under federal law.

### E. Examples.

*Example 1: Constitution and Bylaws of the Confederated Salish and Kootenai Tribes of the Flathead Reservation*

#### Article I – Territory

The jurisdiction of the Confederated Salish and Kootenai Tribes of Indians shall extend to the territory within the original confines of the Flathead Reservation as defined in the Treaty of July 16, 1855, and to such other lands without such boundaries, as may hereafter be added thereto under any law of the United States, except as otherwise provided by law.

*Example 2: Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation*

Article I – Territory

The jurisdiction of the Three Affiliated Tribes of the Fort Berthold Reservation shall extend to Indian Trust and Tribal lands within the confines of the Fort Berthold Reservation, as defined in the treaty of September 17, 1851; to lieu lands outside of such boundaries; and to such other lands, within or without such boundaries, as have been or may be hereafter added thereto under any law of the United States, except as otherwise provided by law.

*Example 3: Constitution of the Jamestown Klallam Tribe of Indians*

Article 1 – Name And Territory

Section 1. Name.

The legal name of the tribal organization shall be the Jamestown Klallam Tribe of Indians.

Section 2. Territory.

The territory and jurisdiction of the Jamestown Klallam Tribe shall extend over the following to the fullest extent possible under Federal Law:

- (a) All lands, waters, property, airspace, other natural resources and any interest therein either now, or in the future, owned by the Tribe or individual tribal members held in trust status or located within the boundaries of the reservation which may be proclaimed for the Jamestown Klallam Tribe, notwithstanding the issuance of any patent or right-of-way;
- (b) All persons, property and activities located or found within the Tribe's jurisdiction;
- (c) All members exercising or purporting to exercise any rights reserved by the Tribe under the Treaty of Point No Point concluded January 26, 1855 (12 Stat. 933) and all property or activity to the extent necessary to implement and protect all rights and powers reserved or granted to the Tribe by the Treaty of Point No Point, the United States Constitution or other Federal Law.

Section 3. Hunting and Fishing Rights.

Nothing in this Article shall restrict the exercise of hunting and fishing rights reserved by the Tribe under the Treaty of Point No Point including the right to hunt on all open and unclaimed lands, and to fish at all of the Tribe's usual and accustomed grounds and stations.

*Example 4: Constitution and Bylaws of the Confederated Tribes of the Goshute Reservation, Utah*

Article II – Territory

The jurisdiction of the Confederated Tribes of the Goshute Reservation shall extend to the territory within the confines of the Goshute Indian Reservation boundaries, as established by



Executive Order dated March 23, 1914, and to such other lands as may be hereafter added thereto.

*Example 5: Constitution and Bylaws of the Colorado River Indian Tribes of the Colorado River Indian Reservation Arizona and California*

#### Article 1 – Territory

The jurisdiction of the Colorado River Indian Tribes shall include all the territory within the original confines of the Colorado River Indian Reservation boundaries as established and approved by the act of March 3, 1865, and lands added thereto by Executive Order of November 22, 1873; Executive Order of November 16, 1874; Executive Order of May 5, 1876; and Executive Order of November 22, 1915, in Arizona and California and to which title has been given by Act of the Congress of the United States, Public Law 88-302, of April 30, 1964, and any other lands in which the Colorado River Indian Tribes acquire ownership, management, use or occupancy by virtue of purchase, gift, Act of Congress or otherwise.

*Example 6: Constitution of the Absentee-Shawnee Tribe of Indians of Oklahoma*

#### Article II – Jurisdiction

The jurisdiction of the Absentee-Shawnee Tribe shall extend to all tribally owned land and all restricted or trust land belonging to tribal members within the boundary of the reservation established by Agreement dated June 26, 1890, and ratified by the Act of March 3, 1891 (26 Stat. 1019), and such other land, or interest in land, which may be subsequently acquired.

*Example 7: Constitution and Bylaws of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation*

#### Article II – Territory

The jurisdiction of the Tribes shall extend to the territory within the original confines of the Fort Peck Reservation as defined in the agreement of December 28 and December 31, 1886, confirmed by the Act of May 1, 1888 (25 Stat. Sec. 113, Ch. 212) and to such other lands as may be hereafter added thereto under any laws of the United States, except as otherwise provided by law.

*Example 8: Constitution of the Confederated Tribes of Siletz Indians of Oregon*

#### Article III – Authority of Government

The authority of the government established by this Constitution shall extend over all persons, subjects, and property now or hereafter included within the jurisdiction of the Confederated Tribes of Siletz Indians of Oregon, except and only as limited by this Constitution and the Laws of the United States. The government shall not inhibit any person's right to enjoy freedom of worship, conscience, speech, press, assembly and association, and other rights enumerated by Federal Law.

*Example 9: Constitution of the Confederated Tribes of the Grand Ronde Community of Oregon*

Article 1 – Authority of Government

Section 1. Jurisdiction and Territory.

The authority of the government established by this Constitution shall extend over all persons, property, and activities within the jurisdiction of the Confederated Tribes of the Grand Ronde Community of Oregon, except as limited by this Constitution and by Federal Law.

The jurisdiction of the Confederated Tribes of the Grand Ronde Community of Oregon shall extend, to the fullest extent possible under Federal Law, over all lands, waters, property, airspace, minerals and other natural resources, and any interest therein, either now or in the future, owned by the Tribe or individual members held in trust status or located within the boundaries of the tribal reservation which will be established pursuant to the Grand Ronde Restoration Act, notwithstanding the issuance of any existing or future patent or right-of-way.

Section 2. Hunting, Fishing and Gathering Rights.

Nothing in this Article shall be construed as restricting the exercise of hunting, fishing or gathering rights of members, if any, consistent with Federal Law.

*Example 10: Constitution & Bylaws of the Fort Belknap Indian Community of the Fort Belknap Indian Reservation -Montana*

Article II – Territory

The jurisdiction of the Fort Belknap Indian Community shall extend to all lands now contained within the Fort Belknap reservation, and to any lands that may in the future be added thereto.

*Example 11: Constitution and Bylaws of the Agua Caliente Band of Cahuilla Indians, California*

Article II – Territory

The jurisdiction of the Agua Caliente Band of Cahuilla Indians shall extend to the territory within the boundaries of the Agua Caliente Indian Reservation as heretofore designated and to any other lands which may hereafter be added.

*Example 12: Constitution and Bylaws of the Confederated Tribes of the Warm Springs Reservation of Oregon*

Article II – Territory

The jurisdiction of the Confederated Tribes of the Warm Springs Reservation of Oregon shall extend to all lands contained within the present boundaries of the Warm Springs Reservation and to such lands as may have been heretofore or may hereafter be acquired by the Confederated

Tribes of the Warm Springs Reservation or by the United States in trust for such tribes.

*Example 13: Constitution of the Kickapoo Traditional Tribe of Texas*

Article I – Jurisdiction

The jurisdiction of the Kickapoo Traditional Tribe of Texas, hereinafter referred to as the Tribe, shall extend to the extent permitted by federal law, to all lands placed in trust for the Tribe pursuant to Public Law 97-429, known as the Kickapoo Village, to all additional lands which may be acquired by the Kickapoo Traditional Tribe of Texas, to all lands which may be acquired by the United States and held in trust for the Tribe, and to all other lands over which the Tribe may exercise jurisdiction under federal law.

*Example 14: Constitution of the Skokomish Indian Tribe*

Article I – Territory And Jurisdiction

Section 1. Reservation.

Except as prohibited by the Treaty of Point No Point and Federal Law, the Skokomish Tribe shall have jurisdiction over all persons, property, lands, waters, airspace, and resources and all activities occurring within the exterior boundaries of the Skokomish Indian Reservation.

Section 2. Other Areas.

(a) Outside the boundaries of the Skokomish Reservation at the tribe's usual and accustomed fishing grounds and stations, on open and unclaimed lands reserved to the tribe by treaty for hunting and gathering, and on lands and waters which are used for access to fishing, hunting, and gathering territories, the Skokomish tribe shall have jurisdiction as follows:

(1) Jurisdiction over all tribal members;

(2) Jurisdiction over other persons who are not members of the Skokomish Tribe to the extent authorized by treaty or Federal Law;

(3) Jurisdiction over personal property of all persons subject to the tribe's jurisdiction;

(4) Jurisdiction to implement and protect all rights and powers reserved or granted to the tribe by treaty, by the United States Constitution and Federal Law.

(b) In all other areas the Skokomish Tribe shall have jurisdiction to implement and protect all rights and powers reserved or granted to the tribe by treaty, by the United States Constitution and Federal Law.

*Example 15: Constitution for The Pueblo of Isleta, New Mexico*

Article I – Jurisdiction

This constitution shall apply within the exterior boundaries of the Isleta Pueblo Grant and within the exterior boundaries of such other lands as are now or may in the future be added by purchase, grant, lease, or otherwise acquired for use by the Pueblo of Isleta. No such lands shall ever be alienated from the pueblo by action of any member of the pueblo.

*Example 16: Constitution and Bylaws of the Upper Skagit Indian Tribe*

Article I – Name and Territory

Section 2. Territory.

The jurisdiction of the Upper Skagit Indian Tribe shall be any territory in which the Upper Skagit Indian Tribe has a beneficial interest, and any other lands which may be acquired for or by and held in the name of the Upper Skagit Indian Tribe.

Nothing in this article shall restrict treaty hunting and fishing rights which may be established as belonging to the tribe, including the right to hunt and fish in usual and accustomed places.

*Example 17: Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, Colorado*

Article I – Jurisdiction

The jurisdiction of the Southern Ute Indian Tribe through its general council, its tribal council and courts, shall extend to all the territory within the exterior boundaries of the reservation, and to such other lands as may be added thereto by purchase, gift, Act of Congress or otherwise.

*Example 18: Constitution and Bylaws of the Chitimacha Tribe of Louisiana*

Article II – Territory

The jurisdiction of the Chitimacha Tribe of Louisiana shall extend to all lands now held, or hereafter acquired, by or for the Chitimacha Tribe.

*Example 19: Constitution of The Mohegan Tribe of Indians of Connecticut*

Article III – Jurisdiction

Section 1. The jurisdiction of The Mohegan Tribe shall extend to all lands presently owned or leased by The Tribe, all trust lands of The Tribe, all lands hereinafter acquired by The Tribe, and all lands over which The Tribe has regulatory authority.

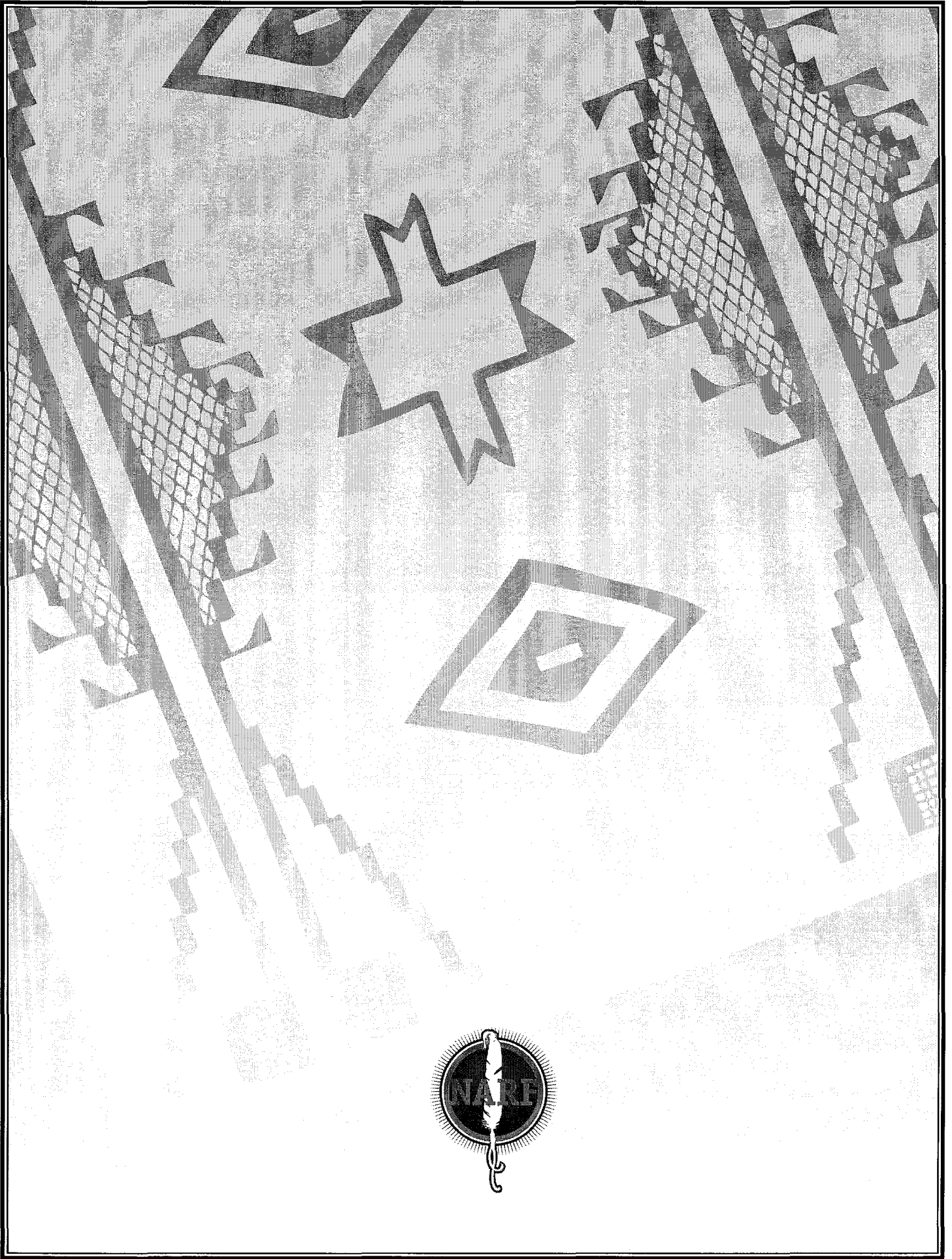
Section 2. The Tribe's jurisdiction shall extend to:

- (a) all persons who are currently enrolled as members of The Tribe;
- (b) all persons who make application to become enrolled as members of The Tribe prior to June 30, 1996, as provided in this Constitution and The Tribal Enrollment Ordinance, who are subsequently accepted as members of The Tribe; and
- (c) all other persons who may lawfully be subject to The Tribe's jurisdiction.

*Example 20: Constitution and Bylaws of the Menominee Indian Tribe of Wisconsin*

Article I – Jurisdiction

The governmental powers of the Menominee Indian Tribe of Wisconsin, a federally recognized sovereign Indian Tribe, shall consistent with applicable Federal law extend to all persons, and subjects, to all lands and other property including natural resources, and to all waters and air space, within the exterior boundaries of the Menominee Indian Reservation, including any land which may hereafter be added to the Reservation under any law of the United States. The governmental powers of the Menominee Indian Tribe shall, consistent with applicable Federal law, also extend outside the exterior boundaries of the Reservation to any persons, subjects, or real property which are, or may hereafter be, included within the jurisdiction of the Tribe under any law of the United States or of the Tribe.





## D. MEMBERSHIP

### A. Considerations.

The purpose of a membership provision is to establish those basic requirements that a person must meet to be a member of the tribe. All tribal constitutions appear to have a membership provision. Although it is possible simply to draft a short provision imposing upon the governing body the duty to enact an ordinance or similar legislation establishing tribal membership requirements, most tribes have chosen to establish membership requirements in their constitutions. The historical reason for this is that, unlike state and federal governments, Indian tribal membership, or citizenship, has since time immemorial been based upon more than residence within a defined territory, although that is one possible requirement for tribal membership. But more than that, Indian tribes have traditionally identified their members by certain other important characteristics and beliefs shared by all the members of the tribe, including race, culture, kinship structure, religion, and economic philosophy. In short, Indian tribes have identified their members as all those who share an identifiable way of life unique to the tribe and who are part of the tribal community. This fact presents tribal governments with a more complicated problem than that faced by non-tribal governments.

Since 1934 when many tribal constitutions were adopted after the enactment of the Indian Reorganization Act, membership requirements in a tribal constitution have included a blood quantum requirement, or at least descendency from that tribe. This is in part a result of a need to provide for more rigid membership requirement because of a tribe's relation with the federal government. This artificial legal construct imposed, or encouraged, by the federal government deviated from the historical reasons mentioned in the preceding paragraph. As a result, that legacy has created a situation where tribes, especially smaller tribes, are at present facing a critical point in their tribal existence because a blood quantum requirement has eroded, and continues to erode, their membership. This issue concerning blood quantum requirements will inevitably become a critical issue for tribes since many will have to lower their blood quantum or strike it from their constitution and return to historical considerations based more on anthropological or sociological reasons, rather than an artificial legal construct like blood quantum.

In fact, at least one office of the federal government has recognized this critical issue facing tribes. The Office of the Assistant Secretary – Indian Affairs (ASIA), U.S. Department of the Interior, with the assistance of the Office of Federal Acknowledgment (OFA), has issued federal acknowledgment decisions to establish, or not, a government-to-government relationship with some petitioners. Importantly, in its analysis of one of seven criteria that a petitioner must meet (criterion 83.7(e)) it has stated that a “petitioner must (1) identify its current members, (2) document the historical Indian tribe and the individuals in that historical Indian tribe from whom its current members descend, and (3) document that descent.” *Shinnecock Indian Nation*, Proposed Finding, page 99. In the evaluation of the current members, the ASIA has determined that “Federal law imposes no general blood degree requirement for tribal membership. Moreover, Federal regulations for determining eligibility for acknowledgment as a tribe (25 CFR Part 83) do not contain a blood quantum requirement.” *Poarch Creek*, Final Determination, 1984, 49 FR 24083).

It is for the above reasons that Indian tribes usually carefully list membership requirements in their constitutions that they believe are basic and fundamental to preserving the identity of the tribe. One key consideration will be if blood quantum is not a requirement, or a diminished requirement, then what will be the substitute? One main factor to consider is whether the person is part of the community and has social contacts with the community. Having said that, the real question at the heart of the matter is what it means to be part of the tribal community. This decision is specific to each tribe. You will have to determine if it is best to define that connection in the constitution or by ordinance. There is no easy answer, but tribes seem to always consider, in some way, that a person must be connected in some way to the tribal community.

In summary, membership requirements of Indian tribes are generally considered by tribes to be so fundamentally important to the existence and identity of the tribe that the basic requirements are usually included in the tribal constitution, rather than left to be established by the tribal council by legislation.

A second consideration, of course, is that membership in the tribe also entitles a person to receive substantial benefits which are unavailable to non-members. For example, tribal members will have a right to share in tribal assets and to receive tribal benefits, as well as federal services provided to the tribe such as education scholarships and health care or to be eligible to receive a permit to possess eagle feathers or parts. This particular area has seen significant attention since the birth of Indian gaming and the resulting per capita distribution of gaming proceeds to tribal members. There have been major disputes surrounding membership requirements because of such distributions, disputes which have lead to disenrollment of members. On the other hand, people of Indian descent who have had no ties to a tribal community suddenly become attuned to their heritage, leading them to make attempts to enroll in a tribe in order to partake of per capita payments. Often, these individuals will be able to prove their genealogical descent from a tribe's base roll. Thus, it makes it even more important to clearly set forth your tribe's membership criteria since much is at stake and to strongly consider requiring more than descent. Otherwise, there is a possibility, especially for smaller tribes that the makeup of the membership will drastically change to the point of altering the political balance of the tribal community. Lastly, tribal members also are entitled to the protection of federal laws designed to protect the unique rights of Indian tribes, such as the laws which permit the Bureau of Indian Affairs to hold tribal and individual lands in trust and exempt those lands from taxation and other kinds of encumbrances.

**B. Existing Provision.** [to be filled in by tribe]

**C. Suggested Provision.**

#### Article - Membership

Section 1. Requirements. [to be filled in by tribe]

Section 2. Ineligibility For Membership.

No person shall be eligible to be a member of the Tribe if that person is enrolled in another Indian tribe.

### Section 3. Enrollment Board.

(a) Within 180 days of the effective date of this Constitution, an Enrollment Board composed of (e.g. three) enrolled tribal members shall be appointed for staggered terms of three years by a majority vote of the members of the governing body present at the meeting. The initial term of each Board member first appointed shall be randomly assigned with one Board member serving three years, one Board member serving two years and one Board member serving one year. Board members may be removed from office by majority vote of the entire governing body present at a regular meeting prior to the expiration of their term only for cause. Any person who holds any elective or appointive tribal office or is a candidate for such office shall be ineligible to serve on the Enrollment Board. Any Board member who becomes a candidate or is elected to Tribal office or is appointed to Tribal office shall automatically forfeit the remainder of their term of office on the Enrollment Board.

(b) The Enrollment Board shall be responsible for enforcing Tribal enrollment laws. The duties of the Enrollment Board shall include, but not be limited to, the following:

- (1) Maintaining the Tribal membership roll.
- (2) Reviewing and approving or rejecting all applications for enrollment in the Tribe *provided that*, a rejected applicant may appeal such decision under Section 4 of this Article.

(c) The Enrollment Board shall perform such other duties as may be delegated to the Board by Ordinance.

(d) The Enrollment Board may issue such regulations as may be necessary to carry out Tribal enrollment law.

Section 4. Appeal From Denial of Membership Application. [Comment: For a non-federally acknowledged tribe, you must seriously consider whether you want to provide an appeal process in the constitution or leave the matter to tribal legislation to provide greater flexibility. Experience has shown that there is an influx of applicants for membership once federal acknowledgment is achieved. Often, many of the applicants will be rejected. Those applicants in turn have the potential to overwhelm the financial and personnel resources of the tribe if they are capable of appealing their denial, especially if they are allowed to appeal to a tribal court. In that situation, a newly-acknowledged tribe will have to divert needed funds to defending itself in tribal court, and possibly state and federal court. For federally recognized tribes, the situation is different. To a large extent membership is stable since they have been processing membership applications for a longer period of time. They may experience some appeals but not on the scale of newly-acknowledged tribes. Thus, an appeal process may be a serious consideration for recognized tribes, but it depends entirely upon the tribe's situation.]

Any person whose application for membership in the Tribe is rejected by the Enrollment Board shall have the right to appeal such adverse decision to the Tribal Judiciary, but only after exhausting all remedies, if any, available within the governing body. That person may appeal the governing body's decision to the Tribal Judiciary within \_\_\_\_ days of such decision. The judgment by the Tribal Judiciary shall be final.

#### Section 5. Automatic Forfeiture.

A member shall be deemed to have automatically forfeited membership in the Tribe along with all rights and benefits to which members are entitled by virtue of their membership (1) upon enrollment in another tribe, or (2) upon a final finding that membership in the Tribe was obtained by fraud or mistake.

#### Section 6. Removal From Membership Roll by the Governing Body.

If, upon the report and recommendations of the Enrollment Board, the governing body determines that an enrolled Tribal member lacks a required membership requirement, the governing body may remove that person from the Tribal membership roll; *provided*, that person may appeal the governing body's decision to the Tribal Judiciary within \_\_\_\_ days of such decision. Only if a final judgment by the Tribal Judiciary is rendered upholding the removal shall that person's name be removed from the membership roll.

#### Section 7. Relinquishment of Membership.

Members of the Tribe may relinquish membership in the Tribe in accordance with procedures established by the Enrollment Board. Such members shall be ineligible to reapply for membership. Any minor whose membership is relinquished by a parent or legal guardian shall have the right to petition the Enrollment Board for automatic reinstatement of membership upon reaching the age of 18, *provided that*, such person petitions within \_\_\_\_\_ [days?, months?, years?] from the day that person reaches the age of 18. If such person fails to petition for automatic reinstatement, such person may apply for membership under Section 1 of this Article.

#### Section 8. Enforcement.

The governing body shall enforce this Article by ordinance; *provided that*, the governing body shall have no power to establish substantive requirements for membership or removal from the membership roll in addition to those established in Section 1 of this Article or to waive any of those requirements.

## **D. Examples**

### *Example 1: Jamestown Klallam Tribe*

#### Article II -Membership

Section 1. The membership of the Jamestown Klallam Tribe shall consist of the following:

- (a) All persons whose names appear on the list of members submitted by the Jamestown Klallam Tribe in its petition for Federal acknowledgment as an Indian tribe pursuant to 25 C.F.R. Part 54 (1978), who met the membership criteria specified in the petition. The Tribal Council may correct the list subject to approval by the Secretary of the Interior.
- (b) All lineal descendants of persons who qualify for membership under subsection 1(a), above; provided, that such descendants possess at least one-fourth (1/4) degree Jamestown Klallam blood.

#### Section 2. Limitation.

No person shall qualify for membership in the Jamestown Klallam Tribe who is a member of any other organized tribe, band, or Indian community officially recognized by the Secretary of the Interior, unless he or she has relinquished in writing his or her membership in such tribe, band or community.

#### Section 3. Adoption.

The Tribal Council shall have the power to enact ordinances governing the adoption of persons as members who have a significant community relationship with the Jamestown Klallam Tribe. Adoption ordinances shall be subject to approval by the Secretary of the Interior.

#### Section 4. Regulation of Membership.

The Tribal Council shall have power to enact ordinances regulating membership as to admission and loss of membership; provided, that any person who may lose his or her tribal membership is entitled to a hearing before the Tribal Council and to adequate notice of such hearing.

### *Example 2: Constitution of the Absentee-Shawnee Tribe of Indians of Oklahoma*

#### Article III -Membership

Section 1. The membership of the Absentee-Shawnee Tribe of Indians of Oklahoma shall consist of the following persons:

- (a) All persons of Indian blood enrolled or who were entitled to be enrolled on the official census roll of the tribe as of January 1, 1937. All Indian blood shown on that roll shall be considered to be blood of the Absentee-Shawnee Tribe.

(b) All children of Absentee-Shawnee blood born to any member of the tribe between January 1, 1937, and April 17, 1954, the effective date of Amendment II to the 1938 constitution and bylaws.

(c) All children born since April 17, 1954, who are of at least one-fourth ( $\frac{1}{4}$ ) degree Absentee-Shawnee blood.

Section 2. From and after the effective date of this Constitution no person shall be enrolled as a member of the Absentee-Shawnee Tribe unless he possesses at least one-fourth ( $\frac{1}{4}$ ) degree Absentee-Shawnee Indian blood.

Section 3. Any person entitled to membership who has been enrolled as a member of another tribe may be enrolled in the Absentee-Shawnee Tribe; provided that person has not shared in land or money as a member of another tribe; and provided further, that person relinquishes in writing and officially terminates membership in the other tribe.

Section 4. All persons, desiring to be enrolled members of the tribe, who are not presently enrolled, must submit an enrollment application to the Secretary of the Executive Committee for subsequent approval or disapproval of the Executive Committee. Applications for membership must be supported by birth certificates or other records recognized by State or Federal officials. Such document or copies thereof shall be kept by the Executive Committee for their permanent records.

Section 5. The General Council shall have power to prescribe rules and regulations by ordinance, covering future membership including adoptions and the loss of membership.

*Example 3: Constitution and Bylaws of the Seneca-Cayuga Tribe of Oklahoma*

Article III -Membership of Tribe

The membership of the Seneca-Cayuga Tribe of Oklahoma shall consist of the following persons:

1. All persons of Indian blood whose names appear on the official census roll of the Tribe as of January 1, 1937.
2. All children, born since the date of the said roll, both of whose parents are members of the Tribe.
3. Any child born of a marriage between a member of the Seneca-Cayuga Tribe and a member of any other Indian tribe who chooses to affiliate with the Seneca-Cayuga Tribe.
4. Any child born of a marriage between a member of the Seneca-Cayuga Tribe and any other person, if such child is admitted to membership by the Council of the Seneca-Cayuga Tribe.

*Example 4: Confederated Tribes of the Grand Ronde Community of Oregon*

Article V –Membership

Section 1. Requirements.

The membership of the Confederated Tribes of the Grand Ronde Community of Oregon shall consist of all persons who are not enrolled as members of another recognized tribe, band or

community and,

(a) whose names validly appear on the official tribal membership roll prepared under the Grand Ronde Restoration Act; provided, that such roll may be corrected by the Tribal Council with the approval of the Secretary of the Interior; or

(b) who possess one-sixteenth (1/16) or more degree Indian blood quantum of a federally recognized tribe or tribes, are descended from a member of the Confederated Tribes of the Grand Ronde Community of Oregon, have filed an application for enrollment according to procedures established pursuant to Section 3 of this Article, and have been accepted as members in accordance with the tribal ordinance adopted under Section 3 of this Article.

For purposes of this section, descent from a member of the Confederated Tribes of the Grand Ronde Community of Oregon shall include lineal descent from any person who was named on any roll or records of Grand Ronde members prepared by the Department of the Interior prior to the effective date of this Constitution.

## Section 2. Dual Membership Prohibited.

No person is an enrolled member of any other organized tribe, band, or Indian community officially recognized by the Secretary of the Interior shall be qualified for membership in the Confederated Tribes of the Grand Ronde Community of Oregon, unless he or she has relinquished in writing his or her membership in such tribe, band or community.

## Section 3. Ordinance.

The Tribal Council shall, within six (6) months of the Tribal Council's initial election to office under this Constitution, enact an ordinance establishing procedures for processing membership matters, including but not limited to application procedures, procedures for correction of the tribal roll, the right to appeal from a rejected application for membership, loss of membership, procedures for voluntary relinquishment of membership, and procedures governing reinstatement of former members who have relinquished membership.

## Section 4. Adoption.

The Tribal Council shall have the power, with the prior approval of the General Council, to enact an ordinance governing the adoption of persons as members who have a significant community relationship with the Confederated Tribes of the Grand Ronde Community of Oregon. Such ordinance shall define what constitutes a significant community relationship.

## Section 5. Loss of Membership.

The Tribal Council shall be ordinance prescribe rules and regulations governing involuntary loss of membership. The reasons for such loss shall be limited exclusively to failure to meet the requirements set forth for membership in this Constitution; provided, that nothing in this section shall prohibit a member from voluntarily relinquishing membership in the Confederated Tribes of the Grand Ronde Community of Oregon, with the consent of the Tribal



Council.

*Example 5: Constitution and Bylaws of the Agua Caliente Band of Mission Indians, California*

Article III -Membership

(a) The membership of the Agua Caliente Band of Mission Indians shall consist of all persons whose names appear on the last official per capita payroll of June 1954, and children born to such members as issue of a legal marriage, provided such children shall possess at least a degree of Indian blood.

(b) No new members may be adopted.

Amendment Constitution And Bylaws of The Agua Caliente Band of Mission Indians  
Amendment

Article III of the constitution and bylaws, Membership, shall be amended by adding a new subsection (c) to read as follows:

(c) The Tribal Council, as provided for in Article IV hereof, shall keep the membership roll current at all times by striking therefrom the names of persons who have relinquished in writing their membership in the Band and of deceased members upon receipt of a death certificate or other evidence of death, and by adding the names of persons eligible under Article III hereof. The Tribal Council shall also be authorized to adopt ordinances establishing procedures for the preparation and maintenance of current membership rolls.

*Example 6: Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada*

Article I -Membership

Section 1. Tribal Membership shall include:

(a) All persons of at least one-quarter ( $\frac{1}{4}$ ) degree Shoshone Indian blood whose names appear on the official census roll of the Elko Indian Colony as of January 1, 1937, hereafter called Base Roll 1.

(b) All persons of at least one-quarter ( $\frac{1}{4}$ ) degree Shoshone Indian blood whose names appear on the "Census of Non-Reservation Shoshone Area, Northeastern Nevada Reservation of the Carson Agency Jurisdiction as of January 1, 1937, taken by Alida C. Bowler," hereafter called Base Roll 2.

(c) All persons of at least one-quarter ( $\frac{1}{4}$ ) degree Indian blood born to a member or descendant of a member of the Tribe before the effective date of this Constitution.

(d) All descendants of members of the Tribe born after the effective date of this Constitution; provided; such descendants possess at least one-quarter ( $\frac{1}{4}$ ) degree Te-Moak Shoshone Indian blood.

(e) Any person who does not appear on either Base Roll 1 or 2, who has at least one-quarter ( $\frac{1}{4}$ ) degree Shoshone Indian blood and who can establish residency for himself or his ancestry in the Te-Moak census area as of January 1, 1937.

## Section 2. Loss of Membership.

(a) The Tribal Council shall cancel the membership of any adult person who relinquishes in writing his membership in the Tribe. The legal guardian of any non compos mentis adult may act in his stead.

(b) No person who is or becomes enrolled as a member of another Tribe shall be enrolled as a member of this Tribe. Any member of this Tribe who becomes enrolled as a member of any other Tribe or Band of Indians and refuses to relinquish his or her membership in such other Tribe or Band shall be subject to disenrollment action by the Tribal Council.

## Section 3. Appeal of refusal of membership.

Any person refused membership by the Tribal Council shall have the right to appeal in accordance with tribal ordinances.

## Section 4. Future membership.

The Tribal Council shall have the power to enact ordinances governing adoption, loss of membership, and future membership in accordance with the standards stated herein; and shall maintain a current membership roll of the Tribe listed by constituent Band.

*Example 7: Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation*

## Article II -Membership

(Section 1 changed in its entirety by Amendment No. VI, effective December 12, 1975)

Section 1. Membership. The membership of the Three Affiliated Tribes of the Fort Berthold Reservation shall consist of:

(a) All persons whose names appear on the membership of the Tribes as of October 2, 1974.

(b) Any persons born before the effective date of this amendment and to any member of the Tribes who was a resident of the reservation at the time of birth of said person.

(c) All persons of at least  $\frac{1}{4}$  degree Indian blood of a federally recognized tribe provided at least c Indian blood be of the Gros Ventre, Mandan and/or Arickara Tribes.

(New Section 2 added by Amendment No. VII, effective December 12, 1975).

## Section 2. Dual Enrollment.

- (a) Persons enrolled with another tribe and who have received benefits from such tribe in the form of land or payments shall not be eligible for enrollment with the Three Affiliated Tribes of the Fort Berthold Reservation, provided that inherited interests shall not be considered as being benefits.
- (b) A person eligible for membership with the Tribe Affiliated Tribes of the Fort Berthold Reservation and another tribe shall relinquish whatever rights of membership he may hold in the other tribe as a condition to his enrollment with the Three Affiliated Tribes of the Fort Berthold Reservation.

## Section 3.

The Tribal Business Council shall have power to promulgate ordinances, subject to review by the Secretary of the Interior, governing future membership, the adoption of new members and the revision of the membership rolls from time to time as determined by such ordinances. (Formerly Section 2 -Changed to Section 3 by Amendment No. VI, effective December 12, 1975)

*Example 8: Constitution and Bylaws of the Chippewa Cree Indians of the Rocky Boy's Reservation, Montana*

## Article II -Membership

Section 1. The membership of the Chippewa Cree Tribe shall consist as follows:

- (a) All members of the Rocky Boy's Band of Chippewas enrolled as of June 1, 1934.
- (b) All children born to any member of the Chippewa Cree Tribe of the Rocky Boy's Reservation who is a resident of the reservation at the time of the birth of said children.
- (c) All children of one-half or more Indian blood born to a non-resident member of the Tribe.
- (d) Any person shall lose his membership if after the adoption of this Constitution he is away from the reservation for a period of ten years unless within that period he applies to the Business Committee for extension of his membership and the Business Committee acts favorably upon such application. Any extension of membership shall be construed to include all absentee children of such member. Likewise, loss of membership by the parent shall be construed to include loss of membership by his absentee children.

Section 2. Any Indian, one-half blood or more and a resident of Montana, not a member of any other reservation, may become a member of this organization provided that two-thirds or more of the eligible voters cast their ballots at such election, and provided further that two-thirds of those voting at such election vote in favor of such adoption. All elections to membership shall be confirmed by the Secretary of the Interior.

*Example 9: Constitution and Bylaws of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation*

Article III -Membership

Membership of the Tribes of the Reservation shall consist of those persons who qualify in accordance with an ordinance approved by the Tribes in a referendum vote. A membership ordinance shall be submitted to the Tribes simultaneously with the submission of this Constitution for referendum vote by the Tribes.

Enrollment Ordinance

WHEREAS, The Tribal Executive Board of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana, ascertained that it is necessary to determine membership of the Tribes in order that per capita payments may be made, and to provide otherwise for the general welfare of its members.

NOW, THEREFORE, BE IT RESOLVED, that membership of the Assiniboine and/or Sioux Tribes of the Fort Peck Reservation shall consist of:

Section 1. Qualifications.

The following individuals automatically qualify for membership in the Assiniboine and Sioux Tribes of the Fort Peck Reservation and shall be enrolled if they comply with the rules of procedure prescribed for enrollment by the Tribal Executive Board.

(a) Basic Rolls. Each living person of Assiniboine and/or Sioux blood whose name appears on either the 1932 annuity payment roll or an allotment schedule prepared and approved pursuant to the Acts of February 8, 1887 (24 Stat. 388), February 28, 1891 (26 Stat. 794), May 30, 1908 (35 Stat. 558), August 1, 1914 (38 Stat. 593), February 14, 1920 (41 Stat. 408), and March 3, 1927 (44 Stat. 1401), provided that he or she is not enrolled as a member of some other tribe.

(b) Descendants of Persons on Basic Roll. Each living person who is of one-fourth ( $\frac{1}{4}$ ) or more Assiniboine or Sioux blood born prior to the effective date of this constitution who is a lineal descendant of a person whose name appears on one or both of the documents specified in (a) of this Section regardless of whether such annuitant or allottee is living or deceased, provided that he or she is not a member of some other tribe at the time of application for enrollment and provided further,

that he or she is a citizen of the United States. Any such person may apply for enrollment at any time. **(AMENDMENT NO. 1 AS PER REFERENDUM VOTE OF 05/07/88.)**

(c) Adoptees. Each person adopted into tribal membership by the General Council prior to the effective date of this Constitution whose adoption was approved by the Secretary of the Interior, or his authorized representative, provided such adoptee has not subsequently become enrolled as a member of some other tribe.

(d) Future Members. Each child of one-fourth ( $\frac{1}{4}$ ) or more Assiniboine and/or Sioux blood born after the effective date of this ordinance to any member of the Assiniboine and Sioux Tribes, provided that the child is not a member of some other tribe at the time of application for enrollment and provided further, that the child is a citizen of the United States at the time of the child's birth.

**(AMENDMENT NO. 2 AS PER REFERENDUM VOTE OF 05/07/88).**

(e) Associate Members. Each child of one-eighth (1/8) or more but less than onequarter (1/4), Assiniboiné, and/or Sioux blood born to any member of the Assiniboiné and Sioux Tribes, provided the child is a citizen of the United States at the time of the child's birth. Associate members shall not be eligible to vote in Tribal elections or to share in any distribution of tribal funds or property, but shall otherwise be eligible for benefits as Indians as provided by Law. **(AMENDMENT NO. 4 AS PER REFERENDUM VOTE OF 05/07/88.)**

Section 2. Loss of Membership.

In no case shall a member lose his membership other than by personal request in writing to the Tribal Executive Board or establishing residence in a foreign country.

Section 3. Rules of Procedure.

The Tribal Executive Board shall have the authority to appoint an Enrollment Committee of seven (7) tribal members and to prescribe rules to be followed by the Committee and by the tribal members in compiling a membership roll in accordance with the provisions of this Article. The completed roll to be approved by the Tribal Executive Board, and in a case of distribution of tribal assets the roll shall be submitted to the Secretary of the Interior for final approval by him or by his authorized representative prior to such distribution.

Section 4. Appeals.

Any person who has been rejected for enrollment as a member of the Assiniboiné and Sioux Tribes shall have the right to appeal within sixty (60) days from the date of receipt of written notice of rejection to the Secretary of the Interior from the decision of the Tribal Executive Board, and the decision of the Secretary of the Interior shall be final.

Section 5. Definition.

The terms "Assiniboiné or Sioux blood" or "Assiniboiné and/or Sioux blood" as used in this Ordinance, means the blood of the Assiniboiné or the Sioux Tribes of the Fort Peck Reservation, Montana, or the blood of any other federally recognized Assiniboiné or Sioux Tribes, or any combination of Assiniboiné and Sioux blood. The burden shall be on the applicant for enrollment to establish the requisite degree of blood by evidence satisfactory to the Executive Board. **(AMENDMENT NO. 3 AS PER REFERENDUM VOTE OF 05/07/88.)**

BE IT FURTHER RESOLVED, that this membership ordinance when adopted by a majority vote of the Assiniboiné and Sioux Tribes of the Fort Peck Indian Reservation, Montana, voting at a special election called by the Tribal Executive Board shall be in full force and effect.

*Example 10: Constitution and Bylaws of the Menominee Tribe of Wisconsin*

Article II -Tribal Membership

Section 1. Requirements.

Membership in the Menominee Indian Tribe shall consist of the following persons:

- (a) Those persons of one-quarter ( $\frac{1}{4}$ ) degree Menominee Indian blood whose names appear on the tribal roll compiled pursuant to subsection 4(c) of the Menominee Restoration Act (87 Stat. 771), and
- (b) Those persons who possess at least one-quarter ( $\frac{1}{4}$ ) degree Menominee Indian blood, and who are descendants of persons enrolled on the tribal member roll compiled pursuant to subsection 4(c) of the Menominee Restoration Act (87 Stat. 771), and who are enrolled on the official tribal membership roll in accordance with procedures established by the Tribal Legislature by ordinance.
- (c) A person shall be removed from the tribal membership roll only in accordance with the procedures set forth in Section 5 of this Article.

Section 2. Ineligibility For Membership or Automatic Forfeiture of Membership.

No person shall be eligible to be a member of the Menominee Indian Tribe if that person is enrolled in another Indian tribe. Any member of the Menominee Indian Tribe who applies to be and is accepted as a member of another Indian tribe shall thereby automatically forfeit membership in the Menominee Indian Tribe and all rights and benefits to which tribal members are entitled by virtue of their membership.

Section 3. Enrollment Committee.

- (a) An Enrollment Committee composed of five (5) eligible tribal voters shall be elected or appointed, beginning in 1992 and every three years thereafter, at the Annual General Council meeting in accordance with Bylaw III, Section 4, of this Constitution and Bylaws. The members of the Enrollment Committee shall be subject to the supervision of the Tribal Legislature. If the Enrollment Committee is appointed, the Tribal Legislature, by majority vote, shall have the power to terminate any such appointment for good cause, and to make a new appointment. If the Enrollment Committee is elected, the members of the committee shall be subject to the terms of Article VII of this Constitution, including the provisions of Section 2, which shall govern the manner of the Enrollment Committee from office. In the event of any vacancy, the Legislature, by majority vote, shall within sixty days appoint a replacement for the remainder of the term.
- (b) The Enrollment Committee shall have the authority and duty to maintain a current and accurate official tribal membership roll in accordance with the provisions of this Article. The Enrollment Committee shall report at least four (4) times a year to the Tribal Legislature as to the current status of the roll. The Committee shall have the authority to investigate suspected errors in the roll, and where it deems appropriate in view of evidence, shall recommend changes in the roll to the Tribal Legislature.

#### Section 4. Appeal From Denial of Membership Application.

Any person whose application for membership in the Menominee Indian Tribe is denied shall have the right to appeal such adverse decision to the Tribal Judiciary, but only after exhausting all remedies available within the Tribal Legislature.

#### Section 5. Removal From Membership Roll by Tribal Legislature.

If, upon the report and recommendations of the Enrollment Committee, the Tribal Legislature determines that any person lacks a required membership qualification, proceedings shall be instituted against such person in Tribal Court to remove such person from the tribal membership roll. Only after a final decision is rendered in favor of the Tribal Legislature shall the affected person's name be removed from the tribal membership roll.

#### Section 6. Voluntary Relinquishment of Membership.

Members of the Menominee Indian Tribe may relinquish membership in the Tribe in accordance with procedures established by the Tribal Legislature. However, any member of the tribe who relinquishes membership voluntarily, or who forfeits membership by enrolling in another Indian tribe, shall not again be eligible to enroll as a member of the Menominee Indian Tribe.

#### Section 7. Enforcement.

The Tribal Legislature shall enforce this article by ordinance, provided that, the Tribal Legislature shall have no power to establish substantive requirements for membership in addition to those established in Section 1 of this Article, nor to waive any of these requirements.

#### *Example 11: Constitution and Bylaws of the Chitimacha Tribe of Louisiana*

##### Article III -Membership

#### Section 1. The membership of the Chitimacha Tribe shall consist of

(a) All Chitimacha Indians living on the date of approval of this constitution,

(1) Whose names appear on the Annuity Pay Roll of 1926, Claim 374514, which was received and recorded by the Office of Indian Affairs on October 18, 1926, or the revised census roll of June 1959, of record at the Choctaw Indian Agency, Philadelphia, Mississippi, or

(2) Who are lineal descendants of such persons provided such descendants possess at least one-sixteenth (1/16) degree Chitimacha Indian blood and provided further, such descendants apply for membership and furnish birth certificates or other sufficient evidence to prove their ancestry.

(b) Any child of one-sixteenth (1/16) degree or more Chitimacha Indian blood born to any enrolled member of the tribe after the approval of this constitution shall be entitled to membership.

Section 2. The tribal council shall have the power to correct the membership roll, with the approval of the Secretary of the Interior, at any time.



Section 3. The burden of proof rests upon the applicant to establish his eligibility for enrollment.

Section 4. Enrollment Ordinances. The tribal council shall have the power to pass ordinances, subject to the approval of the Secretary of the Interior, governing future membership, loss of membership, and the adoption of new members, provided that no person of less than one-sixteenth (1/16) degree Chitimacha Indian blood shall be admitted to membership in the Chitimacha Tribe of Louisiana.

*Example 12: Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, Colorado*

## Article II -Membership

Section 1. The membership of the Southern Ute Indian Tribe shall consist of the following:

- (a) All persons duly enrolled on the 1970 tribal census roll dated August 31, 1971, approved by the Albuquerque Area Director on February 1, 1972.
- (b) All children of enrolled members born subsequent to July 14, 1965, and prior to the effective date of this revision, if such children possess at least one-fourth (1/4) degree of Southern Ute Indian blood; and have not been enrolled as a member of any other Indian tribe.
- (c) All children of enrolled members born subsequent to the effective date of this revision, if such children shall be one-fourth (1/4) or more degree of Southern Ute Indian blood and PROVIDED that such person shall not be included on the membership roll of any other Indian tribe and is approved for adoption by the tribal council.

Section 2. The tribal council shall have the power to enact ordinances consistent with this constitution, to govern future membership, loss of membership and the adoption of persons into the Southern Ute Tribe. Such ordinances shall be subject to approval by the Secretary of the Interior or his authorized representative.

Section 3. The tribal council shall have the power to prescribe rules governing the compilation, maintenance and correction of a tribal membership roll. Such rules, insofar as the correction of blood degree is concerned, shall be subject to approval by the Secretary of Interior or his authorized representative.

Section 4. The tribal council shall have the sole authority and original jurisdiction to determine eligibility for enrollment. No decree of any non-tribal court purporting to determine membership in the tribe, paternity, or degree of Indian blood, shall be recognized for membership purposes.

*Example 13: Constitution and Bylaws of the Upper Skagit Indian Tribe*

Article II -Membership

Section 1. The membership of the Upper Skagit Indian Tribe shall consist of the following:

- (a) All persons possessing at least 1/8 degree Skagit-Suiattle Indian blood whose names appear on the Skagit-Suiattle Census dated January, 1942.
- (b) All original Upper Skagit allottees possessing at least 1/8 degree Skagit-Suiattle Indian blood and their descendants of at least 1/8 degree Skagit-Suiattle blood living on January 1, 1942.
- (c) All other persons possessing at least 1/8 degree Skagit-Suiattle Indian blood and who were accepted as members of the Upper Skagit Tribe by official action of the tribe as of January 1, 1942.
- (d) All persons possessing at least 1/8 degree Skagit-Suiattle Indian blood born to any member of the Upper Skagit Indian Tribe.
- (e) All persons who are adopted into membership in accordance with resolutions or ordinances passed by the tribal council.

Section 2. No person shall become a member of the Upper Skagit Tribe who is a member of any other organized tribe, band, or Indian Community which is officially recognized by the Secretary of the Interior, unless he has relinquished his membership in such tribe, band, or community, prior to being approved for membership with the Upper Skagit Indian Tribe.

Section 3. The Upper Skagit Tribal Council may correct the tribal membership roll at any time, subject to the approval of the Secretary of the Interior or his authorized representative, provided that any person previously admitted into membership and officially approved will not be removed from the tribal membership roll without a hearing.

Section 4. The Upper Skagit Enrollment Committee shall establish procedures for handling membership matters including, but not limited to, application procedures, establishing and maintaining official records, disenrollment guidelines and blood degree correction all in accordance with resolutions approved by the tribal council.

*Example 14: Yankton Sioux Tribe*

Article IV. Membership (See Amendment 1)

Section 1. The 1921 Yankton Sioux Tribal Rolls shall be the base for the current membership, and all members shall be of the Yankton-Sioux Indian blood. The Yankton Sioux Tribal Membership shall comprise those persons whose names appear on the Rosebud Agency Census Roll. Every effort should be made by resident tribal members to induce non-resident relatives to register themselves on this roll, including children born off the reservation. This shall be recognized officially as the LIVING YANKTON SIOUX INDIAN TRIBAL ROLL. Names of the deceased shall be stricken from the roll, and the new-born shall be added to said roll. Those born after the date of distribution of per capita (in the event there is one) shall not be entitled to that

particular distribution. In all fairness the date of distribution (in the event there is one) shall be set and declared final, but actual distribution shall take place one year after said final date. This procedure is to allow time for registration for eligibility, in the event that one is born in the last hours of the last twenty-four hour day. Parents of any new-born in the last twenty-four hour period, on or off the reservation, shall have time to enroll such new-born in said roll (birth certificate required as proof.) To be eligible for the LIVING YANKTON SIOUX INDIAN TRIBAL ROLL, members must possess at least one-quarter ( $\frac{1}{4}$ ) degree Yankton Sioux Indian blood, provided, moreover, that they are not enrolled on another reservation. This section shall not segregate Yankton Sioux Indian blood, paternal or maternal.

Section 2. The membership rolls shall be reviewed annually by the Committee in order to keep records up to date as well as make any necessary corrections, said corrections subject to the approval of the Tribe.

Section 3. The active membership shall be comprised of Tribal members who are of legal age (21 years and over).

*Example 15: Constitution of the Skokomish Tribe*

Article II -Membership

Section 1. Members.

The membership of the Skokomish Tribe shall include the following persons:

- (a) All persons of Indian blood whose names appear on the census roll of the tribe as of January 1, 1937;
- (b) All persons born between January 1, 1937, and January 12, 1966, to any member of the Skokomish Tribe who was a resident of the reservation at the time of the child's birth;
- (c) All persons of at least one-fourth ( $\frac{1}{4}$ ) degree Skokomish blood;
- (d) All persons of at least one-eighth ( $\frac{1}{8}$ ) degree Skokomish blood and at least one-fourth ( $\frac{1}{4}$ ) degree total Indian blood who are descendants of any Skokomish tribal member; and
- (e) All persons adopted into the membership as provided in Section 4 of this article.

Section 2. Dual Membership Prohibited.

No person who is an enrolled member of any other Indian nation, tribe, band, or community shall at the same time be a member of the Skokomish Tribe. Status as an at-large shareholder in a regional corporation established pursuant to the Alaska Native Claims Settlement Act shall not be construed as enrollment for purposes of this section.

### Section 3. Enrollment Procedures.

- (a) No person shall be enrolled in the Skokomish Tribe who has not applied for membership according to tribal regulations.
- (b) The tribal council shall have the following powers regarding enrollment of tribal members:
  - (1) The power of enact ordinances setting procedures for enrollment and correction of the tribal roll; and
  - (2) Subject to approval of the Secretary of the Interior where required by Federal Law, the power to correct the original or current tribal roll at any time by adding the names of persons who should have been included or by deleting the names of persons who have relinquished their tribal membership or who were incorrectly included in the roll.
- (c) A living person may be removed from the tribal roll only for failure to meet the qualifications set out in this constitution. Any person subject to removal from the roll shall be provided with reasonable notice of the proposed action and an opportunity to present evidence on his or her behalf.

### *Example 16: Constitution of the Kickapoo Traditional Tribe of Texas*

#### Article II -Membership

Section 1. The membership of the Kickapoo Traditional Tribe of Texas shall consist of the following persons:

- (a) All persons of Kickapoo Indian blood whose names appear on the official roll of the Texas Band of Kickapoo dated November 8, 1987, and to those enrolled through November 8, 1988; and
- (b) All children, born to a tribal member, who are at least one-fourth ( $\frac{1}{4}$ ) degree Kickapoo Indian blood.

Section 2. From and after the adoption of this Constitution, persons who are members of other federally recognized Indian tribes who are at least  $\frac{1}{4}$  degree Kickapoo Indian blood may apply for membership in the Tribe provided: (1) they have relinquished their membership in the other Tribe; (2) they have resided within the jurisdiction of the Tribe as defined in Article I for three (3) years; and (4) the application for membership is approved by the Membership Committee.

Section 3. No person shall be a member of the Tribe who is enrolled or recognized as a member in any other tribe, unless he or she relinquishes membership in such other tribe pending enrollment with the Kickapoo Traditional Tribe of Texas by submitting to the Tribe a conditional relinquishment form properly executed. Upon acceptance of enrollment in the Kickapoo Traditional Tribe of Texas, the member shall provide evidence that his or her name has been stricken from the rolls of such other Tribe.

Section 4. The Traditional Council shall have the power to prescribe rules and regulations by ordinance not inconsistent with this Article governing all matters pertaining to membership.

Section 5. Within reasonable time after the adoption of the Constitution, the Traditional Council shall appoint a Membership Committee composed of three tribal members who shall serve

four (4) year terms, except no Committee member shall serve more than two (2) consecutive terms. The Membership Committee shall act on all applications for membership and other issues relating to membership. Decisions of the Membership Committee may be appealed to the Traditional Council which shall render final decisions. Persons appealing to the Traditional Council on membership matters shall be entitled to a hearing after proper notice. Members of the Membership Committee may be removed only through the recall procedure set out in Article VI, Section 4.

*Example 17: Constitution of the Cherokee Nation*

Article III -Membership

Section 1. All members of the Cherokee Nation must be citizens as proven by reference to the Dawes Commission Rolls, including the Delaware Cherokees of Article II of the Delaware Agreement dated the 8<sup>th</sup> day of May, 1867, and the Shawnee Cherokees as of Article III of the Shawnee Agreement dated the 9<sup>th</sup> day of June, 1869, and/or their descendants.

Section 2. There shall be established a Cherokee Register, to be kept by the Registrar, for the inclusion of any Cherokee for membership purposes in the Cherokee Nation who presents the necessary evidence of eligibility for registration.

(a) A Registration Committee shall be established. It shall be the duty of the Registration Committee to consider the qualifications and to determine the eligibility of those applying to have their names entered in the Cherokee Register. The Registration Committee shall consist of a Registrar and two (2) assistants. All members shall be appointed by the Principal Chief, and confirmed by the Council.

(b) There shall be a number assigned to every name which is approved and entered into the Cherokee Register. This number shall be preceded by the three words. "Cherokee Registry Number."

(c) The decisions of the Registration Committee shall be subject to review by the Tribunal created by Article VII.

Section 3. Registration as used in this article refers to the process of enrolling as a member of the Cherokee Nation and is not the same as the registration for voting purposes.

*Example 18: Constitution for The Pueblo of Isleta, New Mexico*

Article II -Membership

The following persons shall be members of the Pueblo of Isleta, provided such persons shall not have renounced, or do not hereafter renounce their membership by joining another tribe or pueblo, or otherwise:

Section 1. Persons on one-half (½) or more degree of Isleta Indian blood and Isleta parentage shall be members of the Pueblo of Isleta, provided they have not renounced their right to membership.

Section 2. All persons of one-half (½) or more degree Isleta Indian blood whose names appear on the official census roll maintained by Southern Pueblos Agency, as of January 1, 1970.

Section 3. All persons of one-half (½) or more degree of Isleta Indian blood born after January 1, 1970.

Section 4. Any person of one-half (½) or more degree of Indian blood who is hereafter naturalized or adopted in conformity with an appropriate ordinance of the council or according to the laws and traditions of the Pueblo of Isleta.

Section 5. No person shall be or become a member of the Pueblo of Isleta who is an enrolled member of any other Indian tribe or pueblo.

Section 6. Non-Indians shall never become members of the Pueblo of Isleta.

Section 7. The council shall have the power to adopt ordinances, consistent with this constitution, to govern future membership, loss of membership and the adoption or naturalization of members into the Pueblo of Isleta, and to govern the compilation and maintenance of a tribal roll.

Section 8. No decree of any non-tribal court purporting to determine membership in the pueblo, paternity or degree of Isleta Indian blood shall be recognized for membership purposes. The council shall have original jurisdiction and sole authority to determine eligibility for enrollment for all tribal purposes except where the membership of an individual is dependent upon an issue of paternity, in which case the courts of the pueblo shall have authority and exclusive jurisdiction.

*Example 19: Constitution of the Choctaw Nation of Oklahoma*

Article II -Membership

Section 1. The Choctaw Nation of Oklahoma shall consist of all Choctaw Indians by blood whose names appear on the final rolls of the Choctaw Nation approved pursuant to Section 2 of the Act of April 26, 1906 (34 Stat. 136) and their lineal descendants.

Section 2. Except as hereinafter provided, any Choctaw by blood who has elected or shall hereafter elect to become a member of any other tribe or band of Indians may not be a member of this Nation.

Section 3. The Tribal Council shall have the power to adopt any Choctaw by blood as a member of the Choctaw Nation who is or has become a member of any other tribe or band of Indians and who applies for membership in the Choctaw Nation; provided, the applicant denounces his membership in such other tribe or band of Indians.

*Example 20: Constitution of the Otoe-Missouria Tribe of Indians*

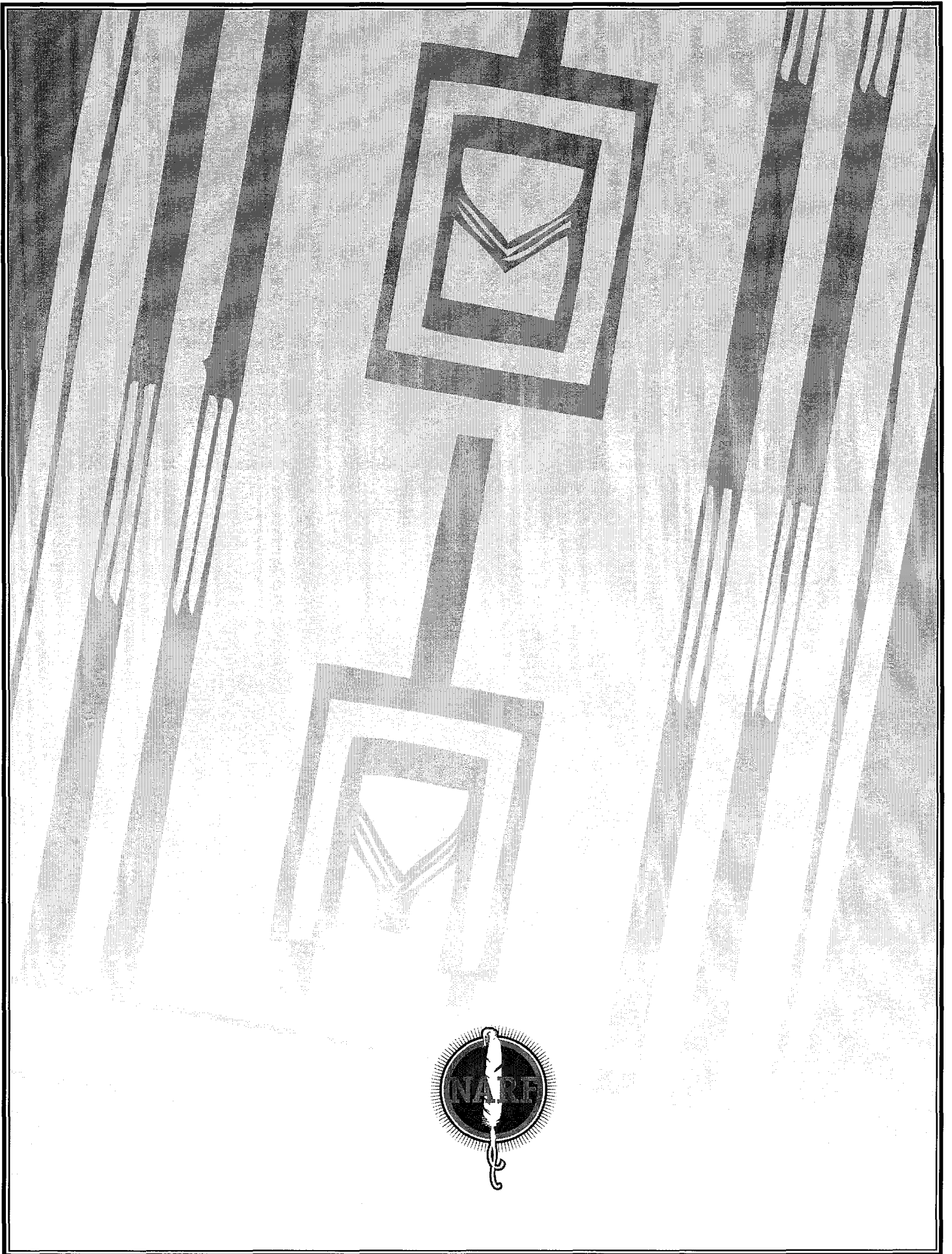
Article IV -Membership

Section 1. The membership of the Otoe-Missouria Tribe of Indians shall consist of the following persons who have not received land or money by virtue of being enrolled as members of another Indian tribe:

- (a) All persons whose names appear on the official membership roll of the Tribe as of October 14, 1966.
- (b) All persons who met the requirements for enrollment in effect as of October 14, 1966, but whose names do not appear on the roll of that date.
- (c) All persons born to a tribal member after October 14, 1966, who are of at least one-fourth ( $\frac{1}{4}$ ) degree Otoe-Missouria Tribal blood.

Section 2. The Tribal Council shall implement the provisions of the Membership Resolution adopted February 24, 1949, for determining membership eligibility under Section 1(b) above and shall have the power to enact and enrollment ordinance consistent with the above provisions, subject to approval by the Secretary of the Interior, which shall include provisions for adoption and loss of membership and all other enrollment rules and procedures, including the establishment of an enrollment committee.





## E. ELECTIONS

### A. Considerations.

On many occasions, elections of tribal leaders have resulted in internal tribal disputes, ultimately leading to unrest within the tribal community and governing body of the tribe. Inevitably, the internal unrest leads to ineffective and inefficient tribal government. In some situations, it is difficult, if not impossible, to run the day-to-day operations of tribal government. Questions arise as to who is really in control of tribal government.

Such unrest can also disrupt tribal dealings with outsiders including the federal government, state government, and business community. Often the tribes turn to the Bureau of Indian Affairs (BIA) to resolve the dispute. Meanwhile, the BIA, as well as other federal agencies, may decide to withhold federal funds sometimes amounting to millions of dollars for an indefinite period of time until the dispute is resolved. At those times, state governments and the non-Indian business community are reluctant to engage in any kind of relationship with the tribe, especially if it involves investing money with the tribe, on or off tribal lands.

Internally, the unrest leads to membership or a faction of leadership mounting challenges to the legitimacy of purported leaders. This leads to a situation where they seek outside assistance to resolve a dispute surrounding purported leadership. The outside assistance, often lawyers, simply intensifies the dispute, which in many cases leads to litigation. When this happens, litigants will often turn to a federal court. Whether good or bad, the issue most relevant for a tribe is the effect on tribal sovereignty and whether there will be an infringement on tribal sovereignty by the very fact that a possibility exist for a federal court to say who are the so-called legitimate leaders of a tribe, as opposed to the membership deciding the issue. Even more disturbing for some is the possibility that the BIA will ultimately influence the leadership determination by acknowledging certain tribal leaders as the so-called legitimate leaders.

These election problems often stem from poor or ineffective procedures for the conduct of the election process. One safeguard is to organize an autonomous body to oversee elections, often called an election board. It is important that they be insulated from the control of the tribal governing body to give the election process more objectivity and legitimacy. Another safeguard is to enact an election ordinance to instill objectivity in the election process by dealing with each of the several types of tribal elections. The ordinance should include such provisions as on-going voter registration, majority voting, secret balloting, absentee voting and a procedure for quickly settling election disputes. It is imperative to have a procedure and forum readily available to settle disputes prior to (for example, a candidate challenges his or her name not being placed on the ballot) and after an election (for example, a candidate challenges the outcome of an election). It should also set forth a procedure, a referendum or an initiative, for example, for handling petitioning for recalls of tribal officials and how such petitions are determined to be valid.

The use of a tribal voter registration system has many advantages over the use of such ambiguous terms as eligible to vote. A voter registration system has the benefit of having a definite base figure to determine whether a required percentage of voters have signed a petition

or participated in an election.

If the constitution provides for representation by districts, a procedure should be included to comply with the one-person, one-vote principle. This should insure compliance with the Equal Protection Clause of the Indian Civil Rights Act. The Constitution should also incorporate standards such as contiguity and compactness.

Where selection of leadership is determined by other processes, such as appointment by designated chiefs, religious or clan leaders, it is useful to describe – where this doesn't run afoul of cultural or religious prohibitions — that process to avoid misunderstandings about the legitimacy of leadership.

Regarding the selection and appointment or election of a chief, religious or clan leader – generally, a traditional or cultural leader - there can be considerable disputes and disagreements as to who legitimately holds such positions, for how long and how they are selected. And, since it belongs to the area of core tribalism, there is usually no resort to outside forums, such as a federal court to determine who legitimately holds such position. In the end, it is a matter for the tribal community to settle. But, a prolonged dispute often creates political and business problems when the person holding such a position is entitled to vote on the governing body of the tribe or has veto power over actions of the governing body. Thus, it is important to describe – again, where this does not run afoul of cultural or religious prohibitions – the processes governing the selection and appointment or election of those individuals.

## **B. Questions.**

1. In those districts electing one representative, in the event no candidate received more than 50 percent of the votes cast, should: 1) A run-off election be held between the two candidates receiving the most votes? Or 2) The candidate receiving the most votes be declared the winner? If a run-off, when shall the election be held?

2. If your Constitution will establish voting districts, should the Constitution contain a specific mandate to apply a district criteria of contiguity, i.e., a contiguous district is one in which a person can go from any point within the district to any other without leaving the district? For purposes of contiguity should water be considered land?

3. If your Constitution will establish voting districts, should the Constitution contain a specific mandate to apply a district criterion of compactness, i.e., are appropriate shapes of districts and the appropriate linkage between the shaped districts assumed?

4. Should the Constitution contain a specific mandate of a one-man/one-vote principle? What should be the standard deviation: 5%, 10% or another percentage figure? Should the standard deviation apply to each district or as a whole to the entire exterior boundaries of the identified district boundaries? Should the 10 % standard deviation limit be combined, i.e., the deviation from the ideal of the most over-populated and under-populated districts combined to 10 percentage points?

5. Should the districts be based on population or registered voters?

6. Should the geographical boundaries of the districts be based as close as possible to postal zip code boundaries?

**C. Existing Provisions.** [to be filled in by Tribe]

**D. Suggested Provisions.**

Section 1. Voter Requirements.

Any enrolled member of the Tribe who is \_\_\_\_ years of age or older and is registered to vote shall be entitled to vote in Tribal elections, except if such member is judicially declared mentally incompetent.

Section 2. Voting.

Except as may be otherwise specified in this Constitution, voting in Tribal elections shall be by secret ballot cast at polls established by the Election Board at such sites designated by the Election Board. Absentee voting shall be permitted in accordance with such procedures as shall be established by the Election Board. No proxy voting or write-in voting shall be allowed in Tribal elections.

Section 3. Regular and Special Elections.

The governing body shall provide by ordinance for the holding of regular elections, including establishing dates, times and places for holding such elections. The governing body shall also provide by ordinance for the holding of special elections by establishing the procedure by which such elections may be called and held with adequate notice provided to registered Tribal voters.

Section 4. Election Board.

(a) Within 180 days of the effective date of this Constitution, an Election Board composed of three registered voters of the Tribe shall be appointed for staggered terms of three-years by a majority vote of the governing body members present at a regular meeting of the governing body. The initial term of each Board member first appointed shall be randomly assigned with one Board member serving three years, one Board member serving two years and one Board member serving one year. Board members may only be removed for cause. Removal from office requires a majority vote of the entire governing body present a regular meeting prior to the expiration of their term. Any person who holds any elective or appointed Tribal office or is a candidate for such office shall be ineligible to serve on the Election Board. Any Board member who becomes a candidate, is elected to Tribal office or is appointed to Tribal office shall automatically forfeit the remainder of their term of office on the Election Board.

(b) The Election Board shall be responsible for enforcing Tribal election laws.

(c) The Election Board shall perform such other duties as may be delegated to the Board by ordinance.

(d) The Election Board may issue such regulations as may be necessary to carry out a Tribal election ordinance.

#### Section 5. Election Ordinance.

The governing body shall enact an election ordinance that shall include, but shall not be limited to, voter registration requirements, a provision for the appointment of a three-member Election Board and a provision to expeditiously resolve disputed elections.

#### Section 6. First Election.

(a) The first election under this Constitution shall be held on the date of the next regular election that was scheduled under the Constitution [and Bylaws] and shall be supervised and conducted pursuant to an election ordinance enacted by the governing body then in office pursuant to Section 5 of this Article. [note: should be made fact specific to the tribe]

(b) All members of the governing body at the time this Constitution becomes effective shall continue to serve and shall be entitled to exercise all powers granted by this Constitution to the governing body until such time as their successors are elected and installed under this Constitution.

### **E. Examples.**

*Example 1: Constitution and Bylaws of the Chitimacha Tribe of Louisiana*

#### Article VI – Elections

##### Section 1.

Annual elections shall be held on the second Saturday in June to fill vacancies on the council resulting from the expiration of the two-year terms of office. Officers and councilmen, hereinafter referred to as members of the Tribal council, shall be elected by secret ballot. A majority of those voting shall be necessary to effect election.

##### Section 2. Entitlement to vote.

Any Tribal member, male or female, eighteen (18) years of age or over, shall be entitled to vote in any election, except in elections to adopt or amend this constitution. Participation in elections to adopt or amend this constitution shall be limited to those who are twenty-one (21) years of age or older. No person shall be permitted to vote in any election unless he is duly registered.

### Section 3. Election Ordinance.

The Tribal council shall enact an ordinance governing the conduct of Tribal elections and referendums, provided that such election ordinance shall provide for voter registration, secret balloting, absentee voting, and procedures for settling election disputes.

### Section 4. First Election.

Within four (4) months after the approval of this constitution, the chairman of the present council shall call a special election for the purpose of electing the members of the Tribal council. The present council shall appoint an election board of three (3) persons to supervise the first election of members of the Tribal council under this constitution. The board shall prescribe rules and regulations for conducting such election, which shall be by secret ballot. After the first election, the members of the Tribal council shall be elected in accordance with Section 3 of this Article.

*Example 2: Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, Colorado*

## Article IV – Nominations and Elections

### Section 1. The First Election.

The first election under this constitution shall be held on the first Friday in November (November 7, 1975) and shall be supervised and conducted in accordance with an election ordinance enacted by the council then in office pursuant to Section 7 of this article. The position of Tribal council chairman and the two (2) vacancies on the council which would occur in November, 1975 under the original constitution, shall be filled for three (3) year terms at the November 7, 1975 election. Those incumbents in the two (2) above mentioned council positions shall continue to serve until December 2, 1975 unless earlier removed from office, or until their successors are duly elected and installed.

Successful candidates for the three (3) vacant council positions (chairman and two (2) council members) and the person appointed by the chairman to serve as vice-chairman, shall be installed in office on the first Tuesday of December (December 2, 1975). Thereafter there shall be annual elections on the first Friday in November to fill for three (3) year terms, the two (2) vacancies occurring each year so as to continue the system of staggered terms of office. Every third year there shall also be elected a Tribal council chairman for a three (3) year term. No person shall hold the office of Tribal Council Chairman consecutively for more than three terms.

### Section 2. Terms of Office.

The terms of office of the Tribal council chairman and the members of the Tribal council shall be three (3) years, PROVIDED, that upon adoption and approval of this constitution the unexpired terms of the council members elected under the previous constitution shall continue

until their terms expire at the end of three (3) years from the date of their installation or until their successors are duly elected and installed.

### Section 3. Assumption of Office.

Newly-elected members of the Tribal council shall be installed in office on the first Tuesday of December after their election. Persons who are elected or appointed to fill any unexpired term on the council shall take office immediately following certification of their election or appointment.

### Section 4. Voter Qualifications.

Any enrolled member of the Southern Ute Indian Tribe, male or female, eighteen (18) years of age or over, shall be entitled to vote at any Tribal election PROVIDED such person is duly registered.

### Section 5. Qualification of Candidates.

Candidates for membership on the Tribal council shall be at least twenty-five (25) years of age at the time of election or appointment, and shall have physically resided within the present exterior boundaries of the Southern Ute Indian Reservation for at least ninety (90) days immediately preceding their appointment or the election at which they are candidates for Tribal office. No person who has been convicted of a felony shall qualify as a candidate or hold membership on the Tribal council.

### Section 6. Election Board.

An election board, appointed by the Tribal council, shall maintain a register of qualified voters, rule on the eligibility of the candidates for Tribal office, settle all election disputes and supervise and administer all Tribal elections in accordance with established Tribal ordinances and in conformity with this constitution PROVIDED, that no member of the election board shall be at the same time a member of the Tribal council or a candidate for Tribal office. Persons appointed to the election board may be removed by the Tribal council chairman with the concurrence of the Tribal council. The election board shall choose its own chairman, vice-chairman and secretary from within its membership.

### Section 7. Election Ordinance.

Rules and procedures governing the elections under this constitution shall be prescribed by ordinance of the Tribal council. Such ordinance shall include provisions for notice of election, secret ballots, absentee voting, registration of voters, special elections and a procedure for settling election disputes. Further, it shall contain provisions to govern the filling of unexpired terms of office pursuant to Section 6(b) of Article V and the conduct of referendum elections as set forth in Section 3 of Article VI.



*Example 3: Constitution and Bylaws of the Upper Skagit Indian Tribe*

Article IV – Nominations and Elections

Section 1. Eligibility to vote and hold office.

All members of the Upper Skagit Tribe 18 years of age or older shall be eligible to vote, and any qualified voter 21 years of age or older may become a candidate for the Tribal council.

Section 2. Election Dates.

The first Tribal council election under this constitution shall be held within 30 days after the constitution is ratified and approved. Thereafter, Tribal council elections shall be held at the annual membership meeting.

Section 3. Nominations.

Nominations for the Tribal council may be made from the floor, or in accordance with other procedures approved by the membership.

Section 4. Election Procedures.

Election procedures shall be in accordance with written election regulations adopted by the Tribal council. The regulations shall require voting by secret ballot, provide for absentee balloting, and shall prescribe the duties of the election board, outline procedures for settlement of election disputes, tie votes, and shall include any further provisions which are consistent with this constitution and bylaws.

Section 5. Council Terms.

At the first election, the three candidates receiving the highest number of votes shall hold office for three (3) years; the next two highest for two (2) years; and the next two (2) highest for one (1) year or until the first annual election.

In the following annual elections, the councilmen shall be elected on the above staggered basis for three (3) year terms.

*Example 4: Constitution of the Kickapoo Traditional Tribe of Texas*

Article V – Elections

Section 1. Regular Elections.

Elections shall be held every two (2) years on the third Saturday in November with the members being selected to fill the positions with terms expiring that year on the Traditional Council. Following the first election conducted under this Constitution all terms of office shall

be for four (4) years or until successors are duly elected and installed. Members of the Traditional Council shall be selected by secret ballot. Section 2. Special Elections

In the event a special election is required by any provision of this Constitution, it shall be called by the Election Board and be governed by the Election Ordinance. All special elections shall be held at the earliest possible time during the period October through April, provided at least thirty (30) days notice is given.

### Section 3. Eligible Voters

Each Tribal member as defined in Article II of this Constitution shall have the right to vote in any Tribal election, provided such member: (1) is at least eighteen (18) years of age at the time of such election; and (2) has resided within the jurisdiction of the Tribe as defined in Article I for at least three (3) years at the time of the election. Residency shall be determined by a voter registration procedure to be set forth in the Election Ordinance.

### Section 4. Election Board and Ordinance

(a) The Traditional Council shall appoint an Election Board consisting of three Tribal members who shall administer and supervise all Tribal elections. The Election Board shall resolve all matters pertaining to qualifications of prospective candidates, secret balloting, filing procedures, election disputes, and all other matters pertaining to or arising from Tribal elections. The Election Board shall call and conduct all Tribal elections in accordance with a Tribal Election Ordinance. Members of the Election Board shall serve four (4) year terms, except no Board member may serve more than two (2) consecutive terms. The Election Board shall select a Chairman and Secretary from among the Board members. Members of the Election Board may be removed only through the recall procedure set out in Article VI, Section 4, except that if the Election Board refuses to call any election required by this Constitution, the Board members forfeit their position and the Traditional Council may appoint new members. Members of the Traditional Council may not be appointed to the Election Board.

(b) All Tribal elections shall be conducted in accordance with an Election Ordinance enacted by the Traditional Council consistent with this Constitution. Such ordinance shall provide procedures for all aspects of elections, and shall also provide for the conduct of initiative, recall, removal, and referendum elections, and a uniform petitioning procedure. Notice of all regular and special elections and meetings shall be posted in at least three (3) public places within the Kickapoo Village.

*Example 5: Constitution of the Cherokee Nation of Oklahoma*

## Article IX. – Election

### Section 1.

The Council shall enact an appropriate law not inconsistent with the provisions of this Constitution that will govern the conduct of all elections, provided that the initial election of the

Council and Deputy Principal Chief shall be conducted pursuant to rules and regulations promulgated by the Principal Chief and the provision set forth in Articles V and VI of this Constitution, notwithstanding, the Principal Chief or Council may adopt rules requiring a majority vote for any elective office.

## Section 2.

Any member of blood of the Cherokee Nation at least twenty-five (25) years of age on that date of the election may be a candidate for the Council. No person who shall have been convicted of or has pled guilty or has pled no defense to a felony charge under the laws of United States of America, or of any State, Territory, or Possession thereof, shall be eligible to hold any office or appointment of honor, profit or trust within this Nation unless such person has received a pardon. Any person who holds any office of honor, profit or trust in any other tribe of Indians, either elective or appointive shall be ineligible to hold simultaneously any office of honor, profit or trust of the Cherokee Nation unless approved by the Council

### *Example 6. Constitution for The Pueblo of Isleta, New Mexico*

## Article VI – Nominations, Elections and Appointments

### Section 1.

A general election shall be held on December 30 of each even-numbered year for the purpose of electing a governor.

### Section 2.

Any enrolled member of the Pueblo of Isleta aged twenty-one (21) years or more on the date of the election shall be eligible to vote in any general election of the pueblo, provided that he or she has registered to vote.

### Section 3.

The council shall designate a polling place at a public location within the pueblo and, during the hours 8:00 a.m. to 7:00 p.m. on the first consecutive Saturday and Sunday following the first Monday in December of even-numbered years, the council secretary shall register eligible voters of the pueblo to vote in the general election. An announcement of the forthcoming dates and place of registration shall be posted in one or more public places at least ten (10) days in advance of registration.

### Section 4.

At the time he or she registers, each eligible voter shall cast a secret ballot, nominating an eligible enrolled member of the pueblo as a candidate for governor. The three eligible persons receiving the greatest number of votes shall be certified by the council secretary as the only candidates for the office of governor in the next general election of the pueblo.

Section 5.

Not less than ten (10) days preceding the date of each general election of the pueblo, the council secretary shall post, in one or more public places, an announcement of the forthcoming election, including a list of the candidates whose names will appear on the ballot and the location of the polling place designated by the council.

Section 6.

Voting shall be by secret ballot, the form of which shall be established by the council.

Section 7.

The polling place shall be open between the hours of 8:00 a.m. and 7:00 p.m. on election day for any general or special election of the pueblo.

Section 8.

All elections of the pueblo shall be conducted under the supervision of the council secretary with the assistance of such poll clerks as the secretary may require and the council may provide.

Section 9.

Immediately following the closing of the polling place on any election day the council secretary, together with the poll clerks and a representative of each candidate or party whose name appeared on the ballot, shall open the ballot box and count the ballots. The council secretary shall thereupon certify the results of the election. At general elections of the pueblo the candidate receiving the greatest number of votes shall be certified as the winning candidate for governor; the candidate receiving the next highest number of votes shall be certified as the newly elected president of the council; and the candidate receiving the third highest number of votes shall be certified as the vice-president of the council.

Section 10.

On January 1 following any general election of the pueblo the governor-elect shall name four (4) qualified members of the pueblo to be members of the council; and the council president and vice-president-elect shall each name three (3) qualified members of the pueblo to be members of the council.

Section 11.

The term of office of all executive officers and council members shall be two (2) years, beginning on January 6 following each general election of the pueblo, or immediately upon certification of the winning candidate in any special election held to fill a vacancy.

## Section 12.

At the first council meeting following each general election of the pueblo, the council shall appoint one of its members as council secretary and shall appoint a qualified member of the pueblo as treasurer. The treasurer of the pueblo shall serve at the pleasure of the council and he may be removed from office by majority vote of the council.

## Section 13. Treasurer.

The treasurer shall:

- (a) Keep the financial records of the pueblo and make disbursements from pueblo funds in conformity with the annual budget of the pueblo or at the direction of the council;
- (b) Co-sign with the governor all checks authorized by the council to be drawn against the accounts of the pueblo.

## Section 14.

The offices of first lieutenant governor, second lieutenant governor, sheriff and undersheriff shall be filled by qualified members of the pueblo appointed by the governor-elect following his election to office and prior to his inauguration.

## Section 15.

Any elected or appointed official of the pueblo or council member may resign his office by tendering his written resignation to the council at any regular or special meeting thereof.

## Section 16.

Controversies and disputes growing out of any election of the pueblo shall be decided by the incumbent council of the pueblo. Article VIII -Filling Vacancies and Special Elections Section 7. In the event of a tie vote in any general or special election of the pueblo the winner shall be decided by lot before the council.

### *Example 7: Constitution of The Mohegan Tribe of Indians of Connecticut*

## Article III – Jurisdiction

### Section 6.

The Officers of the Council of Elders shall be elected in the following manner: At their first regular meeting following each election, the Elders shall elect from among the membership of the Council of Elders, a Chair, a Vice-Chair, a Secretary, and a Treasurer. Those Elders who are elected to these positions shall have those additional powers and duties as are hereinafter

enumerated.

## Article VI – Elections

### Section 1.

In order to qualify for and seek election to a position on the Tribal Council, a person:

- (a) Must be at least 21 years of age prior to the date of the election;
- (b) Must be a registered voting member of The Tribe in good standing;
- (c) Must not have been convicted of any violation of The Tribal Election Ordinance; and
- (d) Must not have been convicted of either a felony or a misdemeanor involving moral integrity, such as forgery or bribery.

(e) Subsection (d) of Article VI, Section 1 may be waived by a majority vote of the Council of Elders.

### Section 2.

In order to qualify for and seek election to a position on the Council of Elders, a person:

- (c) Must not have been convicted of any violation of The Tribal Election Ordinance; and
- (d) Must not have been convicted of either a felony or misdemeanor involving moral integrity, such as forgery or bribery.

(e) Subsection (d) of Article VI, Section 2 may be waived by a majority vote of the Council of Elders.

### Section 3.

The current members of the Tribal Council and Council of Elders shall serve until five years have expired from the dates they became seated, respectively. Regular elections for the Tribal Council and Council of Elders shall be held on the last Sunday in August, and the newly elected members of each body shall take office on the first Monday in October following the respective elections.

## Article VII – Voting

### Section 1.

Any member of The Mohegan Tribe who attains the age of eighteen (18) shall be entitled to become a registered voter, pursuant to the procedures set forth in The Tribal Election Ordinance, and shall be entitled to vote in the next Tribal election.

Section 2.

In each Tribal election, every registered voting member shall be entitled to cast one vote for each elective position available.

Section 3.

All elections shall be by secret ballot and absentee ballots shall be allowed for registered voters. No votes in a Tribal election, however, may be cast by proxy.

*Example 8: Constitution of the Confederated Tribes of Siletz Indians of Oregon*

Article VI – Elections

Section 1. Voters.

All duly enrolled members of the Confederated Tribes of Siletz Indians of Oregon who are eighteen (18) years of age or older shall have the right to vote in all Tribal elections.

Section 2. Manner of Voting.

All elections shall be by secret ballot, except that the General Council may make advisory recommendations to the Tribal Council by voice vote or show of hands at General Council meetings. Voting by mail and absentee ballot shall be provided for by ordinance. The ordinance shall require that such ballots be made available to members sufficiently in advance of any election to permit the ballots to be submitted by voters to the Tribal office prior to the scheduled date of the elections. Ballots so submitted shall be counted along with ballots cast in person at the polls.

Section 3. Tribal Council Election.

Elections for Tribal Council shall be held annually on the first Saturday of February, except as provided in Article VI, Section 5. The times and places of voting shall be designated by the Tribal Council. New members shall take office upon certification of election results by the Election Board. Candidates for Tribal Council must be duly enrolled members of the Confederated Tribes of Siletz Indians of Oregon who will be at least eighteen (18) years of age on the date of election and who have never been expelled in accordance with Article VII, Section 4. Candidates must file statements of their candidacy with the Election Board not less than forty-five days before the annual election. The Election Board shall make public the list of candidates not less than thirty days before the election.

Each voter shall be allowed to cast one vote for each vacancy on the Tribal Council. No more than one vote per candidate shall be cast. The winners shall be chosen plurality according to the rank order of votes received. In the event of a tie, the winner shall be chosen by flipping a coin under the supervision of the Election Board.

#### Section 4. Election Ordinance.

The Tribal Council shall enact an election ordinance consistent with the provisions of this Constitution. The ordinance shall include provision for appointment by the Tribal Council of a three-member Election Board. The members of the Election Board shall serve for set terms of office and shall be removable prior to the expiration of their terms only for cause. No person who holds any elective Tribal office or is a candidate for such office shall be eligible to serve on the Election Board. The Election Board shall supervise all Tribal elections, verify petitions by Tribal members, and perform such other duties as are set by the election ordinance. The ordinance shall include provision for settlement of election disputes, including the right to appeal to the Tribal Court whose decision shall be final.

#### Section 5. First Election.

Notwithstanding the above provisions, the election of the first Tribal Council under this constitution shall be in accordance with an election ordinance enacted by the Interim Tribal Council which accords as much as is feasible with the above provisions and which is made available to the Tribal membership no more than thirty days after certification of the adoption of this Constitution. The ordinance shall provide that the election will be held no later than one hundred-twenty days after adoption of the Constitution, and may provide that there will be no regular, annual election of Tribal Council members thereafter until February of 1981. The first Tribal Council elected under this Constitution shall be elected with three members at three-year terms, three members at two-year terms, and three members at one-year terms, or until certification of his or her successor's election: Provided, any person who meets the requirements in Section 4(b) of the Act of November 18, 1977, 91 Stat. 1415, shall be entitled to vote, whether they meet the membership requirements under Article 1, Section 1 of this Constitution.

#### Section 6. Vacancies.

In the event that any elective Tribal office becomes vacant between elections, the Chairman shall recommend a person who meets the requirements of a candidate for that position to fill the vacancy. Such person shall assume office to serve the remainder of the term upon approval of the appointment by the Tribal Council.

*Example 9: Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota Constitution*

### Article IV – Tribal Elections

#### Section 1. Right to Vote.

All elections held on the six (6) Reservations shall be held in accordance with a uniform election ordinance to be adopted by the Tribal Executive Committee which shall provide that:

(a) All members of the tribe, eighteen (18) years of age or over, shall have the right to vote at all elections held within the reservation of their enrollment.



(b) All elections shall provide for absentee ballots and secret ballot voting.

(c) Each Reservation Business Committee shall be the sole judge of the qualifications of its voters.

(d) The precincts, polling places, election boards, time for opening and closing the polls, canvassing the vote and all pertinent details shall be clearly described in the ordinance.

## Section 2. Candidates.

A candidate for Chairman, Secretary-Treasurer and Committeeman must be an enrolled member of the Tribe and reside on the reservation of his enrollment. No member of the Tribe shall be eligible to hold office, either as a Committeeman or Officer, until he or she has reached his or her twenty-first (21) birthday on or before the date of election.

## Section 3. Term of Office.

(a) The first election of the Reservation Business Committee for the six (6) Reservations shall be called and held within ninety (90) days after the date on which these amendments became effective in accordance with Section 1, of this Article.

(b) For the purpose of the first election, the Chairman and one (1) Committeeman shall be elected for a four-year term. The Secretary-Treasurer and any remaining Committeeman shall be elected for a two-year term. Thereafter, the term of office for officers and committeemen shall be four (4) years. For the purpose of the first election, the Committeeman receiving the greatest number of votes shall be elected for a four-year term.

*Example 10: Constitution of the Absentee-Shawnee Tribe of Indians of Oklahoma*

## Article VI – Elections

### Section 1. First Election.

The first election of Tribal officials under this Constitution (on the third Saturday in June following its ratification) shall be conducted by the Bureau of Indian Affairs under procedures it develops. Such election shall include balloting to elect persons to serve on the Executive Committee, the Tribal Court, the Appeals Court, and the Election Commission.

### Section 2. Election Commission.

There shall be an Election Commission consisting of five (5) Tribal members including Election Commissioner, Deputy Election Commissioner, Secretary, and two (2) Election Commission Members, all of which shall be elected by referendum. At the first election cited in Section 1 above, the positions of Election Commissioner and Election Secretary shall each be filled for a three (3) year term, the offices of Deputy Election Commissioner and one (1)

Member shall each be filled for a two (2) year term; the remaining Member shall be elected to a one (1) year term of office. Thereafter, there shall be annual elections in June and all terms shall be three (3) years in length.

(a) Duties. The Election Commission shall be available at all times during the year, as needed, to conduct any of the Tribal elections provided for in this Constitution. Such elections shall be conducted pursuant to an Election Ordinance required by this Article. Also included among its duties is: to establish and maintain a system of voter registration, determine eligibility of prospective candidates for Tribal offices (both elective and appointive), receive petitions and determine their validity, and perform all other functions necessary to insure that the democratic elective process is honestly and fairly administered.

(b) Installation of Officers. Except for the first election under this Constitution, the Election Commissioner shall call the first meeting of the Executive Committee within thirty (30) days following the date of the June election and preside over the installation of newly elected officers which shall include those elected to the Judicial Branch and the Election Commission.

### Section 3. Election Ordinance.

All Tribal elections specified in this Constitution shall be conducted in accordance with an Election Ordinance to be drafted jointly by the Executive Committee and the Election Commission in cooperation with representatives of the Judicial Branch. That ordinance shall become effective upon its ratification by a referendum of the General Council. In order to have procedures available for the Election Commission to use in conducting the second annual election under this Constitution, a proposed Election Ordinance shall be presented to a referendum vote no later than October following the first annual election under this Constitution. Until an Election Ordinance is duly ratified, the Election Commission shall use those regulations developed for the first election.

The Election Ordinance shall be consistent with this Constitution and shall include, but not be limited to, the following provisions: voter registration, absentee balloting, secret ballots, settling of election disputes, avoidance of nepotism, handling of petitions which shall be signed only by registered voters and which shall require the designation of a spokesman empowered to clarify the intent of such petition and shall require that a summary of the petition's objective shall appear on each sheet of the petition, the installation of newly elected officials, recall of officials, and any other matters relating to the responsibility of the Election Commission.

### Section 4. Fees.

The Election Commission is empowered to establish reasonable fees which shall be required of all those who file as candidates for elective office, and shall be responsible for using such fees to pay for necessary costs in conducting the election process. The Commission shall adopt a procedure for the safe handling of all funds by a Treasurer it shall elect from within the Commission membership, who shall be bonded in the manner provided for the Treasurer in Section 4 of Article XIII. The Commission shall have conducted an annual audit of its finances and present a copy of such audit report to the General Council at the October semi-annual

meeting. Copies shall also be provided to the Executive Committee and, upon request, to any Tribal member.

#### Section 5. Conflict of Interest.

Members of the Election Commission shall be responsible to disqualify themselves and withdraw from all functions of their positions during any election or process in which a conflict of interest exists. Such persons shall resume their duties only when there is no longer a conflict of interest. The Commission shall have authority, by majority vote, to disqualify any of its members in the event they continue to function in a conflict of interest situation.

The Election Ordinance shall describe what constitutes a conflict of interest. However, included in that description shall be the event where someone from the immediate family of a Commission Member is a candidate for any elective Tribal office. Also to be included is a provision that Commission Members shall not be eligible to become candidates for any elective Tribal office, other than for reelection to the Commission, until one (1) year has passed following completion of their service on the Election Commission.

#### Section 6. Alternates.

In order to keep the Election Commission up to its full complement, that body is empowered to appoint alternates who shall attend meetings of that body and be available to function as regular members as the need arises during conflict of interest situations or other absences.

#### Section 7. Kinds of Elections.

(a) Annual Election: Held on the third Saturday in June primarily for the purpose of electing persons to fill those positions whose terms expire for the given year. It is conducted by the Election Commission. Voting is by secret ballot at polling places. Absentee voting is permitted. Unless provision is made in the Election Ordinance for a run off, the outcome of this election shall be decided by plurality.

(b) Tribal Referendum: An election conducted by voting at polling places rather than at a General Council meeting. Referendum elections are for the purpose of deciding on issues of major importance which are usually set forth in Tribal Ordinances. This is an opportunity for the voters to participate in making Tribal laws pursuant to this Constitution. A majority of votes cast shall decide the issue. Certain kinds of issues are required by this Constitution to be decided by referendum. The Executive Committee or a General Council meeting may also refer issues or questions to the registered voters for a referendum election. See Article IX.

(c) Initiative. A referendum election which is initiated by the registered voters in the manner set forth in Article IX.

(d) Recall. An election initiated by the registered voters through a petition for the purpose of voting on whether an elected official should be recalled from office. Upon its receipt of a valid

petition as set forth in Article VII, the Election Commission is required to conduct a referendum election to consider recall of an elected official. A majority of ballots cast shall decide the matter. Any resulting vacancy shall be filled pursuant to Article VIII.

(e) General Council Election. There are certain powers which, by terms of this Constitution, are to be exercised by the registered voters of the tribe meeting in General Council. Such enactments by a majority vote of a quorum of the General Council meeting, which are consistent with this Constitution and Tribal Ordinances, are binding on the Executive Committee. Voting at General Council meetings on Tribal legislation shall be by secret ballot.

(f) Constitutional Amendment. Conducted by the Bureau of Indian Affairs pursuant to regulations of the Secretary of the Interior and the provisions of Article XII of this Constitution.

*Example 11: Constitution and By-Laws with Amendments Incorporated and Enrollment Ordinance No. 1 of the Assiniboiné and Sioux Tribes of the Fort Peck Indian Reservation, Montana*

## Article V – Nominations, Elections and Vacancies

### Section 1.

Elections shall be by secret ballot. Voting shall be within the respective districts as provided herein, at a place designated within each district by the Board.

### Section 2.

All members of the Assiniboiné and Sioux Tribes, as determined by Article III of this Constitution, who are eighteen (18) years of age or over, are eligible to vote, provided:

(a) Voters residing on the Reservation shall be eligible to vote in the district in which they have last resided for a full sixty (60) days immediately preceding the election. The registration of any member for voting at a State or County election shall be conclusive as establishing his/her place of residence.

(b) Non-resident voters may vote by absentee ballot in the last district of their former affiliation, provided they have registered their intent to vote in that district at least thirty (30) days prior to the date of election. (Amendment No. 3 approved 07/29/74 and Amendment No. 4 approved 02/13/78.)

### Section 3.

The first election of the Board under this Constitution and Bylaws shall be held within one hundred twenty (120) days following its ratification and approval by the Secretary of the Interior under such rules, regulations, and ordinances, as promulgated by the Tribal Executive Board. Subsequent elections shall be held on the last Saturday in October every two (2) years. In event such day is a holiday, the election shall be held on the first subsequent day that is not a

holiday.

#### Section 4.

Elected Board members shall take office at the first regular meeting following election. Before entering on duty the newly elected Board members shall file the oath of office certified by a notary public, the following oath: "I do solemnly swear that I shall faithfully execute the duties of my office, defend the Constitution of the United States of America, the State of Montana and the Assiniboiné and Sioux Tribes of the Fort Peck Indian Reservation, so help me God."

#### Section 5.

To be eligible for nomination and election to the Board, a person must be:

(a) An eligible voter on the Reservation.

(b) A qualified candidate having resided on the Reservation at least sixty (60) days immediately preceding an election, and not having been convicted of a felony for which he/she has not received a pardon.

(c) All questions of residence as referred to in this Constitution shall be resolved by the Tribal Executive Board.

#### Section 6.

The candidates for Chairman, Vice-Chairman, Sergeant-of-Arms and twelve (12) additional members of the Executive Board receiving the highest number of cumulative legal votes from all the districts shall be declared elected. (Amendment No. 1 approved 10/06/71.)

#### Section 7.

The Tribal Executive Board shall have the authority to pass ordinances providing for method of elections, and not limiting said power to, but including election announcements, nominations, and fees, registration of voters lists, election officials and their duties, place of voting, certificates of election, manner of protests and recounts, and all election procedures; and as a guide, to follow as near as practicable Chapter 23 of the Revised Code of Montana, 1947, as amended, and effective at the time, and in case of disputed interpretation, the decisional laws of Montana shall be resorted to, subject to the approval of the Fort Peck Tribal Board.

#### Amendment No. 1

"That commencing with the elections to be held in 1971, all officers of the Executive Board, consisting of the Chairman, Vice-Chairman, Sergeant-at-Arms and twelve (12) additional members of the Board shall be elected at large."

Amendment No. 3

“Section III, Article V, NOMINATION, ELECTIONS AND VACANCIES, shall be amended to read:

Section 2.

All members of the Assiniboine and Sioux Tribes, as determined by Article III of this constitution, who are eighteen (18) years of age or over, are eligible to vote, provided:

(a) Voters residing on the Reservation shall be eligible to vote in the district in which they have last resided for a full sixty (60) days immediately preceding the election. The registration of any member for voting at a State or County election shall be conclusive as establishing his or her place of residence.

(b) Non-resident voters may vote by absentee ballot in the last district of their former affiliation provided they have registered their intent to vote in that district at least thirty (30) days prior to the date of the election.”

Adopted at regular election on October 27, 1973, and approved by Area Director Canan on July 29, 1974.

Amendment No. 4

Article V, NOMINATION, ELECTIONS AND VACANCIES. Section 2 shall be amended to read:

Section 2:

All members of the Assiniboine and Sioux Tribes, as determined by Article III of this Constitution, who are eighteen (18) years of age or over are eligible to vote, provided:

(a) Voters residing on the Reservation shall be eligible to vote in the district in which they have last resided for a full sixty (60) days immediately preceding the election. The registration of any member for voting at a State or County election shall be conclusive as establishing his or her place of residence.

(b) Non-resident voters may vote by absentee ballot in the last district of their former affiliation, provided they have registered their intent to vote in that district at least thirty (30) days prior to the election date.”

*Example 12: Constitution and By-Laws of The Cheyenne-Arapaho Tribes of Oklahoma*

Article VIII -Elections

Section 1.

The election of the committeemen shall be determined by those ballots returned to the Tribal office not later than 6:00 p.m. on the day set for counting ballots as specified by the election board. Each registered voter shall be furnished a ballot, by mail, containing the names of candidates from his district at least twenty-one (21) days prior to counting the ballots.

(a) Ballots mailed to registered voters shall be accompanied by a blank envelope and an envelope addressed to the chairman of the election board. Those wishing to vote shall indicate their selection on the ballot, seal it in the blank envelope, and insert the blank envelope in the envelope addressed to the chairman of the board. The voter shall affix his signature across the back of the addressed envelope. Upon receipt by the board of a ballot, the name on the outside of the addressed envelope shall be checked against the appropriate list of registered voters, the blank envelopes containing the ballot cast by the eligible voter separated from the other and deposited in a sealed box, where it shall remain until counted pursuant to the rules of election.

(b) Those districts electing only one representative shall, in the event no candidate received more than fifty (50) percent of the votes cast, hold a runoff election between the two (2) candidates receiving the most votes. Such elections shall be completed in November in odd-numbered years.

(c) For the first election under this constitution and by-laws in those districts electing more than one representative, each candidate shall file for either a 2-year or a 4-year term. Voters of such districts shall be entitled to cast one vote for a candidate seeking a 2-year term and one vote for a candidate seeking a 4-year term. In the event no candidate receives more than fifty (50) percent of the votes cast, a runoff election shall be held between the two (2) candidates who received the most votes running for a 2-year term and between the two (2) candidates who received the most votes running for a 4-year term.

Section 2.

For the purpose of providing staggered four (4) year terms for members of the business committee, those rules and regulations adopted to govern the first election under this constitution shall provide for the election of two (2) Cheyenne and two (2) Arapaho committeemen for two (2) year terms.

The election board shall determine by a drawing which Cheyenne district representatives shall be elected for two (2) year terms and which representatives shall be elected for four (4) year terms.

### Section 3.

The term of office for each committeeman elected after the first election shall be for a period of four (4) years, or until his successor is duly elected and installed in office.

(a) Each committeeman shall be eligible to serve three (3) consecutive terms. At the completion of his third (3<sup>rd</sup>) consecutive term, a committeeman shall not be eligible for re-election or eligible to fill a vacancy until a period of two (2) years has elapsed. For the purpose of this sub-section, a partial term shall be considered a term.

### Section 4.

The term of office of all business committee members elected under this constitution shall commence January 1<sup>st</sup> after their election. Prior to the first meeting after December 31<sup>st</sup>, the oath of office shall be administered to the newly elected members of the business committee. Said oath shall be administered by any member of the Cheyenne-Arapaho Tribes duly designated by the business committee elect. At the first meeting, the business committee shall select the following officers from its membership: chairman, vice-chairman, secretary, treasurer, and sergeant-at-arms. They shall hold office for a term of two (2) years, or until their successors are duly chosen and installed.

### Section 5. Eligibility.

All registered Tribal members who have reached the age of twenty-one (21) years shall be eligible to serve as a member of the business committee, except those persons previously convicted in a court of competent jurisdiction of a felony involving dishonesty. A twenty-five dollar (\$25) filing fee will be required of each candidate payable to the Cheyenne-Arapaho Tribes to help defray the election expense.

### *Example 13: Constitution & Bylaws of the Menominee Indian Tribe of Wisconsin*

#### Article VI – Tribal Elections

##### Section 1. Voter Requirements.

Any member of the Menominee Indian Tribe who is eighteen (18) years of age or older on the date of the Tribal election in question shall be eligible to vote in Tribal elections.

##### Section 2. Voting.

Except as may be otherwise specified in this Constitution, voting in Tribal elections shall be by secret ballot cast at polls established on the Reservation. Absentee voting and write-in voting shall be permitted in accordance with such procedures as shall be established by the Tribal Legislature. Proxy voting and cumulative voting shall not be permitted in Tribal elections.



### Section 3. Action By the Tribe: Approval -Disapproval, Consent -Rejection.

Except as may be otherwise specified in this Constitution, the vote of a majority of the eligible tribal voters voting in a Tribal election shall constitute action by the Tribe, including Tribal approval or disapproval, and Tribal consent or rejection.

### Section 4. Regular and Special Elections.

The Tribal Legislature shall provide for the holding of regular elections, including establishing dates, times and places for holding such elections. The Tribal Legislature shall also provide for the holding of special elections by establishing the procedure by which such elections may be called and held with adequate notice provided to Tribal voters.

### Section 5. Tribal Election Commission.

(a) A Tribal Election Commission composed of three (3) eligible voters of the Menominee Indian Tribe shall be appointed and supervised by the Tribal Judiciary.

(b) The Tribal Election Commission shall be responsible for enforcing Tribal election laws subject to the supervision of the Tribal Judiciary. The duties of the Tribal Election Commission shall include but not be limited to the following:

- (1) Maintain a current list of eligible voters of the Menominee Indian Tribe.
- (2) Conduct Tribal elections; and
- (3) Certify the results of Tribal elections.

(c) The Tribal Election Commission shall perform such other duties as may be delegated to the Commission by this Constitution, by ordinance, or by the Tribal Judiciary.

(d) The Tribal Election Commission may be authorized to issue such rules as may be necessary to carry out Tribal election ordinances.

### Section 6. Elections Which Result in Ties.

In any Tribal election which results in a tie between two or more candidates, the tie shall be broken by some means of chance agreed upon by the candidates involved. In any Tribal election which results in a tie as to the approval or disapproval of an issue, the issue shall be determined defeated.

### Section 7. Disputed Elections.

Any eligible voter or group of eligible voters of the Menominee Indian Tribe may challenge the validity of the results of any Tribal election on the ground that such election was conducted in violation of this Constitution and Bylaws, or of Tribal ordinance or of any provision of the Indian Civil Rights Act (25 U.S.C. s.1301, 1302). Such challenge shall be commenced within ten (10) days after the Tribal Election Commission certifies the results of the

election by a written complaint filed in a Trial Court of the Tribe. The complaint shall (1) specifically charge the person or persons alleged to have violated the law with having committed an offense against this Constitution and Bylaws, or Tribal ordinance or a provision of the Indian Civil Rights Act (25 U.S.C. s.1301 and 1302), and (2) specify the constitutional provision or provisions, or the Tribal ordinance, or the provision of the Indian Civil Rights Act alleged to have been violated, and (3) state the facts alleged to have been violated, and (4) state the facts alleged to support such charge or charges. Upon filing of such complaint, the Tribal Court shall promptly hold an initial hearing at which evidence is received from the complainant or complainants in support of the charges in the complaint. Any person or persons charged in the complaint shall have full opportunity to respond at the hearing to the charges and evidence offered in support of the complaint. At the conclusion of the initial hearing the Court may make a final decision in the case either dismissing the complaint or granting the relief sought; or the Court may order interim relief pending further investigation and hearings in the case. If the disputed election involves the filling of a Tribal office, and the Court decides that further investigation and hearings are necessary, the Court shall, at the conclusion of the initial hearing, specifically grant or deny permission to fill the office pursuant to the election results pending further investigation and hearing and a final decision on the charges.

The Court may at the conclusion of the initial hearing and in the interests of justice, appoint an unbiased commission to investigate the charges further and to present any evidence gathered to the Court at a hearing at which both sides in the case have opportunity to be heard, to present evidence and to question the commission. At the conclusion of all hearings, the Court shall decide whether the charges have been proven. If the Court determines one or more of the charges have been proven, the Court shall provide such relief as is appropriate, which may include invalidating the Tribal election in question and ordering a new election to be held.

#### Bylaw IV -Oath of Office

Every Tribal official shall, prior to assuming the duties of the office take the following oath of office:

I, , do hereby solemnly swear that I will support and defend the Constitution and Bylaws of the Menominee Indian Tribe of Wisconsin, that I will carry out faithfully and impartially the duties of my office to the best of my ability; and that I will promote and protect the best interests of the people of the Menominee Indian Tribe of Wisconsin.

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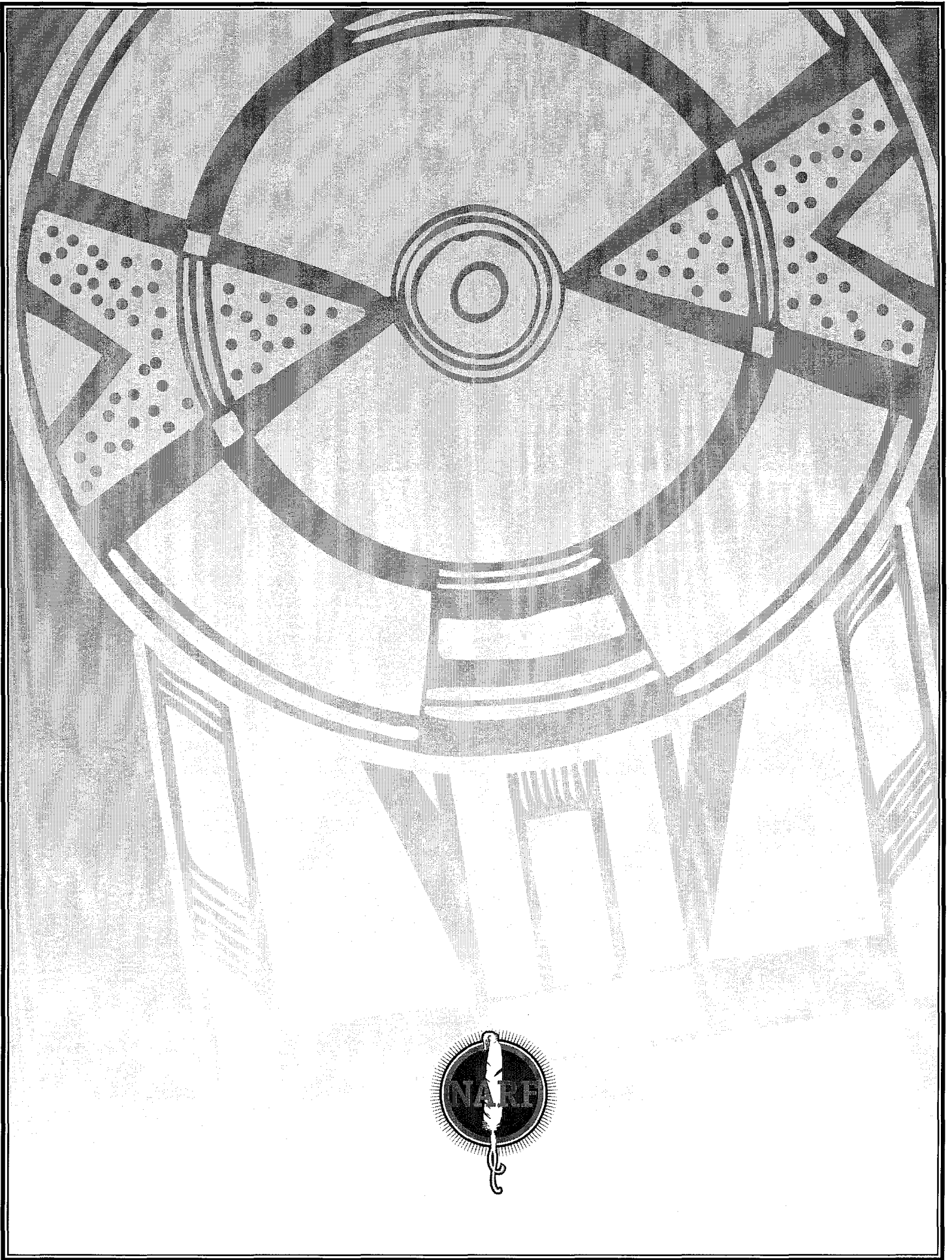
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## F. TRIBAL GOVERNMENT POWERS

### A. Considerations.

Indian tribes have an inherent right to be self-governing. The source of the self-government power is in the tribal people. But the governing of the people and property is usually exercised through a governing body or bodies.

Where there is no separation of powers, the governing body, variously called a Tribal Council, Executive Committee, Board of Directors, Business Committee or Board of Trustees, to name a few, exercise most tribal government powers. Where there is separation of powers, the tribal members empower different government entities to carry out government functions. For example, in a two-branch government, one governing body may enact laws and enforce the laws (combining the legislative and executive function) while another governing body interprets the law (the judicial function). Or, in a three branch government, one governing body may enact the laws (legislative function), another enforces the laws (executive function), and another interprets the law (judicial function).

If you decide that a separation of powers would be in the best interest of the Tribe, then this section on Governing Body, will offer material to construct a separate Tribal branch of government granted all, or limited, legislative and executive powers of the Tribe, and another for judicial powers. It is important to clarify that when judicial powers are allocated in the constitution the judiciary is not subject to control or amendment by the legislative or executive, except to the extent provided for in the constitution. Where a separate judiciary is not provided for in the constitution, it may be created by the legislative or executive branch, but it is then subject to the control or amendment of that branch.

### B. Existing Provision. [to be filled in by tribe]

### A. Suggested Provision. [note: two-branch governmental structure]

#### Section 1: Separation of Powers.

The Tribal Council and the Tribal Judiciary shall be separate and equal branches of the Tribal Government. Each branch shall exercise only the powers vested in it and shall have no authority over the other branch except as may be granted by this Constitution. [Optional for non-federally recognized tribe: Article , Section 3 of this Article, and Article (Tribal Judiciary) which separate Tribal government powers shall become effective upon the appointment of the Judges of the Tribal Supreme Court under Article (Tribal Judiciary) of this Constitution. Until that time, the tribal governing body will continue to exercise all Tribal government powers and any reference in this Constitution in provisions other than Article \_\_\_, Section 3 of this Article and Article \_\_\_ (Tribal Judiciary) shall mean the tribal governing body. If the United States fails to federally recognize the Tribe, those provisions shall be ineffective and unenforceable.]

## Section 2: Tribal Governing Body Powers.

The tribal governing body, as established in Article \_\_\_ of this Constitution, shall be vested with all executive and legislative powers of the Tribe including the power to make and to enforce laws, including such powers as may in the future be restored or granted to the Tribe by any law of the United States, or other authority. This Constitution, and ordinances or other legislation of the tribal governing body adopted under this Constitution, shall be the supreme law of the Tribe. The tribal governing body shall exercise its powers consistent with the letter and spirit of this Constitution.

## Section 3: Tribal Judiciary Powers.

The Tribal Judiciary, as established in Article \_\_\_ of this Constitution, shall be vested with all the Tribe's judicial powers.

## Section 4: Ethics in Tribal Government.[See the Article on Ethics in Tribal Government]

To promote the integrity and openness in the Tribal political process and to maintain the trust of Tribal members in their representative Tribal government, the tribal governing body shall, promptly after the adoption of this Constitution, by ordinance establish a code of ethics in Tribal government for Tribal public officials or others as it deems appropriate to meet the needs of the Tribe.

### B. **Examples.** [Note: These same examples should be referenced for Article H. Tribal Governing Body.]

#### *Example 1: Pueblo of Laguna*

### Article III — The Pueblo Council, Staff Officers And Settlements

#### Section 1. The Pueblo Council.

The governing power of the Pueblo shall be vested in the Pueblo of Laguna Council. The Pueblo Council, functioning as one (1) governmental entity, shall be composed of the following officials:

- (a) One Governor
- (b) One First Lieutenant Governor
- (c) One Second Lieutenant Governor
- (d) One Head Fiscale
- (e) One First Fiscale
- (f) One Second Fiscale
- (g) One Treasurer
- (h) One Secretary
- (i) One Interpreter
- (j) Representative elected in the customary manner and in accordance with this Constitution and the Election Ordinance required by Section 1 of Article VII, from each of the following villages of

the Pueblo: Laguna, Paguate; Casa Blanca-Paraje, Seama, Encinal, and Mesita. The Village of Laguna is, and shall continue to be, the Capital of the Pueblo of Laguna.

## Section 2. Staff Officers.

The Governor, First Lieutenant Governor, Second Lieutenant Governor, Head Fiscale, First Fiscale and Second Fiscale are the cane-bearing Staff Officers of the Pueblo and, as such, are vested with traditional governing authority. They shall serve as the governing officers of their respective villages and shall also act on such matters as are delegated to them by the Pueblo Council. No more than one (1) Staff Officer shall reside in the same village jurisdiction.

## Section 3. Secretary, Treasurer and Interpreter.

The Secretary, Treasurer and Interpreter shall perform the administrative functions provided in Article VI, Sections 3, 4, 5, and 6. They shall also provide advice and assistance to the Staff Officers, as required.

### *Example 2: Jamestown Klallam Tribe of Indians*

## Article III - Tribal Council

Section 1. The representative governing body of the Jamestown Klallam Tribe shall be known as the Jamestown Klallam Tribal Council.

## Section 2. Membership.

The Tribal Council shall consist of five (5) members duly elected to serve two (2) year terms whose terms shall be staggered as provided in Section 3. Tribal Council members shall remain in office until their successors are duly elected and installed.

## Section 3. Tribal Officers.

The Tribal Council shall consist of (1) a Chairperson, (2) a Vice-Chairperson, (3) a Secretary, (4) a Treasurer and (5) a Councilperson. The Tribal Council may appoint such other officials and committees as are considered necessary, however, those appointees shall have no vote in the deliberations of the Tribal Council. The Chairperson and the Secretary shall be elected in odd-numbered years and the Vice-Chairperson, Treasurer and Councilperson shall be elected in even-numbered years. All members of the Tribal Council at the time this Constitution becomes effective, shall continue to serve until the end of their terms.

*Example 3: Constitution and Bylaws of the Menominee Indian Tribe of Wisconsin*

Article III - Powers of the Tribal Government

Section 1. Powers of the Tribal Legislature.

The Tribal Legislature, as established in Article IV of this Constitution, shall be vested with all executive and legislative powers of the Tribe including the power to make and to enforce laws, and including such powers as may in the future be restored or granted to the Tribe by any law of the United States, or other authority. The powers of the Tribal Legislature shall include those powers vested in the Tribe by Section 16 of the Indian Reorganization Act (48 Stat. 987), namely, to employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease or encumbrance of Tribal lands, interest in lands, or other Tribal assets without the consent of the Tribe; and to negotiate with the Federal, State and local governments. This Constitution and Bylaws and ordinances of the Tribal Legislature adopted pursuant to this Constitution shall be the supreme law of the Menominee Indian Tribe and all persons subject to its jurisdiction. However, the Tribal Legislature shall exercise its powers consistent with the limitations imposed by this Constitution and Bylaws.

Section 2. Powers of the Tribal Judiciary.

The Tribal Judiciary, as established in Article V of this Constitution, shall be vested with all judicial powers of the Tribe including the following powers: to resolve controversies between and among persons where such controversies arise under this Constitution and Bylaws, Tribal ordinances, the Constitution and laws of the United States, or the Constitution and laws of any state or Indian Tribe; and to decide cases in which a person is accused by the Tribe of committing an offense against the laws of the Tribe. The powers granted to the Tribal judiciary by this Section shall include such judicial powers as may in the future be restored or granted to the Tribe by any law of the United States, or other authority. Decisions of the Tribal Judiciary shall be binding upon all persons within the jurisdiction of the Tribe. The Supreme Court of the Tribe shall be the final and supreme interpreter of this Constitution and Bylaws, and all Tribal ordinances. However, the Tribal Judiciary shall exercise its powers consistent with the limitations imposed by this Constitution and Bylaws.

Section 3. Separation of Powers.

The Tribal Legislature and the Tribal Judiciary shall be separate and equal branches of the Tribal Government. Neither branch shall exercise the powers of the other, nor shall either branch have authority over the other branch except as may be granted by this Constitution and Bylaws.



## Article V - The Tribal Judiciary

### Section 1. Structure.

- (a) The Tribal Judiciary shall be composed of one Supreme Court and of such lower courts as are designated to be established in this Article, and as may be established by ordinance by the Tribal Legislature as it deems appropriate to meet the needs of the Tribe.
- (b) The Supreme Court of the Tribe shall have jurisdiction over appeals from all final decisions of the lower courts of the Tribe. The Supreme Court shall be composed of three (3) Judges. Supreme Court Judges may, if necessary and if so instructed by the Tribal Legislature, also serve as Judges of the lower courts; however, in such a situation, the Supreme Court Judge shall be disqualified from participating in a review of any decision entered by him or her while sitting as a lower court judge.
- (c) The Tribal Legislature shall, promptly after the adoption of this Constitution and Bylaws, determine and establish the number of lower trial courts necessary to serve the judicial needs of the Tribe. Such trial courts shall have general and original jurisdiction over all cases and controversies of a civil or criminal nature. Each trial court shall be presided over by one Judge.
- (d) If the Tribal Legislature establishes special kinds of lower courts with original jurisdiction over specified subject areas, the Tribal Legislature shall specify whether such jurisdiction is exclusive or concurrent with the jurisdiction of the trial courts established in subsection (c) of this Section.
- (e) If the Tribal Legislature establishes an intermediate level of courts to hear appeals from all final decisions of the lower courts, the Supreme Court shall hear appeals only from decisions of the intermediate courts of appeals. In addition, the Tribal Legislature may authorize the Supreme Court to exercise its discretion in all or designated kinds of cases in deciding whether to hear an appeal in any particular case.

Bylaws Bylaw I -Officers and Committees of the Tribal Legislature:  
Duty to Vote Stock of Menominee Enterprises, Inc.

### Section 1. Officers of the Tribal Legislature.

- (a) Number. There shall be three officers of the Tribal Legislature. A Chairperson, a Vice-Chairperson, and a Secretary. No Legislator shall hold more than one (1) of these offices simultaneously.
- (b) Election and Terms of Office. The Chairperson, the Vice-Chairperson and the Secretary shall be elected by the Tribal Legislature in accordance with rules and procedures established by the Legislature.
- (c) Qualifications. The Chairperson shall be a resident on the Menominee Indian Reservation.
- (d) Removal. A Legislator may be removed from the office of Chairperson, Vice-Chairperson or Secretary by the Tribal Legislature on grounds of failure to perform adequately the duties of the office in question, or non-participation in business of the Legislature.
- (e) Vacancies. A vacancy in the office of Chairperson or Vice-Chairperson, or Secretary shall be filled by the Tribal Legislature for the unexpired portion of the term.

(f) Chairperson of the Tribal Legislature. The Chairperson shall receive a reasonable compensation for services. Such compensation shall not be increased or decreased during a Chairperson's term in office. The Tribal Legislature may authorize the Chairperson to serve full time in the office.

#### Article IV - The Tribal Legislature

##### Section 1. Composition, Terms of Office, and Classes.

(a) The Tribal Legislature of the Menominee Indian Tribe of Wisconsin shall be composed of nine (9) members of the Tribe, elected at large by the eligible voters of the Tribe. Seven (7) of the offices shall be filled by Tribal members who are residents on the Reservation. There shall be no residency requirement for the remaining two (2) offices.

(b) Tribal Legislators shall serve terms of office of three (3) years. The nine (9) Tribal Legislators shall be divided into three (3) classes for the purpose of staggering terms of office. Each class shall be composed of three (3) Legislators. The terms of office of Tribal Legislators shall be staggered as follows:

(1) The term of office of the first class of Legislators shall expire upon assumption of office by the newly elected Legislators three (3) years following the first election of Legislators held pursuant to Section 5(c) of the Menominee Restoration Act (87 Stat. 772), and every third year thereafter.

(2) The term of office of the second class of Legislators shall expire upon assumption of office by the newly elected Legislators two (2) years following the first election of Legislators held pursuant to Section 5(c) of the Menominee Restoration Act (87 Stat. 772), and every third year thereafter.

(3) The term of office of the third class of Legislators shall expire upon assumption of office by the newly elected Legislators one (1) year following the first election of Legislators held pursuant to Section 5(c) of the Menominee Restoration Act (87 Stat. 772), and every third year thereafter.

##### Section 2. Initial Division of Tribal Legislature Into Classes.

The Tribal Legislators elected at the first election of the Tribal Legislature, held pursuant to Section 5(c) of the Menominee Restoration Act (87 Stat. 770) shall be initially divided into the three (3) classes as follows:

The three candidates receiving the highest number of votes shall be the first class; the three candidates receiving the highest number of votes after the first class shall be the second class; and the three candidates receiving the highest number of votes after the second class shall be the third class, provided that, if more than two (2) non-resident candidates are among the nine candidates receiving the highest number of votes, only the two non-resident candidates receiving the highest number of votes of the non-resident candidates shall take office; the other seven (7) offices shall be filled with the seven (7) resident candidates receiving the highest number of votes of the resident candidates, in accordance with Section 1(a) of this Article.

*Example 4: Constitution and Bylaws of the Chitimacha Tribe of the Louisiana*

Article V - Governing Body

Section 1. Composition.

The governing body of the Chitimacha Tribe shall be the Chitimacha Tribal Council, a five-member body composed of a chairman, vice-chairman and secretary-treasurer, who reside on the Chitimacha Reservation, and two (2) councilmen, all of whom shall be elected at large by the qualified voters of the Chitimacha Tribe.

Section 2. Qualifications.

All officers and councilmen (members of the council) must be at least twenty-one (21) years of age and members of the tribe. If either the chairman, vice-chairman, or secretary--treasurer moves his residence from the reservation, he shall automatically lose his office. Such vacancy shall be filled pursuant to Article VI, Section 6.

*Example 5: Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, Colorado*

Article III - Governing Body

Section 1. Name.

The governing body of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation shall be known as the Southern Ute Indian Tribal Council.

Section 2. Composition of the Council.

The council shall be composed of seven (7) members (chairman and six (6) councilmen), all of whom shall be elected on an at-large basis for three (3) year staggered terms or until their successors are duly elected and installed. The chairman shall be elected from among candidates who specifically file for that office. Following his installation, the chairman shall appoint from within the council membership a vice-chairman to serve in that capacity at the pleasure of the chairman provided such appointment shall not extend the vice-chairman's normal three (3) year term on the council.

Section 3. The Tribal council and Tribal officials incumbent on the effective date of this constitution shall remain in office and shall be entitled to exercise all powers granted by this constitution to the Tribal council and Tribal officials until such time as their successors are duly elected and installed pursuant to the provisions of this governing document.

*Example 6: Constitution and Bylaws of the Upper Skagit Indian Tribe*

Section 1. The governing body of the Upper Skagit Indian Tribe shall be known as the Upper Skagit Tribal Council.

Section 2. The Tribal council shall consist of seven (7) members duly elected to serve three (3) year terms, whose terms will be staggered in accordance with Article IV, Section 5.

Section 3. The general council shall elect annually a chairman and a vice-chairman from the seven (7) duly elected members on the same day as the regular election. For the purpose of electing the chairman and vice-chairman only, there will be no provision for absentee balloting. The Tribal council shall elect from within or without its members, a secretary and a treasurer and may appoint such other officials and committees that are considered necessary. In the event that the secretary and/or treasurer are elected from without the council, such officials shall not be counted for a quorum and/or voting purposes at Tribal council meetings.

*Example 7: Constitution of the Cherokee Nation of Oklahoma*

Article IV. Distribution of Powers

The powers of the government of the Cherokee Nation shall be divided into three (3) separate departments: Legislative, Executive and Judicial; and except as provided in this Constitution, the Legislative, Executive and Judicial departments of government shall be separate and distinct and neither shall exercise the powers properly belonging to either of the others.

Article V. Legislative

Section 1. The legislature shall consist of one legislative body to be called the Council of the Cherokee Nation. The initial election of members to the Council pursuant to this Constitution shall occur within 120 days from the date of its ratification on a day to be announced by the Principal Chief.

Section 2. The Council shall establish its rules for its credentials, decorum, and procedure.

Section 3. The Council shall consist of 15 members, who are members by blood of the Cherokee Nation of Oklahoma, and shall be elected at large.

The term of the office of each Council member serving on the first Council shall run until the first Saturday in August of 1979 and until his successor is duly elected and installed. Thereafter, the term of office of each Council member shall be for four (4) years and until his successor is duly elected and installed.

## Article VI. Executive

Section 1. The executive power shall be vested in a Principal Chief, who shall be styled "The Principal Chief of the Cherokee Nation". The Principal Chief shall hold his office for the term of four (4) years; and shall be elected by the qualified voters on the same day and in the same manner, except as otherwise provided by this constitution, as they shall respectively vote for members of the council for that particular year, provided, the Principal Chief in office when this Constitution is ratified shall continue in office until his successor is duly elected in the 1979 election and installed.

The returns of the election for the Principal Chief shall be sealed and directed by the lawfully appointed election officials to the Secretary-Treasurer, who shall, immediately after the organization of the Council, and before proceeding to other business, open and publish the same in the presence of a majority of the Council. The person having the highest number of votes shall be the Principal Chief; but if two (2) or more shall be equal and highest in votes, one of them shall be chosen by a vote of the Council. The manner of determining contested elections shall be as directed by Cherokee law.

Section 2. The Principal Chief of the Cherokee Nation shall be a citizen of the Cherokee Nation of Oklahoma in accordance with Article III. He shall have been born within boundaries of the United States of America, its territories or possessions; and he shall have obtained the age of thirty (30) years at the time of his election and be a member by blood of the Cherokee Nation of Oklahoma.

Section 3. The qualified electors shall elect a Deputy Principal Chief, who shall possess the same qualifications as the Principal Chief, for a term of four (4) years at the same time and in the same manner as herein provided for the election of the Principal Chief, provided, that the initial election of the Deputy Principal Chief shall take place in conjunction with the first Council election pursuant to this Constitution and in accordance with Section 1 of this Article.

## Article VIII. Cabinet.

There shall be a cabinet composed of the following persons who shall be members of the Cherokee Nation:

Secretary-Treasurer Secretary of Health, Education and Welfare Secretary of Commerce and Industrial Development General Counsel Secretary of Communications

These persons shall be appointed by the Principal Chief and approved by the Council. The Council, on recommendation of the Chief only, may create additional cabinet positions and departments. The Chief shall prescribe the duties and responsibilities of cabinet members. Cabinet members shall be authorized to appoint such staff and other assistants as they deem necessary. The Council may, with recommendation of the Principal Chief, abolish any established cabinet position or function or revise the title or responsibilities of any foregoing department or function.

*Example 8: Constitution for The Pueblo of Isleta, New Mexico*

Article IV - Executive Branch

Section 1. The Executive Branch of the Pueblo of Isleta shall consist of the following-named executive officers:

Section 2. The council may establish such other appointive offices and positions as it deems in the best interest of the Pueblo of Isleta.

Section 3. No persons shall be eligible for election or appointment to any executive office of the pueblo unless

- (a) He shall be an enrolled member of the Pueblo of Isleta.
- (b) He shall have lived on the lands of the pueblo continuously for not less than five (5) years immediately preceding his candidacy or selection for office.
- (c) He shall never have been convicted of a felony.
- (d) He shall be at least thirty-five (35) years of age at the time of his election or appointment to the offices of governor and first or second lieutenant governor; and he shall be at least twenty-five (25) years of age at the time of his selection or appointment to the offices of Treasurer, sheriff or undersheriff.

Section 8. Sheriff and Undersheriff.

The sheriff and undersheriff shall enforce the laws of the pueblo and perform other duties traditionally associated with their offices. They shall be subject to direction by the governor.

Article V -Legislative Branch

Section 1. The Legislative Branch of the Pueblo of Isleta shall consist of a council of twelve (12) members, selected as hereinafter provided.

Section 2. Subject only to limitations imposed by the laws of the United States and the restrictions established by this constitution; the powers of the council shall include the following:

- (a) Governor
  - (b) First Lieutenant Governor
  - (c) Second Lieutenant Governor
  - (d) Sheriff
  - (e) Undersheriff
- 
- (a) To employ legal counsel, the choice of the counsel and fixing the fees to be subject to the approval of the Secretary of the Interior, so long as said approval is required by Federal law.
  - (b) To prevent the sale, disposition, lease or encumbrance of Pueblo of Isleta lands or interests in lands or other pueblo assets; to execute leases, contracts and permits, provided that where the leasing, contracts and permits, or encumbering of pueblo land is involved, the approval of the

Secretary of the Interior shall be required so long as such approval is required by Federal law.

(c) To negotiate and enter into agreements with the Federal Government, State and local governments and with the duly recognized governing bodies of other Indian tribes or pueblos, private persons, partnerships, corporations, associations or other private non-profit or profit entities.

(d) To advise the Secretary of the Interior with regard to all appropriation estimates, or Federal projects of interest to or for the benefit of the pueblo prior to the submission of such estimates or projects to the Bureau of the Budget and the Congress.

#### Article IX -Judicial Branch

Section 1. The Judicial Branch of the government of the Pueblo of Isleta shall consist of the trial and appellate courts of the pueblo.

Section 2. The Tribal court of the pueblo shall be presided over by one or more judges appointed by the governor with the concurrence of a two-thirds (2/3) majority of the council.

Section 3. The number, salary, qualifications and term of office of the judge or judges of the trial court shall be prescribed by ordinance of the council; provided that the salary of any judge shall neither be increased or decreased during the term in office; provided further that no person be a judge who has been convicted of a felony.

#### *Example 9: Constitution of the Skokomish Indian Tribe*

#### Article III - General Council

##### Section 1. Electorate.

All Tribal members eighteen (18) years old or older shall be members of the General Council of the Skokomish Tribe and shall be eligible to vote in all Tribal elections, referenda, and meetings of the General Council.

##### Section 3. President of the General Council.

At the annual elections in June, the voters shall elect a President of the General Council. The President, who shall serve a one (1)-year term, shall preside at all meetings of the General Council. In the absence of the General Council President, the Chairman of the Tribal Council shall preside at General Council meetings. Tribal Council members, Tribal employees, and other Tribal officers shall not be prohibited from also serving as President of the General Council.

#### Article IV - Tribal Council

##### Section 1. Powers of the Governing Body.

Except as it is expressly limited in this constitution and by Federal Law; the governing power of the Skokomish Tribe shall be exercised by the Tribal Council.

## Section 2. Composition of the Tribal Council.

The Tribal Council shall be composed of seven (7) persons elected by the General Council.

## Section 3. Qualifications of Tribal Council Members.

All members of the Skokomish Tribe who physically reside in Mason County, Washington and who are eighteen (18) years old or older shall be eligible to become candidates for and serve on the Tribal Council. No more than one (1) immediate family member of any person already on the Tribal Council shall become a candidate for or serve on the council. "Immediate family member" shall mean mother, father, brother, sister, spouse, son or daughter.

## Section 6. Officers of the Tribal Council.

Each time an election of a Tribal Council member has been held, the Tribal Council shall elect from within its own membership a chairman, vice-chairman, and secretary and may elect or appoint from within or outside the council any other officers it thinks are necessary and appropriate.

### *Example 10: Constitution of the Kickapoo Traditional Tribe of Texas*

#### Article III - Governing Body

Section 1. The governing body of the Tribe shall be the Traditional Council which shall be composed of five (5) adult members of the Tribe meeting the qualifications set forth in Article V and elected at large by secret ballot of the qualified voters of the Tribe.

### *Example 11: Constitution of The Mohegan Tribe of Indians of Connecticut*

#### Article IV - Governing Body

Section 1. The Mohegan Tribe shall be governed by The Mohegan People, and represented by a Tribal Council, consisting of nine members, unless and until said number of members is increased through the enactment of a joint ordinance, approved by a majority of the Tribal Council and a majority of the Council of Elders.

Section 4. The Officers of the Tribal Council shall be elected in the following manner: At the first regular meeting following each election, the Tribal Council shall elect from among the membership of the Tribal Council a Chair, a Vice-Chair, a Recording Secretary, a Corresponding Secretary, and a Treasurer. Those members who are elected to these positions shall have those additional powers and duties as are hereinafter enumerated.



*Example 12: Constitution of the Choctaw Nation of Oklahoma*

Article V - Division of the Powers of Government

Section 1. The powers of the government of the Choctaw Nation shall be divided into three (3) distinct departments: Executive, Legislative and Judicial. No person or collection of persons, being one of those departments, shall exercise any power properly attached to either of the others; provided, that the exercise of such powers shall be subject to any limitations imposed by this Constitution and Federal Law.

Section 2. The officers of the Nation are to include all elective officials, Assistant Chief and members of the Judicial Department.

Article VI - Executive Department

Section 1. The supreme executive power of this Nation shall be vested in a chief magistrate, who shall be styled "The Chief of the Choctaw Nation."

Section 2. There shall be an Assistant Chief who shall assist the Chief and perform all duties as assigned to him by the Chief.

Section 3. Any members of the Choctaw Nation who is at least thirty (30) years of age and who possesses no less than one-quarter ( $\frac{1}{4}$ ) degree of Choctaw Indian blood is eligible to become a candidate for the office of Chief or Assistant Chief.

Section 4. The Chief and the Assistant Chief must have been residents of the Choctaw Nation for two (2) years or more immediately preceding any election for Chief and must remain residents of the Choctaw Nation during the tenure of their office.

Section 5. No person who has been convicted of a felony by a court of competent jurisdiction shall be eligible to hold any elective or appointive office in the Choctaw Nation.

Section 6. The Chief shall be elected for a term of four (4) years which shall commence at twelve (12) noon on the first Monday in September of 1983 and thereafter the terms shall commence at twelve (12) noon on the first Monday of September of every quadrennium. The Chief shall serve until his successor has been elected and installed. For the initial election of officers under this Constitution, if a runoff election for the office of Chief shall be required the installation will be on October 1, 1983.

Section 7. The Assistant Chief shall be appointed by the Chief with the advice and consent of the Tribal Council and may be removed at the discretion of the Chief.

Article VIII - Legislative Department

Section 1. The legislative authority of the Choctaw Nation shall be vested in the Tribal Council.

Section 2. The Tribal Council shall consist of twelve (12) members, one (1) each to be elected from that part of the following twelve (12) districts which lie within the boundaries set forth in Article I, Section 2 of this Constitution; provided, that the Tribal Council shall have the responsibility for reapportionment based on population when necessary.

Section 3. Members of the Tribal Council must be members of the Nation and must have resided in their respective districts for one (1) year immediately preceding the election. They must remain residents of the district from which they were elected during the tenure of their office. Candidates for the Tribal Council must be at least one-fourth ( $\frac{1}{4}$ ) Choctaw Indian by blood and must be twenty-one (21) years of age or older at the time they file for election.

Section 4. Except as provided in the following Section, members of the Tribal Council shall be elected for a term of four (4) years commencing at twelve (12) noon on the first Monday in September of 1983. Thereafter, terms of office for Council positions shall be for a term of four (4) years and shall commence at twelve (12) noon on the first Monday of the first September after the election for such posts.

Section 5. At the hour of twelve (12) noon on October 1, 1983, following the ratification of this Constitution, the successful candidates for Tribal Council shall meet with the elected Chief and the Choctaw Election Commission at the Capital at Tuskahoma at which time and place the Chairperson/Arbitrator of the Commission will place twelve (12) slips of paper in a receptacle, six (6) of which will have the number four (4) on them and six (6) of which will have the number four (4) on them and six (6) will have the number two (2) written on them. Each slip will be folded so that the number thereon cannot be seen. In the presence of each other and the elected Chief, each successful candidate shall draw one (1) of the slips from the receptacle and the number on the slip each of the successful candidates draws will be the number of years he shall serve during the first term.

## Article XII - Judicial Department

Section 1. The judicial authority of the Choctaw Nation shall be vested in a Tribal Court which shall consist of a three (3) member Court appointed by the Chief with the advice and consent of the Tribal Council. One (1) such member, the presiding judge, shall be a lawyer duly licensed to practice before the Supreme Court of Oklahoma. Two (2) members may be non-lawyers.

Section 2. Members of the Judicial Department must be residents of the Choctaw Nation and must remain residents of the Choctaw Nation during the tenure of their office. The nonlawyer members must be qualified electors of the Choctaw Nation.

*Example 13: Constitution of the Confederated Tribes of Siletz Indians of Oregon*

Article IV - Branches of Government

Section 1. Councils.

There shall be a General Council which shall exercise the powers set forth in Article II section 2, of this constitution.

The Tribal Council shall consist of nine members elected by the General Council to terms of three years each provided that each member's term shall continue until certification of his or her successor's election. The Tribal Council shall elect from its membership a Tribal Chairman, Vice Chairman, Secretary and Treasurer. The Tribal Council is empowered to exercise all legislative authority, except that vested in the General Council, and executive authority of the government, including the right to delegate authorities as it deem appropriate. Said authority shall include but is not limited to the power to employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease or encumbrance of Tribal lands, interests in land, or other Tribal assets without the consent of the tribe; and to negotiate with the Federal, State and local governments.

Section 2. Tribal Court.

The Tribal Court shall consist of one Chief Judge and such Associate Judges and staff as are deemed necessary by the Tribal Council. The Tribal Court is empowered to exercise all judicial authority of the government. Said authority shall include but is not limited to the power to review and overturn Tribal legislative and executive actions for violations of this Constitution or of the Federal Indian Civil Rights Act of 1968 as well as to perform all other judicial and court functions. The Tribal Council shall set forth qualifications for Tribal Court Chief Judge, Associate Judges, and staff positions by ordinance, and shall appoint persons to fill said positions for a term of not less than four years for Chief Judge, not less than two years for Associate Judges. During the tenure of his or her appointment, the Chief Judge, or an Associate Judge may be suspended or dismissed only for cause by the Tribal Council upon due notice and an opportunity for a hearing open to Tribal members.

*Example 14: Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada*

Article 4 - Executive and Legislative Branch of Government

Section 1. Governing Bodies.

The executive and legislative powers of the Tribe shall be vested in a Tribal Council known as the Tribal Council of the Te-Moak Tribe of Western Shoshone Indians of Nevada, and in Band Councils, one Band Council for each constituent Band of the Tribe and identified by the name of the Band.

## Section 2. Composition of Tribal Council.

- (a) The initial composition of the Tribal Council shall consist of eight (8) members; four (4) from Elko, two (2) from Battle Mountain and two (2) from South Fork selected from and by the membership of each of the respective Band Councils.
- (b) Tribal Council members shall be apportioned among the several Bands according to the respective number of members in each Band. Apportionment shall be reviewed every five (5) years, and when a new Band is added pursuant to Article 3, Section 2. Necessary adjustments shall be made in order to maintain the principle of one (1) person, one (1) vote.
- (c) A subsequent election for Tribal Chairperson shall be held from among those elected to the Tribal Council. The Tribal Chairperson shall be elected at large by the registered voters of the Tribe who cast ballots in a Tribal election. The Chairperson shall be the representative who receives the highest number of votes in the Tribal election for Chairperson. The representative receiving the next highest number of votes shall be the Vice-Chairperson.
- (d) Each member of the Band Council who is elected as a representative to the Tribal Council shall serve on both councils for the duration of his/her three (3) year term of office of the Band of Council.
- (e) The Tribal Council shall select, either from within its membership or outside of its membership, a Secretary and a Finance Officer. In the event such officials are selected from outside the Tribal Council, they shall have no power to vote in Tribal Council proceedings.

## Article 8 - Judicial Branch of Government

### Section 1. Tribal Courts.

There shall be a court of general jurisdiction and a Supreme Court of appellate jurisdiction.

### Section 2. Powers of the Courts.

All judicial powers of the Tribe shall be vested in the Judicial Branch of Government, including such powers as may in the future be granted to the Tribe by any law of the United States, or other authority.

### Section 3. Jurisdiction.

The judicial power shall extend to all cases in law or equity arising under this Constitution or Tribal enactments. Decisions of the Tribal Courts shall be binding upon all persons and property within the jurisdiction of the Tribe as referenced in Article 2. Jurisdiction of suits against the Tribe or any constituent Band is limited to suits brought by a member, or members, of the Tribe or by one of the Bands or by the Tribe. The appellate court of the Tribe shall be the final interpreter of this Constitution and Tribal laws.

### Section 4. Term of Office and Qualifications.

- (a) Term of Office. The judges of both Tribal Courts shall be appointed by the Tribal Council for six (6) year terms, except for the initial appointments to fill those positions. At the time of the initial appointments, the length of the term for approximately half of the judges on each court shall

be for three (3) years in order to establish a system of staggered terms of office.

(b) Qualifications. A judge shall be at least thirty (30) years of age and of good moral character.

#### Section 5. Compensation.

Tribal judges shall receive for their services, compensation which shall not be diminished during their term of office.

#### Section 6. Recall of Judges and Filling of Vacancies.

(a) A judge shall be unseated from office only in the manner set forth in Section 8 of Article 4.

(b) If the position of a judge is declared vacant, the Tribal Council shall immediately appoint a qualified person to fill the vacancy for the remainder of the unexpired term.

### *Example 15: Constitution of the Absentee-Shawnee Tribe of Indians of Oklahoma*

## Article IV - Tribal Government

### Section 1. General Council.

The supreme governing body of the tribe shall be the General Council consisting of all members of the tribe eighteen (18) years of age or older who are duly registered to vote pursuant to Article VI, Section 3 of this Constitution. The General Council shall have the power by majority vote of a quorum to dictate the actions of the Executive Committee through actions taken at General Council meetings within limitations set forth in this Constitution. The General Council shall also have the power to direct all entities of the Tribal government through the procedures of initiative and/or referendum as specified in Article IX, and shall exercise such other powers as defined in this Constitution.

The Tribal government, as described in this Article, is composed of two (2) separate branches, i.e., the Judicial Branch and the Legislative/Executive Branch. In addition, there is an independent body charged with the responsibility for conducting Tribal elections. Each of these entities is directly responsible to the General Council.

### Section 2. Legislative/Executive Branch.

(a) Executive Committee. There shall be an Executive Committee consisting of five (5) representatives including Governor, Lt. Governor, Secretary, Treasurer and a Representative, all of which shall be elected by referendum. Such committee shall have both legislative and executive powers as set forth in Article V.

(b) Previous Governing Body. The five (5) Business Committee members elected under the previous constitution shall serve until the expiration of their terms of office, unless earlier removed, or until their successors are duly elected and installed.

The first election for Executive Committee members and other elective officials under this Constitution shall be conducted by the Bureau of Indian Affairs and held on the third

Saturday of June following the ratification of this Constitution. At that election the positions of Governor and Secretary shall each be filled for a two (2) year term, the offices of Lt. Governor, Treasurer and Representative shall be filled for a one (1) year term. Thereafter, there shall be annual elections in June and all terms shall be two (2) years in length.

Section 3. Judicial Branch. There shall be a Tribal judicial system consisting of a Tribal Court and an Appeals Court. Members of each court shall be elected by Tribal referendum. Candidates must meet those qualifications set forth in Article XIV.

(a) Tribal Court. The lower court shall be composed of five (5) members initially elected at the first regular election (third Saturday in June) following ratification of this Constitution. The Tribal Court shall consist of a Chief Judge, Associate Judge, Clerk of the Court, and two (2) Tribal Judges. At the first election the Chief Judge and one (1) Tribal Judge shall each be elected for a three (3) year term, the Clerk of the Court and the other Tribal Judge shall each be elected for a two (2) year term, and the Associate Judge shall be elected for a one (1) year term. Thereafter, there shall be annual elections in June and all terms shall be three (3) years in length. The Chief Judge shall be the presiding officer and the remaining four (4) members, including the Clerk of the Court, shall participate in the deliberations of that body. The Tribal Court shall have duties and jurisdiction as established by Tribal ordinances. The Tribal Court shall make known its decisions in writing to the Executive Committee, or other Tribal entity whose decision is being disputed, and the aggrieved party. Such Tribal entity will then reconsider its previous decision based on those recommendations.

(b) Appeals Court. There shall be an Appeals Court composed of five (5) members initially elected at the first regular election (third Saturday in June) following ratification of this Constitution. The Appeals Court shall consist of a Chief Justice, Associate Justice, Court Recorder and two (2) Appellate Justices.

At the first election the Chief Justice and one (1) Appellate Justice shall each be elected for a four (4) year term, the Associate Justice shall be elected for three (3) years, the Court Recorder shall be elected for two (2) years and the remaining Appellate Justice shall be elected for a term of one (1) year. Thereafter, there shall be annual elections in June and all terms shall be four (4) years in length.

The Chief Justice shall be the presiding officer and the remaining four (4) members, including the Court Recorder, shall participate in the deliberations of that body.

The Appeals Court may hear appeals of decisions resulting from actions by the Tribal Court. The Appeals Court shall render its decision in writing to all concerned parties including the Executive Committee, which decision shall be final and binding on all concerned parties.

Section 4. Independent Commissions.

Included as part of the Tribal government is an Election Commission established pursuant to Article VI. Other such entities may be created as needed by referendum of the General Council.

*Example 16: Constitution and Bylaws of the Confederated Tribes of the Goshute Reservation, Utah*

Article IV - Governing Body

Section 1. The governing body of the Confederated Tribes of Indians of the Goshute Reservation shall consist of the council of five members, to be known as the Goshute Business Council. The term of office of each councilman shall be three years, except as provided in Section 1 (a) of Article V.

Section 2. The Business Council so organized shall elect from within its own number (1) a chairman, (2) a vice-chairman, and from within or without, (3) a secretary, and (4) a treasurer, and may appoint or employ such other officers and committees as may be deemed necessary.

*Example 17: Constitution and Bylaws of the Confederated Salish and Kootenai Tribes of the Flathead Reservation*

Article III - The Tribal Council

Section 1. The governing body of the Confederated Salish and Kootenai Tribes of the Flathead Reservation shall be the Tribal Council.

Section 2. The Council shall consist of ten councilman to be elected from the districts as set forth hereafter, and Chiefs Martin Charlo and Eneas Paul Koostabtab.

Section 3. Representation from the districts hereby designated shall be as follows: Jocko Valley and Mission Districts, two councilmen each: Roman, Pablo, Polson, Elmo-Dayton. Hot Springs-Cama-Prairie and Dixon, one councilman each.

Section 4. The Tribal Council shall have the power to change the districts and the representation from each district, based on community organization or otherwise, as deemed advisable, such change to be made by ordinance, but the total number of delegates shall not be changed as provided for in section 2 of article III of this Constitution.

Section 5. The Tribal Council so organized shall elect from within its own number a chairman, and a vice chairman, and from within or without its own membership, a secretary, treasurer, sergeant-at-arms, and such other officers and committees as may be deemed necessary.

Section 6. No person shall be a candidate for membership in the Tribal Council unless he shall be a member of the Confederated Tribes of the Flathead Reservation and shall have resided in the district of his candidacy for a period of one year next preceding the election.

Section 7. The Tribal Council of the Confederated Tribes of the Flathead Reservation shall be the sole judge of the qualifications of its members.

*Example 18: Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation*

Article III - Governing Body

Section 1. The governing body of the Three Affiliated Tribes of the Fort Berthold Reservation shall be known as the Tribal Business Council.

Section 2(a). The Tribal Business Council shall consist of a Chairman elected at large and ten (10) members elected on an at large basis to represent segments of the reservation as follows:

Western Segment	3 Representatives
Northern Segment	1 Representative
Northeastern Segment	1 Representative
Eastern Segment	3 Representatives
Southern Segment	2 Representatives

Section 2(b). While candidates for each of the ten (10) council member positions (representatives) must qualify on the basis of the segment they propose to represent, they, as well as candidates for the office of chairman, shall be subject to an election open to all qualified voters on a reservation-wide basis, including those entitled to vote by absentee ballot.

In segments where there are three (3) representatives, the three (3) qualified candidates from each such segment receiving the highest number of votes shall be declared elected.

In the segment where there are two (2) representatives, the two (2) qualified candidates receiving the highest number of votes shall be declared elected. In segments where there is only one (1) representative, the one (1) qualified candidate from each such segment receiving the highest number of votes shall be declared elected.

Section 2(c). The Chairman of the Tribal Business Council shall be elected at large by a majority of all votes cast for the office of chairman. If no candidate for chairman receives a majority of the votes cast for that office at the general election, a special run-off election shall be held between the two (2) candidates which received the highest number of votes at the general election. The candidate receiving the highest number of votes at the special run-off election shall be declared elected as chairman.

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Section 5. Within three (3) days after the installation of the successful candidates for council positions elected at the general election, the newly constituted Tribal Business Council shall meet and organize by electing a vice-chairman, a secretary, and a treasurer from its own members; and from within or outside its own members, it may elect or appoint a sergeant-at-arms and such other officers and committees as it may find necessary.

Section 6. The members of the Tribal Business Council shall hold office until the next regular election and until their successors are elected or appointed and qualified.



*Example 19: Constitution and Bylaws of the Confederated Tribes of the Warm Springs Reservation Oregon*

Article IV - Organization of Tribal Council

Section 1. Composition.

The Tribal Council shall be composed of members chosen as hereinafter provided. The Council shall consist of eleven members, to be selected from the districts as set forth hereafter.

Section 2. Apportionment.

Representation from the districts shall be as follows: Simnasho District, 3 elected members and the recognized chief of the district, or his successors; Agency District, 3 elected members, one of whom shall represent the Sidwaller Flat area, together with the recognized chief of the district, or his successors; Seekseequa District, 2 elected members and the recognized chief of the district, or his successors.

Section 3. Term of Office.

Members of the Council shall be elected for terms of three years except that the chiefs shall serve for life, and their successors shall be selected in accordance with Tribal custom.

Section 4. First Election.

The first election of the Tribal Council shall be called by the present Business Committee as soon as possible after the adoption and approval of this Constitution.

Section 5. Right to Vote.

All members of the Community of either sex, who are married, or who are over 21 years of age, are entitled to vote in the district in which they reside.

Section 6. Time of Election.

Elections of membership on the Council shall be set by the Tribal Council at least 30 days in advance of the expiration of the terms of office of the members. Duly elected councilmen shall take office on the first regular meeting date of the Council following their election.

Section 7. Manner of Elections.

Elections shall be by secret ballot or by prevailing customs, as may be desired by the people of the district.

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## Section 11. Officers.

The Tribal Council shall select from its membership, a Chairman and Vice-Chairman, and from within or outside of its membership, a Secretary-Treasurer. It may also select other officers and committees as it may deem necessary for properly conducting the business of the Council.

*Example 20: Constitution and Bylaws of the Agua Caliente Band of Mission Indians, California*

### Article IV - Governing Body

(a) The governing body of the Agua Caliente Band of Mission Indians shall be known as the Tribal Council (formerly designated as the Tribal Committee) and shall be comprised of five members consisting of three officers, namely; the Chairman, Vice-Chairman, Secretary and two additional members.

(b) Effective beginning with the next election after the adoption of this constitution, the members of the Tribal Council shall be elected in the following manner: Officers shall be elected for a term of two years; the Chairman to be elected during the even year, the Vice-Chairman and Secretary to be elected during the following odd year. The other members shall be elected for a term of one year. Elections shall take place on March 15, at which time the Secretary shall call the election. Elections shall be by secret ballot and absentee ballots shall be used by members who cannot be present to cast their ballots at the place on the Reservation where, and at the time when the election is held.

*Example 21: Constitution and Bylaws of the Assiniboine and Sioux Tribes of The Fort Peck Indian Reservation*

### Article IV - Governing Body

Section 1. The governing body of the Tribes shall be known as the Tribal Executive Board, subject to the powers of the General Council.

A General Council may initiate ordinances or reject within ninety (90) days any enactment of the Executive Board. Upon petition of at least ten percent (10%) of the eligible voters of the Tribes, a General Council shall be called by the Chairman at a place within the Fort Peck Reservation designated in the petition; a quorum shall consist of one hundred (100) eligible voters of the Tribes. A stenographic transcript shall be kept of all proceedings of the General Council.

Section 2. The Board shall consist of a Chairman, a Vice-Chairman, a Secretary-Accountant, a Sergeant-at-Arms, and twelve (12) Board members.

Section 3. The Chairman, the Vice-Chairman, Sergeant-at-Arms and twelve (12) additional members of the Board shall be elected at large. The Secretary-Accountant shall be appointed from within or without the Board membership.

Section 4. The Chairman, the Vice-Chairman, the Sergeant-at-Arms, and Board members shall be elected for a two (2) year term.

Section 5. The Secretary-Accountant shall be appointed for a two (2) year term, and if appointed from outside of the elected Board membership, the Secretary-Accountant so appointed shall have no vote in Executive Board proceedings.

*Example 22: Constitution and Bylaws of the Chippewa Cree Indians of the Rocky Boy's Reservation, Montana*

### Article III - Organization of Governing Body

Section 1. The governing body of the Chippewa Cree Tribe shall be known as the "Business Committee."

Section 2. The Business Committee shall consist of eight (8) members and a Chairman all of whom shall be elected on an at-large basis. The Chairman shall file for that particular office.

Section 3. During the first regular meeting following certification of those committee members elected at the biennial election, the Business Committee shall elect from within its own membership a Vice-Chairman and such officers and committees as it may deem necessary. The services of a Tribal Secretary-Treasurer shall be available to the committee. Such Tribal employees shall be hired on the basis of an employment contract.

Section 4. The term of office of the Chairman and all other committee members shall be four (4) years, or until their successors are duly elected and installed.

Those members of the Business Committee who are in office on the effective date of this amendment shall continue to serve until their successors are duly elected at the November 1972 general election and installed in office. At the election a Chairman and eight (8) committee members shall be elected. The Chairman and four (4) committee members shall be elected for terms of four (4) years (November 1972 through November 1976 unless earlier removed from office). The remaining four (4) committee members shall be elected to serve for two (2) year terms. (November 1972 through November 1974 unless earlier removed from office). The differing lengths of terms shall apply only to the 1972 election for the purpose of establishing a system of staggered terms of office. Thereafter, all terms shall be for four (4) years. Primary elections shall be in June and general elections shall be in November of even numbered years.

The procedures for conducting the 1972 elections shall be determined by the election board and set forth in an ordinance of that body. In addition to those provisions stated in Article IV, Section 7, it shall include a procedure for determining which candidates in the June 1972 primary election will compete in the November 1972 general election for four (4) year terms and two (2) year terms. Those receiving the higher number of votes in the 1972 primary election will compete in the 1972 general election for the longer terms of office.

Candidates who wish to compete for the office of Chairman shall specifically file for that position for a four (4) year term.

## Bylaws

### Section 1. Organization of Business Committee and Duties of Officers.

(a) The officers of the committee shall be the Chairman, Vice-Chairman, and such other officers as may be hereafter designated by the committee.

(b) The Chairman shall be elected at large. The Vice-Chairman and any other officers shall be elected from within the committee by secret ballot. A nonvoting Secretary-Treasurer shall be selected from outside the committee and retained on an employment contract.

## Article XII - Judicial Branch

Section 1. There shall be established a Judicial Branch within the Tribal government to enforce ordinances and laws of the Business Committee, the Election Board and/or to administer justice through a Tribal court. The Judicial Branch shall also provide an appellant body for Tribal members who are aggrieved by decisions of the Tribal court.

Section 2. There shall be established, the positions of Chief Judge and two (2) Associate Judges for the Tribal court who shall be responsible to carry out the tribe's judicial functions in accordance with an approved Tribal law and order code. Terms of these offices shall be four (4) years and judges shall be elected at large in accordance with the Tribal election ordinance.

The Chief Judge and the two (2) Associate Judges in office upon the effective date of this amendment shall continue in office until the November 1972 election unless earlier removed from office. The successful candidates at the election and thereafter shall be elected to serve for four (4) year terms.

*Example 23: Constitution and Bylaws of the Colorado River Indian Tribes of the Colorado River Indian Reservation Arizona and California*

## Article IV Governing Body

Section 1. The governing body of the Colorado River Indian Tribes shall be the Colorado River Tribal Council.

### Section 2. Composition of Council.

The Tribal council shall consist of nine (9) members including a chairman and vice-chairman, all of whom shall be elected by secret ballot as herein elsewhere provided.

### Section 3. Officers.

The Tribal council shall elect from within its number: (a) a secretary; (b) a treasure, and such other officers other than the chairman and vice-chairman, as may be deemed necessary.

### Section 4. Terms.

Except as otherwise expressly provided in this constitution, each member of the Tribal council, and the chairman and vice-chairman, shall serve for a term of four (4) years from the date of his installation in office, or until his successor shall have been regularly elected and installed, except if removed for cause as provided in Article IX. At the first general election at which a vice-chairman is to be elected following the effective date of this constitution, the term of the person so elected shall be two (2) years. Upon the expiration of that term and thereafter, the term of office of the vice-chairman shall be four (4) years.

### Section 5. Savings Clause.

All duly elected and acting members and officers of the Tribal council, including the chairman and vice-chairman, under the Constitution of the Colorado River Indian tribes in effect immediately prior to the effective date of this constitution and bylaws shall continue to serve in that capacity under this constitution until the expiration of their terms of offices as provided for in that constitution heretofore in effect, and until their successors are duly elected and installed. However, such members and officers of the Tribal council shall function in their offices subject to the appropriate provisions of this constitution from and after its effective date. All ordinances and resolutions adopted by the Colorado River Indian Tribes and the Tribal council under the Constitution of the Colorado River Indian Tribes in effect immediately prior to the effective date of this constitution and bylaws shall continue in force after the effective date hereof until and unless they are duly amended, modified or repealed hereunder, provided, they are not in conflict with any provisions of this constitution in which instance they shall be considered invalid from the effective date of this constitution.

## Article XII Judiciary

### Section 1. Judiciary.

The judiciary power of the Colorado River Indian Tribes shall be vested in a Tribal court having trial jurisdiction and an appeals court having appellate jurisdiction over matters and persons subject to their jurisdiction as provided by in this constitution and bylaws, the ordinances of the tribes, and the authority of the constitution and laws of the United States.

### Section 2. Jurisdiction.

The judicial power of the courts of the Colorado River Indian Tribes shall extend to all cases and matters in law and equity arising under this constitution and bylaws, and the ordinances of the tribes, subject to any limitations, restrictions or exceptions imposed by or under the authority of the Constitution or laws of the United States.

### Section 3. Trial by Jury.

The trial of all criminal offenses shall be by a jury of not less than three (3) jurors, unless a jury trial is waived in writing by the defendant, or all defendants if more than one is to be tried at a common trial. If the offense is punishable by imprisonment, not less than six (6) jurors shall be allowed as provided by the so-called Indian Civil Rights Act.

### Section 4. Judicial Code.

The Tribal council shall enact a judicial code governing the operation and procedures of the judiciary of the tribes and the exercise by it of judicial power.

*Example 24: Constitution & Bylaws of the Fort Belknap Indian Community of the Fort Belknap Indian Reservation -Montana*

## Article IV - Organization of Community Council (Amendment #IV -Dec. 31, 1964)

### Section 1: Composition:

The Community Council shall be composed of twelve (12) members, six (6) of whom shall be chosen every second year by popular vote. Each candidate for councilman shall pay a filing fee for \$10.00.

### Section 2: Apportionment:

Representation of the Community Council shall consist of six Gros Ventre and six Assiniboiné members, who shall be apportioned among the districts according to the population of the members of the two tribes in the respective districts. The actual enumeration shall be made prior to July first of each election year.

### Section 3: Tenure:

At the first election under this amendment, the three (3) Gros Ventre and three (3) Assiniboiné members receiving the highest number of total votes shall be elected for a four (4) year term of office, and the three (3) Gros Ventre and three (3) Assiniboiné members receiving the next highest number of total votes shall be elected to a two (2) year term of office; thereafter, the members of the Community Council shall be elected to serve for a period of four (4) years and may succeed themselves as often as re-elected.

Section 4: Officers: The officers of the Community Council shall consist of: President, Vice-President, Secretary-Treasurer, and those officers shall be chosen by the Council when properly convened. Officers shall be elected from the Council membership.

*Example 25: Constitution and Bylaws of the Confederated Tribes of the Umatilla Reservation in Oregon*

Article V - General Council

Section 1. The General Council shall consist of all members of the Confederated Tribes of the age of eighteen (18) years or over. The General Council shall be the sole judge of the qualification of its own members.

Section 2. The General Council shall elect its own officers, and shall also elect the members of the Board of Trustees (formerly called the Umatilla Tribal Business Committee), as hereinafter provided; and the General Council shall have the power to demand reports from its officers and from the said Board, and to recall its officers or the members of the Board, as hereinafter provided.

Section 3. The officers of the General Council shall be a Chairman, a Vice-Chairman, a Secretary, and Interpreter, and such other officers as the General Council may from time to time create and fill.

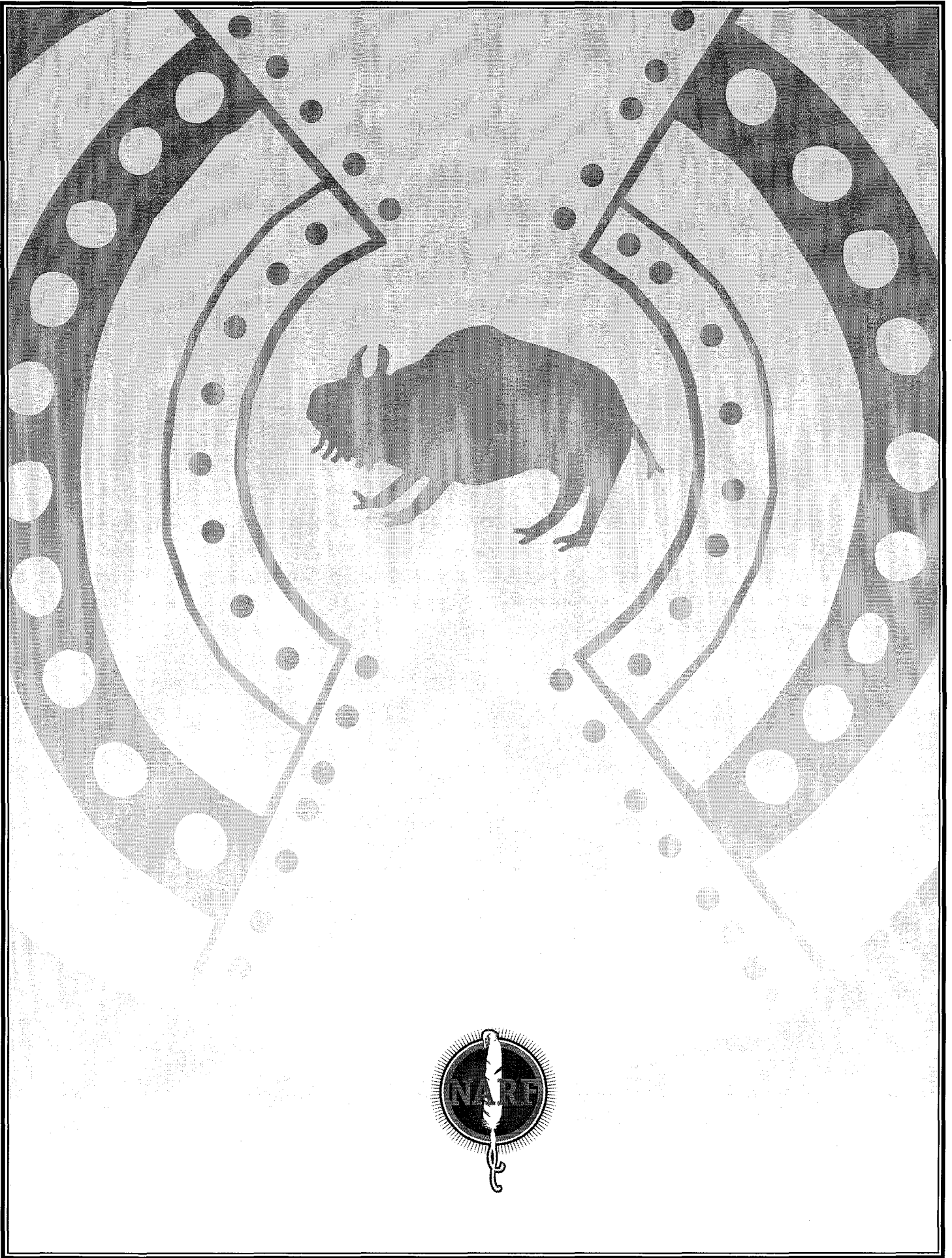
Section 5(c). Members of the Board of Trustees shall each hold office for a period of two (2) years, or until their successors are elected and take office, except that in the first election of said members, the four nominees receiving the highest number of votes shall hold office until December 1, 1950, and the four nominees receiving the next highest number of votes shall hold office until December 1, 1949.

Article VI - Board of Trustees

Section 1. The governing body of the Confederated Tribes shall be a Board of Trustees. Subject to limitations imposed by the Statutes or Constitution of the United States, the Board of Trustees shall have the following powers:

Section 2. The members of the Board of Trustees shall consist of the Chairman of the General Council, as ex officio member with the right to vote, and eight (8) members of the General Council elected by the General Council. No member shall be qualified to act as a member of the Board of Trustees who is a non-resident of the Umatilla Indian Reservation. The Board of Trustees shall be the sole judge of the qualifications of its members.

Section 3. The officers of the Board of Trustees shall be a Chairman, a Vice-Chairman, a Treasurer and a Secretary.





## **G. ETHICS IN TRIBAL GOVERNMENT**

### **A. Considerations.**

The purpose of a constitutional provision prohibiting public officials from participating in decision-making in which they have a conflict of interest is to ensure that the people are governed by individuals whose decision making is not compromised by their own self interests, such as personal financial interests, holding another public office, and receipt of campaign funds. It is a way to preserve the integrity and openness in the political process and to maintain the trust of the people in their representative tribal government.

At times, a decision maker will need to be removed from the decision making-process when that person's interests are at stake or appear to be at stake. A conflict of interest provision will help that individual, and others, to make a determination of whether that person can make an informed, impartial and unbiased decision under the given situation or, whether he or she should be relieved from making that decision.

### **B. Existing Provision. [to be filled in by tribe]**

### **C. Suggested Provision.**

This suggested provision would be placed as section 4 under Tribal Government Powers.

#### Section 4: Ethics in Tribal Government

The governing body shall, promptly after the adoption of this Constitution, by ordinance, not inconsistent with this Constitution, establish a code of ethics in Tribal government for tribal public officials or others as it deems appropriate to meet the needs of the Tribe.

### **D. Examples.**

#### *Example 1. Constitution of the Prairie Band Potawatomi Nation*

#### Article IX. Ethical Responsibilities of Officials

##### Section 1. Ethics Commission.

There is established an Ethics Commission. Beginning with a first election following approval of this amendment the Chairperson and Secretary shall be elected for a term of four (4) years. The Vice Chair and one (1) other officer shall be elected for a term of three (3) years. Two (2) other members shall be elected for a term of two (2) years. Thereafter, it shall be comprised of six (6) members who shall be elected for three (3) year terms by the General Council every year through an annual election process conducted by the Election Board. Voting may be in person or by mail-in ballot. Ethics Commission members shall serve until their successors are elected and installed in office. Successful candidates must receive the support of at least fifty percent (50%) plus one

vote of those voting. If no candidate receives the support of at least fifty percent (50%) plus one vote of those voting, then there shall be a run-off for that position between the two (2) candidates receiving the highest number of votes. Any tie shall be decided within two (2) days by a fair and formal coin toss; or the drawing of straws if more than two (2) candidates tie votes to determine the winner in the presence of the candidates or their appointed representatives within 48 hours. Election results shall be by the Election Board three (3) days following the annual election and/or run-off election. Successful candidates shall swear an oath to uphold the Nation's Constitution and laws following the certification of the results.

## Section 2.

In order to be qualified and seek election to a seat on the Ethics Commission a person must:

- (a) Be an enrolled member of the Prairie Band Potawatomi Nation.
- (b) Candidates for the offices of Chairperson, Vice-Chairperson, Secretary and the Commissioner position having an initial 3 year term must be 25 years of age or older.
- (c) Candidates for the two other Commissioner positions must be 21 years of age or older.
- (d) No person convicted of a felony within the past 5 years shall be a candidate for any office.

## Section 3.

Five (5) affirmative votes shall be necessary in order to conduct the business of the Commission. All meetings and hearings of the Commission shall be open to nation members only, provided that the Commission may meet in closed executive session to review investigatory reports and other privileged and confidential information. The purpose of the Commission shall be: (i) to develop the Code of Ethics; (ii) to formulate rules and regulations implementing provisions of this Article and the Code of Ethics; and (iii) to hear all complaints against nation officials arising under the Code of Ethics. For purposes of this Article, "officials" are officers elected or appointed under the terms of this constitution. The Commission shall have an Executive Director and such other staff, including legal counsel, that it may deem necessary. The Tribal Council shall fund the Commission at a level sufficient to satisfy its Constitutional and statutory obligations. Commissioners shall not be paid for their service, but may receive reimbursement of expenses incurred in performing their official duties. Commissioners shall be subject to the Code of Ethics and may not run for any other Nation office for four (4) years after their term expires or ends.

#### Section 4.

The Commission shall have the power: (i) to investigate and hear complaints against Nation officials that may arise under the Code of Ethics; (ii) to provide informal advice or written advisory opinions to nation officials to assist them in complying with the Code of Ethics; (iii) to issue rules and regulations implementing provisions of this Article and the Code of Ethics; (iv) to administer oaths and issue subpoenas to compel attendance and testimony of witnesses or production of documents; and (v) to recommend sanctions for violations of the Code of Ethics to the General Council, including but not limited to a recommendation that a Nation official be recalled using the regular recall process described in this constitution.

#### Section 5. Code of Ethics.

Within one (1) year of the effective date of this Amendment, the Ethics Commission shall develop a Code of Ethics governing the conduct of all Nation officials. The proposed Code of Ethics shall address the following types of potential official misconduct; dereliction of duty; conflict of interest; appearance of impropriety; misuse of confidential information; unauthorized compensation or benefits; unauthorized use of Nation property, funds, or staff; acceptance of solicitations and excessive gifts; misuse of official position; misuse of travel funds and leave; harassment; and such other matters as the Commission may deem necessary. The proposed Code of Ethics, as well as any amendments in the future, shall be submitted to the General Council for its consideration and approval. The Code of Ethics shall not supersede existing federal laws or regulations that govern the Gaming Compact.

*Example 2. Amended Constitution and Bylaws of the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation*

### Article VII – Code of Ethics

#### Section 1.

It is declared that the observance of high ethical standards by the President, Vice President, Secretary and Treasurer, and all members of the Tribal Council (“Tribal Officials”) is essential to the conduct of the Tribal government. In order to promote such high standards of public service and to strengthen the confidence of the Tribal membership in Tribal government, the principles set forth in Section 2 below are adopted as a Code of Ethics for Tribal Officials.

#### Section 2.

Every Tribal Official shall be guided by the following principles in discharging the duties and exercising the powers of office. Except as may be otherwise specifically required or permitted by Tribal or federal law, while in office every Tribal Official shall:

(a) discharge the duties and exercise the powers of office in good faith and in a manner which the Tribal Official believes will best serve the interests of the Tribe;

- (b) not accept any compensation, gratuity, benefit or advantage (other than duly authorized emoluments of office) from any source other than the Tribe in return for exercising or abstaining from exercising any duty or right of office in any particular way;
- (c) not use Tribal money, property or personnel for personal benefit;
- (d) not disclose or use for personal gain any confidential information of the Tribe;
- (e) not knowingly falsify, alter, conceal or destroy any official book, record, account or other document of the Tribe;
- (f) not present, allow or pay any charge or claim against the Tribe which the Tribal Officials know to be improper; and
- (g) not knowingly make any false statement in any official statement, report, certificate or other document, presented to or on behalf of Tribal government or the Tribal membership, which as an adverse effect on significant interest of the Tribe or its membership.

*Example 3. Constitution of the Yavapai-Apache Nation*

Section 9. Code of Ethics.

The Tribal Council shall have the power to adopt a Code of Ethics governing the conduct of tribal officials. The Code of Ethics may include disciplinary procedures, subject to section 7 of this Article, so long as the tribal official in question is afforded full due process rights.

*Example 4. Constitution of the Standing Rock Sioux Tribe*

Section 12.

All members of the Tribal Council and all other tribally elected officers shall act in accordance with a "Code of Ethics which shall have been adopted by Ordinance of the Council which shall include policies and procedures for enforcement, discipline and guidance. The Code of Ethics Ordinance shall include, but not be limited to as a basic foundation, the following tenets and principles of which the Council and Officers of the Council shall, in carrying out their respective duties and responsibilities, abide by the following:

Code of Ethics

- a. The faithful and diligent discharge of duties and responsibilities shall be for and in the best interest of the Standing Rock Sioux Tribe.
- b. The discharge of duties and responsibilities shall be without variance, neglect, or influence in the form of compensation, gratuity, benefit or advantage from any source other than from the Standing Rock Sioux Tribe or as pre-authorized by the Standing Rock Sioux Tribe.

- c. Use of Tribal property, funds, or resources shall be for authorized uses only and not for personal use or gain.
- d. Take an "Oath of Confidentiality" which shall provide non-disclosure or use for personal gain, any confidential information of the Tribe.
- e. To knowingly or intentionally alter, falsify, conceal, or destroy any official book, record, account or other document of the Tribe.
- f. To present, allow or pay, charge or claim against the Tribe which the Tribal Official or employee, agent or instrumentality knows to be improper or illegal; and
- g. To knowingly make any false statement in any official statement, report, certificate, application, claim or other document presented to or on behalf of Tribal Government or the Tribal Membership, which has an adverse effect or significant interests of the Tribe or its membership.

*Example 5. Constitution of the Pokagon Band of Potawatomi Indians*

Article XVII Conflict of Interest and Code of Ethics

Section 1. Personal Financial Interest.

In carrying out the duties of tribal office, no tribal official, elected or appointed, shall make or participate in making decisions which involve a personal financial interest. The voting of Tribal Council members, however, on recommendations made by the Salary Commission for Tribal Council compensation levels under Article X, Section 7 of this Constitution shall not be considered a violation of this provision.

Section 2. Employment Prohibitions.

No Tribal Council member may be an employee of the Band. The receipt by a Tribal Council member of compensation under Article X, Section 7 of this Constitution shall not classify that Council member as an employee of the Band.

Section 3. Code of Ethics.

The Tribal Council shall establish, by legislation, a Code of Ethics to cover the conduct and activities of Tribal Council members, Tribal Judges, employees, Commissioners, Board members, and Committee members. This code shall include, but not be limited to, the following:

- (a) The establishment of an Ethics Board;
- (b) Financial disclosure and financial conflict-of-interest;
- (c) The acceptance of gifts;

- (d) A definition for and policy on nepotism; and
- (e) A definition of “immediate family member” as used in this Constitution.

*Example 6. Constitution of the Ho-Chunk Nation*

Article V - Legislature

Section 3. Codes.

The Legislature shall adopt Codes governing Membership, Open Meetings, Elections, Ethics including conflicts of interest, nepotism, and the conduct of all elected and appointed officials and employees, and other Codes as deemed necessary.

*Example 7. Constitution of the Coquille Indian Tribe*

Article VI - Tribal Council

Section 4. Conflict of Interest.

a. No member of the Tribal Council may be employed by the tribal administrative office while serving as a member of the Tribal Council.

b. No Tribal Council member will vote on any matter in which s/he or a member of her or his immediate family has a direct personal interest, including but not limited to, employment contracts, project funding and appointment to tribal committees. A Tribal Council member who is attending the meeting but unable to vote because of a conflict of interest will nevertheless count toward the quorum necessary to conduct business. For purposes of this provision, “immediate family member” is defined as father, mother, son, daughter, husband, wife, brother, sister or any other relative living in the same household.

*Example 8. Constitution of the Grand Traverse Band of Ottawa and Chippewa Indians*

Article XII - Conflict of Interest

Section 1. Personal Financial Interest.

In carrying out the duties of tribal office, no tribal official, elected or appointed, shall make or participate in making decisions which involve balancing a personal financial interest, other than interests held in common by all tribal members, against the best interests of the Band.

Section. 2. Employment Prohibitions.

No Tribal Council member may be employed in a position that conflicts with his/her role as a Council member. Such conflicts include, but are not limited to, the following:

- (a) employment in a program that is controlled by the Tribal Council directly or indirectly through a tribal manager; and
- (b) employment in a program management position unless such employment is by a subordinate for-profit business organization chartered by the Tribe.

*Example 9. Constitution of the Zuni Tribe*

Article VIII - Conflicts of Interest

Section 1.

Any councilman who may be personally interested in any matter before the Zuni Tribal Council shall not vote on such matter without the consent of the remaining members. Failure to reveal a personal interest, not similarly shared by all members of the council, to the Zuni Tribal Council, in a matter before the council, shall constitute dereliction of official duty, and may be cause for removal from office.

*Example 10. The Constitution of the Osage Nation*

Article X - Code of Ethics

Section 1. Purpose.

Recognizing the desire of the Osage people to establish a government that is fair and equitable to all people; elected or appointed tribal officials and employees of the Osage Nation, putting aside their personal or private interest, shall strive for the common good of the Osage people and shall administrate fair and equal treatment of all persons, claims, and transactions petitioning before the Osage Nation Government.

Section 2. Compliance with Law and Regulations.

In the performance of their duties, all officials and employees of the Osage Nation shall comply with all laws and regulations of the Osage Nation not in conflict with this Constitution.

Section 3. The Conduct of Tribal Officials and Employees.

All tribal officials and employees of the Osage Nation shall avoid even the appearance of impropriety in the performance of their duties. Officials and employees shall refrain from abusive conduct, personal charges, or verbal affronts upon the character, motives, or intents of other officials or Osage citizens.

Tribal officials and employees shall not hinder or obstruct the proper administration of the Osage Nation government in the administration of their duties.

#### Section 4. Conflicts of Interest.

In order to assure independence and impartiality, tribal officials and employees are prohibited from using public positions to influence or otherwise effect government decisions for personal gain. Tribal officials and employees shall fully and in a timely manner disclose any conflicts, real or apparent, that might be seen to influence their judgment in the performance of their duties. Tribal officials and employees shall abstain from participation in deliberations or decision-making where any conflicts are deemed to exist.

#### Section 5. Gifts and Public Favor.

Tribal officials and employees shall not accept any special advantage of services or opportunities for personal gain, by virtue of public office, that is not available to the Osage people. Tribal officials and employees shall not accept any gift, favor, or promise of future benefit for themselves or their relatives in exchange for preferential treatment.

#### Section 6. Use of Tribal Resources.

Tribal officials and employees shall refrain from the use of tribal resources when not acting in an official capacity.

#### Section 7. Advocacy.

All official delegates of the Osage Nation shall accurately represent the official policies and positions of the Osage Nation government to the best of their abilities. When called upon to provide their own individual opinions or positions, all such delegates shall state explicitly that such information is not representative of the position of any administrative body within the Osage Nation government and shall not allow such an inference to occur.

#### Section 8. Independence of Boards and Commissions.

Tribal officials and employees shall refrain from using tribal positions to improperly influence the deliberations, administrations, or decisions of established board or commission proceedings.

#### Section 9. Political Subdivisions.

The Osage Nation Code of Ethics shall be applicable to all political subdivisions of the Osage Nation including members of the boards, commissions and other bodies.

#### Section 10. Provisions for Violations.

The Osage Nation Congress shall enact provisions for violations of the above stated code.



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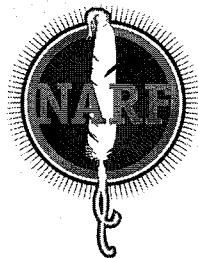
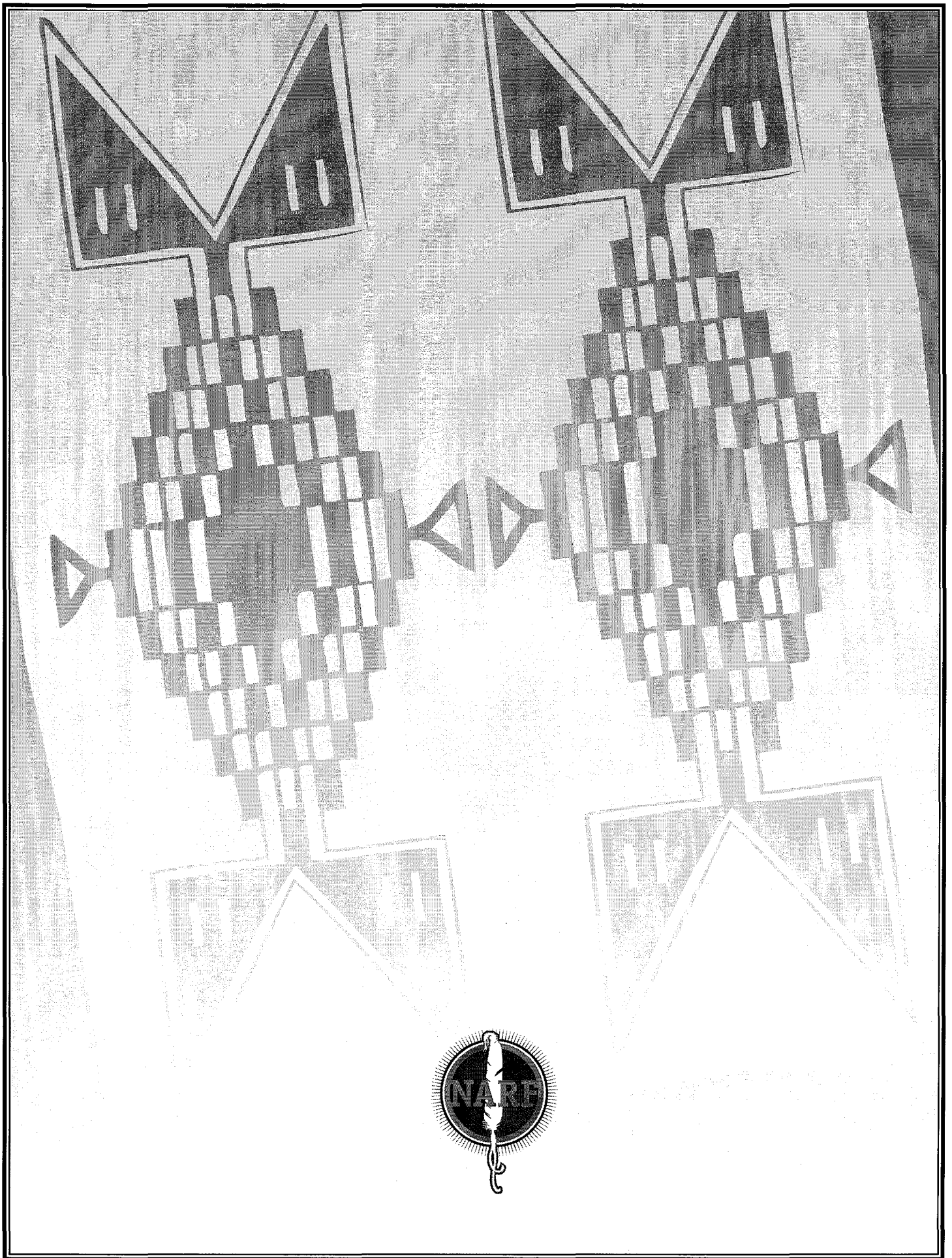
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## H. TRIBAL GOVERNING BODY

### A. Considerations.

This Article on Governing Body will focus only on the legislative and executive functions with the intent that a decision has been made to separate tribal government powers into two separate, but equal, branches of tribal government. This is one possibility so if your tribe has decided to pursue another possibility this Article will change for your tribe. In addition, if your tribe has districts, then the composition of the governing body may reflect the fact that some members of the governing body may be elected by their districts while some, such as the Chair and Vice Chair, may be elected at large. There are many variations related to the composition of the governing body, including a wide range of qualifications. The following are suggestions, but certainly not limitations.

The structural details of the executive/legislative branch, such as the specific powers of the governing body, will be presented in the next Article. You may want to combine that Article with this one since it deals with the governing body. For that reason, we denominate this part Section 1.

### B. Existing Provision. [to be filled in by tribe]

### C. Suggested Provision.

Article \_\_\_\_\_, Governing Body

Section 1: Composition, Qualifications, Terms of Office, Officers.

(a) Composition. The governing body shall be composed of \_\_\_\_ members [Option if based on district elections: \_\_\_\_ of which shall be elected by majority vote from single member geographical districts, and one of which, the [Chairperson/President/Chief/etc.] who shall be elected by majority vote of all registered tribal voters.

All members of the governing body at the time this Constitution becomes effective shall continue to serve and shall be entitled to exercise all powers granted by this Constitution to the governing body until such time as their successors are elected and installed under this Constitution.

(b) Qualifications. For a person to be eligible for election or appointment to the governing body that person shall be:

- (1) a registered voter of the tribe;
- (2) at least \_\_\_\_ years of age;
- (3) a high school graduate or have the equivalent of a high school diploma;
- (4) a resident [options; of the reservation? in a voting district established under this Article \_\_\_\_\_, Section \_\_\_\_\_ ?] for \_\_\_\_ or more consecutive years immediately preceding the election; and
- (5) free of any felony conviction.

[Option for head tribal leader: In addition to the qualifications immediately preceding, the candidate for (Chairperson/President/Chief, etc.) shall:

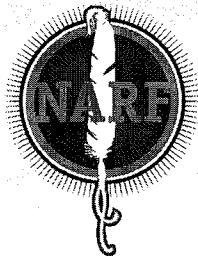
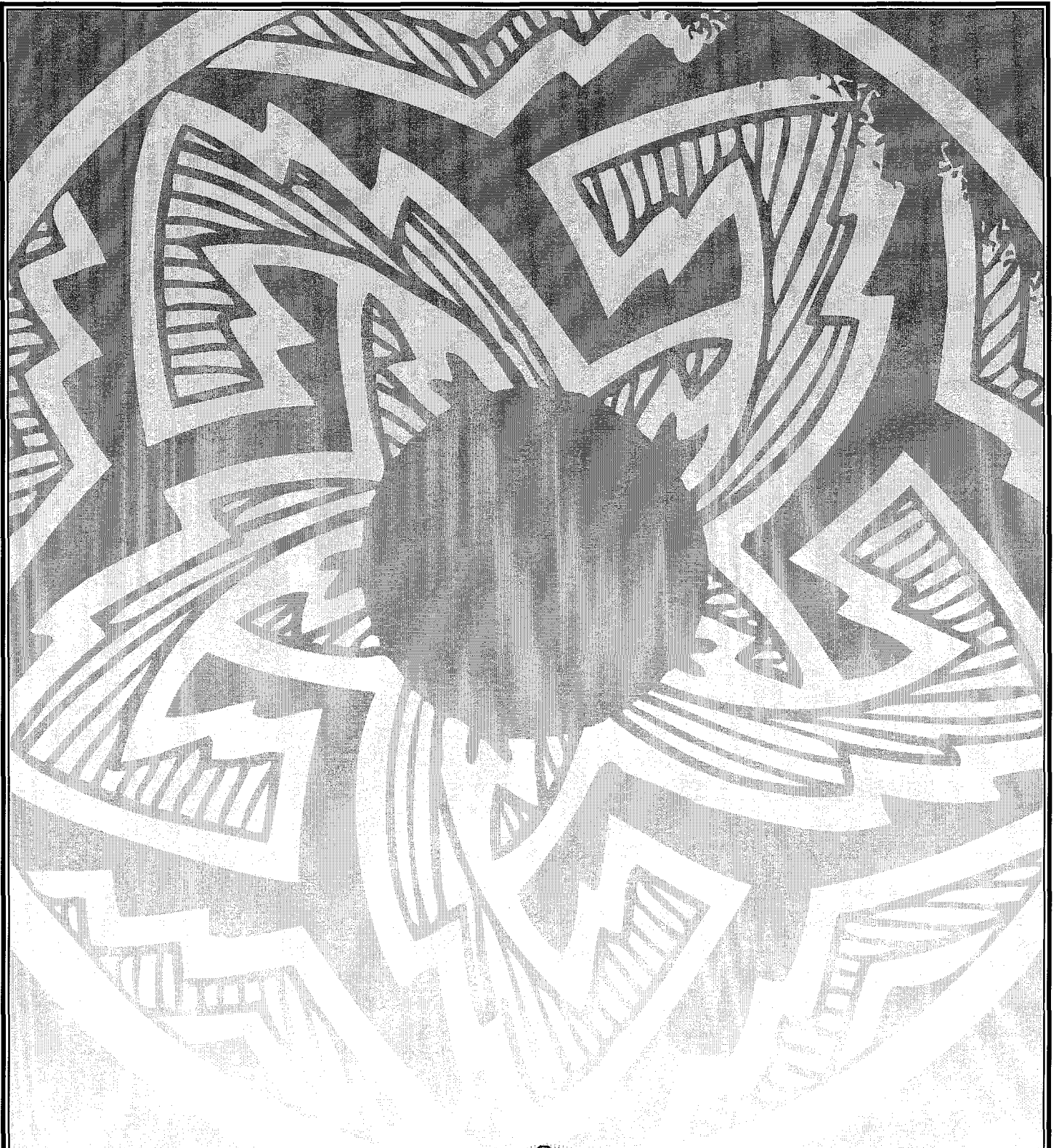
- (1) be at least \_\_\_\_ years of age, and
- (2) have previously served at least one term on the governing body.]

(d) Terms. The members of the governing body shall serve \_\_\_\_ year terms of office and remain in office until their successors are elected and installed. The [Chairperson/President/etc.] shall be limited to \_\_\_\_ consecutive terms of office. The term of office for members of the governing body shall be staggered as follows: [Fill in staggered terms]

(e) Officers. The governing body shall elect from within its own number a [Options: Vice-Chairperson, Secretary, and Treasurer.] The governing body may appoint from without its numbers [Options: Parliamentarian and a Sergeant-at-Arms], and appoint or employ those other officers and committees as may be necessary. Those officers who are appointed from without the governing body shall not be counted for a quorum or voting purposes at meetings of the governing body.

**D. Examples.** [Note: Look to the examples in Article F. Tribal Government Powers.]





## I. EXECUTIVE & LEGISLATIVE POWERS

### A. Considerations.

The major purpose for this article is to define those tribal powers which the governing body is authorized to exercise. Thus, the major question to be answered with regard to this article is this: what scope of tribal powers should the governing body be authorized to exercise? There are two alternative answers to this question: first, the governing body may be authorized to exercise any and all power now vested in, or which in the future may be vested in, the Tribe, except as limited by the tribal constitution or federal law. Second, the governing body may be authorized to exercise only certain enumerated tribal powers with all other powers, including future tribal powers, reserved to the members of the tribe. The tribal members may, by future constitutional amendments, authorize the governing body to exercise certain of these reserved powers.

#### 1. Advantages and Disadvantages of the First Alternative: A General Grant of Powers:

The major advantage of the first approach is that it allows the tribal policy makers, *i.e.*, the governing body, a broad choice of powers which they may use to serve the needs of the tribal members. It allows the governing body to be flexible and innovative in responding to present needs of the Tribe. And particularly, it allows the governing body to respond quickly to future needs, unforeseeable at the time the constitution is drafted, without having to go through the difficulty of amending the constitution to obtain a grant of power allowing the governing body to act.

If the first approach is chosen, however, care must be taken to draft into the constitution sufficient checks and balances to make it extremely difficult for the governing body to abuse its grant of powers. There are several protections against the abuse of power by public officials which can be drafted into the constitution. Unscrupulous public officials may be removed from office by vote of the tribal members under a recall procedure. Members of the governing body may also be removed from office by their fellow members for abuse of power, subject perhaps to a referendum of the tribal members. Certain kinds of actions by the governing body can be required to be submitted to a referendum vote before such action can be effective. Tribal members can be authorized to initiate a referendum on any action by the governing body. The head tribal leader can be granted the power to veto acts of the governing body, and the governing body can be granted approval power over some or all acts of the head tribal leader. Finally, specific limitations, upon the general grant of power to the governing body, can be drafted into the constitution-provisions which specifically forbid the governing body from taking certain actions, at least without a tribal referendum. Such a provision might, for example, prohibit the governing body from selling tribal land without a vote of the tribe approving such a sale.

2. Advantages and Disadvantages of the Second Alternative: A Grant of Enumerated Powers.

The major advantage of this approach is that it limits the scope of powers granted to the governing body, and by so doing, it limits the scope of opportunities for tribal officials to abuse power. This advantage, however, appears to be largely illusory in light of the fact that most tribal constitutions have enumerated powers, as has the United States Constitution, yet abuses of power have still occurred or at least been charged. Perhaps the ultimate point is that a grant of power no matter how limited is still a grant of power and if the person authorized to exercise that power is unscrupulous and has the opportunity and motivation that grant of power will likely be abused. As discussed in more detail in section 1 above, there are various ways to lessen the possibility of abuses of power by drafting into the constitution provisions designed to provide checks upon the exercise of tribal power by tribal officials.

The major disadvantage of the enumerated powers approach is that those powers not granted to the governing body of the tribe cannot, so long as they are reserved, be of any benefit to the tribe. A tribal power is useless unless someone is authorized to exercise it for the tribe's benefit. A second disadvantage is that enumerated powers will not include powers which may be returned to tribes in the future by the federal government. If the power provisions of the tribal constitutions are not broad enough to authorize the governing body to exercise the new tribal powers, the constitutions must be amended to do so. This is usually a time consuming and difficult job. Finally, enumerating powers creates the risk that some necessary or desirable powers will be overlooked or that unforeseeable tribal problems will arise in the future which will require the governing body to have certain powers other than those enumerated to deal with the situation. Again, amending the Constitution to grant the governing body those powers will be time consuming and difficult. In the end, to get around the barrier of amending the constitution, the governing body may rely upon a general enumerated power usually stating "to promote and protect the health, peace, morals, education, political integrity, economic security and general welfare of the Tribe and its members." This type of enumerated power clause often has its good and bad points. As stated, it helps to the governing body to rapidly respond to changing circumstances and emergency situations, but it is also so broad as to be ripe for abuse.

**B. Existing Provisions.** [to be filled in by tribe]



### **C. Suggested Provisions.**

This suggested provision is denominated Section 2 since it may be coupled with the preceding Articles titled "Tribal Governing Body".

#### **Option 1:**

Section 2. Powers of the Governing Body. The governing body, as established in Article\_\_\_\_\_ of this Constitution, shall be vested with all executive and legislative powers of the Tribe including the power to make and to enforce laws, and including such powers as may in the future be restored or granted to the Tribe by any law of the United States, or other authority. This Constitution, and ordinances or other legislation of the governing body adopted under this Constitution, shall be the supreme law of the Tribe. The governing body shall exercise its powers consistent with the limitations imposed by this Constitution.

#### **Option 2:**

#### **Section 2. Enumerated Powers of the Governing Body.**

The governing body shall be authorized to exercise the following powers, subject to any limitations imposed by Federal Law or this Constitution.

- A. To promote and protect the health, peace, morals, education, political integrity, economic security and general welfare of the Tribe and its members.
- B. To establish a basic departmental structure for the executive branch of the Tribal government with a delegation of appropriate powers to such subdivisions and agencies.
- C. To establish procedures and ordinances for the conduct of all tribal businesses, governmental or otherwise, and non-tribal businesses, including over those businesses employees, except where elsewhere precluded in this constitution or by federal law.
- D. To negotiate and enter into contracts and agreements including with tribal, foreign, federal, state and local governments, private persons and corporate entities.
- E. To prevent the sale, loss or transfer of tribal land, to manage the disposition, lease or encumbrance of tribal lands or interest in land inherited, acquired with tribal funds or other tribal assets.
- F. To make assignments or lease of Tribal lands to members of the Tribe, Tribal agencies and to corporations wholly owned by the Tribe, and regulate the use of disposition of all such assignments or leases.
- G. To purchase, take by gift or bequest, or otherwise own, hold, manage and operate land

and other assets of the Tribe.

- H. To approve or disapprove operating budgets of the Tribal agencies, subdivisions and departments.
- I. To prepare and present an annual balanced budget of Tribal operations to the Tribal body and in the event the budget is approved by a majority of the registered voters present and voting at the annual meeting of the Tribe, to allocate the funds called for by the budget.
- J. To approve or disapprove allocations or disbursements of Tribal funds (or grant or contract funds under the administrative control of the Tribe) not specifically appropriated or authorized in the budget approved by the Tribe.
- K. To create or to provide for the creation of corporate entities including public and private corporations and/or charters for any lawful purpose, which may be nonprofit or profit making, and to create or provide for the creation of subordinate organizations, agencies, instrumentalities or entities of the Tribe to engage in any lawful activity, and to regulate the activities of such entities, organizations, agencies, or instrumentalities.
- L. To establish and enforce all ordinances governing Tribal members.
- M. To levy and collect taxes and raise revenue to meet the needs of the Tribe or to support Tribal government operations.
- N. To assert as a defense to lawsuits against the Tribe, and to waive only by express written agreement, the sovereign immunity of the Tribe.
- O. To establish an adjustable distribution of Tribal assets among the members of the Tribe which shall be made out of the net profits of any gaming enterprise after all Tribal debts then due have been managed and considerations given to future expense.

**D. Examples.**

*Example 1: Constitution & Bylaws of the Menominee Indian Tribe of Wisconsin*

**Article III - Powers of the Tribal Government**

**Section 1. Powers of the Tribal Legislature.**

The Tribal Legislature, as established in Article IV of this Constitution, shall be vested with all executive and legislative powers of the Tribe including the power to make and to enforce laws, and including such powers as may in the future be restored or granted to the Tribe by any law of the United States, or other authority. The powers of the Tribal Legislature shall include those powers vested in the Tribe by Section 16 of the Indian Reorganization Act (48 Stat. 987),

namely, to employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease or encumbrance of tribal lands, interest in lands, or other tribal assets without the consent of the Tribe; and to negotiate with the Federal, State and local governments. This Constitution and Bylaws and ordinances of the Tribal Legislature adopted pursuant to this Constitution shall be the supreme law of the Menominee Indian Tribe and all persons subject to its jurisdiction. However, the Tribal Legislature shall exercise its powers consistent with the limitations imposed by this Constitution and Bylaws.

#### Section 8. Powers and Duties.

The powers and duties of the officers of the Tribal Legislature are set forth in the Bylaws of this Constitution.

#### Article X - Limited Power of Tribal Legislature to Transfer Ownership Of, Or To Encumber, Tribal Land or Interest Therein

#### Section 3. Limited Power to Develop Natural Resources

The Tribal Legislature shall not develop on a commercial or industrial basis any natural resources of the Tribe without the consent of a majority of the total number of eligible voters of the Tribe, except as otherwise specified in Article XI, Section 2(d).

#### Bylaws

#### Bylaw 1 - Officers and Committees of the Tribal Legislature: Duty to Vote Stock of Menominee Enterprises, Inc.

#### Section 1. Officers of the Tribal Legislature.

The duties of powers of the Chairperson shall include but not be limited to the following:

- (1) Preside at all meetings of the Tribal Legislature and at any other meeting called by the Tribal Legislature at which the Chairperson may be designated to preside.
- (2) Represent the Tribal Legislature in its relations with other governments, but only where the Tribal Legislature has specifically and expressly authorized the Chairperson to do so provided that, the Tribal Legislature shall not authorize the Chairperson to take any action which under this Constitution and Bylaws must be taken by the Legislature.
- (3) Appoint members of all committees of the Tribal Legislature subject to the approval of the Legislature and in accordance with rules of procedure of the Legislature.

- (4) Serve as an ex officio member of all committees of the Tribal Legislature.
- (5) Call special meetings when appropriate of the Legislature and of any committee of the Legislature, in accordance with this Constitution and Bylaws, laws of the Tribe, and rules of procedure of the Legislature.
- (6) Receive reports of all committees of the Legislature and deliver such reports or cause such reports to be delivered to the Legislature.
- (7) Exercise supervision over all committees of the Legislature and recommend to the Legislature the establishment, consolidation, or abolition of Legislative committees.
- (8) Be responsible for the administrative details of calling and holding meetings of the Legislature and of the tribal members.
- (9) Perform such other duties as may be prescribed by this Constitution and Bylaws, by ordinance, or as required by the Tribal Legislature.

*Example 2: Constitution and Bylaws of the Chitimacha Tribe of Louisiana*

Article VII - Powers of the Tribal Council

Section 1. Enumerated Powers.

The Tribal Council of the Chitimacha Tribe shall have the following powers subject to any limitations imposed by the Statutes or the Constitution of the United States:

- (a) To negotiate with the Federal, State, and local governments.
- (b) To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior.
- (c) To manage, acquire or dispose of, lease, encumber or use tribal lands, interest in lands, tribal funds or other tribal assets, subject to approval of the Secretary of the Interior.
- (d) To veto any sale, disposition, lease or encumbrance of tribal lands, interests in land, tribal funds, or other tribal assets.
- (e) To advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Chitimacha Indians prior to the submission of such estimates, to the Office of Management and Budget and to Congress.

- (f) To appropriate any available tribal funds for the benefit of the tribe.
- (g) To supervise and manage tribal economic affairs and enterprises in accordance with this constitution and a corporate charter which may be issued by the Secretary of the Interior.
- (h) To pass and enforce ordinances and rules and regulations which shall be subject to the approval of the Secretary of the Interior, providing for the management of tribal lands or other tribal assets, including the making and revoking of assignments, disposition of timber, oil and mineral resources, except that this article shall not conflict or interfere in any way with the provisions of Article IV.

*Example 3: Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, Colorado*

## Article VII - Powers of the Council

### Section 1.

The inherent powers of the Southern Ute Indian Tribe, including those set forth in Section 16 of the Act of June 18, 1934 (48 Stat. 984) as amended, shall be exercised by the Southern Ute Indian Tribal Council, subject only to limitations imposed by the Constitution and Statutes of the United States, by the regulations of the Department of the Interior and by this constitution. The tribal council shall be empowered to:

- (a) Regulate its own procedures by appropriate ordinance. In addition, the council may appoint subordinate boards, commissions, committees, tribal officials and employees not otherwise provided for in this constitution, and may prescribe their salaries, tenure and duties.
- (b) Authorize and regulate tribal associations, corporations and subordinate organizations for economic and other purposes, with the approval of the Secretary of the Interior or his authorized representative whenever required by law, and may transfer tribal assets thereto for management and control;
- (c) Any encumbrance, sale, lease, permit, assignment, or management of any portion of the reservation, or the grant of any rights to use of lands or other assets, or the grant or relinquishment of any water or mineral rights or other natural or fiscal assets of the Southern Ute Indian Tribe, are hereby reserved to the tribal council.
- (d) Advise the Secretary of the Interior and heads of other Federal Agencies with regard to all appropriation estimates or Federal projects for the benefit of the Southern Ute Indians of the Southern Ute Indian Reservation.

- (e) Subject to approval by the Secretary of the Interior, or his authorized representative, the tribal council may enact ordinances and codes to protect the peace, safety, property, health and general welfare of the members of the Southern Ute Indian Tribe and to govern the administration of justice through the tribal courts, prescribe the powers, rules and procedures of the tribal courts in the adjudication of cases involving criminal offenses, domestic relations, civil actions and the inheritance and probate of trust, real and personal property of tribal members within the reservation.
- (f) Provide by ordinances for the appointment of guardians for minors and mental incompetents.
- (g) Provide by ordinance, subject to the approval of the Secretary of the Interior, or his authorized representative, for the removal or exclusion from the reservation of any nonmembers whose presence may be found by the tribal council to be injurious to members of the tribe.
- (h) The tribal council shall manage all funds within the control of the tribe, and may appropriate available tribal money for public, business, governmental or investment purposes with approval of the Secretary of the Interior, or his authorized representative, whenever required by Federal law.
  - 1. All appropriations of tribal funds shall be expended in conformity with annual budgets subject to approval by the Secretary of the Interior, or his authorized representative;
  - 2. Provisions shall be made for adequate accounting of all tribal financial transactions, including a comprehensive annual audit. An annual summary audit report showing income and expenses for the fiscal year ended, reflecting the financial condition of the tribe, shall be available to tribal members upon request. All tribal officials and employees who are directly responsible for the receipt, disbursement and custody of tribal funds shall be adequately bonded. The cost of such bond shall be paid from tribal funds.
- (i) The tribal council may authorize the deposit of any tribal funds under its control, to the credit of the Southern Ute Indian Tribe, without limitations on the amount carried in any account, in any bank whose deposits are insured by any agency of the Federal Government.
- (j) The tribal council shall have the power to borrow money for business and economic development purposes from the Federal Government or other lending agencies.

- (k) The tribal council may levy and collect taxes and fees on tribal members, and may enact ordinances, subject to approval by the Secretary of the Interior, or his authorized representative, to impose taxes and fees on nonmembers of the tribe doing business on the reservation.
- (l) The tribal council may administer charity.
- (m) The tribal council may adopt ordinances to authorize the loan of tribal funds to tribal members or tribal organizations.
- (n) To protect and preserve the property, wildlife and natural resources of the tribe, and to regulate the conduct of trade and the use and disposition of tribal property upon the reservation.
- (o) To employ legal counsel for the protection and advancement of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, the choice of counsel and the fixing of fees to be subject to the approval of the Secretary of the Interior, or his authorized representative, so long as such approval is required by Federal law.
- (p) To enact ordinances, covering the activities of voluntary associations consisting of members of the tribe organized for the purposes of cooperation or for other purposes, and to enforce the observance of such ordinance.
- (q) To establish housing and such other authorities to conduct the business of the tribe.

#### Section 2. Acting Chairman.

In the absence of the chairman and vice-chairman, the tribal council shall by proper resolution appoint from within its membership an acting chairman, who will be given all authority of the regular chairman.

#### Section 3. Further Powers.

The tribal council may exercise such further powers as may be delegated to or conferred upon the Southern Ute Indian Tribe by the Congress of the United States, the Secretary of the Interior or other competent authority.

#### Section 4. Reserve Powers and Rights.

Any rights and powers heretofore vested in the Southern Ute Indian Tribe of the Southern Ute Indian Reservation but not expressly referred to in this constitution shall not be abridged by this article, but may be exercised by the members of the Southern Ute Indian Tribe through the adoption of appropriate amendments to this constitution.

## Section 5. Approval of Council Enactments.

Every resolution or ordinance passed by the tribal council shall, before it becomes effective, be presented to the chairman for approval within five (5) days following the date of its passage. If he approves, he shall sign it within ten (10) days following its receipt by him and take such further action as may be necessary. If he does not sign an enactment of the tribal council, it shall not become effective and he shall, at the next regular meeting of the tribal council following its submittal to him for signature, return it to the council with a statement of his objections. It shall, thereafter, not become effective unless it is again approved by five (5) of the six (6) tribal council members.

### *Example 4: Constitution and Bylaws of the Upper Skagit Indian Tribe*

## Article VI - Powers of the Council

### Section 1. Enumerated Powers.

The Tribal Council of the Upper Skagit Indian Tribe shall exercise the following powers, subject to any limitations imposed by the statutes or the Constitution of the United States, and subject further to all express restrictions upon such powers contained in this constitution and bylaws:

- (a) To negotiate with the Federal, State, and local government on behalf of the tribe and to advise and consult with the representatives of the Department of the Interior on all activities of the Department that may affect the Upper Skagit Indian Tribe.
- (b) To employ legal counsel, the choice of counsel and the fixing of fees to be subject to the approval of the Secretary of the Interior as long as such approval is required by law.
- (c) To approve or veto any sale, disposition, lease, or encumbrance of tribal lands, interest in lands, or other tribal assets which may be authorized or executed by the Secretary of the Interior or his authorized representative; provided, that no tribal lands shall be encumbered, sold, or leased for a period exceeding the time authorized by law.
- (d) To advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Upper Skagit Indian Tribe prior to the submission of such estimates to the Office of Management and Budget and to Congress.



- (e) To manage all economic affairs and enterprises of the tribe in accordance with the terms of a charter that may be issued to the said tribe by the Secretary of the Interior.
- (f) To appropriate any available funds for public purposes of the tribe.
- (g) To levy taxes upon members of the tribe or to require the performance of community labor instead.
- (h) To remove or exclude from the territory of the tribe non-members whose presence may be injurious to the peace, health, or welfare of the tribe, under ordinances which shall be subject to the approval of the Secretary of the Interior.
- (i) To enact resolutions or ordinances governing the adoption of members and the relinquishment of membership, and to maintain a correct roll of the members of the tribe.
- (j) To safeguard and promote the peace, safety, moral, and general welfare of the members of the tribe by regulating the use and disposition of tribal property, provided that any ordinance directly affecting non-Indians shall be subject to the approval of the Secretary of the Interior as long as required by law.
- (k) To charter subordinate organizations for economic purposes and to regulate the activities of all cooperative associations of members of the tribe by ordinances.
- (l) To regulate the domestic relations of members of the tribe, to the extent permitted by law.
- (m) To provide for the appointment of guardians for minors and mental incompetents by ordinance or resolution, to the extent permitted by law, subject to the approval of the Secretary of the Interior.
- (n) To adopt resolutions regulating the procedure of the council itself and of other tribal agencies and tribal officials.
- (o) To delegate to subordinate boards or to cooperative associations which are open to all members of the tribe any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated powers.
- (p) To promulgate and enforce ordinances governing the conduct of members of the Upper Skagit Tribe to the extent permitted by law.

## Section 2. Joint Land Use Committee.

The chairman of the Upper Skagit Indian Tribe and committee members designated by the tribal council shall work in conjunction with representatives of the Sauk-Suiattle Tribe to transact business regarding common property taken pursuant to the Act of June 30, 1913 (38 Stat. 101) for the Upper Skagit and Sauk-Suiattle Tribes.

## Section 3. Future Powers.

The Tribal Council of the Upper Skagit Indian Tribe may exercise such further powers as may in the future be delegated to it by the Secretary of the Interior, or by any other duly-authorized official or agency of government.

## Section 4. Reserved Powers.

Any rights and powers heretofore vested in the Upper Skagit Indian Tribe but not expressly referred to in this constitution shall not be abridged by this Article, but may be exercised by the people of the Upper Skagit Tribe through the adoption of appropriate bylaws and constitutional amendments.

### *Example 5: Constitution of the Kickapoo Traditional Tribe of Texas*

#### Article VII - Powers of Traditional Council

All powers of the Kickapoo Traditional Tribe of Texas, including but not limited to those powers conferred by section 16 of the Act of June 18, 1934 (25 U.S.C. 465), shall be exercised by the Traditional Council subject only to limitations imposed by the laws or Constitution of the United States, including but not limited to the following powers:

- (a) To negotiate with the Federal, State, and local governments;
- (b) To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior as long as such approval is required;
- (c) To prevent the sale, disposition, lease, or encumbrance by any person or entity other than by the Traditional Council as provided in this section, of tribal lands, interest in lands, or other tribal assets without the consent of the tribe;
- (d) To advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Kickapoo Traditional Tribe of Texas;
- (e) To purchase, take by gift or bequest, or otherwise, own, hold, manage, operate, and dispose of property real and personal including the power to purchase restricted Indian land;

- (f) To lease and make assignments of tribal land in accordance with the law;
- (g) To exercise powers necessary to the conduct of business, including entering into contracts and agreements and borrowing money;
- (h) To manage and regulate all tribal economic affairs and activities;
- (i) To appropriate funds;
- (j) To safeguard the peace, safety, welfare and political integrity of the Tribe by enacting appropriate resolutions or ordinances for this purpose;
- (k) To levy taxes and license fees;
- (l) To exclude unauthorized persons from land within the jurisdiction of the Tribe.
- (m) To determine and regulate tribal membership;
- (n) To regulate and maintain law and order on lands within the Tribe's jurisdiction;
- (o) To provide for the administration of justice by establishing tribal courts;
- (p) To condemn lands for public purposes;
- (q) To regulate the use and disposition of property;
- (r) To charter and regulate subordinate organizations and cooperative associations;
- (s) To regulate the inheritance of property, including trust and restricted property, to the extent authorized by law;
- (t) To regulate domestic relations and other internal affairs of the Tribe;
- (u) To appoint guardians;
- (v) To encourage arts and crafts;
- (w) To regulate tribal elections;
- (x) To regulate the conduct of the Traditional Council itself and of tribal meetings.

## Section 2. Committees and Boards.

The Traditional Council may appoint other officials, committees or boards and delegate responsibilities thereto as may be required from time to time. The duties, responsibilities and compensation for such officials, committee members or board members shall be set by the Traditional Council.

## Section 3. Future Powers.

The Traditional Council may exercise such further powers as may in the future be conferred by federal law.

### *Example 6: Constitution of the Cherokee Nation of Oklahoma*

## Article IV. Distribution of Powers

The powers of the government of the Cherokee Nation shall be divided into three (3) separate departments: Legislative, Executive and Judicial; and except as provided in this Constitution, the Legislative, Executive and Judicial departments of government shall be separate and distinct and neither shall exercise the powers properly belonging to either of the others.

## Article V. Legislative

### Section 2.

The Council shall establish its rules for its credentials, decorum, and procedure.

### Section 7.

The Council shall have the power to establish laws which it shall deem necessary and proper for the good of the Nation, which shall not be contrary to the provisions of this Constitution. Laws or enactments which are required by Federal statutes to be approved shall be transmitted immediately upon enactment as provided by Section 11 of this Article to the President of the United States or his authorized representative.

### Section 9.

The Council shall have the power of removal and said removal must be conducted in accordance with Article XI of this Constitution. Nothing herein is intended to abrogate or limit the authority of the President of the United States or any person or agency to which the President or Congress of the United States shall delegate authority therefore, to remove the Principal Chief or his subordinates.

## Article VI. Executive

### Section 1.

The executive power shall be vested in Principal Chief, who shall be styled. "The Principal Chief of the Cherokee Nation."

### Section 10.

The Principal Chief shall cause the laws of the Cherokee Nation to be faithfully executed, and shall conduct in person and in such manner as shall be prescribed by law, all communications and business of the Cherokee Nation. The Principal Chief may cause to be formed and operated, trusts, the beneficiary of which shall be the Cherokee Nation and these trusts shall be granted such powers as provided by law for public trusts. Authorization for these trusts, however, must be approved by a majority vote of the Council.

*Example 7: Constitution for The Pueblo of Isleta, New Mexico*

## Article IV - Executive Branch

### Section 5. Duties of the Governor.

The duties of the governor shall include the following:

- (a) To direct and administer the civil affairs of the pueblo in conformity with applicable ordinances, procedures and policies enacted by the council;
- (b) To represent the pueblo in negotiations and relationships with other governmental agencies, individuals and entities;
- (c) To co-sign with the treasurer all checks authorized by the council to be drawn against the accounts of the pueblo;
- (d) To attend all meetings of the council;
- (e) To supervise and direct all employees of the pueblo government;
- (f) To act as contracting and certifying officer with reference to all contracts, agreements and payment vouchers approved by the council;
- (g) To perform such other duties as are traditionally associated with the office of the governor.

## Article V - Legislative Branch

## Section 2.

Subject only to limitations imposed by the laws of the United States and the restrictions established by this constitution; the powers of the council shall include the following:

- (a) To employ legal counsel, the choice of the counsel and fixing of fees to be subject to the approval of the Secretary of the Interior, so long as said approval is required by Federal law.
- (b) To prevent the sale, disposition, lease or encumbrance of Pueblo of Isleta lands or interests in lands or other pueblo assets; to execute leases, contracts and permits, provided that where the leasing, contracts and permits, or encumbering of pueblo land is involved, the approval of the Secretary of the Interior shall be required so long as such approval is required by Federal law.
- (c) To negotiate and enter into agreements with the Federal Government, State and local governments and with the duly recognized governing bodies of other Indian tribes or pueblos, private persons, partnerships, corporations, associations or other private non-profit or profit entities.
- (d) To advise the Secretary of the Interior with regard to all appropriation estimates, or Federal projects of interest to or for the benefit of the pueblo prior to the submission of such estimates or projects to the Bureau of the Budget and the Congress.
- (e) To enact ordinances, subject to approval by the Secretary of the Interior, to protect the peace, safety, property, health and general welfare of the members of the Pueblo of Isleta; to provide for the appointment of guardians for minors and mental incompetents; and to provide for the removal or exclusion from the lands of the pueblo of any nonmember whose presence may be found by the council to be injurious to the peace, safety or welfare of the members of the pueblo;
- (f) To levy and collect taxes, fees and assessments on members of the pueblo and, subject to approval by the Secretary of the Interior, upon nonmembers of the pueblo living or doing business on the lands of the pueblo;
- (g) To prescribe and establish necessary rules and regulations for the conduct of pueblo elections in accordance with this constitution;
- (h) To prescribe compensation for the executive officers, employees and members of the council;
- (i) To appropriate such funds as are necessary for the health, safety and general welfare of the pueblo, for other public purposes and per capita payments to

members of the pueblo; provided, the amount distributed per capita in any one year shall not exceed one-half of the net income received during the preceding pueblo fiscal year.

- (j) To appoint or authorize such committees, commissions, boards, pueblo chartered organizations or corporations, officials and employees not otherwise provided for in this constitution.
- (k) To regulate trade, inheritance of personal property, land assignments and private dealings in pueblo lands among members within the pueblo.
- (l) To otherwise manage and control the lands and resources of the pueblo for the best interest of the pueblo.

*Example 8: Constitution of The Mohegan Tribe of Indians of Connecticut*

Article IX - Powers and Duties of the Tribal Council

Section 1.

All legislative and executive powers of The Mohegan Tribe not granted to the Council of Elders shall be vested in the Tribal Council and shall be exercised in accordance with this Constitution and laws of the United States applicable to Indian tribes, provided, that legislative and executive actions taken prior to the effective date of this Constitution shall remain in effect unless and until changed by the subsequent action of the Tribal Council or until any such action expires of its own terms.

Section 2.

The powers of the Tribal Council shall include all executive and legislative powers reasonable and necessary to achieve and tribal goals recited in the Preamble hereof, and shall further specifically include, but not be limited to, the following powers:

- (a) To negotiate with and to approve or disapprove contracts or agreements with tribal, foreign, federal, state, or local governments, with private persons or with corporate bodies;
- (b) To approve or disapprove any sale, disposition, lease or encumbrance of tribal lands, interests in land, tribal funds or other tribal assets or resources with or without advertisement for any period not in excess of the period provided for by federal law;
- (c) To establish procedures for the conduct of all tribal government and business operations except where elsewhere precluded in this Constitution;

- (d) To advise the Secretary of the Interior with regard to all appropriation estimates of the Department of the Interior which are submitted for the benefit of The Mohegan Tribe of Indians of Connecticut prior to the submission of such estimates to the Office of Management and Budget or to Congress;
- (e) To employ and pay legal counsel for The Mohegan Tribe, subject to the approval of the Secretary of the Interior to the extent that such approval is required by federal law;
- (f) To appropriate available tribal funds for the benefit of The Tribe;
- (g) To approve or disapprove operating budgets submitted by the Tribal Chair;
- (h) To review the budget submitted annually by the Council of Elders and, in the event that said budget is approved by a majority of the members of the Tribal Council, to allocate the funds called for by said budget;
- (i) To approve or disapprove allocations or disbursements of tribal funds (or grant or contract funds under the administrative control of The Tribe) not specifically appropriated or authorized in a budget approved by the Tribal Council;
- (j) To establish and enforce rules, consistent with applicable federal statutes and the applicable regulations of the Secretary of the Interior, for the management of tribal lands, including but not limited to, the making and revocation of assignments, and the disposition of timber, oil, and mineral resources;
- (k) To create, or to provide by ordinance for the creation of organizations, including public and private corporations, for any lawful purpose, which may be nonprofit or profit-making, and to regulate the activities of such organizations by ordinance;
- (l) To promote and protect the health, peace, morals, education, and general welfare of The Tribe and its members;
- (m) To borrow money from any source whatsoever without limit as to amount, and on such terms and conditions and for such consideration and periods of time as the Tribal Council shall determine; to use all funds thus obtained to promote the welfare and betterment of The Tribe and its members; to finance tribal enterprises; or to lend money thus borrowed;
- (n) To establish and enforce all ordinances governing tribal members, including, but not limited to, ordinances regarding tribal elections, ordinances establishing the civil and criminal jurisdiction of The Mohegan Tribal Court System, ordinances delineating the civil and criminal laws of The Mohegan Tribe, and ordinances



providing for the maintenance of law, order, and the administration of justice within The Mohegan Indian Reservation;

- (o) To establish a tribal court system, defining the powers and duties of that court system;
- (p) To regulate wholesale, retail, commercial or industrial activities on tribal lands;
- (q) To establish a basic departmental structure for the executive branch of the tribal government; and to establish governmental sub-divisions and agencies and delegate appropriate powers to such subdivisions and agencies;
- (r) To establish policies relating to tribal economic affairs and enterprises in accordance with this Constitution;
- (s) To levy and collect taxes and raise revenue to meet with needs of The Tribe or to support tribal government operations;
- (t) To pass any ordinances and resolutions necessary or incidental to the exercise of any of the foregoing powers and duties; to waive sovereign immunity of The Tribe subject to such limitations and restrictions on the extent and enforcement thereof as the Tribal Council may determine; and to adopt and to do such acts of a governmental and/or public nature as are not prohibited by applicable laws or by this Constitution.

### Section 3.

The powers and duties of the Chair of the Tribal Council shall include, but not be limited to, the following:

- (a) To serve as the chief executive officer of The Tribe and as head of the executive branch of the tribal government;
- (b) To carry out the policies established by the Tribal Council through its passage of any ordinances and resolutions necessary or incidental to the exercise of any of the powers and duties enumerated in Article IX above, and to be accountable to the Council to see that said policies are faithfully executed;
- (c) To negotiate, execute and carry out contracts or agreements with tribal, foreign, federal, state, and local governments, private persons, or corporate bodies, provided, that such contracts and agreements shall not be valid unless and until approved by the Tribal Council;

- (d) To manage, administer and direct the operation of tribal programs, activities, and services and to report to the Tribal Council the status of each program at least annually;
- (e) To direct the preparation of budgets, budget estimates and financial reports for submission to or at the direction of the Tribal Council;
- (f) To assure the proper receipt, deposit, disbursement, and accounting of all funds (or funds under control of The Tribe) consistent with this Constitution and such policies as may be established by the Tribal Council;
- (g) To provide for the protection and maintenance of the property, equipment, and official records of The Tribe;
- (h) To provide for enforcement of the rules, regulations, and ordinances enacted by the Tribal Council;
- (i) To preside over the meetings of the Tribal Council; and
- (j) To exercise such additional powers are necessary or incidental to the performance of the powers and duties enumerated above.

#### Article X - Powers & Duties of the Council of Elders

##### Section 1.

All judicial review powers of The Mohegan Tribe not exercised by the Gaming Disputes Court shall be vested in the Council of elders, and in such subordinate commissions and/or courts as the Tribal Council may from time to time ordain and establish. The Council of Elders shall exercise its judicial review powers in accordance with this Constitution and the laws of the United States applicable to Indian tribes, provided that judicial actions taken prior to the effective date of this Constitution shall remain in effect unless and until changed by the subsequent action of the Council of Elders or until any such action expires of its own terms.

##### Section 2.

The powers of the Council of Elders shall include all judicial review powers reasonable and necessary to achieve the tribal goals recited in the Preamble hereof, and shall further specifically include, but not be limited to, the following powers:

- (a) To rule over cases and controversies arising under this Constitution and arising under all laws of The Mohegan Tribe, but not to issue advisory opinions or decisions in cases which are moot;

- (b) To appoint from within their body member(s) to serve in the capacity of “Justice of the Peace”;
- (c) To provide traditional Mohegan names to tribal members;
- (d) To appoint and define all religious and ceremonial positions, including but not limited to the Medicine Person, Chief or Sachem, Pipe Carrier, Tribal Historian, Sagamores, Nonners, Fire Keepers, etc.; the persons so appointed to said positions shall act under the supervision of, and subject to the removal by, the Council of Elders, and shall fulfill their respective duties in accordance with traditional Mohegan customs and traditions;
- (e) To advise the Tribal Council in all matters related to tribal culture;
- (f) To allocate within its budget the amounts deemed necessary for the advice and assistance of legal counsel, and to exercise its discretion in determining when to seek the advice and assistance of said counsel;
- (g) To appropriate available tribal funds for the benefit of the Tribe, up to the amount allocated by the Tribal Council in the annual budget of the Council of Elders;
- (h) To establish and enforce rules of tribal custom, consistent with applicable federal statutes and the applicable regulations of the Secretary of the Interior, for the management of tribal society, including but not limited to, the conduct of tribal ceremonies and rituals;
- (i) To promote and protect the health, peace, morals, and general welfare of the Tribe and its members, and to establish traditional policies regarding education of tribal members;
- (j) To establish and enforce ordinances governing tribal membership and enrollment;
- (k) To recommend and submit for a vote, as it deems necessary and wise, amendments to this Constitution, as prescribed in Article XVI and XVII; and
- (l) To entertain recommendations from other tribal members regarding amendments to this Constitution, and to submit said recommendations to a tribal vote, as prescribed in Article XVI and Article XVII.

### Section 3.

The powers and duties of the Chair of the Council of Elders shall include, but not be limited to, the following powers:

- (a) To carry out the policies established by the Council of Elders through its passage of any ordinances and resolutions necessary or incidental to the exercise of any of the powers and duties enumerated in Article X above, and to be accountable to the Council of Elders to see that said policies are faithfully executed;
- (b) To manage, administer and direct the operation of tribal cultural programs, activities, and services and to report to the Tribal Council the status of each program at least annually;
- (c) To direct the preparation of budgets, budget estimates and financial reports for submission to or at the direction of the Tribal Council;
- (d) To assure the proper receipt, deposit, disbursement, the accounting of all funds (or funds under control of the Tribe) consistent with this Constitution and such policies as may be established by the Council of Elders;
- (e) To provide for the protection and maintenance of the property, equipment, and official records of the Council of Elders;
- (f) To provide for enforcement of the rules, regulations, and ordinances enacted by the Council of Elders;
- (g) To preside over the meetings of the Council of Elders; and
- (h) To exercise such additional powers as are necessary or incidental to the performance of the powers and duties enumerated above.

*Example 9: Constitution of the Confederated Tribes of Siletz Indians of Oregon*

Article II - Rights of Members

Section 2. General Council.

All duly enrolled members of the Confederated Tribes of Siletz Indians of Oregon who are eighteen (18) years of age or older shall constitute the General Council. In accordance with Articles V, VI, VII and VIII of this Constitution, the General Council shall have the power to:

- (a) Elect Tribal Council members and approve or disapprove any salary or wages paid for performance of Tribal Council duties;
- (b) Exercise the powers of initiative and referendum;
- (c) Recall elected tribal officials;
- (d) Amend this Constitution; and
- (e) Make advisory recommendations to the Tribal Council.

## Article IV - Branches of Government

### Section 1. Councils.

There shall be a General Council which shall exercise the powers set forth in Article II section 2, of this constitution.

*Example 10: Constitution of the Poarch Band of Creek Indians*

### Section 2. Powers to Determine Membership.

The Poarch Creek Indian Tribal Council shall have the sole authority to determine membership of the Poarch Band of Creek Indians. No decree of any Court purporting to determine membership in the Poarch Band of Creek Indians, paternity, or decree of Creek Indian blood or other blood shall be recognized as determination of membership in the Poarch Band of Creek Indians.

*Example 11: Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada*

## Article 1 - Membership

### Section 3. Powers of the Tribal Council.

The Tribal Council shall exercise, in addition to all other powers lawfully granted to it, the powers listed in this Section; provided, that the exercise of such powers shall not conflict with Federal Law or terms of this Constitution:

- (a) To negotiate, consult, and contract with Federal, State, local and Tribal Governments, private enterprises, individuals and other organizations;
- (b) To employ legal counsel. The choice of counsel and the fixing of fees to be subject to the approval of the Secretary of the Interior as long as such approval is required by Federal Law;
- (c) To prevent the sale, disposition, lease, or encumbrance of Tribal lands, interests in lands, or other Tribal assets;
- (d) To sell, dispose of, lease, encumber, assign or otherwise regulate Tribal lands, interests in lands, or other Tribal assets; upon concurrence of the Band Council or Band Councils concerned, subject to the approval of the Secretary of the Interior;
- (e) To charter and regulate independent organizations, subordinate organizations, committees, and boards of officials of the Tribe; and to delegate powers as appropriate, retaining the right to supervise and to rescind delegated powers;

- (f) To plan and manage all economic affairs and enterprises of the Tribe;
- (g) To establish agencies for and otherwise to provide for, law enforcement within the territory and jurisdiction of the Tribe;
- (h) To levy assessments for the use of Tribal privileges and property;
- (i) To spend Tribal funds in accordance with an annual budget approved by the Tribal Council; provided, that when required by Federal Law, such budget shall also be approved by the Secretary of the Interior or his authorized representative;
- (j) To promote and protect the health, peace, morals, education, safety and welfare of the Tribe, its members and all other persons within its jurisdiction, and govern the conduct of Tribal members;
- (k) To regulate all administrative and legislative bodies of the Tribe, Tribal agencies, officers and organizations;
- (l) To recognize as constituent Bands of the Tribe, additional groups of Western Shoshone Indians pursuant to Section 2(a) of Article 3. Each newly recognized Band shall have the same power and authority as exists in the Bands mentioned in Section 1 of Article 3;
- (m) To provide for the exclusion of non-members from the territory of the Tribe for good cause;
- (n) To enact all ordinances and resolutions which shall be necessary and proper for carrying into effect the foregoing powers; and
- (o) to exercise all powers vested in it by existing law, and such further powers as may in the future be granted to the Tribal Council by members of the Tribe or by the United States or the State of Nevada.

#### Section 4. Powers Reserved to Tribal Members.

Any powers, not delegated to the Tribal Council by this Constitution or the Secretary of the Interior are retained by the members of the Tribe and may be exercised through constitutional amendments.

#### Section 12. Powers of Band Councils.

Consistent with this Constitution, Federal and Tribal law, the Band Councils shall have the power to:

- (a) Consult with representatives of Federal, State and local Governments, business, and all other persons on matters of Band interest;
- (b) Conduct business affairs concerning all matter that relate solely to the Band;
- (c) Manage local enterprises, own and operate businesses, charter local associations and corporations;
- (d) Issue grazing permits and leases of Tribal lands located within the Community, make assignments, and apply for Bureau of Land Management grazing permits, all subject to the approval of the Secretary of the Interior. Leases longer than twelve (12) months require the consent of the Tribal Council;
- (e) Apply for Federal grants under its own name;
- (f) Make contracts under its own name;
- (g) Exercise such further powers as may be delegated by the Tribal Council or this Constitution;
- (h) Recommend any changes in the Constitution; and
- (i) Select its representatives to the Tribal Council and remove them for any good cause by a majority vote, except as provided in Article 4, Sections 7 and 17.

*Example 12: Constitution and By-Laws with Amendments Incorporated and Enrollment Ordinance No. 1 of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana*

#### Article VII - Governmental Powers

The Tribal Executive Board shall exercise the following powers subject to any limitations imposed by the Constitution or Statutes of the United States and Fort Peck General Council, and subject further to all expressed restrictions upon such powers contained in this Constitution and Bylaws.

##### Section 1.

To negotiate with Federal, State and local governments, and others on behalf of the Tribes, and consult with representatives of the Department of the Interior on all activities which may affect the Tribes.

##### Section 2.

To employ legal counsel for the protection of the rights of the Tribes.

### Section 3.

To make and enforce ordinances covering the Tribes' right to levy taxes and license fees on persons or organizations doing business on the Reservation, except that ordinances or regulations affecting non-members trading or residing within the jurisdiction of the Tribes shall be subject to the approval of the Secretary of the Interior.

### Section 4.

To promote public health, education, security, charity, and such other services as may contribute to the social advancement of the members of the Tribes.

### Section 5.

To provide, subject to the review of the Secretary of the Interior, or his authorized representative, for the maintenance of law and order and the administration of justice by establishing tribal courts and police force, and defining the powers and duties of same, and to promulgate criminal and civil codes or ordinances governing the conduct of the members of the Tribes and non-member Indians residing within the jurisdiction of the Tribes.

- (a) To prescribe rules of inheritance, except allotted lands.
- (b) To provide for an escheat of personal property to the Tribes of resident members who die intestate and without heirs.
- (c) To protect and preserve the wildlife and natural resources of the Reservation, and to regulate hunting and fishing on the Reservation.

### Section 6.

To exclude from the restricted land of the Reservation persons not legally entitled to reside thereon under ordinances subject to the review of the Secretary of the Interior.

### Section 7.

To adopt resolutions regulating the procedure of the Tribal Executive Board, its officials and committees in the conduct of tribal affairs.

### Section 8.

No authority contained in this Constitution and Bylaws may be delegated by the Tribal Executive Board to tribal officials, district councils, committees, delegates or associations, to carry out any functions for which this Tribal Executive Board assumes primary responsibility, except by ordinance or resolution duly enacted by the Tribal Executive Board in the legal



session, and excepting those specific requirements contained in the Bylaws hereof.

#### Section 9.

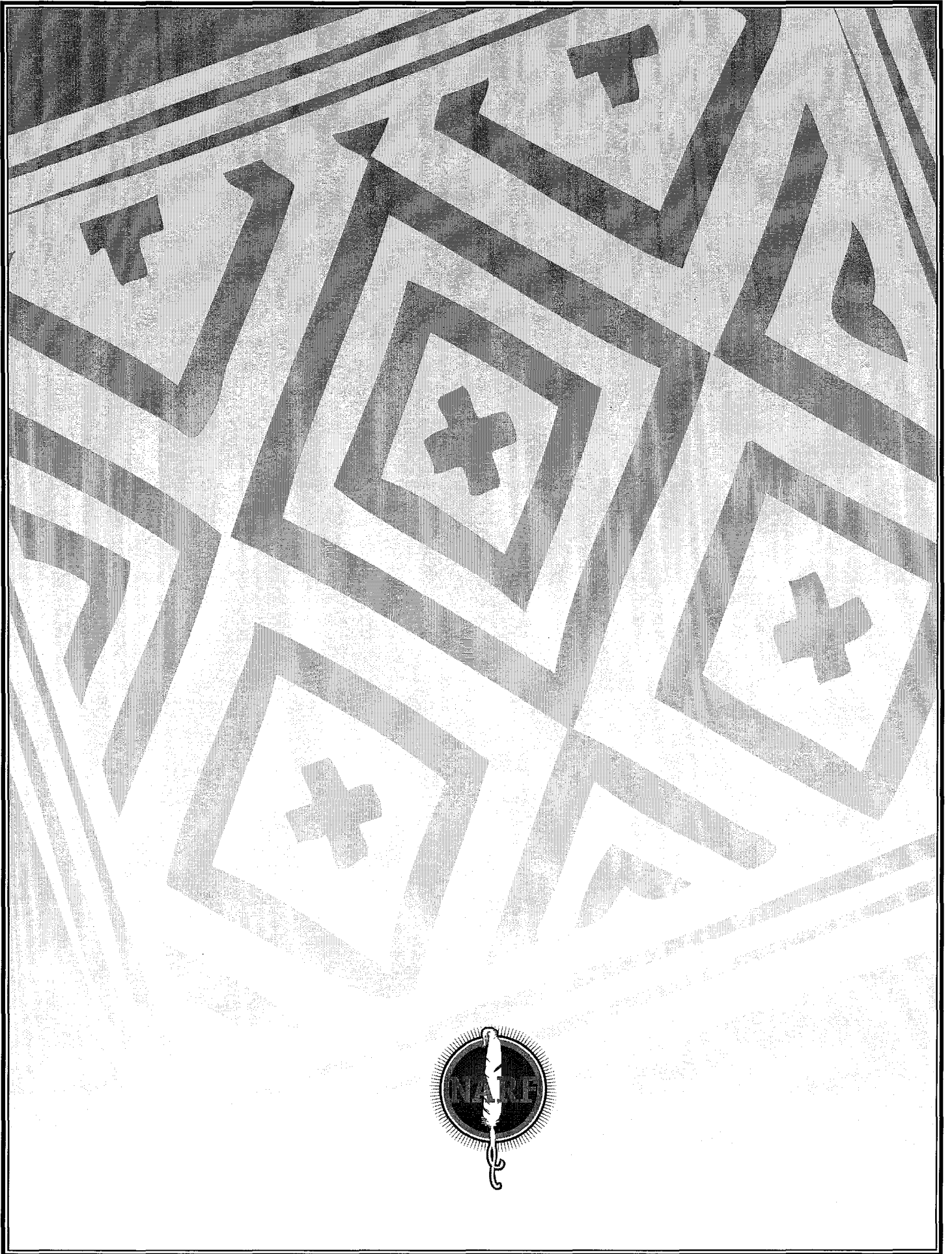
The Tribal Executive Board is hereby authorized to recognize claim councils, district committees, and other organizations open to the membership of the Tribes, and to approve such organizations, and to provide financial support, services, or such other assistance as may be required to carry on programs beneficial to the membership of the Tribes.

#### Article VIII - Future Powers

The Tribal Executive Board may exercise future powers as may be granted to it by the membership of the Tribes by appropriate amendments to this document.

#### Article IX - Reserve Powers

Any rights and powers heretofore vested in the Assiniboine and/or Sioux Tribes, but not expressly referred to in this Constitution, shall not be abridged, but may be exercised through the adoption of appropriate amendments to this Constitution.



## **J. DUTIES OF OFFICERS**

### **A. Considerations.**

This provision is intended to set forth the duties of the governing body's officers, which are considered by the tribe to be important to ensure the efficient, fair, and continued operations of the tribal government. Because these duties will be part of the constitution, they will be difficult to change. Thus, in drafting the duties for the officers ask if the duty is of such fundamental importance that it should be subject to change only by constitutional amendment. Or is it the type of duty that is best left to the discretion of the officers, either because it is not of fundamental importance or because it is more important that the duty be readily adaptable to changes in circumstances? Or is it of a religious or culturally sensitive nature that should not be publicly expressed?

### **B. Questions.**

1. Do you want to list each specific duty or list duties in general terms?
2. Do you want to list specific duties for only certain officers?
3. Do you have in mind general duties that would apply to all the officers?
4. What if the chairperson or vice-chairperson is absent from a meeting of the governing body? Shall a meeting take place? If so, who presides?
5. Should the secretary have the duty of keeping tribal records open for public inspection?
6. Should the treasurer give a report at every tribal meeting? Semi-annual reports? Quarterly reports?
7. Do you want to get more specific with drawdowns from tribal funds or have those procedures in your accounting procedures manual?

### **C. Existing Provision. [to be filled in by tribe]**

### **D. Suggested Provision.**

#### **DUTIES OF OFFICERS**

##### **Section 1. Duties of the Chairperson [President, Governor, etc.].**

The Chairperson shall preside over all meetings of the governing body and shall perform the usual duties of a Chairperson including, but not limited to, acting as the official spokesperson for the Tribe on matters specifically authorized by the governing body, engaging in public relations, serving as coordinator of overall tribal government activities and exercising any authority delegated to the Chairperson by the governing body. The Chairperson shall vote only in case of a tie.

## Section 2. Duties of the Vice-Chairperson.

The Vice-Chairperson shall assist the Chairperson when called upon to do so or in the absence of the Chairperson shall preside over the meeting. When so presiding, the Vice-Chairperson shall have all rights, privileges, duties and responsibilities of the Chairperson.

## Section 3. Duties of the Secretary.

The Secretary of the governing body shall be responsible for all correspondence issued by the Tribal Council, shall keep an accurate record of all matters transacted at governing body meetings and shall perform those other duties as required by the governing body.

## Section 4. Duties of the Treasurer.

The Treasurer shall accept, receive, preserve and safeguard all tribal funds or special funds for which the governing body is acting as trustee or custodian. The Treasurer shall deposit all funds in such appropriate insured depositories as the governing body shall direct, make or preserve a faithful record of those funds and report on all receipts and expenditures and the amount and nature of all funds in the Tribal treasury accounts at each regular meeting of the governing body or at such other times as directed by the governing body. An audit of accounts shall be made once a year and at such other times as the governing body may require. All checks drawn upon tribal funds will be handled according to the accounting procedure manual approved by the governing body. The Treasurer may be required to give satisfactory bond to the governing body and that bond shall be paid from Tribal funds.

## Section 5. Duties of the Parliamentarian [Optional].

The Parliamentarian shall assist the Chairperson in making decisions on the correct use of Robert's Rules of Order, as revised by the governing body, for the conduct of the governing body. The Parliamentarian will function only in an advisory role to the Chairperson.

## Section 6. Duties of the Sergeant-at-Arms [Optional].

The Sergeant-at-Arms shall attend all meetings of the governing body when requested by the Chairperson so as to maintain order under the direction of the Chairperson and execute the commands of the Chairperson and all processes issued under the Chairperson's authority.

## Section 7. Duties of Committees, Commissions or Appointive Officers.

The duties of all committees, commissions or officers appointed by the governing body shall be clearly defined by resolution or ordinance of the governing body at the time of their creation or appointment. Those committees, commissions or officers shall report to the governing body from time to time as the governing body requires and the governing body may review their activities and decisions.

## **E. Examples.**

### *Example 1: Chitimacha Tribe of Louisiana*

#### Article I -Duties of Officers

Section 1. The chairman shall preside over all meetings of the council. He shall perform the usual duties of a chairman and exercise any authority delegated to him by the council.

Section 2. The vice-chairman shall assist the chairman when called upon to do so and in the absence of the chairman he shall preside over the meeting. When presiding, he shall have all the rights, privileges, duties and responsibilities of the chairman.

Section 3. The secretary-treasurer of the council shall conduct all tribal correspondence, and shall keep an accurate record of all matters transacted at council meetings. It shall be his duty to submit promptly to the Superintendent, copies of all minutes of regular and special meetings of the council. He shall accept, receipt for, preserve and safeguard all tribal funds coming into his custody by virtue of his office. He shall deposit all funds in such depository as the council shall direct. He shall make and preserve a faithful record of such funds and shall report all receipts and expenditures and the amount and nature of all funds in his custody at each meeting of the tribal council. An audit of accounts shall be made at such time as the tribal council or the Commissioner of Indian Affairs may require. All checks drawn upon tribal funds must bear the signature of the chairman and the secretary-treasurer. Neither shall disburse any funds except by resolution of the council. The secretary-treasurer shall receive a salary of \$1.00 per year or such other sum as the tribal council may direct. He shall be required to give bond satisfactory to the council and to the Commissioner of Indian Affairs. The cost of the bond shall be paid out of tribal funds.

Section 4. The duties of all committees or boards appointed by the tribal council shall be defined by resolution of the council at the time of their creation or appointment. Such committees and boards shall report to the council from time to time as required, and their activities and decisions shall be subject to review by the council.

### *Example 2: Constitution & Bylaws of the Menominee Indian Tribe of Wisconsin*

Bylaws Bylaw I -Officers and Committees of the Tribal Legislature: Duty to Vote Stock of Menominee Enterprises, Inc.

Section 1. Officers of the Tribal Legislature.

(a) Number. There shall be three officers of the Tribal Legislature. A Chairperson, a Vice-Chairperson, and a Secretary. No Legislator shall hold more than one (1) of these offices simultaneously.

(b) Election and Terms of Office. The Chairperson, the Vice-Chairperson and the Secretary shall be elected by the Tribal Legislature in accordance with rules and procedures established by the Legislature.

(c) Qualifications. The Chairperson shall be a resident on the Menominee Indian Reservation.

(d) Removal. A Legislator may be removed from the office of Chairperson, Vice-Chairperson or Secretary by the Tribal Legislature on grounds of failure to perform adequately the duties of the office in question, or non-participation in business of the Legislature.

(e) Vacancies. A vacancy in the office of Chairperson or Vice-Chairperson, or Secretary shall be filled by the Tribal Legislature for the unexpired portion of the term.

(f) Chairperson of the Tribal Legislature. The Chairperson shall receive a reasonable compensation for services. Such compensation shall not be increased or decreased during a Chairperson's term in office. The Tribal Legislature may authorize the Chairperson to serve full time in the office.

The duties and powers of the Chairperson shall include but not be limited to the following:

(1) Preside at all meetings of the Tribal Legislature and at any other meeting called by the Tribal Legislature at which the Chairperson may be designated to preside.

(2) Represent the Tribal Legislature in its relations with other governments, but only where the Tribal Legislature has specifically and expressly authorized the Chairperson to do so provided that, the Tribal Legislature shall not authorize the Chairperson to take any action which under this Constitution and Bylaws must be taken by the Legislature.

(3) Appoint members of all committees of the Tribal Legislature subject to the approval of the Legislature and in accordance with rules of procedure of the Legislature.

(4) Serve as an ex officio member of all committees of the Tribal Legislature.

(5) Call special meetings when appropriate of the Legislature and of any committee of the Legislature, in accordance with this Constitution and Bylaws, laws of the Tribe, and rules of procedure of the Legislature.

(6) Receive reports of all committees of the Legislature and deliver such reports or cause such reports to be delivered to the Legislature.

(7) Exercise supervision over all committees of the Legislature and recommend to the Legislature the establishment, consolidation, or abolition of Legislative committees.

(8) Be responsible for the administrative details of calling and holding meetings of the Legislature and of the tribal members.

(9) Perform such other duties as may be prescribed by this Constitution and Bylaws, by ordinance, or as required by the Tribal Legislature.

(g) Vice-Chairperson of the Tribal Legislature. The Vice-Chairperson of the Tribal Legislature shall perform the duties of the Chairperson when the Chairperson is absent or unable to perform his duties, or as long as the office is vacant. In addition, the

Vice-Chairman shall perform such other duties as may be prescribed by this Constitution, by ordinance, or as required by the Tribal Legislature.

(h) Secretary of the Tribal Legislature. The Secretary of the Tribal Legislature shall perform the duties of the Chairperson when the Chairperson and the Vice-Chairperson are absent or unable to perform such duties. The Secretary shall also perform such other duties as may be required by the Tribal Legislature.

*Example 3: Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation*

Article X -Duties of Officers

Section 1. The chairman shall preside over meetings of the Southern Ute Indian Tribal Council and shall perform all duties of a chairman and exercise any authority given him by the tribal council. He shall vote only in case of a tie.

(a) The chairman shall appoint all non-elective officials and employees of the executive department of the tribal government and shall direct them in their work, subject only to applicable restrictions embodied in this constitution or in enactments of the tribal council establishing personnel policies or governing personnel management.

(b) The chairman, subject to the approval of the tribal council, may establish such boards, committees or subcommittees as the business of the tribal council may require and may serve as an ex-officio member of all such committees and boards.

(c) The chairman shall serve as contracting officer for the Southern Ute Indian Tribe executing all contracts and agreements to which the Southern Ute Indian Tribe is a party following approval by the tribal council.

(d) The chairman shall have power to veto all enactments of the council as provided in Section 5 of Article VII of the constitution.

(e) The chairman shall direct the preparation of the annual budget of the tribe and its presentation to the tribal council.

(f) The chairman may represent the tribe in negotiations with non-tribal organizations, agencies and branches of government.

(g) The chairman shall direct the tribal police to assure the enforcement of ordinances of the tribal council.

Section 2. Vice-Chairman.

In the absence of the chairman, the vice-chairman shall preside and shall have all powers, privileges, duties and responsibilities of the chairman.

(a) The vice-chairman shall function as chairman of the tribal council in the absence or at the direction of the chairman.

(b) The vice-chairman shall perform such other duties as directed by the chairman.

### Section 3. Treasurer.

The treasurer and assistant treasurer of the Southern Ute Indian Tribe shall be appointed by the tribal council. The treasurer and assistant treasurer may be removed by the chairman with the consent of the majority of the total membership of the tribal council.

(a) The treasurer shall accept, receipt for, keep and safeguard all funds under the exclusive control of the tribe by depositing them in a bank insured by an agency of the Federal Government, or in an individual Indian Money account as directed by the Southern Ute Indian Tribal Council, and shall keep an accurate record of such funds. The treasurer shall make or authorize disbursement from funds under his control only as authorized in the approved annual budget of the tribe or by special action of the tribal council. He shall report on all receipts and expenditures and upon the amount and nature of all funds in his custody to the tribal council at regular meetings and at such other times as requested by the tribal council.

(b) All checks shall be signed by the treasurer or assistant treasurer. Vouchers shall be approved for payment in accordance with a resolution to be adopted by the tribal council.

(c) The treasurer and assistant treasurer shall be bonded as provided in Section 1(h)2 of Article VII of the constitution.

### *Example 4: Constitution and Bylaws of the Upper Skagit Indian Tribe*

#### Bylaws of the Upper Skagit Indian Tribe Article I -Duties of Officers

##### Section 1. Chairman.

The chairman of the tribal council shall preside over all meetings of the tribal council and of the general council, shall perform all duties of the chairman, and exercise any authority delegated to him by the council. Unless otherwise provided, he shall vote only in the case of a tie.

##### Section 2. Vice-Chairman.

The Vice-chairman of the tribal council shall assist the chairman when called upon to do so. In the absence of the chairman, he shall preside and when so presiding, he shall have all the rights, privileges, duties, and responsibilities of the chairman.

##### Section 3. Secretary.

The secretary of the tribal council shall conduct all tribal correspondence and shall keep an accurate record of all business transacted at council meetings. It shall be the secretary's duty to keep minutes of regular and special tribal meetings and to submit copies of such minutes to the superintendent of the agency having jurisdiction.



#### Section 4. Treasurer.

The treasurer of the tribal council shall account for, receive, receipt for, preserve, and safeguard all funds in the custody of the council, whether same be tribal or other funds for which the council is acting as trustee or custodian. Deposits of such funds shall be made in a bank or elsewhere, as designated by the council. The treasurer shall make and preserve a financial record of all funds and shall report on all receipts and expenditures, and the amount and nature of all funds in his possession or custody, such report being made in writing to the council at regular meetings at such other times as requested by the council. The treasurer shall not pay out or otherwise disburse any funds in his possession or custody, or in the possession or custody of the council, until properly authorized to do so by resolution duly passed by the council. The books and records of the treasurer shall be audited at least once each year by a competent auditor employed by the council and at such other times as the council or the Commissioner of Indian Affairs may direct.

The treasurer shall be required to furnish a bond satisfactory to the council and to the Commissioner of Indian Affairs before tribal funds under the jurisdiction of any government agency can be advanced, and the council is hereby authorized to pay the premium on such bond from any available funds.

#### Section 5. Duties of Appointive Officers and Boards.

The duties of all appointive boards or officers appointed by the council shall be clearly defined by resolution of the council at the time of their creation or appointment. Such boards and officers shall report from time to time, as required, to the council, and their activities and decisions shall be subject to review by the council upon the complaint of any person aggrieved.

#### *Example 5: Constitution of the Kickapoo Traditional Tribe of Texas*

#### Article IV -Duties of Officers

##### Section 1. Chairman.

The Chairman of the Traditional Council shall preside over all meetings of the Traditional Council and the Annual General Membership Meeting and shall have general responsibility for the business of the Tribe and shall perform all duties delegated to him by the Traditional Council. In the absence of the Chairman, an acting Chairman may be selected by a majority of the Traditional Council.

##### Section 2. Secretary.

The Secretary of the Traditional Council shall keep an accurate record of all proceedings and enactments of the Traditional Council, and shall file copies with the Tribal office as public records and shall perform such other duties as may be directed by the Traditional Council. All official records of the Secretary shall be open to public inspection during normal business hours in the Secretary or Secretary designee's presence.

### Section 3. Treasurer.

The Treasurer of the Traditional Council shall accept, receive, preserve and safeguard all funds and assets of the Tribe from any source and keep an accurate account thereof; and shall make disbursements of funds only in accordance with properly executed resolutions of the Traditional Council. The Treasurer shall keep all funds entrusted to his care in special bank accounts and shall file a bond with the Secretary of the Traditional Council in an amount satisfactory to the Traditional Council; the cost of such bond shall be paid by the Tribe. The records and accounts of the Tribe shall be open for public inspection during normal business hours in the presence of the Treasurer or his designee.

### *Example 6: Constitution for The Pueblo of Isleta, New Mexico*

Section 5. Duties of the Governor: The duties of the governor shall include the following:

- (a) To direct and administer the civil affairs of the pueblo in conformity with applicable ordinances, procedures and policies enacted by the council;
- (b) To represent the pueblo in negotiations and relationships with other governmental agencies, individuals and entities;
- (c) To co-sign with the treasurer all checks authorized by the council to be drawn against the accounts of the pueblo;
- (d) To attend all meetings of the council;
- (e) To supervise and direct all employees of the pueblo government;
- (f) To act as contracting and certifying officer with reference to all contracts, agreements and payment vouchers approved by the council;
- (g) To perform such other duties as are traditionally associated with the office of the governor.

### Section 6.

The first and second lieutenant governors shall function under the direction of the governor and shall assist him in the performance of his duties. They shall attend all meetings of the council.

### Section 7. Succession.

The first lieutenant governor shall assume the governorship in the event of the absence, incapacity, death, resignation or removal of the governor, and the second lieutenant governor shall succeed to the governorship in the event of the absence, incapacity, death, resignation or removal of the governor and the first lieutenant governor. In the event of the absence, and the first lieutenant governor. In the event of the absence, incapacity, death, resignation or removal of the governor and the first and the second lieutenant governors, the president of the council shall assume the governorship.

## Section 8. Sheriff and Undersheriff.

The sheriff and undersheriff shall enforce the laws of the pueblo and perform other duties traditionally associated with their offices. They shall be subject to direction by the governor.

### *Example 7: Constitution of the Mohegan Tribe of Indians of Connecticut*

Section 3. The powers and duties of the Chair of the Tribal Council shall include, but not be limited to, the following:

- (a) To serve as the chief executive officer of the Tribe and as head of the executive branch of the tribal government;
- (b) To carry out the policies established by the Tribal Council through its passage of any ordinances and resolutions necessary or incidental to the exercise of any of the powers and duties enumerated in Article IX above, and to be accountable to the council to see that said policies are faithfully executed;
- (c) To negotiate, execute and carry out contracts or agreements with tribal, foreign, federal, state, and local governments, private persons, or corporate bodies, provided, that such contracts and agreements shall not be valid unless and until approved by the Tribal Council;
- (d) To manage, administer and direct the operation of tribal programs, activities, and services and to report to the Tribal Council the status of each program at least annually;
- (e) To direct the preparation of budgets, budget estimates and financial reports for submission to or at the direction of the Tribal Council;
- (f) To assure the proper receipt, deposit, disbursement, and accounting of all funds (or funds under control of the Tribe) consistent with this Constitution and such policies as may be established by the Tribal Council;
- (g) To provide for the protection and maintenance of the property, equipment, and official records of the Tribe;
- (h) To provide for enforcement of the rules, regulations, and ordinances enacted by the Tribal Council;
- (i) To preside over the meetings of the Tribal Council; and
- (j) To exercise such additional powers as are necessary or incidental to the performance of the powers and duties enumerated above.

## Section 4.

In the absence of the Chair, it shall be the Vice-Chair's duty and responsibility to preside over the Tribal Council meetings. The Vice-Chair of the Tribal Council shall assist the Chair when called upon to do so and shall maintain a current list of members of The Mohegan Tribe.

## Section 5.

The Recording Secretary shall ensure that a full and complete record of all transactions of the Tribal Council and Tribal meetings are kept, and shall submit promptly to the Chair all copies of the minutes, resolutions adopted, and ordinances passed at all meetings of the Tribal Council.

## Section 6.

The Corresponding Secretary shall be responsible for all correspondence issued by the Tribal Council, and shall be responsible for communicating all appropriate information from the Tribal Council to other members of The Mohegan Tribe and/or to the Tribal Administration.

## Section 7.

The Treasurer shall cause to be audited all tribal funds and accounts at least once per year, and at such other times as requested by the Tribal Council or by any other lawful authority, and shall be the custodian of the liquid assets of The Mohegan Tribe. Additionally:

(a) Unless otherwise provided, the Treasurer and Chair shall sign and approve all disbursements of tribal funds or grant or contract funds under the administrative control of the Tribe.

(b) The Treasurer shall be included in the membership of any committee established by the Tribal Council, at least insofar as budgetary and financial matters are concerned.

### *Example 8: Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada*

## Section 5. Duties of Tribal Officers.

(a) Tribal Chairperson. The Tribal Chairperson shall have the following duties, powers, and restrictions:

- (1) Shall be the primary representative of the Tribe;
- (2) Shall call and preside over meetings of the Tribal Council;
- (3) Shall sign all negotiable instruments, contracts, applications for Federal, or other funds, and all other obligations of the Bands, all as designated by the Tribal Council;
- (4) Shall not vote except in case of a tie;
- (5) Shall make written and oral reports at all Tribal Council meetings of all of his or her activities;
- (6) Shall not obligate the Tribe without the prior written approval of the Tribal Council; and
- (7) Such other duties, powers and restrictions as designated by the Tribal Council.

(b) Tribal Vice-Chairperson. The Tribal Vice-Chairperson shall assist the Chairperson and in the absence of the Chairperson shall assume the duties and powers of the Chairperson.

(c) Tribal Secretary. The Tribal Secretary shall preserve all ordinances, resolutions and minutes of the Tribal Council and make the same available to all Tribal members during regular business hours.

(d) Tribal Finance Officer. The Tribal Finance Officer:

- (1) Shall be responsible for the funds of the Tribe;
- (2) Shall accept, receive, receipt for, preserve, and safeguard all funds for which the Tribal Council is acting as trustee or custodian;
- (3) Shall deposit all such funds in a bank or elsewhere, as directed by the Tribal Council;
- (4) Shall report all receipts and expenditures and accounts and the nature of all funds in his/her custody, once every six (6) months to the Tribal Council in writing, or at any time requested to do so by the Tribal Council; and
- (5) Shall be bonded as required by law or by the Tribal Council. All Tribal financial records shall be audited annually. Copies of such audit report shall be submitted to the Tribal Council and to the Superintendent.

*Example 9: Constitution of the Absentee-Shawnee Tribe of Indians*

Article XIII -Duties of Officers

Tribal officers may, from time to time, in carrying out their official responsibilities, be required to attend functions of National, State, local or private organizations as an official representative of the Tribe. In such cases, it shall be the duty and responsibility of the tribal official to conduct himself in a manner befitting the office he holds and the people he represents.

Section 1.

The Governor shall call and preside over all meetings of the General Council and the Executive Committee except as provided in Article XVI or any other applicable provision of this Constitution or subsequent ordinances, and shall be accountable for the exercise of those duties specifically assigned to him by this Constitution, and such additional authorities which may be delegated by either the General Council or the Executive Committee. He shall be held responsible for executing the policies established by the General Council. A semi-annual report shall be given to the General Council at its April and October meetings. Such report shall be given orally and in writing by the Governor as outlined in Article V. The Governor shall make an oral report on all of his activities, meetings, and conferences at the monthly Executive Committee meetings. The Governor shall file an agenda with the Executive Committee Secretary, three (3) days prior to a regularly scheduled Executive Committee meeting. The Governor shall not vote except in the case of a tie.

Section 2.

The Lieutenant Governor, in the absence of the Governor, or during procedures to remove or recall him, shall possess all of the privileges, authority, and responsibility of the office of Governor. In case of a vacancy in the office of the Governor, the Lieutenant Governor shall succeed at once to that office and shall serve for the remainder of the Governor's unexpired term. The resulting vacancy in the office of Lieutenant Governor shall be filled pursuant to Article VIII. The Lieutenant Governor shall have such other duties as may be delegated to him by the Governor, by actions of the Executive Committee, or General Council.

### Section 3.

The Secretary shall prepare an agenda for all meetings under the direction of the Governor. The Secretary shall be responsible for preparing timely notices of all meetings and the dissemination of such notices, as appropriate, to the Executive Committee and General Council. The Secretary shall prepare and read the minutes of the previous meeting and call to the attention of the Executive Committee any unfinished business. The Secretary shall read to the Committee all communications of official business which must be acted upon by the Executive Committee. The Secretary shall certify all official business transactions taken by the General Council and the Executive Committee. All records, minutes, documents and correspondence for which the Secretary is responsible shall be on file at the tribal headquarters at all times. The Secretary shall be the custodian of the tribal membership roll and shall give priority to keeping it current. Responsibilities as tribal membership roll custodian shall be limited to the following: (a) The timely processing of new membership applications which shall be approved or disapproved by the Executive Committee. (b) Annotating the roll to reflect deceased members. (c) Recording official name changes and/or changes of address. (d) Prompt reply to questions and confirmation of enrollment.

The Secretary shall have a working knowledge of the Treasurer's duties and responsibilities. The Secretary shall accept and be responsible for other duties as assigned by the Executive Committee. In the absence of the Governor, and the Lieutenant Governor, the Secretary shall assume the position of Governor Pro-Tem, except in case of vacancies of the two (2) top positions.

### Section 4.

The Treasurer shall be the custodian of all monies, and related bookkeeping functions, which come under the jurisdiction or control of the tribe. The Treasurer shall conserve, invest, and pay out money pursuant to the provisions of this Constitution. All expenditures shall be reviewed and approved or disapproved by the Executive Committee before payment. The authority to approve or disapprove such expenditures shall be based on constitutional authority and/or a duly adopted General Council resolution or ordinance pursuant to the provisions of this Constitution. Subject to the limitations above, the Executive Committee shall render in writing such approval or disapproval that shall be maintained as a permanent part of the bookkeeping record. The Treasurer shall, upon receipt of written approval, be authorized to sign checks or otherwise make payment on behalf of the tribe. The Treasurer shall keep and maintain an accurate account of all receipts and disbursements and shall report the accurate amounts of each account to the Executive Committee at each regular meeting. The Treasurer shall submit financial reports and results of audits pursuant to the provisions in Article V. Such reports and audits shall be equivalent to National Accounting Association practices and standards. The Treasurer shall keep double-entry accounting records, which shall be fully implemented within one (1) year following the first election of officers under this Constitution. The financial records shall be maintained at the tribal headquarters. The Treasurer shall be bonded by a bona fide bonding company in an amount satisfactory to the Executive Committee and such bonding fees shall be paid from tribal funds or program funds if authorized by the funding agency.

Section 5.

The Representative shall be a full voting member of the Executive Committee and shall perform such duties and responsibilities as may be delegated to him by the Executive Committee and/or the General Council.

Section 6.

Judicial Branch Officials. The duties of such officials shall be set forth in the Judicial Ordinance which shall be consistent with this Constitution. That ordinance shall include a provision for the Chief Justice to call and conduct any meeting or election that the Executive Committee or Election Commission has failed to call even though such meeting or election has been mandated by this Constitution or a valid petition, except as provided in Section 2 of Article XVI.

Section 7.

Independent Commissions. The duties of Election Commission officials shall be set forth in the Election Ordinance. Any future commission, which may be established pursuant to this Constitution and any limitation placed on it by the General Council within the scope of its stated purpose.

*Example 10: Constitution and Bylaws of the Confederated Tribes of the Goshute Reservation, Utah*

Article I — Duties of Officers

Section 1.

Chairman of the Business Council. The Chairman of the Business Council shall preside over all meetings of the Council and the Tribes. He shall perform all duties of a chairman, and exercise any authority delegated to him by the Tribes and the Business Council. He shall vote only in the case of a tie.

Section 2.

Vice-Chairman of the Business Council. The Vice-Chairman shall assist the Chairman when called upon to do so, and in the absence of the Chairman he shall preside. When so presiding, he shall have all the rights, privileges, duties and responsibilities of the Chairman.

Section 3.

Secretary of the Business Council. The Secretary of the Business Council shall conduct all tribal correspondence, and shall keep an accurate record of all matters transacted at tribal and Business Council meetings. It shall be his duty to submit promptly to the Superintendent of the

jurisdiction, and to the Commissioner of Indian Affairs, copies of all minutes of regular and special meetings of the Tribes and the Business Council.

#### Section 4.

Treasurer of the Business Council. The Treasurer of the Business Council shall accept, receive, receipt for, preserve, and safeguard all funds in the custody of the Business Council, whether same be tribal funds or special funds for which the Business Council is acting as trustee or custodian. He shall deposit all funds in such bank or elsewhere as directed by the Business Council, and shall report on all receipts and expenditures and the amount and nature of all funds in his possession or custody, such report being made in writing to the Business Council at regular meetings and at such other times as requested by the Business Council and the Tribes.

He shall not pay out or otherwise disburse any funds in his possession or custody, or in the possession or custody of the Business Council, except when properly authorized to do so by resolution duly passed by the Business Council.

The books and records of the Treasurer shall be audited at least once each year by a competent auditor employed by the Business Council, or an employee of the Department of the Interior, and at such other times as the Tribes, the Business Council, or the Commissioner of Indian Affairs may direct.

The Treasurer shall be required to give a bond satisfactory to the Business Council, and to the Commissioner of Indian Affairs.

The Treasurer shall be present at all special and regular meetings of the Tribes and the Business Council.

#### Section 5.

Appointive Officers. The duties of all appointive committees or officers of the Confederated Tribes shall be clearly defined by resolution of the Business Council at the time of their creation or appointment. Such committees and officers shall report, from time to time as required, to the Business Council, and their activities and decisions shall be subject to review and approval by the Business Council.

*Example 11: Constitution and Bylaws of the Seneca-Cayuga Tribe of Oklahoma*

### Article I - Duties of Officers

#### Section 1. Chief.

It shall be the duty of the chief to preside at all meetings and perform all duties appertaining to the office, also to act as chairman of the Business Committee. Section 2. Second Chief.



In the absence of the chief, the second chief shall perform the duties of that officer. In case of vacancy, the second chief shall succeed at once to the office of the chief until the next special or regular election for the office of chief.

### Section 3. Secretary-Treasurer.

The Secretary-Treasurer shall correctly record the proceedings of all meetings. He shall make out the order of the business for the chief, shall notify all committees of their appointments, shall have custody of the records and all papers of the Council, which records and papers shall be open to inspection at any time, in his presence, by any member of the Council desiring to read them. He shall keep a correct list of all members of the Council, shall authenticate all accounts or orders of the council and, in the absence of the chief and second chief, shall call the meeting to order until a chairman pro tem is selected. He shall render a written report at the annual meeting and at the expiration of his term of office the records and all papers in his possession shall be turned over to his successor. He shall issue notices of all meetings and conduct all general correspondence, as directed by the council or the Business Committee. He shall receive all moneys of the council and keep an accurate account of receipts and disbursements.

The Secretary-Treasurer shall keep all tribal moneys entrusted to his care in a special account and all disbursements therefrom should be made by check. At any time that such account shall amount to more than \$50.00, he shall file a bond satisfactory to the Business Committee and the Commissioner of Indian Affairs. The cost of such bond shall be paid out of tribal moneys.

### *Example 12: Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation*

## Article I - Duties of Officers

### Section 1.

The Chairman of the Tribal Business Council shall preside at all meetings of the council and direct the work of its officers. He shall appoint, subject to the approval of the council, such standing committees and special committees and other officers as the business of the tribe may require.

In the absence of the chairman from any regular council meeting or any special meeting regularly called, the vice chairman shall preside in his place, and he shall have all the privileges, duties, and responsibilities of the chairman in his absence.

### Section 2.

The Secretary of the Tribal Business Council shall conduct all correspondence of the council, shall keep all records, minutes of meetings, and an accurate roll of members by communities. He shall receive all petitions, applications and other papers and prepare them for the action of the council. He shall promptly submit a copy of the minutes of each council meeting to the Superintendent of the agency. He shall perform such other clerical duties relating to the business of the council as it may direct.

### Section 3.

The Treasurer of the Tribal Business Council shall accept, receipt for, keep, and safeguard all funds in the custody of the council, whether they be tribal funds or special funds for which the council is acting as trustee or custodian. He shall deposit all such funds in a bank or elsewhere as directed by the council and shall make and keep a faithful record of such funds, and shall report on all receipts and expenditures and the amount and nature of all funds in his possession or custody to the council at regular meetings and at such other times as requested by the council, his reports to be in writing and matters of record.

He shall not expend or otherwise disburse any funds in his possession or in the possession or custody of the Tribal Business Council except when he is authorized to do so by resolution duly passed by the council. All checks shall be signed by the Treasurer and shall be countersigned by the Chairman of the Tribal Business Council, and all checks issued prior to July 1, 1940, shall be approved by the Superintendent of the reservation.

The books and records of the Treasurer shall be audited at least once each year by a competent auditor employed by the council, and at such other times as the council or the Commissioner of Indian Affairs may direct. The Treasurer shall be required to be under a surety bond satisfactory to the council and to the Commissioner of Indian Affairs.

### Section 4.

The Tribal Business Council, or an election board appointed by it, shall certify to the election of the duly elected council members within 3 days after the election, and the newly elected councilmen who have been certified shall be installed at the first meeting of the Tribal Business Council thereafter, upon subscribing to the oath of office as follows: "I do solemnly swear that I will support and defend the Constitution of the United States and the Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation, and will faithfully and impartially discharge the duties of councilman to the best of my ability."

### Section 5.

The duties of all appointed committees and officers shall be clearly defined by resolution of the council at the time of their appointment, and such committees and officers shall report from time to time as required by the council, and their activities and decisions shall be subject to review by the council at any time.

*Example 13: Constitution of the Confederated Salish and Kootenai Tribes of the Flathead Reservation*

Article I - The Tribal Council

Section 1.

The Chairman of the Council shall preside over all meetings of the Council, perform all duties of chairman, and exercise any authority detailed to him, and he shall be entitled to vote on all questions.

Section 2.

The vice chairman shall assist the chairman when called on so to do, in the absence of the chairman shall preside, and when so presiding shall have all the privileges, duties, and responsibilities of the chairman.

Section 3.

The Council secretary shall forward a copy of the minutes of all meetings to the Superintendent of the Reservation and to the Commissioner of Indian Affairs.

Section 4.

The duties of all appointed boards or officers of the (not legible)

Section 5.

Newly elected members who have been duly certified shall be installed at the first regular meeting of the Tribal Council.

Section 6.

Each member of the Tribal Council and each officer or subordinate officer, elected or appointed hereunder, shall take an oath of office prior to assuming the duties thereof, by which oath, he shall pledge himself to support and defend the Constitution of the United States and this Constitution and Bylaws. The following form of oath of office shall be given: "I, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, to carry out faithfully and impartially, the duties of my office to the best of my ability; to cooperate, promote, and protect the best interests of my Tribe, in accordance with this Constitution and Bylaws."

Section 11.

It shall be the duty of each member of the Tribal council to make reports to the district from which he is elected, concerning the proceedings of the Tribal Council.

## Section 12.

The Tribal Council may prescribe such salaries for officers or members of the Council as it deems advisable, from such funds as may be available.

*Example 14: Constitution and Bylaws of the Assiniboiné and Sioux Tribes of the Fort Peck Indian Reservation, Montana*

### Section 6. Duties of Officers Duties of Chairman:

- (a) He shall preside at all regular and special meetings.
- (b) He shall have general and active management of the affairs of the Tribes except that he shall not act on matters binding the Tribal Executive Board until that body had deliberated and decided its course of action.
- (c) He shall see that all resolutions and ordinances are carried into effect.
- (d) He shall execute all official papers of the Tribes when authorized to do so.
- (e) He shall exercise general supervision of all other tribal officers and employees and see that their respective duties are performed.
- (f) He shall submit a report of operations to the Tribal Executive Board at its regular meeting including all matters within his knowledge which the interest of the Assiniboiné and Sioux Tribes of the Fort Peck Indian Reservation may require be brought to its attention.
- (g) He shall vote in the case of a tie only.

#### Duties of Vice-Chairman

In the absence of the Chairman, he shall preside. Then so presiding, he shall have all rights, privileges and duties, as set forth above under duties of Chairman, as well as the responsibility of the Chairman.

#### Duties of Secretary:

- (a) He shall keep a book of minutes at the principal office of the Tribes or at such other place as the Tribal Executive Board may order, of all meetings of the Tribal Executive Board in the manner and in the form prescribed by the Board.
- (b) He shall attend to the giving and serving of all notices of the Tribal Executive Board as required by this Constitution.
- (c) He shall keep the tribal roll showing all changes therein as required by this Constitution. In addition, he shall keep a current voting list.
- (d) He shall attend to all correspondence as may be assigned to him, and perform all other duties incidental to his office or prescribed by the Tribal Executive Board.

#### Duties of the Secretary as Accountant:

(a) He shall keep and maintain, open to inspection by the members of the Tribes or representatives of the Commissioner of Indian Affairs at all reasonable times, adequate and correct accounts of the properties and business transactions of the Tribes.

(b) He shall have care and custody of the funds and valuables of the Tribes, and deposit same in the name of and to the credit of the Assiniboiné and Sioux Tribes of the Fort Peck Indian Reservation, with such depositories as the Board may direct.

(c) Disburse the funds of the Tribes as may be ordered by the Tribal Executive Board, taking proper signed invoices, vouchers, or other instruments for said disbursements.

(d) Render to the Tribal Executive Board monthly report and account of all his transactions as Accountant, and an annual financial statement in forms and detail showing the condition of tribal expenditures, receipts and disbursements.

(e) The Tribal Accountant and all officers and employees whose duties involve the handling of tribal money or other resources, shall be bonded under the terms and conditions established by the Tribal Executive Board and approved by the Superintendent of the Fort Peck Reservation.

#### Duties of Sergeant-at-Arms:

(a) He shall act a Sergeant-at-Arms at all regular and special meetings and shall enforce all rules and see that peace and order are kept during the sessions of the Board.

(b) He shall perform other duties as assigned by the Tribal Executive Board.

(c) He shall not be a voting member of the Board.

*Example 15: Constitution and Bylaws of the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California*

### Article VII - Powers of Officers

#### Section 1. Chairman

(a) The Chairman shall preside over all meetings of the tribal council.

(b) The Chairman shall have the power to call special meetings of the tribal council, subject to the provisions of Article IV, Section 7.

(c) The Chairman shall vote only in case of a tie vote of the tribal council on any issue.

(d) The Chairman shall be responsible for general supervision of all tribal employees.

(e) It shall be the responsibility of the Chairman to implement and carry out all directives of the tribal council.

(f) It shall also be the responsibility of the Chairman to conduct and supervise tribal affairs in accordance with the policies and/or directives of the tribal council.

## Section 2. Vice-Chairman

(a) The Vice-Chairman shall be permitted to vote on all issues coming before the tribal council.

(b) The Vice-Chairman shall act as Chairman in the absence or inability of the Chairman to perform his duties as specified in Section 1 of this article.

(c) The Vice-Chairman shall be ex-officio member of all committees appointed by the tribal council and shall keep the tribal council informed of their activities.

## Section 3. Duties of the Secretary

(a) The Secretary shall act as Chairman in case of absence or incapacity of Chairman and Vice-Chairman.

(b) The Secretary shall be responsible for an accurate record of all meetings of the tribal council and other such proceedings as directed by the Chairman.

(c) The Secretary shall be responsible to forward a copy of the minutes of all meetings to the Superintendent of the Colorado River Indian Agency and shall perform all other such duties as may be required of the office by the Chairman, Vice-Chairman, and the tribal council.

## Section 4. Duties of the Treasurer.

(a) The Treasurer shall act as Chairman in case of absence or incapacity of the Chairman, Vice-Chairman and Secretary.

(b) The Treasurer of the tribal council shall be responsible to accept, receive, receipt for, preserve and safeguard all funds in the custody of the tribal council, whether same be tribal funds or special funds for which the tribal council is acting as trustee or custodian. He shall be responsible to deposit all funds in such bank or elsewhere as directed by the tribal council and shall be responsible to make and preserve a faithful record of such funds and shall be responsible to report in writing to the tribal council annually and at such other times as requested by the tribal council.

(c) He shall not pay out or otherwise disburse any funds in his possession or custody of the tribal council, except when properly authorized to do so by resolution duly passed by the tribal council.

(d) The books and records of the Treasurer shall be audited at least once each year by a competent auditor employed by the tribal council and at such other times as the tribal council or the Commissioner of Indian Affairs may direct.

(e) The Treasurer shall be required to give a bond satisfactory to the tribal council and to the Commissioner of Indian Affairs, except that until he has been bonded, the tribal council may make such provision for the custody and disbursement of funds as shall guarantee their safety and proper disbursement and use.

*Example 16: Constitution & Bylaws of the Fort Belknap Indian Community of the Fort Belknap Indian Reservation -Montana*

Article I - Duties of Officers

Section 1: President

It shall be the duty of the president to preside at all meetings of the council and to direct the work of its officers. He shall appoint such standing committees as are provided for in the bylaws and constitution and such temporary committees as the business of the community may require. He shall issue all necessary writs for regular or special elections, setting dates, place of polling, cause due notices to be posted, and in other ways perform any and all duties devolving upon his office with diligence and dispatch.

Section 2. Vice-President

The vice president shall preside at any meeting of the council from which the president is absent, and in the event of the death of the president or his resignation or removal from office, he shall serve the remainder of the term as President.

Section 3. Secretary-Treasurer:

The Secretary-Treasurer shall conduct the correspondence of the community council, shall keep all records, minutes of meetings, roster of members, records as to expenditures and allotments of tribal, gratuitous, or other funds over which the council has sole charge. He shall keep an accurate record of all members of the community, prepare necessary resolutions for appropriate action by the council; he shall prepare or cause to be prepared by such assistants as are assigned to him by the president, such reports or registers as the president or council may direct. He shall be required as the president or council may direct. He shall be required to give bond acceptable to the community and the Commissioner of Indian Affairs.

*Example 17: Constitution of the Choctaw Nation of Oklahoma*

Article VII - Privileges, Duties and Powers of Executive Department

Section 1. The Chief shall perform all duties appertaining to the office of Chief Executive. He shall sign official papers on behalf of the Nation. He shall take care that the laws be faithfully executed.

Section 2. The Chief shall have power to establish and appoint committees, members and delegates to represent the Choctaw Nation with the advice and consent of the Tribal Council. All appointments requiring confirmation shall be presented to the Council within thirty (30) days of the appointment.

Section 3. The Chief shall fix and prescribe salaries and allowances for all elected or appointed officials and employees of the Choctaw Nation except the members of the Tribal

Council and Tribal Court. Compensation for elected or appointed officials shall not be increased nor diminished during the term for which they are elected or appointed.

Section 4. The Chief shall have the power to veto any legislative act, rule or regulation of the Tribal Council and must do so within five (5) working days after passage.

Section 5. The Chief shall prepare an annual tribal budget for the expenditure of all funds belonging to or administered by the Choctaw Nation from whatever source derived which shall be submitted to the Tribal Council. The annual budget for tribal trust funds shall be submitted to the Tribal Council at least thirty (30) days prior to the beginning of the tribal fiscal year.

Section 6. The Chief shall manage, administer and direct the operation of tribal programs, activities and services and report to the Tribal Council quarterly.

Section 7. The Assistant Chief shall serve in the absence of the Chief and when serving shall have all the privileges, duties and powers of the Chief.

Section 8. The Chief shall have the power to remove any official appointed by him except for members of the Tribal Court and the Tribal Council.

#### Article IX Privileges, Duties and Powers of Legislative Department

Section 1. The Tribal Council, at its first regular session each year, shall organize and elect officers from its membership. Officers to be elected are a speaker, a Secretary and such other officers as the Council shall deem necessary. A recording secretary and a sergeant-at-arms who are not members of the Tribal Council shall be appointed by the Speaker.

Section 2. The Speaker shall preside over all meetings of the Tribal Council.

Section 3. The Secretary of the Tribal Council shall maintain all records and enactments of the Tribal Council. They shall be available for inspection by tribal members during normal office hours. All such documents shall remain the property of the Choctaw Nation.

*Example 18: Constitution and Bylaws of the Agua Caliente Band of Cahuilla Indians amended June 1, 1977, California*

(f) The duties of the officers of the Tribal Council shall be as follows:

(1) The Chairman of the Tribal Council shall preside over all meetings of the Council and of the Band. He shall exercise in addition thereto any other authority vested in him by the Council to advance the interests of the Band.

(2) The Vice-Chairman shall assist the Chairman, and, in the absence of the Chairman, he shall assume the duties of the office of Chairman.

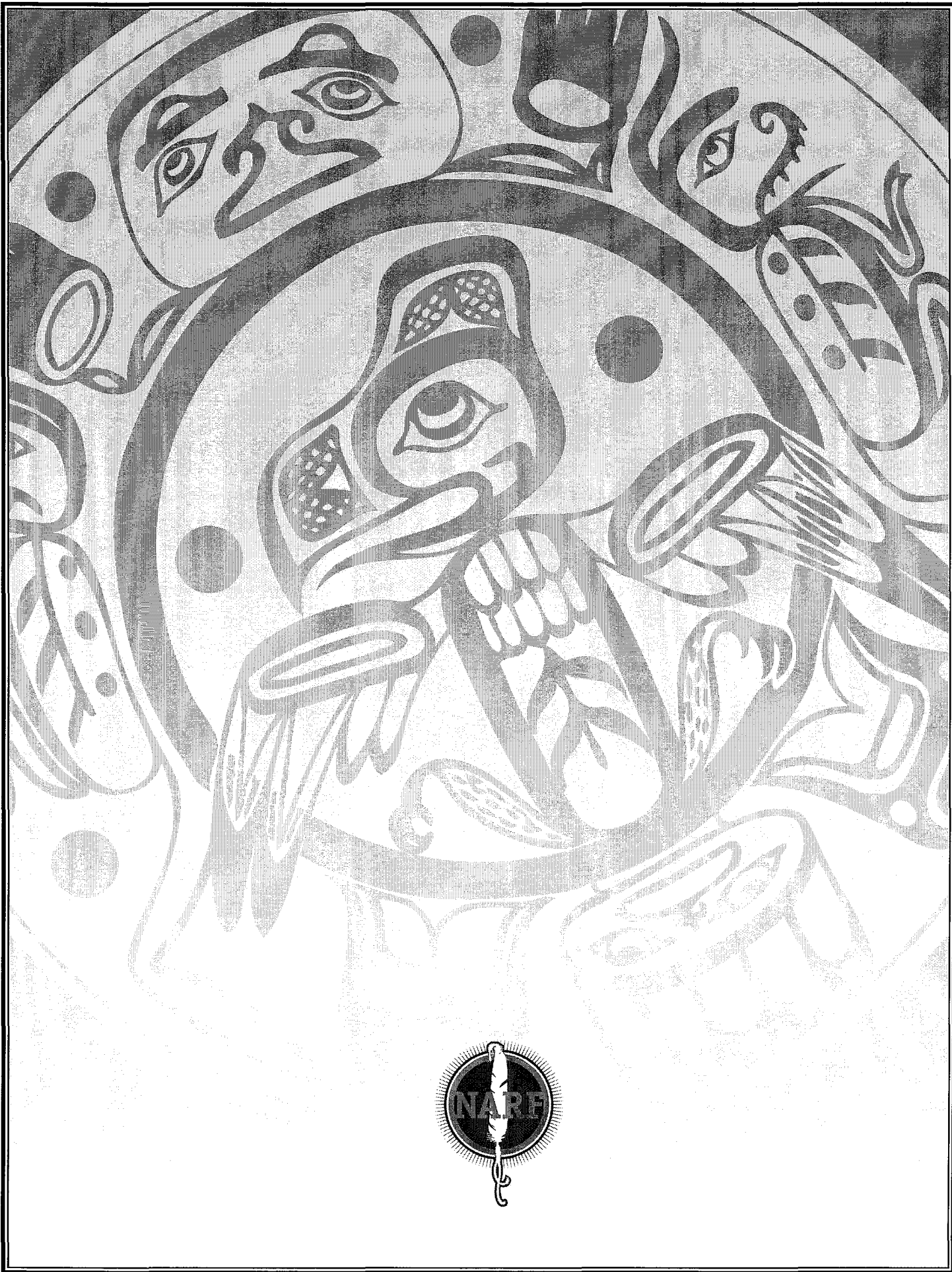
(3) The Secretary shall keep all records of the Council, including a permanent file of the minutes of all meetings. The Secretary shall make the same available at all times for the inspection of the other members of the Council and of the Agua Caliente Band.



The Secretary shall also make regular reports to the Band at the annual and special meetings, of business transacted by the Council, and shall perform all the other customary duties of a Secretary concerning the affairs, property and correspondence of the Band. All correspondence prepared on behalf of and approved by the Tribal Council may be signed by the Secretary.

(4) Committees may be appointed by the Tribal Council for specific purposes and their duties shall be clearly designated by resolution at the time of their creation. Such committees shall report as required to the Tribal Council at its regular meetings.

(5) A Tribal Treasurer shall be elected immediately after the annual election each year by the Tribal Council. The one selected for this office need only be a member of the Tribe. He shall not be entitled as tribal treasurer to a vote on the Tribal Council unless he is serving in a dual capacity by holding a duly elected position as one of the five members of the Tribal Council. The tribal treasurer may be suspended or dismissed by the Tribal Council in the same manner as provided for in Article IV(j) hereof pertaining to the suspension or dismissal of members of the Tribal Council. He shall have the duty of maintaining a complete and accurate set of financial records pertaining to the business of the Tribe. He shall also have the care and custody of all valuable for the Band and shall deposit all money in an approved depository. In addition, he shall disburse all funds as ordered by the Tribal Council by check which shall be co-signed by the Tribal Chairman. The financial accounts, receipts and records which he maintains shall be available at all reasonable times for inspection by officers of the Tribal Council, representatives of the Bureau of Indian Affairs, and all duly enrolled members of the Tribe. His financial records shall be audited at least once each year and at such other times as may be directed by the Tribal Council or the Commissioner of Indian Affairs. The tribal treasurer shall further be required to file a bond satisfactory to the Tribal Council and the Commissioner of Indian Affairs when either are of the opinion sufficient funds have accumulated in the Band treasury to justify the expense of such a bond. The Tribal Council shall authorize payment of the annual bond premium from local Band funds.



## **K. VACANCIES AND REMOVAL OF TRIBAL OFFICIALS**

### **Removal of Elected Officials from Office**

There are three possible methods for removing elected officials from office before their term expires: recall, expulsion, and automatic forfeiture. The tribe may have other possible methods, including under tribal tradition or custom. The three possible methods will be discussed below.

#### **I. RECALL.**

##### **A. Considerations.**

Elections are the place to select leadership, not collaterally through a recall of an elected tribal official. A recall of an elected official takes significant resources and time from other business that demands the attention of tribal officials. It is too often used as a political tool rather than one for accountability. For that reason it is important to consider carefully the procedures and requirements of a recall provision.

The purpose of a recall provision is to provide a means by which the voters of a tribe may by petition force an election to be held whether a specific elected tribal official should be removed from office. The removal should be for a principled reason, not for merely political differences. For that reason it may be useful to identify the reasons that form the basis for recall, for example: commission of a crime of moral turpitude, malfeasance in office – such as misappropriating funds, abuse of office through sexual or physical harassment, or intentional violation of constitutional provisions or other tribal laws. It is usually advised that a recall provision be self-executing, that is, it should not require further action by the governing body to be effective. The reason, of course, is that recall is a check upon the performance of elected officials and, therefore, should not be subject to possible impediment by legislation.

##### **B. Questions.**

The following is a list of questions to be answered in discussing a recall provision:

1. How long should an official be in office before the recall procedure can be used against him or her? Usually, this time period is designated as six months or one year. The reason for designating such a time period is so that the official will have an opportunity to prove himself or herself before being subject to recall. Having said that, should the time limit not be imposed for certain activity such as the commission of a crime?

2. The petition that initiates the recall procedure should state the reasons why the specific tribal official should be recalled from office. Should the person or persons starting the recall petition be required to swear to the truth of the accusations against the specific tribal official sought to be recalled? If they prove to be untrue, can that person be fined the cost to the tribe of the recall process? Should they be required to post a bond?

3. Should the tribal official sought to be recalled be given an opportunity to attach to the recall petition a statement in his defense. If so, should he or she be required to swear to the truth of that statement?

4. If the incumbent official sought to be recalled is given the right to attach a statement in his or her defense to the petition, it will be necessary to require that the petition be filed with the tribal clerk (or some other tribal administrator) before it can be circulated so that the clerk can notify the tribal official involved of the charges against him or her. The following questions are related to this possibility:

a. Should the tribal official be granted a specific amount of time after notification by the clerk of the petition to submit his or her statement and defense? If so, how long?

b. Should the clerk be required to start the circulation of the petition within a specific amount of time after the petition is filed? If so, how long?

5. Should the petition be required to be circulated for a specific amount of time? If so, how much time?

6. How many copies of the petition should be circulated?

7. Should posting of the petition be required also?

8. Should there be some provision for the certification of the validity of the signatures collected upon the petitions? If so, who should be responsible for checking this?

9. What should be the requisite number of signatures on the petition? Usually, this is 25 percent of total number of votes cast at the last general or regular election or at the last regular election for that particular office.

a. Should there be a specific number designated?

b. Should the number be a certain percentage of registered voters? If so, what percentage?

c. Should the number be a total percentage of registered voters voting in the last general tribal election, or voting in the last regular election for the particular office occupied by the official sought to be recalled?

10. If the requisite number of signatures is collected, the clerk should then notify the governing body, which should then set a date for a recall election. How long after the governing

body is notified should the election be held? 90 days and 120 days are two times which have been used in other constitutions. (If a general or special tribal election is already scheduled within a certain number of days, perhaps a provision should be added which permits the recall election to also be scheduled at that time.)

11. What should the form of the recall ballot be? Certainly it should state the grounds for recall and perhaps also contain a statement by the tribal official in his defense. One common ballot form is the following: "Shall (name of person against whom the recall petition is filed) be recalled from the office of (title of office)?" Following such question are the words "yes" or "no" on separate lines, with a blank space to the right of each in which the voter indicates, by marking a cross (x), his vote for or against such recall. Do you approve of this form?

12. What percentage of votes should be required to recall a tribal official? Should the percentage be 50 percent? More than 50 percent? If so, how much more than 50 percent? The consideration involved in this decision is this: If a candidate to the governing body is elected by a vote of a minority of the total number of voters, and if a majority vote can recall that official, then it is possible that the minority candidate could be recalled by a majority even though he still has the votes of the same minority that elected him. If more than a majority vote is required for recall, then the majority must convince a certain number of minority to vote for recall. Thus, to protect candidates elected by minority vote, it is advisable to require some percentage more than a majority of votes in order to recall a tribal official.

13. If a tribal official is recalled, there are three alternative ways to fill his office:

a. Appointment by the governing body;

b. By special election to fill the office; and

c. Some governments require voters to vote for or against recall and on the same ballot to vote for a candidate to fill the office in the event that the incumbent official is recalled. This method tends to be confusing to the voters, but on the other hand, it is more efficient than holding two elections, one to recall, and one to fill the vacant office. Should a provision be drafted establishing that in the event a recall election is held, an election to fill the possible vacancy shall be held simultaneously?

14. Should the official sought to be recalled be permitted to run for the same office from which he has been or may be recalled?

15. Should recall be permitted only for certain specific reasons, such as neglect of duties including perhaps absence from a specified number of consecutive meetings of the governing body, willful misconduct or conviction of specified kinds of crimes? There is danger in subjecting tribal officials to recall even though no specific or serious misbehavior is involved. The danger is that recall procedure may then be instituted against tribal officials simply because the official is unpopular with some tribal members, even if they constitute a majority. This may result in tribal officials feeling inhibited from making decisions which will be immediately unpopular but which may be in the best interests of the tribe in the long run.

16. Which tribal officials should be subject to recall? All elected officials? Shall judges be included or excluded, especially if they were appointed and confirmed rather than elected? Judges are generally not subject to recall because it is felt they should be able to make their decisions guided solely by their conscience and the law and not be greatly influenced by popular opinion. A special check on the performance of judges could be drafted into the section governing their election or appointment. But we have also limited the number of years a judge may serve on the tribal bench.

## **II. EXPULSION**

### **A. Considerations.**

An expulsion provision is included in constitutions to permit elected officials to remove from office another elected official, or even perhaps judges who are appointed. The question underlying this provision is whether it is a good policy to permit a small group of elected officials to remove one from their group who has been put there by a vote of the people, particularly where recall is available to the people.

### **B. Questions.**

Specific questions to be answered in drafting an expulsion provision are:

1. Should the constitution include a provision for expulsion?
2. Certainly it is a good idea to limit the discretion of elected officials in this area by requiring that cause be shown before a fellow elected official may be expelled from office. Should specific causes be listed as constituting the sole grounds for expulsion? Examples of adequate cause could be the following: neglect of duty, gross misconduct, failure to attend a certain number of successive meetings of the governing body, unless the governing body or some committee thereof considers the excuse given adequate or unless the reason for absence is something which would be beyond the individual's control, intentional violation of tribal law or policy established by the governing body and conviction of a felony or of a misdemeanor involving dishonesty. Which of these, if any, should be grounds for expulsion? Should any of them, such as conviction of a crime, cause automatic forfeiture of the office? Are there other grounds that should be listed?
3. What should be the required percentage of votes for expulsion from the governing body? It is often two-thirds.
4. It should be required that the accused have due notice of charges against him and an opportunity to be heard at a meeting of the governing body and to confront all witnesses against him.
5. Who should be subject to expulsion? Members of the governing body? the Chairperson? The Vice Chairperson? Judges?

6. Should the governing body's decision be final, or should there be a right of appeal to the whole tribe at a special election, or to the tribal courts, or to the Secretary of the Interior?

### III. AUTOMATIC FORFEITURE OF OFFICE

Should there be a provision listing certain events which would result in the automatic forfeiture of office by a tribal official? For example, should an official automatically forfeit his office if he dies in office, resigns, is convicted of certain specific crimes, or lacks at any time during his term one of the required qualifications for office?

#### B. Existing Provision.

[to be filled in by tribe]

#### C. Suggested Provision.

##### Article -Vacancies and Removal of Tribal Officials

##### Section 1. Recall.

(a) At any time after holding office for \_\_\_\_ months, any elected official of the Tribe may be recalled from office by the registered voters of the Tribe [optional: who are from that elected official's voting district, or by all registered voters of the Tribe if that elected official is elected from all districts], and such recall shall be in accordance with procedure as set forth by ordinance; *provided that*, recall shall be allowed only once a year [optional: or once a term] against any particular elected official.

(b) The affirmative vote of \_\_\_\_ percent of those voting at the recall election shall automatically effectuate a recall of the official from office; *provided that*, at least \_\_\_\_ percent of the total number of registered voters vote in the recall election. In the event the official is recalled, the office shall be deemed automatically vacant and shall be filled in accordance with Section 4 of this Article.

##### Section. 2. Expulsion and Suspension of Members of the Governing Body.

(a) The governing body may by affirmative vote of \_\_\_\_ members of the governing body expel a member of the governing body from office on the following grounds: failure to attend \_\_\_\_ successive regular meetings of the governing body in a given calendar year without good reason as determined by the governing body, a lack of a required qualification for holding office, or an occurrence of misuse of funds.

(b) The member of the governing body sought to be expelled shall be notified in person or by registered mail at least \_\_\_\_ days before the holding of any meeting at which the member's expulsion from office is to be considered. The notice shall set forth the alleged grounds for expulsion with specificity. The member in question shall be given full opportunity to be heard at such meeting and to confront any and all adverse witnesses. If the governing body votes to expel

the member in question, then the grounds for removal shall be set forth with specificity in the minutes of the meeting, and the governing body's decision shall be subject to prompt review by the Tribal Judiciary at the request of the expelled member. The expelled member shall file his or her lawsuit within \_\_\_\_ days from the governing body's decision.

(c) In the event the decision of the governing body to expel the member in question is upheld by the Tribal Judiciary, the office shall be deemed automatically vacant and shall be filled in accordance with Section 4 of this Article.

### Section 3. Automatic Vacancies.

(a) The office of any elected or appointed tribal official shall be deemed to be automatically vacant upon the official's death, resignation or conviction of a major crime. Resignation of office shall be written and shall be deemed to be effective as of the date tendered unless otherwise designated in the resignation document. Major crime within the meaning of this subsection means any crime included in 18 U.S.C. § 1153, or any amendment thereto, and any equivalent crime defined under state law.

(b) Any vacancy in office that occurs under this section shall be filled in accordance with Section 4 of this Article.

(c) A member of the governing body may by a vote of the other members of governing body be suspended from office without pay pending the appeal of the member's conviction of a major crime. In such event, if the conviction is overturned on appeal such member shall receive back pay for the time suspended from office without pay.

### Section 4. The Filling of Vacancies In Office.

[Option 1: Any vacancy in the office of an elected official shall be filled by a special election, unless a regular election is scheduled within \_\_\_\_ months of the vacancy.]

[Option 2:]

(a) Any vacancy in the office of an elected official shall be filled as follows:

(1) If the term of the vacant office has more than one year to run from the date of vacancy then the entire governing body present at a regular or special meeting shall within \_\_\_\_ days appoint by a vote of at least \_\_\_\_ members of the governing body the candidate that received the highest number of votes next to the person who vacated the office that is intended to be filled under this Section; *provided that*, the governing body shall exercise this right of appointment only once in any calendar year. Should any additional vacancies occur in the same year or if there is no such candidate, then the vacancy shall be filled by a special election.

(2) If the term of the vacant office has one year or less to run from the date of vacancy, then the entire governing body present at a regular or special meeting shall within \_\_\_\_ days appoint by a vote of at least \_\_\_\_ members of the governing body an eligible Tribal member to



fill such vacancy until the next tribal election.

(3) Paragraph (1) and (2) of this subsection (a) shall not apply to fill a vacancy in the office of Chairperson. Such vacancy shall be filled as follows:

(i) If the term of the office of Chairperson has more than one year remaining from the date of vacancy, then the governing body shall call for a special election to fill the office of Chairperson for the remainder of the term in accordance with this Constitution and applicable Tribal law to be held no later than two months from the date of the vacancy.

(ii) If the term of the Office of Chairperson has less than one year remaining from the date of vacancy, the Tribal Vice-Chairperson shall fill the office of Chairperson for the remainder of the term.

(b) Any special election required to be held under this Article shall be conducted in accordance with this Constitution and applicable tribal law. If a regular election is scheduled to occur within the time permitted to hold a special election, then such election shall be conducted at the regular election.

(c) If, by reason of vacancies in office, the remaining members of the governing body constitute fewer than \_\_\_\_, then the Election Board shall cause all vacant offices to be filled by special election held in accordance with this Constitution and applicable tribal law.

(d) Any tribal member appointed to office under the provisions of this section shall be deemed to be subject to all provisions of this Article, and other Articles of this Constitution, and to other Tribal law generally applicable to elected Tribal officials and that Tribal official's particular office.

#### Section 5. Tribal Judiciary Excluded.

This Article shall not be applicable to the removal of Tribal Judges, nor to the filling of any vacancies in the office of Tribal Judge.

#### **D. Examples.**

*Example 1. Constitution and Bylaws of the Chitimacha Tribe of Louisiana*

#### Article VI - Elections

#### Section 6. Vacancies.

If a vacancy occurs in the membership of the tribal council, that body shall by majority vote fill such vacancy by appointing a tribal member, qualified pursuant to Article V, to serve until the expiration of that term of office.

*Example 2: Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation*

Article V – Vacancies, Removal and Recall

Section 1. Removal.

Any member of the tribal council or other elected official of the southern Ute Indian tribe who, during his term of office, is convicted of a felony in any court, shall thereupon forfeit his term of office. Any member of the tribal council or elected official of the tribe may be removed from office by the affirmative vote of not less than four (4) members of the tribal council for gross neglect of duty, misfeasance in office or for misconduct reflecting on the dignity and integrity of the Southern Ute Indian Tribe, PROVIDED, that first, the accused person shall be given a written statement of the charges made against him at least ten (10) days before the meeting of the tribal council at which he is to appear, and he shall be given an opportunity to answer such charges. The decision of the tribal council shall be final.

Section 2. Recall.

Any member of the tribal council or other elected official of the Southern Ute Indian Tribe shall be subject to recall from office at a special election to be called and held at the direction of the tribal council within thirty (30) days following receipt of a petition signed by at least thirty percent (30 percent) of the registered voters of the Southern Ute Indian Tribe, PROVIDED, that a majority of the registered voters of the Southern Ute Indian Tribe shall vote in such election. Once a recall attempt has been concluded for any given member, it shall not be considered again until twelve (12) months have passed. No recall shall be initiated until the official has completed at least six (6) months of his term.

Section 3. Procedures.

Procedures and regulations governing the conduct of recall elections and removal proceedings shall be established by ordinance of the tribal council.

Section 4. Resignation.

The chairman of the Southern Ute Indian Tribe or any member of the tribal council may, at any time, resign from the office to which he was elected by submitting a written resignation to the tribal council.

Section 5. Filling Vacancies.

Any vacancies in the membership of the tribal council, resulting from any cause, shall be filled:

(a) By a tribal member who meets the qualifications for that office, appointed by the chairman of the Southern Ute Indian Tribe and confirmed by a vote of not less than four (4) council members if the term of the vacant office is due to expire within six (6) months following the date upon which it becomes vacant; or

(b) At a special election to be called and held at the direction of the tribal council within sixty (60) days following the date upon which it becomes vacant if the term of the vacant office has longer than six (6) months to run. Procedures and regulations to govern such special election shall be embodied in the election ordinance.

*Example 3: Constitution and Bylaws of the Upper Skagit Indian Tribe*

Article V - Vacancies and Removal From Office

Section 1. If a member of the tribal council or other officer shall die, resign, or be found guilty of a felony, or of a misdemeanor involving dishonesty, in any Indian, State, or Federal Court, or be removed from office for any other reason, the tribal council shall declare the position vacant and shall appoint a new member to serve until the next regular election when a successor shall be elected.

Section 2. The tribal council may expel any member for neglect of duty or gross misconduct, provided the member is furnished due notice of charges in writing and is given the opportunity to answer the charges at an open hearing held for that purpose. At least four members of the council must vote in favor of expulsion to make it valid. The chairman shall be permitted to vote. The position shall be filled in the same manner as provided in Article V, Section 1.

Section 3. Upon a petition of at least one-third of the eligible voters of the Upper Skagit Indian Tribe, it shall be the duty of the tribal council to call a special election to consider the recall of the member or members of the council named in such petition. If a majority of those voting in such election favor recall from office, the office shall be declared vacant and an election shall be held to fill the vacancy.

*Example 4. Constitution of the Kickapoo Traditional Tribe of Texas*

Article VI - Vacancies, Removal, Forfeiture, Recall

Section 1. Vacancies.

If a member of the Traditional Council is removed, recalled, resigns, forfeits office, or the office otherwise become vacant, the Traditional Council shall appoint a person who meeting the qualifications for election to office to serve the remainder of that term, except if more than two (2) years remain in the term, a special election shall be held to fill the position.

## Section 2. Removal.

The Traditional Council may by majority vote remove any member for neglect of duty or gross misconduct. Before any vote for removal is taken, the member shall be given a written statement of the charges against him at least thirty (30) days before the date of the meeting at which the vote is scheduled, and an opportunity to appear and answer all charges at such designated meeting. The decision of the Traditional Council shall be final and any removed council member shall not be returned to office for a period of at least six years.

## Section 3. Recall.

Upon receipt of a valid petition signed by at least one hundred (100) eligible voters of the Tribe demanding recall of a member or members of the Traditional Council, Election Board, Membership Committee or Appeals Board, the Election Board shall call a special election within forty-five (45) days. No Council member or other tribal official may be recalled unless at least thirty percent (30 percent) of the eligible voters of the Tribe vote in the special election, and a majority of those voting cast their ballot in favor of recall. Recall of a Council member which has been submitted to the voters and rejected shall not be considered against for at least twelve (12) months. Only one official shall be considered for recall in any given election.

### *Example 5: Constitution for The Pueblo of Isleta, New Mexico*

## Article VII - Removal and Recall

Section 1. Any elected or appointed officer of the pueblo and any member of the council, who during the term for which he is elected or appointed, is convicted of a felony, shall thereupon forfeit his office.

Section 2. Any elected or appointed executive officer of the pueblo, member or officer of the council, found guilty in any court of a misdemeanor involving misconduct reflecting on the dignity and integrity of the tribal government, or found guilty by the council of malfeasance in office, or gross neglect of duty, may be removed or recalled from office in the following manner:

(a) The council shall present the accused officer or council member with a written statement of the charges against him and, within ten (10) days thereafter, the council shall hold a hearing at which the accused shall be provided an opportunity to appear and be heard in his own defense.

(b) Any appointed officer of the pueblo or council member may be removed from office following such hearing by an affirmative vote of not less than two-thirds (2/3) of the full council.

(c) Any elected officer of the pueblo, including the governor, president, and vice-president of the council shall be removed from office following such hearing if, by an affirmative vote of not less than two-thirds (2/3) of the full council, the council shall vote to hold a referendum election on the question of such recall, and provided that a majority of the registered voters who cast their ballots in the preceding election vote in favor or recall.

(d) The council shall call and hold a special election for the recall of any elected officer of the pueblo within twenty-five (25) days following receipt of a petition for recall signed by at least twenty-five percent (25 percent) of the voters registered voting in the last preceding general election of the pueblo. If a majority of those voting in such a recall election cast their ballots in favor of such recall the office shall be declared vacant, provided that not less than fifty percent (50 percent) of the registered voters of the pueblo vote in the recall election.

#### Article VIII - Filling Vacancies and Special Elections

Section 1. In the event of the death, resignation, removal or incapacity of any member of the council, the position may be declared vacant by the council and filled for the remainder of the unexpired term by an eligible member of the pueblo appointed by the same officer of the pueblo who made the original appointment to the position thus vacated.

Section 2. In the event of the death, resignation, removal or incapacity of the president of the council, the office may be declared vacant by the council, and the vice-president shall thereupon assume the presidency. The office of vice-president may be declared vacant by the council and filled at a special election as hereinafter provided.

Section 3. In the event of the death, resignation, removal or incapacity of the vice-president of the council, the office may be declared vacant by the council and it shall be filled at a special election to be called by the council and held within thirty (30) days following the date upon which such vacancy is declared. The person so elected shall serve for the remainder of the unexpired term.

Section 4. In the event of death, resignation, removal or incapacity of both the president and vice-president of the council, the council may declare the offices vacant and they shall be filled at a special election to be called and held by the council within thirty (30) days following the date upon which such vacancies are declared.

Section 5. In the event of a vacancy for any cause in the offices of first lieutenant governor, second lieutenant governor, sheriff or undersheriff, the governor shall select a successor to serve the unexpired term.

Section 6. Special elections to fill vacancies created by the death, resignation, removal or incapacity of any elective officer of the pueblo not filled by succession as herein provided shall be conducted under the supervision of the council secretary.

*Example 6: Constitution of the Mohegan Tribe of Indians of Connecticut*

#### Article VIII - Vacancies and Removal From Office

Section 1. If a vacancy occurs among the members of either the Tribal Council or the Council of Elders, and less than three months remain of the term of the vacating member, the Tribal Council shall appoint a successor to such position, who shall serve until the next regular tribal election when a subsequent successor is duly elected and seated.

Section 2. If a vacancy occurs among the members of either the Tribal Council or the Council of Elders, and more than three months remain of the term of the vacating member, the Tribal Council shall cause to be held within sixty days a special tribal election for the purpose of filling the vacancy.

Section 3. Where any member of the Tribal Council or the Council of Elders, during the term for which he or she is elected or appointed:

- (a) violates the provisions of this Constitution;
- (b) is convicted of a felony or misdemeanor involving moral integrity, such as forgery or bribery;  
or
- (c) is absent from three consecutive regular meetings of the Tribal Council or the Council or the Council of Elders, unless such absence has been excused for good cause; he or she shall be subject to removal from office by action of the Tribal Council or the Council of Elders, provided that such removal shall be effective only after reasonable notice of the charges, an opportunity for the subject member to be heard, and upon approval by a majority of the members of the Council of Elders.

Section 4. Any member of the Tribal Council or Council of Elders who is elected for a five-year term shall be removed from office if, at least three months prior to the expiration of his or her term, a recall election is held and a majority of the voters vote for removal of said person. The Tribal Council and/or the Council of Elders shall hold a recall election within sixty (60) days of its receipt of a recall petition bearing the signatures of at least forty percent (40 percent) of the registered voters in the Tribe, accompanied by a cover letter bearing the notarized signatures of at least three sponsors who are members of the Tribe and who are registered to vote in tribal elections. Said petition shall also be filed in accordance with any other procedures established by the Tribal Council and Council of Elders.

Section 5. The following rules shall govern the removal and/or vacancy of the Officers of the Tribal Council:

- (a) If a vacancy occurs in the office of Chair, Vice-Chair, Recording Secretary, Corresponding Secretary or Treasurer, such vacancy may be filled by the Tribal Council through a subsequent election of one of its members to the office.
- (b) The Tribal Council may remove the Chair, Vice-Chair, Recording Secretary, Corresponding Secretary and/or Treasurer from office for cause, by a two-thirds (2/3) vote of the members of the Tribal Council then in office; the Tribal Council may not, however, terminate or affect an officer's status as a member of the Tribal Council through such action. The Tribal Council shall prescribe in the Tribal Election Ordinance the specific methods by which removal from such offices may be carried out.

Section 6. The following rules shall govern the removal and/or vacancy of the Officers of the Council of Elders:

(a) If a vacancy occurs in the office of Chair, Vice-Chair, Secretary or Treasurer, such vacancy may be filled by the Council of Elders through a subsequent election of one of its members to the office.

(b) The Council of Elders may remove the Chair, Vice-Chair, Secretary and/or Treasurer from office for cause by a two-thirds (2/3) vote of the members of the Council of Elders then in office; the Council of Elders may not, however, terminate or affect an officer's status as a member of the Council of Elders through such action. The Council of Elders shall prescribe in the Tribal Election Ordinance the specific methods by which removal from such offices may be carried out.

*Example 7: Constitution of the Confederated Tribes of Siletz Indians of Oregon*

Section 6. Vacancies.

In the event that any elective tribal office becomes vacant between elections, the Chairman shall recommend a person who meets the requirements of a candidate for that position to fill the vacancy. Such person shall assume office to serve the remainder of the term upon approval of the appointment by the Tribal Council.

*Example 8: Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota Constitution*

Article X - Vacancies and Removal

Section 1. Any vacancy in the Tribal Executive Committee shall be filled by the Indians from the Reservation on which the vacancy occurs by election under rules prescribed by the Tribal Executive Committee. During the interim, the Reservation Business Committee shall be empowered to select a temporary Tribal Executive Committee member to represent the Reservation until such time as the election herein provided for has been held and the successful candidate elected and seated.

Section 2. The Reservation Business Committee by a two-thirds (2/3) vote of its members shall remove any officer or member of the Committee for the following causes:

(a) Malfeasance in the handling of tribal affairs.

(b) Dereliction or neglect of duty.

(c) Unexcused failure to attend two regular meetings in succession.

(d) Conviction of a felony in any county, State or Federal court while serving on the Reservation Business Committee.

(e) Refusal to comply with any provision of the Constitution and Bylaws of the Tribe.

The removal shall be in accordance with the procedures set forth in Section 3 of this Article.

Section 3. Any member of the Reservation from which the Reservation Business Committee member is elected may prefer charges by written notice supported by the signatures of no less than 20 percent of the resident eligible voters of said Reservation, stating any of the causes for removal set forth in Section 2 of this Article, against any member or members of the respective Reservation Business Committee. The notice must be submitted to the Business Committee. The Reservation Business Committee shall consider such notice and take the following action:

(a) The Reservation Business Committee within fifteen (15) days after receipt of the notice or charges shall in writing notify the accused of the charges brought against him and set a date for a hearing. If the Reservation Business Committee deems the accused has failed to answer charges to its satisfaction or fails to appear at the appointed time, the Reservation Business Committee may remove as provided in Section 2 or it may schedule a recall election which shall be held within thirty (30) days after the date set for the hearing. In either event, the action of the Reservation Business Committee or the outcome of the recall election shall be final.

(b) All such hearings of the Reservation Business Committee shall be held in accordance with the provisions of this Article and shall be open to the members of the Reservation. Notices of such hearings shall be duly posted at least five (5) days prior to the hearing.

(c) The accused shall be given opportunity to call witnesses and present evidence in his behalf.

Section 4. When the Tribal Executive Committee finds any of its members guilty of any of the causes for removal from office as listed in Section 2 of this Article, it shall in writing censure the Tribal Executive Committee member. The Tribal Executive Committee shall present its written censure to the Reservation Business Committee from which the Tribal Executive Committee member is elected. The Reservation Business Committee shall thereupon consider such censure in the manner prescribed in Section 3 of this Article.

Section 5. In the event the Reservation Committee fails to act as provided in Sections 3 and 4 of this Article, the Reservation membership may, by petition supported by the signatures of no less than 20 percent of the eligible resident voters, appeal to the Secretary of the Interior. If the Secretary deems the charges substantial, he shall call an election for the purpose of placing the matter before the Reservation electorate for their final decision.

*Example 9: Constitution of the Absentee-Shawnee Tribe of Indians of Oklahoma*

## Article VII - Removal, Recall and Forfeiture

### Section 1. Removal.

Each elected body of the government shall have the power to remove any of its members for a justifiable cause by an affirmative vote of three (3) of its members. The Judicial



Branch and Executive Committee shall jointly enact regulations providing for such removals. These regulations shall be used in removal proceedings by each of the other elected bodies of the tribal government. Included in these regulations shall be procedures for the defendant to confront the plaintiff in answer to a written statement of the charges at a special meeting of the responsible committee, court, or commission, called for that purpose. The defendant shall be provided with the written statement of charges at least fifteen (15) days prior to the removal meeting.

#### Section 2. Recall.

Upon receipt of a valid petition signed by at least thirty percent (30 percent) of the registered voters of the tribe, it shall be the duty of the Election Committee to call and conduct within sixty (60) days, an election for the purpose of recall of an elected tribal official. Only one (1) member of that elected body shall be considered for recall at any given recall election. This shall not prohibit one (1) member from each elected body from being considered for recall during a single election.

#### Section 3. Forfeiture.

It shall be the duty of the affected elected body to immediately declare a position within its body vacant and to promptly fill such vacancy in the manner provided in Article VIII when it is determined that the incumbent:

- (a) Has tendered resignation;
- (b) Has been convicted of a crime involving dishonesty in a court of competent jurisdiction;
- (c) Has been convicted of a felony while in office by a court of competent jurisdiction;
- (d) Has falsified his application or has omitted information concerning a conviction of a felony or any crime involving dishonesty, when filing to be a candidate for elective office.

### Article VIII - Vacancies

Section 1. Vacancies in any elective office shall be promptly filled by the remaining members of the affected body appointing a person who qualifies pursuant to Article XIV. Such appointee shall serve until a replacement is duly elected at the next annual election and installed in office, except as it relates to filling a vacancy in the office

Section 2. An appointee shall not be used to temporarily fill a vacancy in either of the two (2) highest ranking positions on an elective body. Rather, it shall be the responsibility of that body to temporarily shift its members so that appointees shall serve in positions of lesser rank.

Section 3. In the event two (2) vacancies exist in the Executive Committee, the authorities of that body are limited to the payment of utility bills and salaries until those vacancies have been filled by appointment.

*Example 10: Constitution and Bylaws of the Confederated Tribes of the Goshute Reservation, Utah*

Article VI - Vacancies and Removal From Office

Section 1. If a councilman or officer shall die, resign, be removed or recalled from office, permanently leave the reservation, or shall be found guilty of a felony or misdemeanor involving dishonesty in any Indian, State, or Federal Court, the Council shall declare the position vacant and elect to fill the unexpired term.

Section 2. The Business Council may, by four affirmative votes, expel any member for neglect of duty or gross misconduct. Before any vote for expulsion is taken on the matter, such member or official shall be given a written statement of the charges against him at least five days before the meeting before which he is to appear and an opportunity to answer any and all charges at such designated Council meeting. The decision of the Business Council shall be final.

Section 3. Recall from Office.

Upon receipt of a petition signed by at least one-third of the eligible voters of the Confederated Tribes of the Goshute Reservation calling for the recall of any member of the Council, it shall be the duty of the Business Council to call a special election to consider the recall of the member or members of the Council named in such petition. Provided that at least thirty percent of those entitled to vote shall vote in such election, and the majority favor such recall from office, the office shall be declared vacant and the Business Council shall proceed in the usual manner to hold an election to fill the said office.

*Example 11: Constitution and Bylaws of the Seneca-Cayuga Tribe of Oklahoma*

Article IX - Vacancies

Vacancies in any elective office shall be filled at any regular or special meeting of the Seneca-Cayuga Council.

Article X - Removal of Offices

The Grievance Committee shall investigate complaints of misconduct or other acts of the members of the Business Committee and upon a proper showing shall call a special meeting of the Seneca-Cayuga Council to act upon such complaints. Such council shall have power, by majority vote, after giving the accused a hearing, to remove him from office and proceed to elect a successor.

*Example 12: Constitution and Bylaws of the Three Affiliated Tribes of the Three Affiliated Tribes of the Fort Berthold Reservation*

Article V - Vacancies and Removal from Office

Section 1. If a council member or officer shall die, resign, or be permanently removed from the reservation, or be removed from office for cause, the council shall have full authority to appoint a qualified tribal member from the segment where the vacancy occurs to serve the unexpired term of said member or office.

However, in case the chairman's position becomes vacant due to the chairman's death, resignation, permanent removal from the reservation or removal from office for cause, the unexpired term of the chairman shall be filled by a member of the council, selected by a majority vote of the council.

In that instance, the council shall promptly appoint, as herein provided, to fill the vacancy created by a council member assuming the chairman's position. (As changed by Amendment No. III, effective September 10, 1974).

Section 2. The Tribal Business Council may expel a member for cause by seven or more members voting for such expulsion, but before any vote is taken on the matter, such member shall be given an opportunity to answer any and all charges at a designated meeting of the Council, and the decision of the Tribal Business Council shall be final as to the expulsion or retention of such member.

*Example 13: Constitution and By-Laws with Amendments Incorporated and Enrollment Ordinance No. 1 of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana*

Article VI - Vacancies and Removal From Office

Section 1. The Tribal Executive Board shall declare a position on the Board vacant whenever a member shall die, resign, be removed or recalled from office. Such vacancies shall be filled as follows:

- (a) If the office of Chairman shall become vacant, the Vice-Chairman shall become Chairman, and the office of Vice-Chairman shall then be filled as provided in Subsection (b) of this Section.
- (b) If this office of Vice-Chairman shall become vacant, it shall be automatically filled by the person who received the next highest number of cumulative legal votes from all districts for the office of Vice-Chairman at the previous election who meets the qualifications for that office on the date he or she takes office; and who is willing to serve as Vice-Chairman.
- (c) If the office of Secretary/Accountant shall become vacant, a successor shall be appointed for the remainder of his or her term as provided in Article IV, Sections 3 and 5.

(d) If the office of Sergeant-at-Arms shall become vacant, it shall be automatically filled by the person who received the next highest number of cumulative legal votes from all districts for the office of Sergeant-At-Arms at the previous election who meets the qualifications for that office on the date he or she take office; and who is willing to serve as Sergeant-At-Arms.

(e) If any other seat on the Tribal Executive Board shall become vacant, it shall be automatically filled by the person who received the highest number of cumulative legal votes from all districts in the previous election, who meets the qualification for office on the date he or she takes office, who is not a member of the Board on the date he or she takes office; and who is willing to serve as a member of the Board.

(f) If a vacancy shall remain in any office for a reason, the Board may schedule a special election to fill the vacancy. (Amendment No. 7 as per Referendum vote of 10/26/91 and Tribal Resolution No. 2373-91-7, dated 07/10/91).

Section 2. A board member or officer of the Board, may be removed from office by the Board, after having been given twenty (20) days notice in writing by the Secretary, and a chance to be heard. Causes for removal are:

(a) Permanent change of residence from the Reservation.

(b) Conviction in any court of a felony while in office, and/or any course of conduct prejudicial to the Tribes.

(c) Failure to attend three (3) regular meetings in succession, except that the Tribal Executive Board may approve reasonable grounds for non-attendance.

(d) The Tribal Executive Board shall by duly enacted ordinances establish such procedures and regulations necessary to carry out the intent of this article.

(e) All questions which cannot be resolved by the Tribal Executive Board shall be referred to the Fort Peck General Council.

*Example 14: Constitution and Bylaws of the Chippewa Cree Indians of the Rocky Boy's Reservation, Montana*

#### Article V - Vacancies and Removal From Office

Section 1. If any elective official shall die, resign, permanently leave the reservation, or shall be found guilty while in office of a felony or misdemeanor involving dishonesty in any Indian, State or Federal court, the Business Committee shall declare the position vacant and direct the Election Board to call a special election to fill such vacancy. The candidate receiving the highest number of votes shall be elected.

If six (6) months or less remain before the next primary election, the vacated position shall remain vacant until it is filled at the general election following that primary, except as provided in Section 1(f) of the bylaws.

Section 2 The Business Committee may be an affirmative vote of at least five (5) members for neglect of duty or gross misconduct provided that the accused member shall be given full and fair opportunity to reply to any and all charges at a designated committee meeting. It is further stipulated that any such member shall be given a written statement of the charges against him at least five (5) days before the meeting at which he is to appear.

Section 3. Upon receipt of a valid petition signed by registered voters equal in number to forty (40) percent of those who voted at the last election, it shall be the duty of the Election Board to call and conduct, within sixty (60) days, a recall election on any individual who fills an elective position. The provisions of this Section shall also apply to those election board members indicated in Article IV, Section 6. A majority of those who participate in such election must favor recall in order for it to become effective, provide those constitute at least fifty (50) percent of the registered voters.

Only one (1) recall attempt may be made for any tribal official during a given term of office. No recall petition shall be acted upon until at least six (6) months of the term has expired. No more than one (1) official at a time may be considered for recall. A recall election shall not be held an election for that office is scheduled within ninety (90) days after filing the recall petition.

Should the recall be successful, the vacancy shall be filled as provided in Section 1 of this Article. Further details needed to carry out the intent of this Article shall be set forth in the tribal election ordinance.

*Example 15: Constitution and Bylaws of the Chippewa Cree Indians of the Rocky Boy's Reservation, Montana*

#### Article V - Vacancies, Removal and Recall

Section 1. If any elective official shall die, resign, permanently leave the reservation, or shall be found guilty while in office of a felony or misdemeanor involving dishonesty in any Indian, State or Federal court, the Business Committee shall declare the position vacant and direct the Election Board to call a special election to fill such vacancy. The candidate receiving the highest number of votes shall be elected.

If six (6) months or less remain before the next primary election the vacated position shall remain vacant until it is filled at the general election following that primary, except as provided in Section 1(f) of the bylaws.

Section 2. The Business Committee may be an affirmative vote of at least five (5) members expel any member for neglect of duty or gross misconduct provided that the accused member shall be given full and fair opportunity to reply to any an all charges at a designated committee meeting. If it further stipulated that any such member shall be given a written statement of the charges against him at least five (5) days before the meeting at which he is to appear.

Section 3. Upon receipt of a valid petition signed by registered voters equal in number to forty (40) percent of those who voted at the last election, it shall be the duty of the Election Board to call and conduct, within sixty (60) days, a recall election on any individual who fills an elective position. The provisions of this section shall also apply to those election board members indicated in Article IV, Section 6. A majority of those who participate in such election must favor recall in order for it to become effective provided those who vote constitute at least fifty (50) percent of the registered voters. Only one (1) recall attempt may be made for any tribal official during a given term of office. No recall petition shall be acted upon until at least six (6) months of the term has expired. No more than (1) official at a time may be considered for recall. A recall election shall not be held if an election for that office is scheduled within ninety (90) days after filing the recall petition.

Should the recall be successful, the vacancy shall be filled as provided in Section 1 of this Article. Further details needed to carry out the intent of this Article shall be set forth in the tribal election ordinance.

*Example 16: Articles of Incorporation of the Tunica -Biloxie Indians of Louisiana, Inc.*

#### Article XI - Vacancies and Removal From Office

Section 1. If any vacancy occurs in the membership of the tribal council, it shall be the duty of the tribal council of the Tunica -Biloxie Indians of Louisiana, Inc., to fill such vacancy by appointing a member from the community in which such a vacancy occurs, and such appointee shall hold office until his successor is duly elected by the voters of such community either at a special election or a regular election.

Section 2. If a vacancy occurs in the office of the chairman, and less than one (1) year remains of his term of office, then such position shall be filled by the vice chairman, and less than one (1) year remains of his term of office, then such position shall be filled by council appointment for the remainder of the term.

Section 3. Any member of the tribal council or any appointed official of the Tunica - Biloxie of Louisiana, Inc., who during the term for which he is elected, is convicted of any felony, shall forfeit his office. any member of the tribal council or appointed official, found guilty of dereliction of duty, malfeasance in office, or behavior reflecting on the dignity and integrity of the tribal government may be removed from office by an affirmative vote of two-thirds (2/3) of the membership of the tribal council. Prior to any vote for removal from office, such member shall be given a written statement of charges against him at least thirty (30) days before which he is to appear and he shall be given an opportunity to answer any and all charges at the designated council meeting. The decision of the tribal council shall be final.

Section 4. Any of the individual Indian communities may petition for the recall of a council member elected by that community. Upon receipt by the tribal council of a petition signed by thirty percent (30 percent) of the eligible voters from that community demanding recall of a member, and at least six (6) months prior to expiration of such member's term of office, it

shall be the duty of the tribal council to call a special election in that community upon the question of recall. Such special election shall be called and held within a period of sixty (60) days after receipt of petition. No council member may be recalled except by a majority vote in an election in which at least fifty percent (50 percent) of the eligible voters in that community voted.

*Example 17: Constitution of the Timbisha Shoshone Indian Tribe -Inyo County*

Article X - Vacancies

Section 1.

The Tribal Council shall declare a Tribal Council position vacant for any of the following

If less than twelve (12) months of vacant term remains, the Tribal Council shall fill the vacancy by appointment of a General Council member who qualifies for candidacy for the vacant position. If more than twelve (12) months remain in the vacant term a special election shall be held to fill the vacant position. Such a special election shall be held within thirty (30) days after the Tribal Council declares the position vacant.

Article XI - Removal and Recall

Section 1. Removal

Any member of the Tribal Council may be removed from office for any of the following reasons:

- (a) Absence from regular Tribal or General Council meetings three (3) successive, unexcused times in any twelve (12) month period;
- (b) Conviction of a crime involving the moral character of the Tribal Council member;
- (c) Neglect of duty;
- (d) Misconduct in office.

Reasons:

- (a) When a Tribal Council member dies;
- (b) When a Tribal Council member resigns;
- (c) When a Tribal Council member is convicted of a crime that is classified as a felony by either state or federal law.
- (d) When a Tribal Council member is removed from office;
- (e) When a Tribal Council member is recalled from office.

1. Any member of the Tribe can request removal of any Tribal Council member by submitting a written statement of charges to the Chairperson of the Tribal Council, or in the case of a request for removal of the Chairperson, to the Vice-Chairperson of the Tribal Council. Such written statement must be received by the accused Council member no later than ten (10) days before the next regular Council meeting at which he or she is to appear.

2. At the next regular Tribal Council meeting following the submission of such written statement, the charging party shall present his or her allegations and proof against the accused member of the Tribal Council, and the accused member shall be given an opportunity to reply to all charges by presenting his or her allegations and proof to the Tribal Council.
3. After hearing all the charges and proof presented by both sides, the Tribal Council shall take a vote on whether the accused member shall be removed from office. If a majority of the Tribal Council vote to remove the accused Council member who is the subject of the removal request shall not vote nor serve in his or her capacity as a Tribal Council member in the removal proceedings.

## Section 2. Recall

Every person elected to a position on the Tribal Council or who is an elected officer of the Tribe shall be subject to recall from such office by the General Council as follows:

- (a) Any member of the Tribe may circulate one or more petitions among the eligible voters of the Tribe requesting a special recall election, which petition(s) shall contain the name(s) of the person(s) whose recall is sought and shall state the charges being preferred against such person(s) in 25 words or less. If one-third (1/3) of the eligible voters of the General Council shall sign the petition(s), such petition(s) shall be presented to the Tribal Council Chairperson, to the Vice-Chairperson of the Tribal Council.
- (b) The Tribal Council Chairperson, or if charges are being preferred against the Tribal Chairperson, the Tribal Council Vice-Chairperson, shall then certify the validity of such signatures of eligible voters maintained by the Tribe. If the required number of valid signatures appear on the recall petition, the Tribal Council shall call a special recall election within sixty (60) days from receipt of the petition(s).
- (c) Within thirty (30) days after the special recall election has been established, a General Council meeting shall be held. The charging party shall present his or her allegations and proof against the accused member of the Tribal Council, and the accused member shall be given an opportunity to reply to all charges by presenting his or her allegations and proof to the General Council.
- (d) The ballot used for a recall election shall contain the question: "Shall [name of member(s)] be recalled from office on the Timbisha (Tribal) Council?" The ballot shall contain a space opposite such question in which the words "Yes-No" shall be printed so that the voter may indicate with a mark whether he or she wishes to vote for or against the recall of the member(s) so named. In the case of a recall of two (2) or more Council members, there shall be a separate ballot for each member being recalled.
- (e) If a majority of the General Council members voting in a special recall election vote to recall the Council member(s) or any other officer(s) of the Tribe named on the ballot, and provided that two-thirds (2/3) of the General Council vote in said election, the Tribal Council shall immediately declare the Council member(s) or officer(s) to be recalled from office and his or her seat(s) shall be declared vacant.



*Example 18: Constitution of the Choctaw Nation of Oklahoma*

Article XIV - Filling Vacancies

Section 1. In the case of the death, resignation or removal of the Chief, the Assistant Chief shall immediately become Chief for the remainder of the unexpired term. In the event the Assistant Chief shall succeed to the office of Chief, he shall appoint a successor Assistant Chief with the advice and consent of the Tribal Council.

Section 2. The Chief shall have power within sixty (60) days after a vacancy occurs in the Tribal Council to fill such vacancy for the remainder of the unexpired term. Such appointee shall meet the same qualifications as required of a candidate for election to such office. If a vacancy occurs more than one (1) year before the expiration of such term, a special elections shall be called to fill the vacancy.

Article XV - Removal of Officials

Section 1. Impeachment.

- (a) Any elected or appointed officer shall be subject to impeachment for willful neglect of duty, corruption in office, habitual drunkenness, incompetency, incapability of performing his duties or committing any offense involving moral turpitude while in office.
- (b) Impeachment charges shall be presented to the Judicial Department. The Tribal Court shall within thirty (30) days examine the evidence. If the Tribal Court determines evidence or charges are sufficient to warrant further action, it shall conduct a hearing pursuant to this Article. If impeachment charges are brought against any judge, then that judge shall be disqualified to sit on any matters relating to such charges. Then, and in such event, the chief shall name a substitute judge, with the advice and consent of the Tribal Council, who shall sit as a member of the Court on all matters relating to such impeachment charges.
- (c) The Tribal Council shall prescribe such rules and procedures that are necessary to carry into effect the provisions of this Article.
- (d) Any officer against whom charges may be preferred shall be entitled to a hearing, by the Tribal Court, under rules and procedures prescribed by the Tribal Council.
- (e) Any officer against whom articles of impeachment are referred to the Tribal Council shall be suspended for the exercise of the duties of his office during the pendency of his impeachment.
- (f) The Tribal Council shall sit as a court of impeachment and its decision shall be final.
- (g) Eight (8) votes shall be required to impeach the official.
- (h) Judgment in cases of impeachment shall extend not only to removal from office but also to disqualification from holding any office of honor, trust or profit under this Nation.

## Section 2. Recall.

- (a) Upon receipt of a valid petition, submitted to the Judicial Department, signed by at least forty percent (40 percent) of the registered voters of the district or area in which the officer was elected, it shall be the duty of the Tribal Council to call and conduct, within sixty (60) days, a recall election.
- (b) The election shall be conducted pursuant to rules and regulations prescribed by the Tribal Council. Recall from office shall require a supporting vote for at least fifty-one (51 percent) of the registered voters of the district or area in which the election is conducted.
- (c) Only one (1) official shall be subject for recall at any given recall election.
- (d) No official shall be subject to recall more than one (1) time during his term of office.

### *Example 19: Constitution of the Otoe-Missouria Tribe of Indians*

## Article IX - Vacancies, Removal and Forfeiture

### Section 1. Vacancies.

Vacancies in the membership of the Tribal Council which occur in the first two (2) years of the elected term shall be filled at a special election as provided for in the election ordinance. Vacancies occurring in the last year of the elected term shall be filled by the Tribal Council appointing a person who meets the qualifications for election to that position.

Vacancies on the Election Board shall be filled by the Tribal Council appointing a person who qualifies for election to such position. The appointee shall serve until the next annual meeting of the General Council at which time a qualified successor shall be elected to fill that position for any time remaining in such term of office. Voluntary resignation by any Tribal Council member or member of the Election Board shall be in writing and shall be effective when accepted by a resolution of the Tribal Council.

### Section 2. Removal.

Any elected or appointed official found guilty in court of competent jurisdiction, or by the Tribal Council, of behavior involving misconduct reflecting on the dignity and integrity of the tribal government, malfeasance in office, or gross neglect of duty, may be removed from office if at least four (4) members of the Tribal Council vote in favor of such removal. Voting must be by secret ballot and the Chairman is entitled to vote. If the accused is a Tribal Council member, he/she shall have the right to vote by secret ballot. Before, the vote for removal is taken, the accused tribal official shall be given a written statement of the charges at least ten (10) days before the Tribal Council meeting at which he or she is to appear, and shall be given an opportunity to answer any and all charges at such meeting. Any removed member of the Tribal Council or Election Board shall not be returned to office unless subsequently elected by the Tribe's qualified voters. No member of the Tribal Council shall call or preside over the meeting

at which his or her removal is being considered. The decision of the Tribal Council shall be final.

- (a) Absences. Tribal Council members who are absent from two (2) successive regular meetings of that body, or a total of three (3) regular meetings in one (1) year, may be removed from office by a majority vote of the Tribal Council. The due process provisions set forth above shall also be required in pursuing removal for unexcused absences.

- (b) Section 3. Forfeiture.

Any member of the Tribal Council, the Election Board, or the Tribal Court, who, during the term for which he or she is elected or appointed, is convicted of a felony by a court of competent jurisdiction, shall automatically forfeit his or her position effective on the date of the initial conviction.

*Example 20: Constitution and By-laws of The Cheyenne-Arapaho Tribes of Oklahoma*

Article IX - Removal, Recall and Filling Vacancies

Section 1. Any member of the business committee charged, in writing, with misconduct or neglect of duty by a fellow committeeman may be removed from the business committee or from an office of the business committee, provided at least five (5) of the members vote in favor of removal. A special meeting of the committee shall be called to consider any removal action; and the accused shall be provided with a minimum of fifteen (15) days notice of said hearing and be provided the opportunity to attend and testify in his own behalf. The decision of the committee shall be final.

Section 2. The Cheyenne-Arapaho Business Committee shall, upon receipt of a valid petition signed by one-third (1/3) of the registered voters of any one district requesting the recall of a representative from that district, direct the election board to conduct an election within sixty-five (65) days from the date of receiving the petition to determine if, in fact, such representative shall be recalled. No such petition shall be honored if received less than ninety (90) days prior to the expiration of the term of the accused. In the event the committee fails to act within sixty-five (65) days, the Superintendent of the Concho Agency, his replacement, successor, or counterpart may so instruct the board.

Section 3. Vacancies on the business committee occurring not less than ninety (90) days prior to the regularly scheduled election for the vacant position shall be filled by a special election conducted by the election board. Such elections shall involve the registered voters in the district which has lost representation and shall be conducted in accord with established dates, rules, and regulations of the election board.

- (a) If any of the business committee offices designated in Article XIV become vacant, such vacancies shall be filled promptly by a selection from the remaining members by the business committee.

(b) Any person filling a vacancy may serve through the unexpired term of his predecessor.

*Example 21: Constitution & Bylaws of the Menominee Indian Tribe of Wisconsin*

Article VII - Removal of Elected Officials From Office,  
Automatic Vacancy, and the Filling of Vacancies

Section 1. Recall.

(a) Any elected official of the Menominee Indian Tribe of Wisconsin may be recalled from office at any time after holding office for one (1) year, by the eligible voters of the Tribe in accordance with the procedure set forth in subsection (b) of this Section; provided that, recall shall not be a remedy against alleged action by a tribal official which may constitute a crime against the ordinances of the Tribe or the laws of the United States.

(b) The procedure by which an elected official may be recalled shall be as follows:

(1) Petitioner's Committee. Any one hundred (100) eligible voters of the Tribe may commence recall proceedings by filing with the Tribal Election Commission an affidavit stating their names, and addresses, the names and addresses of three (3) representatives of the petitioners' committee, and the address to which all notices, regarding the petition are to be sent; and stating that they will constitute the petitioners' committee, and the address to which all notices, regarding the petition are to be sent and be responsible for circulating the petition and filing it in proper form; and naming the tribal official sought to be recalled; and stating in not more than one hundred (100) words the specific reasons upon which it is alleged that the named tribal official should be recalled. If more than one official is sought to be recalled, there shall be separate affidavits of charges filed for each such official. The Tribal Election Commission shall promptly thereafter serve a copy of the affidavit of the petitioners' committee upon the named official in person or by registered mail. The named official shall have fifteen (15) days after receipt of service of the affidavit of charges to file an affidavit in defense with the Tribal Election Commission answering the charges made against him or her in not more than one hundred (100) words.

(4) Certificate of Sufficiency.

(A) If the petition is certified insufficient because of a lack of the requisite number of signatures, the petitioners' committee shall be promptly notified, and they shall have ten (10) days after receipt of notification to supplement the petition with additional signatures on certified recall petitions issued by the Tribal Election Commission, and to file such supplemental petition with the Commission. The Tribal Election Commission shall within two (2) work days after the filing of the supplemental petition certify as to the sufficiency of the recall petition as supplemented. If the petition is again certified insufficient, the petitioners' committee shall be notified and may appeal such decision to the Tribal Judiciary in accordance with the rules of court procedure. Pending a final decision by the Tribal Judiciary, a new recall petition against the same official shall not be commenced for the same cause.

(B) If the recall petition is certified sufficient, the Tribal Election Commission shall, within ten (10) work days after it certifies the validity of the recall petition, set a date for a recall election to be held. Such recall election shall be held within thirty (30) days after the filing of the recall petition with the Commission and shall provide notice of such election date by posting notices at public places on the Reservation and in appropriate urban areas, and publishing a notice in at least one newspaper with a wide circulation among eligible tribal voters on the Reservation.

(5) Recall Election.

(A) The ballot for the recall election shall, for each official sought to be recalled, if more than one, state the grounds set forth in the recall petition for demanding such recall as well as the answer of the official sought to be recalled in his defense; and the ballot shall set forth the following question: Shall (name of the official sought to be recalled) be recalled from the office (title of office)? Following such question shall be two choices of words, "yes" or "no", on separate lines with the blank space to the right of each in which the voter shall indicate by marking a cross (x), his vote for or against recall.

(B) The affirmative vote of sixty percent (60 percent) of those voting at the recall election shall be sufficient to effect a recall of the official from office, provided that, at least thirty percent (30 percent) of the total number of eligible voters vote in the recall election. In the event the official is recalled, the office shall be deemed vacant and shall be filled in accordance with Section 4 of this Article.

Section. 2. Expulsion and Suspension of Tribal Legislators.

(a) The Tribal Legislature shall by affirmative vote of two-thirds (2/3) of the entire Legislature expel a member of the Legislature from office on grounds of failure to attend three (3) successive regular meetings of the Tribal Legislature in a given Legislative year, without good reason as determined by the Tribal Legislature, lack of a required qualification for holding office, occurrence of a disqualification for office, or misuse of funds.

(b) The Legislator sought to be expelled shall be notified in person or by registered mail at least ten (10) days before the holding of any meeting at which the Legislator's expulsion from office is to be considered. The notice shall set forth the alleged grounds for expulsion with specificity. The Legislator in question shall be given full opportunity to be heard at such meeting and to confront any and all witnesses against him/her. If the Tribal Legislature votes to expel the Legislator in question, the grounds for removal shall be set forth with specificity in the minutes of the meeting, and the Legislature's decision shall be subject to prompt review by the Tribal Judiciary at the request of the expelled Legislator.

(c) In the event the decision of the Tribal Legislature to expel the Legislator in question is upheld by the Tribal Judiciary, the office shall be deemed vacant and shall be filled in accordance with Section 4 of this Article.

(d) A Tribal Legislator may be suspended from office pending the appeal of the Legislator's conviction of a major crime by the vote of a majority of the total number of Tribal Legislators.

Section 3. Automatic Vacancies.

(a) The office of any elected tribal official who dies or resigns, who is convicted of a major crime, as defined in Bylaw V of this Constitution and Bylaws, shall be deemed to be automatically vacant. Resignation of office shall be written and shall be deemed to be effective as of the date tendered unless otherwise designated in the resignation document.

(b) Any vacancy in office which occurs under this section shall be filled in accordance with Section 4 of this Article.

#### Section 4. The Filling of Vacancies In Office.

(a) Any vacancy in the office of an elected official shall be filled as follows:

(1) If the term of the office in question has more than one (1) year to run from the date of vacancy, the Tribal Legislature shall appoint within sixty (60) days an eligible Tribal member to fill such vacancy until the next tribal election; provided that, the Tribal Legislature shall exercise this right of appointment only once in any Legislative year. If any additional vacancies occur in the same year, they shall be filled by a special election.

(2) If the term of the office in question has one (1) year to run, the Tribal Legislature shall within two (2) months appoint by a majority vote of the total number of Legislators, an eligible tribal member to fill the office; provided that, if a special election is required to fill one or more other vacancies pursuant to subsection (a)(1) of this Section. The Tribal Legislature shall submit all vacancies to election.

(b) Any special election required to be held under this Article shall be conducted in accordance with applicable provisions of this Constitution and Bylaws and with applicable tribal ordinance. If a regular election is scheduled to be held within the time permitted to hold a special election, all issues shall be submitted to vote at the regular election.

(c) Any tribal official who, by operation of this Article, vacates his office shall not be eligible to succeed himself in that office.

(d) If, by reason of vacancies in office, the remaining members of the Tribal Legislature constitute less than five (5), the Election Commission shall cause all vacant offices to be filled by special election held in accordance with applicable provisions of this Constitution and Bylaws and applicable tribal ordinance.

(e) Any tribal member appointed to office under the provisions of this section shall be deemed to be subject to all provisions of this Article, and other Articles and Bylaws of this Constitution and Bylaws, and to other tribal ordinances generally applicable to elected tribal officials, and to his or her particular office.

#### Section 5. Tribal Judiciary Excluded.

This Article shall not be applicable to the removal of Tribal Judges, nor to the filling of any vacancies in the office of Tribal Judge.

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<sup>1</sup> <http://www.who.int>

*Journal of Management Inquiry* 18(1)

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**Appendix 1**

**Polymers**

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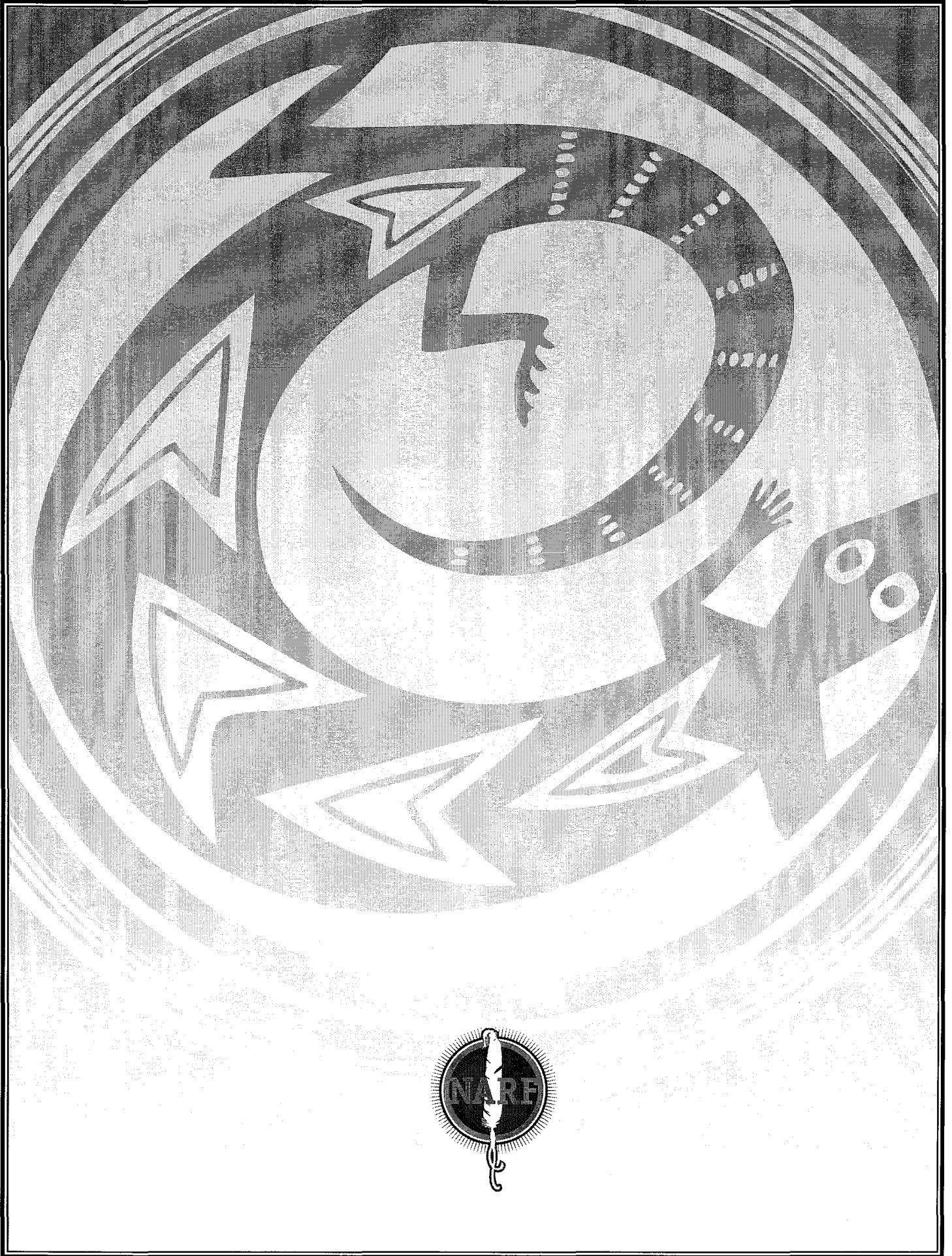
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## **L. PROCEDURES OF THE GOVERNING BODY**

### **A. Considerations.**

#### **I. General Considerations**

This article is generally intended to establish for the governing body guidelines that are considered by the tribe to be important (1) to insure that the tribal members have a fair opportunity to participate in the conduct of tribal affairs; and (2) to minimize the possibility of abuses of power by the governing body. It should be remembered that because these guidelines will be a part of the Constitution, they will be difficult to change. Therefore, in drafting such guidelines for the governing body, you should continually ask yourself: Is this guideline of such fundamental importance that it should be subject to change only by constitutional amendment? Or is it the kind of guideline that is best left to the discretion of the governing body, either because it is not of fundamental importance or because it is more important that the guideline be readily adaptable to changes in circumstances?

As you proceed to consider the following possibilities, you need to consider how transparent you want your tribal government to be and correspondingly the level of accountability. The meetings of the governing body can be designed for maximum transparency, that is, a very open tribal government. But, having said that, there are areas, which will be discussed below, where it is important for tribal government to conduct itself in closed session because it may be damaging to the best interests of the tribe if such meetings were open.

#### **II. Index of Possible Provisions Under This Article**

The following is an index of the various sections and subsections possible under this type of article:

##### **Section 1. Meetings of the Governing Body.**

1. Rules of Procedure.
2. Regular Meetings.
3. Special Meetings.
4. Emergency Meetings.
5. Open Meetings.
6. Attendance.
7. Quorum.
8. Voting.
9. Order of Business.

## Section 2. Action of the Governing Body.

1. Ordinances.
2. Resolutions.
3. Motions.

## III. Section 1. Meetings of the Governing Body.

The following are discussions of the various possible provisions that may be included as subsections of this section.

1. Rules of Procedure. Generally, this subsection authorizes the governing body to establish rules of procedure governing their meetings so long as such rules are not inconsistent with the provisions of this section. Secondly, this subsection requires the governing body to keep a written or public record of its proceedings except where the matter involves privacy issues such as personnel matters or attorney-client confidentiality. Should the tribal constitution include such a provision or should this be left to an ordinance or resolution?

2. Regular Meetings. This provision is generally intended to place a duty on the governing body to meet regularly. If you decide that such a provision should be in the tribal constitution, then you must also decide how much detail should be included in this provision. Should the provision set forth the number, the date, and the time of such regular meetings, or should these details be left to the judgment of the governing body? You might set a minimum number of required regular meetings, leaving it to the judgment of the governing body to schedule additional meetings where desirable or necessary. For example, you might include a sentence to state that there shall be no less than two or four regular meetings a year, leaving the exact timing of these meetings to be set by the governing body. If you decide to set a minimum number, you must make it also clear that additional meetings are also considered to be regular meetings, unless otherwise deemed a special or emergency meeting of the governing body. It is probably a good idea, if you do not establish dates and times for regular meetings in the constitution, to place a duty upon the governing body to establish such details by ordinance. This will insure community participation in the setting of such meetings because ordinances usually must be enacted only after due notice to the people. See the discussion of ordinances below.

### 3. Special Meetings.

This subsection is usually included in constitutions to authorize the calling of meetings other than regular meetings by the governing body for special purposes. Because the purpose of this subsection is to permit meetings to be scheduled within a reasonable time yet give due notice to the tribal members, usually a minimum standard of notice is set forth in the provision. Should there be a provision for special meetings or should this be left to the judgment of the governing body? If you want such a provision in your constitution, again, you must decide how much detail to put into such a provision. Usually, such a provision sets forth the member or members of the governing body who are authorized to call such meetings, the amount of time that shall constitute sufficient notice for such meetings, and what kind of business can be transacted at such specially called meetings. Some constitutions require that the business to be transacted at such meetings

shall be stated in the notice of such meeting to the members of the governing body. Most constitutions state that regular business may be transacted at a special meeting. Some constitutions require the consent of all members of the governing body before any business other than that set forth in the notice of a special meeting can be transacted at a special meeting. You should keep in mind that the special meetings will be called with less notice than the regular meetings. Consequently, it is reasonable to assume that many people who would know about regular meetings would not know about special meetings. Thus, participation by tribal people at special meetings is likely to be less than that at regular meetings. This is an argument for limiting the business that can be conducted at a special meeting to that required by the specific concern that prompted the call for the meeting.

Finally, in some constitutions, special meetings of the governing body can be called by a petition signed by a certain number of eligible voters of the tribe. Once again, there should be clarity about the kind of notice that needs to be provided and the subjects that can be discussed at the meeting. This is another possibility for your consideration.

4. Emergency Meetings. Some constitutions contain a provision for emergency meetings of the governing body. An emergency meeting should be reserved for times of extreme emergency such as when action of the governing body is necessary to preserve or protect public health, welfare, peace, safety or property. You will notice that the provisions usually require that maximum practical notice be given to the public about that meeting. If you think that situations may arise requiring action by the governing body within a shorter amount of time than is required for the calling of a special meeting, then you should probably include a provision like this. An example might be a situation where a snowstorm struck the community and the governing body is required to act immediately to request state or federal aid. Although the action taken at such a meeting is valid, there is often a requirement that these provisions be ratified at a subsequent meeting called with adequate notice.

#### 5. Open Meetings, *i.e.*, Meetings To Be Open To Tribal Members.

Most constitutions include a provision that requires that all regular and special meetings of the governing body be open to tribal members; however, some constitutions allow certain exceptions where the governing body is allowed to go into executive sessions (sessions closed to the public). Some constitutions allow executive sessions simply upon vote of the governing body. Some constitutions designate the kind of situation in which the governing body may hold an executive session. In some constitutions the governing body is allowed to hold executive session only for the purpose of discussing certain matters. But others allow the governing body to call executive sessions as it may determine in its own judgment, but limits its discretion by providing that it may not take action legally binding upon the tribe during such executive session. Thus, while the governing body may discuss action in executive session, it must take final action at a public meeting. Finally, note that at least one constitution states that matters concerning executive session are exempted from the requirement of recording of all meetings of the governing body, unless it determines otherwise.

Experience has shown that, while executive sessions may be desirable in some circumstances, they should be permitted only in certain limited type of situations. One area of

particular concern for tribes to consider is their commercial dealings, especially those involving gaming activity. Often, investors, financiers, banks and others involved in a gaming deal are reluctant to have transactional documents open to tribal members or the public, especially since it may create a situation that would damage the economic interests of the tribe and create a market disadvantage for the tribe. In these current times, such damages may amount to millions of dollars. Thus, elected tribal officials should be required as much as possible to meet, discuss, and decide upon tribal business in full view of the tribe but balance transparency and harm to protect the best interest of the tribe, especially its economic interests.

#### 6. Attendance.

Note that some city charters below include a provision that allows members of the council by vote to either request or compel the attendance of its members at any meetings. If the absent member, after notification of the request or summons to attend, fails to attend for reasons other than those listed in the provision, then the councilperson is deemed guilty of misconduct in office. Another provision in the constitution would provide the penalty for such misconduct in office, which might be forfeiture of office. In addition, this provision may require orderly conduct at meetings and, if the governing body finds that one of its members has not conducted himself in an orderly manner, that member shall be deemed guilty of misconduct, and according to another provision of the constitution may suffer some penalty for this. Again, you should consider whether such a provision is appropriate to put in a constitution, or whether it would be best handled by internal rules of the governing body. Also, you should consider the fact that such a provision permits officials elected by tribal members to be removed or to lose office by means other than action by the tribal members in the form of elections or recall.

#### 7. Quorum.

Most of the constitutions listed as examples below in section D include a provision setting forth the quorum for meetings of the governing body. A quorum is the minimum number or percentage of members of the governing body who are required to be present at a meeting before the governing body can take action binding on the tribe. If the requirement is too high, this may prevent action from being taken in many cases, but if the requirement is too low, then this will allow formal action binding on the tribe to be taken by only a few members of the governing body. In addition, you should consider whether the same quorum should be allowed for all three types of meetings listed above, assuming you will have notice of regular meetings as they will be scheduled in advance by ordinance or in the constitution. Because of the shorter notice period, however, fewer members of the governing body may be able to attend special meetings, and even fewer for emergency meetings. Thus, perhaps the quorum should be less for emergency meetings than for special meetings and less for special meetings than for regular meetings. This, again, would argue in favor of limiting the kind of business that can be transacted at meetings other than regular meetings. Finally, some constitutions provide that meetings, at which less than a quorum is present, can be adjourned by less than a quorum. This would appear to be a good idea, otherwise a pre-scheduled meeting could not be adjourned until a governing body quorum was present; theoretically, such meeting could last for days.

## 8. Voting.

Many constitutions have a provision designating the manner in which votes shall be taken at meetings of the governing body. Some constitutions require a roll call vote to be taken of each member voting "yes" or "no" and that these votes should be recorded. This provision also would designate the percentage or number of votes that would be required to constitute official and formal action by the governing body that is binding for the tribe.

Most constitutions require a majority vote of the entire members elected to the governing body to constitute formal and binding action. You might consider making this particular provision applicable only to voting on ordinances, thus allowing the governing body to set its own voting standards for action less than that which constitutes the passing of ordinances or tribal legislation. Or you may consider providing that action on less important matters may be taken by a majority of the members present or by a majority of those voting (in the event certain members are disqualified from voting on a particular matter).

Finally, some constitutions insert a clause which prohibits members of the governing body from voting if they have a financial interest in the issue presented or if the issue concerns the conduct of the member of the governing body. This might also be extended to prohibit members from voting on questions in which the member has a personal interest.

## 9. Order of Business.

Examples 3, 8, 11 and 13 below, for example, have a provision that list the order of business at any regular or special meeting of the governing body. After reviewing that section, do you think such a provision should be included in your constitution? If so, should the order of business be limited to business at regular meetings only, or also at special meetings, or also at emergency meetings?

## Section 2. Action by the Governing Body: Ordinances, Resolutions, and Motions

### **A. Considerations.**

The purpose of this section is to insure that tribal members will have the fullest opportunity to participate in important decisions of the governing body in the exercise of the powers entrusted to it. The governing body will have the power to enact laws, which will essentially be limitations upon the behavior of tribal members. In addition, the governing body will have the power to make decisions and take action that will be binding upon the tribe in relations with other governments or private parties. Thus, this section is intended to set forth certain basic safeguards with which the governing body must comply before any decision it makes or any action it takes is a legally binding action of the tribe. These safeguards will insure tribal members that they will have full notice and full opportunity to influence and participate in the decision making process of the governing body.

Usually, such safeguards are only applicable to the more important decisions or actions of the governing body. Thus, the safeguards are usually not made applicable to the less important decisions which are made by the governing body, for example, the adjournment of meetings, or the kind of letterhead the governing body should have, or the insignia that will be on the letterhead or whether the person should go to a particular meeting. Generally, actions or decisions of the governing body which are of a temporary nature or which do not have a substantial effect on the tribal members could be taken by action not subject to the safeguards of this article.

Usually, this section first states that the governing body may act only by ordinance (or legislation), resolution, or motion. Action by ordinance or legislation would be required for all matters of an important or permanent nature with the force of law. All other actions, unless specifically provided otherwise in the constitution, may be in the form of a resolutions or motions. The procedure regarding resolutions and motions could be left to the judgment of the governing body to be incorporated in its internal rules of procedure.

For those constitutions that fail to have this type of provision, the governing body will sometimes enact an ordinance or legislation to address this subject. That is also an option for them to consider. In Section E are examples of similar provisions for your reference.

## **B. Questions.**

1. Should there be a provision setting forth the manner in which the governing body may act, and safeguards which must be complied with regarding such actions? Should these kinds of actions be ordinances, resolutions and motions?

2. Should the constitution list certain kinds of matters which must be acted upon by ordinance, as opposed to resolution and motion, for example, levying a tax, creating a debt, appropriating tribal money, establishing criminal or civil penalties, selling, mortgaging, leasing or otherwise encumbering tribal lands?

3. Should a specific form in which ordinances must appear be set forth? This is a safeguard in that an ordinance should thus be immediately recognizable as an important action of the governing body that should be carefully considered. It also provides a consistent format for codification, which allows easy access to the laws of the tribe.

4. What should the procedure be for action by ordinance?

(a) Should an ordinance be allowed to be introduced at either a regular or a special meeting of the governing body? The accepted practice is to allow introduction of ordinances at both regular and special meetings.

(b) Who should be able to introduce an ordinance-any one member of the governing body? Any two members? The Chairperson? Legal Counsel? A committee of the governing body? A tribal department head?

(c) Should the ordinance be read at the meeting at which it is introduced in full, or should copies of the ordinance be made available to the public. A requirement that proposed ordinances be read aloud may be impractical if the ordinance is lengthy, but you might consider requiring that the ordinance be summarized aloud before adoption.

(d) What should happen after the ordinance is introduced? Should the governing body be allowed to approve it at the same meeting at which it is introduced? Should the ordinance be required to be posted and/or published in full, by synopsis or by title? Should the ordinance receive some sort of approval by the governing body prior to being posted or published?

(e) Should a public hearing be mandated on the ordinance? If so, how soon should such a hearing be conducted? Should some sort of notice requirement be set forth for the hearing, that is, should the date and topic be posted and/or published? Who is allowed to comment – only tribal members?

(f) How should the ordinance be publicized as finally adopted? Should it be posted as well as published in full or by title?

(g) Shall ordinances take effect on the date adopted unless otherwise specified in the ordinance? Or shall the constitution provide that ordinances shall take effect after the expiration of a certain number of days? How many days? This is generally anywhere from five to sixty days after adoption.

(h) Should the governing body be allowed to amend the ordinance at a meeting subsequent to the public hearing?

5. Should a special voting requirement be included requiring a vote of a majority of all elected members, as opposed to a majority of the quorum? Or should a higher vote be required such as 3/4 of the elected members?

6. Should there be a provision for emergency ordinances? Such ordinances may be necessary for the immediate preservation of tribal property, health, peace, or safety. The ordinances would take effect immediately upon adoption by the governing body. Should there be a special voting provision for emergency ordinances such as perhaps a unanimous vote requirement? Should the governing body be required to state the facts showing such emergency? Should there be certain kinds of actions that are absolutely prohibited from being the subject of emergency ordinances, such as levying taxes? Should the emergency ordinance be effective only for a limited number of days at which time it shall automatically expire unless re-enacted if the emergency still exists? Should there be requirements for publication of the ordinance? (Generally, emergency ordinances are exempted from most of the publication and notice requirements applicable to the passage of ordinary ordinances except as specifically made applicable.)

7. Should the governing body be required to keep an accurate public record of all ordinances passed?

8. Should there be a special provision that would allow the adoption by reference of entire codes, thus exempting the codes from any publication requirements? For example, the tribe may want to adopt a technical uniform code relating to building requirements. Such codes are now in existence, have been written by technical experts, and are normally quite lengthy. An “adoption by reference” provision in the constitution would permit the governing body to adopt a technical code by reference without having to publish the entire code.

9. Should the ordinances enacted by the governing body be subject to review by the Secretary of the Interior? Many tribal constitutions adopted immediately after the IRA was passed in 1934 have this requirement, although it need not be included in the constitution, and could be seen as a limitation on the tribe’s sovereignty.

## V. Tribe Meetings

### Questions.

Should there be a specific constitutional provision providing for regular meetings of the tribal body, that is, the general membership? What would be the purpose of these tribal meetings? Should the precise date for them be fixed? If so, when should these meetings occur? What procedure should be followed in calling these meetings? Should the procedure be set forth in the constitution or by ordinance of the governing body or by some other procedure?

Some tribes pass legislation by a general membership vote. In addition to legislation, some tribes will take important issues to its general membership for a vote. In these situations, the general membership will meet from time to time and be presented with an agenda that consists of ordinances, resolutions and issues that the governing body will ask membership to vote upon. Thus, if this is relevant to your situation, you may also want to consider the same questions posed above in your deliberations regarding the procedure to follow when such matters are taken before the general membership.

**B. Existing Provisions.** [to be filled by tribe]

### C. Suggested Provisions.

#### Article -Procedure of the Governing Body

##### Section 1. Meetings of the Governing Body.

(a) Regular Meetings. The governing body shall meet in official regular session at least four times a calendar year on a quarterly basis at such time and place as shall be established by ordinance. Unless called as a special or emergency meeting, any properly convened meeting of the governing body is considered a regular meeting. The order of business for any such meeting shall be posted in accordance with Section 3 of this Article. Other business, however, may also be transacted at such meeting if the governing body votes to consider such other business.

(b) Special Meetings.



(1) Calling and Notice.

Special meetings of the governing body shall be called by the Chairperson of the governing body at that person's discretion or upon the written request of any \_\_\_\_ members of the governing body; *provided that*, at least 72 hours written notice of such meetings shall be given to each member by personal service or by registered mail sent to the member's usual place of residence, by electronic means that documents receipt thereof, or left at the member's usual place of residence with some person 18 years of age or older, of suitable discretion and who resides at that place; *provided, however*, notice shall be considered waived by attendance at the meeting. Notice to members shall be posted as provided in Section 3 of this Article promptly after such meeting is called.

(2) Business. No business shall be conducted at any special meeting of the governing body unless the business has been stated in the notice of that meeting. Any business, however, which may lawfully come before a regular meeting may be transacted at a special meeting if all the members of the governing body consent in writing.

(3) Emergency Meetings.

An emergency meeting of the governing body may be called by the Chairperson of the governing body at that person's discretion or upon the written request of any \_\_\_\_ members of the governing body upon less than 72 hours written notice if that meeting is necessary for the preservation or protection of the health, welfare, peace, safety, or property of the Tribe. The governing body shall make every effort to give maximum practical notice to each member for that meeting, and the notice shall be posted as provided in Section 3 of this Article promptly after that meeting is called. No business other than that stated in the notice shall be conducted.

(c) Open Meetings and Executive Sessions.

All meetings of the governing body called under this Article shall be open to Tribal members who shall have a reasonable opportunity to be heard under such rules as the governing body may prescribe, *provided, however*, that the governing body may meet in executive session for the following purposes:

(1) Personnel matters.

(2) Claims against the Tribe, Governing Body or Tribal Courts, or their officials or employees, whether in litigation or otherwise.

(3) Legal consultation and advice.

(4) Matters involved in litigation concerning the Tribe, Governing Body or Tribal Courts, or their officials or employees.

(5) Deliberation or review of any matter heard by the Governing Body in a quasi-judicial capacity.

(6) Negotiations or transactions concerning the purchase, sale, lease or other acquisition of real or personal property, or interests therein, concerning any financing or investment, concerning any contracts except those required to be the subject of competitive bidding, or concerning any economic activity, interest or matter the disclosure of which would not be in the economic best interest of the tribe or would place the tribe in a competitive market disadvantage.

(7) Matters involving the privacy interest of individuals.

The governing body may determine not to keep a record of all or any part of the discussion in executive session; *provided, however*, the general reason for that determination shall be recorded and a record shall be kept of any action taken in executive session. The record may be withheld from inspection by Tribal members pending final disposition of the matter concerned.

(d) Organization and Rules of the Governing Body. The governing body shall adopt by motion **written rules governing its own organization and procedure. Those rules shall be open and** available to review by Tribal members in accordance with Section 3 of this Article.

(e) Voting by the Governing Body.

(1) Ordinances.

Except for emergency ordinances and except as may otherwise be provided in this Constitution, every ordinance shall be adopted at a regular meeting of the governing body by the affirmative vote of at least \_\_\_\_ members, *provided that* the quorum for those meetings shall be \_\_\_\_ members. An emergency ordinance may be adopted at an emergency meeting by a majority vote of those members present at such meeting. An emergency ordinance shall be valid for 45 days, unless extended at a regular meeting duly called.

(2) Resolutions and Motions.

Every resolution and motion shall be adopted by the affirmative vote of at least a majority of the members of the governing body present at a regular, special or emergency meeting of the governing body; *provided that* the quorum for those meetings shall be \_\_\_\_ members, except for an emergency meeting.

Section 2. Ordinances, Resolutions, and Motions.

Promptly after the effective date of this Constitution, the governing body shall enact an ordinance establishing procedures for adopting, amending or rescinding ordinances, resolutions and motions, and handling of tribal records.

Section 3. Posting Procedure.

The following shall be the procedure of the governing body in posting any notice or other document as required by this Constitution or by tribal ordinance.

(1) The Tribal Council shall designate by ordinance no fewer than \_\_\_\_ public places where that posting shall be made. If any posting place is to be changed, then the governing body shall make such change by ordinance.

(2) Posting shall take place as soon as practicable.

**D. Examples.**

*Example 1: Constitution and Bylaws of the Chitimacha Tribe of Louisiana.*

Article II -Meetings

Section 1. Meetings of the Tribal Council.

Meetings of the tribal council may be called by the chairman at his discretion and must be called by him upon request of a majority of the council. Ten days notice of meetings must be given by the chairman in the manner determined by the tribal council. The notice shall state the purpose of the meeting.

Section 2. General Tribal Meeting.

A regular general tribal meeting shall be held each year on the second Saturday in June. Special general tribal meetings may be called at the discretion of the chairman of the tribal council and must be called by him upon a petition signed by at least twenty percent (20%) of those members entitled to vote at tribal elections. The chairman of the tribal council, or in his absence the vice-chairman, shall preside at all general tribal meetings. The meeting shall be widely noticed ten days in advance. The purpose of the meeting shall be included in the notice. A majority of the adult members present shall decide on issues considered.

Section 3. Quorum.

A majority of the full membership of the tribal council, i.e., three (3) of the five (5) members, shall constitute a quorum for the transaction of any tribal business.

Section 4. Conduct of Meetings.

The tribal council shall conduct its meetings according to Robert's Rules of Order except when such rules are in conflict with this constitution.

*Example 2: Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation of Colorado.*

#### Article IX -Meeting of the Tribal Council

##### Section 1. First Meeting.

At the first meeting following installation of newly-elected council members, the carry-over members shall see that new members have a correct and clear understanding of the constitution, the management of tribal and reservation affairs and the rules governing the conduct of the council.

##### Section 2. Regular Meeting.

The regular meetings of the council shall be held on a date decided on at a previous meeting of the council, but meetings shall be held every two (2) weeks.

##### Section 3. Special Meetings.

The chairman shall call a special meeting of the council whenever necessary or at the request of four (4) or more councilmen. Notice of such special meeting shall be given to every member of the tribal council as promptly as possible.

##### Section 4. Agenda and Quorum.

Matters of business before the tribal council shall be decided by majority vote of a quorum present. Any four (4) of the seven (7) council members shall constitute a quorum. In the absence of the chairman and the vice-chairman, the remaining members of the tribal council may appoint an acting chairman as provided in Article VII, Section 2.

*Example 3: Constitution and Bylaws of the Upper Skagit Indian Tribe.*

#### Article V -Time and Place of Tribal Council Meetings

Section 1. Meetings. Regular meetings of the tribal council shall be held at such times as the tribal council may provide by resolution.

Special meetings shall be called by a written notice or a telephone call 24 hours in advance of the meeting to each council member, and approved by the chairman or a majority of the tribal council.

##### Section 2. Quorum.

No business shall be transacted unless a quorum is present. A quorum shall consist of four (4) members of the tribal council.

### Section 3. Order of Business.

The following order of business is established for all meetings:

1. Call to order by chairman
2. Roll call
3. Ascertainment of a quorum
4. Reading the minutes of last meeting.
5. Adoption of the minutes by vote or common consent
6. Treasurer's report
7. Unfinished business
8. Reports
9. New business
10. Adjournment

### Section 4.

All matters shall be fully discussed and a reasonable attempt shall be made to secure unanimous agreement. Parliamentary procedure shall be governed by Robert's Rules of Order, unless otherwise provided in this constitution.

## Article VI -General Tribal Meetings

### Section 1.

There shall be an annual general council meeting held at a time and place designated by the tribal council. A quorum of the general council shall consist of not less than 25 eligible voters. A notice of the meeting shall be mailed at least 15 days prior to the meeting to eligible voters with addresses of record.

It shall be the duty of the chairman to make a report at said meeting of the activities of the council throughout the year and to outline proposed plans for economic and social betterment of the tribe. Also, any other discussion or actions appropriate to the meeting shall be considered.

### Section 2.

Special general council meetings may be called by the Chairman of the Upper Skagit Indian Tribal Council; provided, that eligible voters with addresses of record shall be mailed a notice at least 15 days prior to such meeting.

The tribal council shall be required to call a special general council meeting within 30 days after receiving a written petition signed by at least twenty-five eligible voters; provided that eligible voters with addresses of record shall be mailed a notice at least 15 days prior to such meeting.

*Example 4: Constitution of the Kickapoo Traditional Tribe of Texas.*

Article III -Governing Body

Section 3. Traditional Council Meetings.

- (a) Quorum. Three (3) members of the Traditional Council shall constitute a quorum of that body. No enactment of the Traditional Council will be valid in the absence of a quorum.
- (b) Regular Meetings. Regular meetings of the Traditional Council shall be held quarterly unless otherwise designated by the Chairman with concurrence of the Traditional Council, provided that notice shall be given to the membership of the Tribe at least thirty (30) days in advance specifying the date, time and place of the meeting and provided that at least two regular meetings shall be held at the Kickapoo Village.
- (c) Special Meetings. Special meetings of the Traditional Council may be called by the Chairman at his discretion, except that special meetings shall be called by the Chairman within fifteen (15) days of a written request of a majority of the Traditional Council members. Upon refusal by the Chairman to call a special meeting within fifteen (15) days upon a written request of a majority of the Traditional Council, any member of the Traditional Council may exercise such authority.
- (d) Annual General Membership Meeting. There shall be an annual general meeting of the tribal membership called by the Chairman of the Traditional Council to be held the third Saturday of November. The chairman of the Traditional Council shall present a report to the membership of the activity of the Traditional Council of the past year, and shall outline proposed plans and activities for the coming year. Notice of the Annual General Membership Meeting shall be given by the Secretary of the Traditional Council at least thirty (30) days in advance.
- (e) Special General Membership Meetings. Special General Membership meetings may be called by the Chairman of the Traditional Council provided that notice of such meeting shall be given at least fourteen (14) days prior to such meeting. Upon receipt of a valid petition signed by at least 100 eligible voters of the Tribe, the Chairman shall call a Special General Membership meeting within forty-five (45) days of receipt of the petition.

*Example 5: Constitution of the Cherokee Nation of Oklahoma.*

Article II -Bill of Rights

Section 4.

There shall be a least one regular session of the Council in the calendar year which shall convene on the second Monday in each January or at such other date as the Council shall determine. No business shall be conducted by the Council unless at least two-thirds (2/3) of the members thereof regularly elected and qualified shall be in attendance, which number shall constitute a quorum. The session may not exceed a maximum of thirty (30) calendar days for pay purposes.

## Section 5.

Special meetings of the Council may be called: (A) by the Principal Chief, (B) by the Deputy Principal Chief when he has the full powers of the Principal Chief as elsewhere defined, (C) upon written request of fifty-one percent (51%) of the members of the Council, or (D) upon the written request of ten percent (10%) of the registered voters of the Cherokee Nation. The purposes of said meeting shall be stated in a notice published not less than ten (10) days prior to the meeting, and the Council may not consider any other subject not within such purposes. No special meetings may convene until thirty (30) days have elapsed after the adjournment of a prior session or meeting, unless called pursuant to (A) and (B) above.

## Section 6.

All meetings of the Council and of its committees shall be open to the public except: (A) When the discussion shall concern employment, retention or discharge of personnel; (B) When the question or the moral turpitude of any member of the Tribe is discussed; or (C) When the decorum of the audience shall prejudice orderly administration of business. In the event that consideration of a subject shall take place in Executive Session, the vote shall take place in an open meeting.

*Example 6: Constitution Of The Mohegan Tribe of Indians of Connecticut.*

## Article IV -Governing Bodies

### Section 3.

Meetings of the Tribal Council shall be held and conducted as follows:

- (a) The Tribal Council shall hold regular meetings which shall be called by the Chair or upon written request of a majority of the members of the Tribal Council then in office.
- (b) Five (5) members of the Tribal Council then in office shall constitute a quorum for the transaction of any tribal business, and a majority of a quorum may make decisions except for those requiring a higher vote under this Constitution.
- (c) In conducting its business, the Tribal Council shall be governed by such rules as it may, in its discretion, adopt.

### Section 5.

Meetings of the Council of Elders shall be held and conducted as follows:

- (a) The Council of Elders shall hold regular meetings which shall be called by the Chair or upon written request of a majority of the members of the Elders then in office.
- (b) Five (5) members of the Elders then in office shall constitute a quorum for the transaction of any tribal business, and a majority of a quorum may make decisions except for those requiring a

higher vote under this Constitution.

(c) In conducting its business, the Elders shall be governed by such rules as it may, in its discretion, adopt.

*Example 7: Constitution Of The Confederated Tribes of Siletz Indians of Oregon.*

## Article V -Procedures

### Section 1. General Council.

The General Council shall hold meetings in accordance with the following procedures, and shall exercise its electoral powers in accordance with the provisions of Article VI of this Constitution:

(a) Regular meetings of the General Council shall be held beginning on the first Saturday of February, May, August, and November, at a time and place to be set by the Tribal Council, The February meeting shall include the annual election of the Tribal Council except as provided in Article VI, Section 5.

(b) Special meetings of the General Council may be called by the Tribal Council upon one month's notice to the membership of the General Council. The Tribal Council may call such meetings upon its own motion, but it must call such a meeting upon presentation of a properly verified petition signed by one-third or more of the General Council of the Confederated Tribes of Siletz Indians of Oregon.

(c) The agenda for General Council meetings shall be set by the Tribal Council, provided that any member may submit in writing items to the Tribal Council for consideration for the agenda, and provided further that each agenda shall include time for discussion of items from the floor regardless of whether said items appear on the agenda. Agendas shall be sent to tribal members two weeks in advance of General Council meetings.

(d) The Tribal Council Chairman shall chair General Council meetings.

### Section 2. Tribal Council.

The Tribal Council shall hold meetings and take actions in accordance with the following procedures, which it may augment by its own rules of procedure so long as they do not conflict with any provisions of this Constitution:

(a) Regular meetings of the Tribal Council shall be held each month at a time and place to be set by the Tribal Council. In case the time of the regular meeting conflicts with a National, State or tribal holiday, election, or emergency, the meeting shall be held at the same hour and place one week later than scheduled.

(b) Special meetings of the Tribal Council may be called by the Chairman at his or her discretion, but the Chairman must call a special meeting upon written request of three or more



members of the Tribal Council. No special meeting shall be called without twelve hours' notice to each member, unless each member shall waive the notice requirement in writing.

(c) The agenda shall be set by the chairman, provided that it shall include any item submitted upon the written request of three or more members of the Tribal Council. The agenda shall be provided to Tribal Council members not less than five days prior to any regularly scheduled meeting, and at the time notice is given of any special meeting. Items may be added to the agenda at a Tribal Council meeting upon the concurrence of three or more members.

(d) Five members of the Tribal Council shall constitute a quorum. Matters of business shall be decided by majority vote, except where otherwise required by this Constitution and the Tribal Council's own rules as set forth by ordinance. Voting shall be by roll call vote and the ayes and nays shall be recorded in the minutes.

(e) All meetings of the Tribal Council shall be open to membership of the Confederated Tribes of Siletz Indians of Oregon; However, the Tribal Council may recess at its discretion to discuss any matter in a closed or executive session, provided that the general subject matter discussed is expressed in the motion calling for such session and no final or official action is taken thereon in the closed or executive session.

(f) All final decisions of the Tribal Council on matters of general and permanent interest to the members of the Tribe shall be embodied in ordinances. The ordinances shall be collected and made available to tribal members and others affected upon reasonable request.

(g) All final decisions of the Tribal Council on matters of temporary interest shall be embodied in resolutions. The resolutions shall be collected and made available to tribal members and others affected upon reasonable request.

(h) All questions of procedure shall be decided by motion duly passed, or by the ruling of the Chairman if no objection is heard.

(i) No Tribal Council member shall vote on any matter wherein he or she or a member of his or her immediate family has a direct personal interest, including but not limited to employment contracts, project funding, and appointments to tribal committees.

(j) A written record shall be kept of Tribal Council proceedings. The record shall be open for inspection by all members of the Confederated Tribes of Siletz Indians of Oregon.

*Example 8: Constitution Of The Te-Moak Tribe Of Western Shoshone Indians Of Nevada.*

#### Section 19. Manner of Conducting Business.

Both the Tribal Council and the Band Councils shall follow these provisions:

(a) Regular Meetings. Regular public meetings of each Council shall be held monthly on a date set by resolution and at such other times as the Council shall provide.

(b) Special Meetings. Special meetings of the Council may be called on written or oral notice by the Chairperson and shall be called by him/her upon a written request by a majority of the Council and, when so called and convened, the Council shall have the power to transact

business; provided, that notice of the special meeting has been given to all members. Notice will be considered sufficient when given orally or in writing no less than two (2) days before the special meeting; provided, that written notice shall be delivered to the residence of the Council member. If notice is made by certified mail, properly addressed to the last known address of the Council member, it shall be mailed no less than three (3) days before the special meeting.

(c) Quorum. No meeting shall commence until a quorum is present. A quorum shall consist of a majority of the membership of the Council including the presiding officer. Once a quorum has been established, the Council is authorized to conduct business until adjournment, regardless of whether some Council members leave the meeting. All decisions shall be made by majority vote of Council members present, unless a greater number is otherwise provided for in this Constitution.

(d) Items of Business. The meetings of the Council shall cover the following items in appropriate fashion:

- (1) Call to order;
- (2) Roll Call;
- (3) Reading of the minutes of the last meeting;
- (4) Unfinished business;
- (5) Reports;
- (6) New Business;
- (7) Adjournment.

(e) Procedures: This Constitution and any ordinance, resolution or motion consistent with it shall govern the procedures of the meeting.

(f) Copies of Minutes Furnished. The Band Council shall provide a copy of the minutes of each of its meetings and all official documents of the Band to the Tribal Council and to the Superintendent. The Tribal Council shall provide a copy of the minutes of each of its meetings and all official documents of the Tribe to each Band Council and to the Superintendent.

*Example 9: Constitution Of The Absentee-Shawnee Tribe Of Indians Of Oklahoma.*

## Article XVI -Meetings

### Section 1. General Council Meetings.

General Council meetings shall be held semi-annually in April and October on dates to be set by the Executive Committee. Notices shall be posted at appropriate places at least fifteen (15) days prior to each General Council meeting.

### Section 2. Special General Council Meetings.

Special General Council meetings may be called by the Governor and shall be called and conducted by him when directed to do so by a majority vote of a quorum of the Executive Committee. In the event he refuses to call a meeting when so directed, the highest ranking official who favors calling the meeting, shall be empowered to exercise that authority.

### Section 3. Executive Committee Meetings.

Executive Committee meetings shall be held monthly at tribal headquarters on dates to be established by the Executive Committee by public notice. Written notification shall be provided to each Committee Member at least five (5) days in advance. The Committee may hold meetings at another location provided all members are so advised in the advance notice.

### Section 4. Special Meetings of the Executive Committee.

Special meetings of the Executive Committee may be called by the Governor as necessary with advance individual written notice. Any three (3) members of the Executive Committee may call a special meeting of that body by presenting a written notice to all members of the Committee. If the Governor fails to attend, the highest ranking of those who called the meeting shall be empowered to conduct the meeting, provided a quorum is present.

### Section 5.

All meetings of each of the tribal elective bodies are closed to non-tribal members unless they are on official business with the tribe, or are otherwise invited to attend by the respective body.

### Section 6.

Procedures for calling and conducting meetings of tribal elective bodies, other than the Executive Committee, shall be set forth by each such body in an appropriate resolution which shall be consistent with this Constitution.

### Section 7.

Except where otherwise provided in this Constitution, all meetings shall be conducted in accordance with adopted procedures.

### Section 8.

Legal notices shall be published in a local newspaper in the counties mentioned in Article XIV, Sec. 1(d).

## Article XVII -Quorum

### Section 1. Executive Committee, Tribal Court, Appeals Court, and Election Commission Meetings.

In any duly called meeting of the above elected bodies any three (3) members of that particular body shall constitute a quorum to transact business within the scope of authority of that body.

## Section 2. General Council Meeting.

Fifty (50) members of the General Council, who are registered tribal voters, shall constitute a quorum to transact business at any duly called General Council Meeting.

*Example 10: Constitution And Bylaws Of The Seneca-Cayuga Tribe Of Oklahoma.*

## Article VIII -Annual Meetings

Annual meetings shall be held on the first Tuesday of June of each year for the election of officers and receiving reports and any other business which may come regularly before the council. The term of officers shall be for two years or until their successors are elected and installed. Regular elections shall be held each odd-numbered year. Nominations shall be from the floor. Election shall be by standing vote or by written ballot, a majority vote being necessary to elect. Where there are more than two candidates and no one receives a majority vote the low candidate shall be eliminated and voting proceed until one candidate receives a majority of votes cast. The newly elected officers shall be installed immediately upon their election.

## Article III -Regular and Special Meetings

### Section 1.

The regular meetings of the Council shall be held on the first Tuesday of June of each year at the tribal stomp ground, unless some other point under the Seneca jurisdiction is specifically designated in the call.

### Section 2.

Special meetings of the council may be called at the discretion of the chief, and shall be called by him upon the written request of the majority of the Business Committee or the written request of 30 members of the Tribe.

### Section 3.

The principal object of the special meeting must be stated in the call for same and may include the words "and for the transaction of other business that may be presented." Unless these words are added, no other business can be transacted except for the object stated in the call.

### Section 4.

The regular meetings of the Business Committee shall be held the first Tuesday in each month unless otherwise provided by resolution.

Section 5.

Special meetings of the Business Committee may be called by the chief at his discretion, and shall be called by him upon the written request of three members of the Business Committee.

Article V -Quorum

Section 1.

Four members of the Business Committee constitutes a quorum at any meeting.

Section 2.

Thirty members of the Seneca-Cayuga Council shall constitute a quorum to transact regular business.

*Example 11: Constitution And Bylaws Of The Confederated Salish And Kootenai Tribes Of The Flathead Reservation.*

Section 7.

Regular meetings of the Tribal Council shall be held on the first Friday of January, April, July, and October, at 9:00 o'clock a.m. at the Flathead Agency.

Section 8.

Special meetings may be called by a written notice signed by the chairman or a majority of the Tribal Council and when so called the Tribal Council shall have power to transact business as in regular meetings.

Section 9.

No business shall be transacted unless a quorum is present which shall consist of two-thirds (2/3) of the entire membership.

Section 10.

Order of business:

- (a) Call to order by Chairman.
- (b) Roll call.
- (c) Reading of minutes of last meeting.
- (d) Unfinished business.
- (e) Reports.
- (f) New business.
- (g) Adjournment.

Section 7 of Article I of the Bylaws entitled "The Tribal Council" is hereby amended to read as follows:

"Section 7. Regular meetings of the Tribal Council shall be held on the first Friday of January, April, July, and October, at 9:00 o'clock a.m., at the Flathead Agency."

*Example 12: Constitution And Bylaws Of The Three Affiliated Tribes Of The Fort Berthold Reservation.*

### Article III -Meeting of Council

#### Section 1.

The regular meetings of the Tribal Business Council shall be held at such place as may be designated by the Tribal Business Council, on the second Thursday of each month. (As amended by Amendment No. V, effective September 10, 1974)

#### Section 2.

Special meetings may be called by the Chairman or by any three councilmen who shall notify all members of the council at least twenty-four (24) hours before the time of convening such meeting unless a majority of the council approve a shorter call in an emergency.

#### Section 3.

Seven members shall constitute a legal quorum of the Tribal Business Council.

#### Section 4.

In the absence of the Chairman and Vice Chairman if a quorum is otherwise present, the Secretary shall act as chairman until a temporary chairman is selected.

#### Section 5.

At the first meeting of a newly elected Tribal Business Council, it shall establish by resolution a regular order of business such as: Roll call, reading of minutes of previous meeting, report of Treasurer, report of committees, unfinished business, new business, etc.

*Example 13: Constitution And Bylaws Of The Chippewa Cree Indians Of The Rocky Boy's Reservation of Montana.*

#### Section 2. Meetings.

(a) The Business Committee shall hold regular business meetings each month at the tribal office on a date to be set forth by resolution of the committee.

(b) Special meetings may be called at any time by the Chairman upon ten (10) hours written notice delivered to members of the Business Committee and shall be called and conducted upon petition by five (5) members of the committee.

(c) A quorum of five (5) committee members shall be present at any meeting before the committee may be officially called to order. Only members of the Business Committee shall have the right to vote.

### Section 3. Order of Business.

(a) Roll call.

(b) Reading of the minutes of previous meeting.

(c) Secretary-Treasurer to report business transactions and present any bills, requisitions, claims, etc.

(d) Hearing of applications, petitions, complaints, and other business properly coming before the committee.

(e) Any other business.

(f) Adjournment.

*Example 14: Constitution And Bylaws Of The Colorado River Indian Tribes Of The Colorado River Indian Reservation Of Arizona And California.*

## Article IV -Governing Body

### Section 6. Regular Meeting.

The tribal council shall meet the second Saturday of each month at 9 o'clock in the morning at the Tribal Administration Center. If this date should fall on a holiday, the meeting will be held on the following Saturday.

### Section 7. Special Meetings.

Special meetings of the tribal council shall be held at such times as are designated by the chairman or in his absence by the vice-chairman, who shall notify the members at least twenty-four (24) hours prior to the date of such meeting.

Special meetings of the tribal council shall also be held upon written request of three (3) members of the tribal council or by petition signed by one-third (1/3) of the enrolled members of the tribes, aged eighteen (18) years and older. Such written request shall be filed with the chairman or vice-chairman or secretary of the tribal council, who shall notify the tribal council members at least twenty-four (24) hours prior to the date of such tribal council meetings.

### Section 8. Quorum.

At any regular or special meeting of the tribal council, six (6) members shall constitute a quorum and without such quorum, the chairman or acting chairman shall adjourn the meeting. However, should it be necessary to convene meetings when vacancies, as defined in Article IX

of this constitution, exist prior to their being filled, a quorum shall be two-thirds (2/3) of the number of council members remaining in office. All actions of the tribal council shall be based upon a majority vote of the members present providing those present constitute a quorum.

#### Section 10. Meetings.

All regular meetings and special meetings of the tribal council shall be open to members of the tribes; non-members may attend meetings with permission of the tribal council. Visitors may speak only with the consent of the chairman.

#### Bylaws of the Colorado River Indian Tribes

#### Section 1. Conduct of Meetings.

The order of business at any regular or special meeting of the tribal council shall be as follows:

- (1) Call to order by the presiding officer.
- (2) Roll call.
- (3) Reading of the minutes of the last meeting.
- (4) Unfinished business.
- (5) Reports.
- (6) New Business.
- (7) Adjournment.

*Example 15: Constitution And Bylaws Of The Cheyenne-Arapaho Tribes Of Oklahoma.*

#### Section 5. Quorum.

(a) Business Committee and Election Board: A quorum for each shall consist of at least five (5) of the elected members and must be present to transact tribal business, provided that until the first election for the business committee is held under this constitution and by-laws and the members sworn in; a quorum of the business committee shall be at least eight (8) members.

(b) Tribal Council: A quorum shall be composed of not less than seventy-five members.

#### Article XVI -Meetings

#### Section 1.

Regular monthly meetings of the business committee shall be held on the first Saturday of each month at the tribal headquarters, unless it falls on a legal holiday; and, in such event, it will be held on the following Saturday. Such meetings shall be open to the public.



## Section 2.

Special meetings of the business committee may be called at the discretion of the chairman and shall be called by him upon written request of five (5) of its members or upon receipt of a petition signed by two hundred and fifty (250) members of the tribal council. Written request by the petitioners shall state the object of the meeting, and no other business shall be transacted until that specified in the request has been fully disposed of. A 30-day notice of said meeting requested by the petitioners shall be published in the tribal newsletter and/or other appropriate newspapers and posted at tribal headquarters and at the Concho Agency. Special meetings of the business committee shall not exceed one (1) a month at tribal expense. Such meetings shall be open to the public.

## Section 3.

An annual meeting of the tribal council shall be held on the first Saturday in October of each year. The meeting place will be designated by the business committee. One-half ( $\frac{1}{2}$ ) of the meeting time available shall be reserved for tribal business from the floor.

## Section 4.

Special meetings of the tribal council may be called at the discretion of the chairman of the business committee, but shall be called by him upon written request of five (5) of the elected members of the committee, or upon receipt of a petition signed by two hundred fifty (250) members of the tribal council. A 30-day notice of this meeting must be published in the tribal newsletter and/or other appropriate newspapers and posted at tribal headquarters and at the Concho Agency. One-half ( $\frac{1}{2}$ ) of the meeting time available shall be reserved for tribal business from the floor.

## Section 5.

The regular monthly meeting of the business committee for the months of March and September shall include an agenda item for the business committee to counsel with the tribal chiefs regarding the needs and welfare of the tribes and individual members thereof. Each tribal chief shall receive an invitation to be present at these meetings.

## Section 6.

Sub-committee meetings as required shall be held in the a.m. prior to business committee meetings.

## Section 7.

Each meeting of the tribal council and of the business committee shall be conducted pursuant to Robert's Rules of Order (Revised), except when said rules are in conflict with this constitution and by-laws.

## Section 8.

Other meetings requiring representation of the tribes may be attended by one member of the business committee; and when deemed necessary, a second member of the business committee and/or one additional person other than a member of the business committee may attend at tribal expense. The delegate or delegates shall be selected by the business committee. Official travel will be covered from tribal funds, and per diem shall be determined pursuant to subsection c of Section 5 of Article IV of this constitution.

### *Example 16: Constitution Of The Choctaw Nation Of Oklahoma.*

## Article X -Sessions of the Tribal Council

### Section 1.

Regular sessions of the Tribal Council shall be held on the second Saturday of each month at ten (10) o'clock a.m. at the Choctaw Nation Council House at Tuskahoma, Oklahoma, unless and until otherwise provided by the Tribal Council.

### Section 2.

Eight (8) members must be present to constitute a quorum.

### Section 3.

The Chief may call a special session of the Council at any time he deems necessary by notifying each member by the most expedient way, at least twenty-four (24) hours in advance of the meeting. Inability to notify all members after reasonable efforts shall not prevent such special session from occurring provided a quorum is present.

### Section 4.

All regular and special sessions shall be open to the membership of the Nation. However, except for the Chief or his representative in cases of impeachment, no person shall address the Council unless he or she has the unanimous approval of the Council members present. The Council may meet in executive session upon an affirmative vote of two-thirds (2/3) of the Tribal Council members present. All votes on any matter shall be in open session and shall be a matter of public record.

### Section 5.

Roll call votes showing how each member of the Tribal Council voted shall be recorded in the minutes of the Tribal Council.

## Section 6.

Robert's Rules of Order shall be followed in conducting Tribal Council business to the extent they do not conflict with this Constitution.

## Article XI -Order of Business

The order of business at any regular or special session of the Tribal Council shall be as follows:

- (1) Call to order.
- (2) Roll call and prayer
- (3) Reading of minutes of last session.
- (4) Unfinished business.
- (5) Reports of Committees.
- (6) New business (Comments from Members).
- (7) Prayer and adjournment.

Provided; however, this order of business may be suspended by the Tribal Council for any meeting.

*Example 17: Constitution Of The Skokomish Indian Tribe.*

## Section 7. Regular Meetings of the Tribal Council.

The Tribal Council shall meet at least once each month at a designated regular time. The council may set more frequent regular meetings as necessary. The council shall cause to be published the schedule of all regular meetings.

## Section 8. Emergency Meetings.

Emergency meetings of the Tribal Council may be called by the council chairman or by three (3) council members. The persons calling emergency meetings shall make reasonable efforts to provide notice of the meetings to every council member and to the tribal membership.

## Section 9. Procedures of the Tribal Council.

(a) Except as provided in this constitution, the Tribal Council shall establish its own rules of procedure.

(b) A quorum of the Tribal Council shall be four (4) members. Unless otherwise provided by this constitution or tribal law, official Tribal Council actions shall be taken by majority vote of the members present.

(c) All meetings of the Tribal Council shall be open to the public, except that the council may recess at its discretion to discuss any matter in closed session as long as the subject matter to be

discussed is expressed in the motion calling for a closed session and no official action is taken in the closed session. Copies of all ordinances and resolutions adopted by the Tribal Council and minutes of all open meetings of the Tribal Council, its committees and subcommittees shall be maintained at the tribal office and shall be available for inspection by all interested persons.

*Example 18: Constitution Of The Otoe-Missouria Tribe Of Indians.*

#### Section 2. Tribal Council Meetings.

(a) Quorum. Five (5) members of the Tribal Council shall constitute a quorum of the Tribal Council membership thereof. No enactment of the Tribal Council will have any validity in the absence of a quorum.

(b) Regular Meetings. Regular meetings of the Tribal Council shall be held monthly at a place and date established by ordinance of the Tribal Council. The Tribal Secretary shall be responsible for telephoning or sending written notices to each member in advance of the meeting if the regular date and place should have to be changed. The Tribal Council shall have the authority to call Executive Session of any Tribal Council meeting.

(c) Special Meetings. Special meetings of the Tribal Council may be called by the Chairman at his discretion, and shall be called by the Chairman upon the written request of at least four (4) members of the Tribal Council; provided, that the reason for the meeting is stated in the request and that each member of the Tribal Council is given at least seventy-two (72) hours advance notice of any special meeting. Upon refusal by the Chairman to call a special meeting within seventy-two (72) hours upon the written request of four (4) members of the Tribal Council, the four (4) members who requested the special meeting may proceed to call and conduct the special meeting; provided, a quorum of five (5) members of the Tribal Council is present.

*Example 19: Constitution for the Pueblo of Isleta, New Mexico*

#### Article II -Membership

Section 5. Duties of the Governor: The duties of the governor shall include the following:

(d) To attend all meetings of the council.

*Example 20: Constitution & Bylaws of the Menominee Indian Tribe of Wisconsin.*

#### Bylaw II -Procedure of the Tribal Legislature

##### Section 1. Meetings of the Tribal Legislature.

(a) Regular Meetings. The Tribal Legislature shall meet in official session at least four (4) times a year at such time and place as shall be established by ordinance. The order of business for any

such meeting shall be posted in accordance with Section 4 of this Bylaw; however, other business may also be transacted at such meeting if the Tribal Legislature votes to consider such other business.

(b) Special Meetings.

(1) Calling and Notice. Special meetings of the Tribal Legislature shall be called by the Chairperson of the Legislature or upon the written request of any two (2) Legislators, provided that, at least seventy-two (72) hours written notice of such meeting shall be given to each Legislator, by personal service or by registered mail sent to the Legislator's usual place of residence, or left at the Legislator's usual place of residence with some person of suitable age and discretion residing there; however, notice may be waived by attendance at the meeting. Notice to tribal members shall be posted as provided in Section 4 of this Bylaw promptly after such meeting is called. Special meetings of the Tribal Legislature shall be called by the Chairperson upon the petition of three hundred (300) eligible tribal voters, provided that, not less than five (5) nor more than thirty (30) days notice of such meeting is given to tribal members.

(2) Business. No business shall be transacted at any special meeting of the Tribal Legislature unless such business has been stated in the notice of such meeting. However, any business which may lawfully come before a regular meeting may be transacted at a special meeting if all the members of the Legislature consent in writing.

(3) Emergencies. A special meeting of the Tribal Legislature may be called upon less than seventy-two (72) hours written notice if such meeting is necessary for the preservation or protection of the health, welfare, peace, safety, or property of the Tribe. Efforts shall be made to give maximum practical notice to each Tribal Legislator. Maximum practical notice shall be given to such meeting, and such notice shall be posted as provided in Section 4 of this Bylaw, promptly after such meeting is called. No business other than that stated in the notice shall be transacted.

(c) Open Meetings and Executive Sessions.

All meetings of the Tribal Legislature called pursuant to this Bylaw shall be open to tribal members; and tribal members shall have a reasonable opportunity to be heard under such rules and regulations as the Legislature may prescribe, provided, however, that the Legislature may meet in executive session for the following purposes:

- (1) Personnel matters.
- (2) Claims against the Tribe or the Tribal Legislature, whether in litigation or otherwise.
- (3) Legal consultation and advice.
- (4) Matters involved in litigation concerning the Tribe or the Tribal Legislature.
- (5) Deliberation and/or review of any matter heard by the Legislature in a quasi-judicial capacity.
- (6) Negotiations concerning the purchase, sale, lease or other acquisition of real or

personal property, or interests therein, or concerning any contracts except those required to be the subject of competitive bidding.

The Tribal Legislature may determine not to keep a record of all or any part of the discussion in executive session; however, the general reason for such determination shall be recorded, and a record shall be kept of any action taken in executive session. Such record may be withheld from inspection by tribal members pending final disposition of the matter concerned.

(d) Organization and Rules of the Tribal Legislature.

The tribal Legislature shall adopt by motion written rules governing its own organization and procedure. Such rules shall be open and available to review by tribal members in accordance with Section 3 of this Bylaw.

### Bylaw III -General Council

#### Section 1. Establishment Of General Council; Response To Recommendations.

(a) There is hereby established a General Council which shall be a meeting called at least once a year by the Tribal Legislature and open to all tribal members. The purpose of the General Council shall be to discuss problems and issues concerning tribal affairs; to review the policies, goals, and priorities of the Tribal Legislature; to review the functioning of tribal programs and to make recommendations for change.

(b) The tribal Legislature shall respond to any recommendations of the General Council in writing and shall post such response in accordance with Bylaw II, Section 4 of the Bylaws of this Constitution.

#### Section 2. Annual General Council Meeting.

The Tribal Legislature shall set the time, date, and place for the annual meeting of the General Council, and shall provide reasonable notice to tribal voters of such meeting by posting such notice in accordance with Bylaw II, Section 4 of the Bylaws of this Constitution. The first item of business at the annual meeting of the General Council shall be an election to determine whether the Chairperson of the Legislature shall chair such meeting or whether a tribal voter in attendance shall be elected from the floor to chair such meeting. The last item of business shall be a vote as to whether the meeting shall be adjourned or recessed; provided that, at least fifty (50) voters shall be required to recess a meeting.

#### Section 3. Special General Council Meeting.

(a) The Tribal Legislature may call special General Council meetings when it deems appropriate.

(b) Tribal members may require the Tribal Legislature to call a General Council meeting for a specified purpose or purposes by presenting to the Tribal Legislature a petition with two hundred (200) signatures of eligible tribal voters, which petition shall specify the purpose or purposes for

calling the meeting. The General Council meeting called pursuant to a petition shall be convened no later than thirty (30) days following the presentation of a valid petition.

**E. Examples of Procedure to Enact Tribal Law.**

*Example 1: Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada.*

Section 20. Legislative Actions.

- (b) Proposed Ordinances. The Tribal Council shall deliver, by personal service or return receipt mail, all proposed ordinances to each Band office for review and comment by the Band, at least ten (10) days but not more than forty-five (45) days, before a vote is taken on such proposals by the Tribal Council.

*Example 2: Constitution for the Pueblo of Isleta, New Mexico*

Section 1. Any ordinance, resolution or other enactment of the council which, by the terms of this constitution or in conformity with applicable Federal law, is subject to approval by the Secretary of the Interior, shall be presented to the Superintendent of the Southern Pueblos Agency within ten (10) days following its enactment. The Superintendent shall, within ten (10) days following receipt of such ordinance or resolution, transmit it to the Secretary of the Interior with his recommendation for or against approval. Such enactment shall become effective when approved by the Secretary of the Interior, provided that if the Secretary of the Interior shall not disapprove an enactment of the council within one hundred and twenty (120) days following the date of its receipt by the Superintendent, it shall thereupon become effective.

Section 2. All enactments of the council shall show the date of passage and the number of council members voting for and against the enactment, and shall bear the certification of the governor, or president of the council, and the council secretary. Resolutions and ordinances shall bear an identifying number and a title.

*Example 3: Amended Constitution and Bylaws of the Washoe Tribe of Nevada and California*

Article VII -Ordinances and Resolutions

Section 1. All final decisions of the Washoe Tribal council on matters of general and permanent interest to the members of the tribe shall be embodied in ordinances.

Section 2. All final decision of the Washoe Tribal Council on matters of temporary interest or relating especially to particular individuals or officials, shall be embodied in resolutions. All Washoe Tribal Council legislation, minutes of Washoe Tribal Council meetings, and tribal financial records shall be open to inspection by any member of the Washoe Tribe, at such times as found convenient to the council.

Section 3. All questions of procedure (such as acceptance of committee reports or invitations to outsider to speak) shall be decided by action of the Washoe Tribal Council or by the ruling of the Chairman if no objection is heard. In all ordinances, resolutions, or motions, the Washoe Tribal Council may act by majority vote, but all matters of importance shall be fully discussed and a reasonable attempt shall be made to secure unanimous agreement.

Section 4. Every resolution shall begin with the words: "Be it resolved by the Washoe Tribal Council."

Section 5. Every ordinance or resolution shall contain the authority (statute, tribal constitution, etc.) for the Washoe Tribal Council's legislative action.

*Example 4: Colorado Revised Statute*

Section 31-16-102. Style of ordinances.

The style of the ordinances in cities and towns shall be: "Be it ordained by the city council or board of trustees of ....."

Section 31-16-103. Majority must vote for appropriations — proving ordinances.

Ordinances, resolutions, and orders for the appropriations of money shall require for their passage or adoption the concurrence of a majority of the governing body of any city or town. Unless otherwise specifically provided by statute or ordinance, all other actions of the governing body upon which a vote is taken shall require for adoption the concurrence of a majority of those present if quorum exists. All ordinances may be proven by the seal of the city or town, and, when printed in book and pamphlet form and purporting to be printed and published by authority of the city or town, the same shall be received in evidence in all courts and places without further proof.

Section 31-16-104. Ordinances approved by mayor.

Only if an ordinance adopted pursuant to section 31-4-102(3) or 31-4-302 so provides, any ordinance adopted and all resolutions authorizing the expenditure of money or the entering into of a contract require the approval and signature of the mayor before they become valid, except as otherwise provided in this section. Such ordinance or resolution shall be presented to the mayor within forty-eight hours after the action of the governing body for his signature approving the same. If he disapproves, he shall return such ordinance or resolution to the governing body at its next regular meeting with his objections in writing. The governing body shall cause such objections to be entered at large upon the record and shall proceed at the same or next subsequent meeting to consider the question: "Shall the ordinance or resolution, notwithstanding the mayor's objections, be passed?" If two-thirds of the members of the governing body vote in the affirmative, such resolution shall be valid, and such ordinance shall become a law the same as if it had been approved by the mayor. If the mayor fails to return to the next subsequent meeting of the governing body any resolution or ordinance presented to him for



his approval, the same shall become a valid ordinance or resolution, as the case may be, in like manner as if it had been approved by him.

#### Section 31-16-105. Record and publication of ordinances.

All ordinances, as soon as may be after their adoption, shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the presiding officer of the governing body and the clerk. All ordinances of a general or permanent nature and those imposing any fine, penalty, or forfeiture, following adoption and, if required by ordinance adopted pursuant to section 31-4-102(3) or 31-4-302, compliance with the provisions of section 31-16-104, shall be published in some newspaper published within the limits of the city or town or, if there are none, in some newspaper of general circulation within the limits of the city or town, then, upon a resolution being passed by the governing body to that effect, ordinances may be published by posting copies thereof in three public places within the limits of the city or town, to be designated by the governing body. Except for ordinances calling for special elections or necessary to the immediate preservation of the public health or safety and containing the reasons making the same necessary in a separate section, such ordinances shall take effect upon adoption and, if required by ordinance adopted pursuant to section 31-4-102(3) or 31-4-302, compliance with the provisions of section 31-16-104 if they are adopted by an affirmative vote of three-fourths of the members of the governing body of the city or town. The book of ordinances provided for in this section shall be taken and considered in all courts of this state as prima facie evidence that such ordinances have been published as provided by law. Any municipality may determine at a regular or special election to meet the requirements of this section and section 31-16-106 by publishing ordinances by title only rather than by publishing the ordinance in full. No municipality shall call a special election for the sole purpose of determining the issue of whether the municipality should publish new ordinances in full or by title only.

#### Section 31-16-106. Reading before city council--publication.

No ordinance shall be adopted by any city council of any city unless the same has been previously introduced and read at a preceding regular or special meeting of such city council and published in full in the manner provided in section 31-16-105 at least ten days before its adoption. The previous introduction of the ordinance at such preceding meeting of the city council and the fact of its publication shall appear in the certificate and the attestation of the clerk on the ordinance after its adoption. The provisions of section 31-16-105 shall apply to any ordinance adopted by a city council; except that, if publication after introduction was in a newspaper, publication after adoption may be in the same newspaper by title only and shall contain the date of the initial publication and shall reprint in full any section, subsection, or paragraph of the ordinance which was amended following the initial publication. Publication following adoption may be in full at the discretion of the city council.

#### Section 31-16-107. Reading--adoption of code.

Whenever the reading of an ordinance or of a code which is to be adopted by reference is required by statute, any such requirement shall be deemed to be satisfied if the title of the

proposed ordinance is read and the entire text of the proposed ordinance or of any code which is to be adopted by reference is submitted in writing to the governing body before adoption.

Section 31-16-108. Majority of all members required--record.

On the adoption of an ordinance, resolution, order for the appropriation of money or the entering into of a contract by the governing body of any city or town, the yeas and nays shall be called and recorded, and the concurrence of a majority of the governing body shall be required.

Section 31-16-202. Adoption by reference--title.

If all the procedures and requirements of this part 2 are complied with, any municipality may enact any ordinance which adopts any code by reference in whole or in part, and such primary code thus adopted may in turn adopt by reference, in whole or in part, any secondary codes duly described therein. However, every primary code which is incorporated in any such adopting ordinance shall be specified in the title of the ordinance. Notwithstanding the procedures and requirements of this part 2, a municipality may enact any ordinance which adopts by reference any statute, rule, regulation, or standard adopted by the federal government or the state of Colorado, or by any agency of either of them, solely by referring to such statute, rule, regulation, or standard in the text of such ordinance.

Section 31-16-203. Notice--hearing.

After the introduction of the adopting ordinance, the governing body of any municipality shall schedule a public hearing thereon. Notice of the hearing shall be published twice in a newspaper of general circulation in the adopting municipality, once at least fifteen days preceding the hearing, and once at least eight days preceding it. If there is no such newspaper, the notice shall be posted in the same manner as provided for the posting of a proposed ordinance. The notice shall state the time and place of the hearing. It shall also state that copies of the primary code and copies of the secondary codes, if any, being considered for adoption are on file with the clerk and are open to public inspection. The notice shall also contain a description which the governing body deems sufficient to give notice to interested persons of the purpose of the primary code, the subject matter of the code, the name and address of the agency by which it has been promulgated or, if a municipality, the corporate name of such municipality which has enacted such code, and the date of publication of such code, and, in the case of a code of any municipality, the notice shall contain a specific reference to the code of a given municipality, once at least fifteen days preceding the hearing, and once at least eight days preceding it. If there is no such newspaper, the notice shall be posted in the same manner as provided for the posting of a proposed ordinance. The notice shall state the time and place of the hearing. It shall also state that copies of the primary code and copies of the secondary codes, if any, being considered for adoption are on file with the clerk and are open to public inspection. The notice shall also contain a description which the governing body deems sufficient to give notice to interested persons of the purpose of the primary code, the subject matter of the code, the name and address of the agency by which it has been promulgated or, if

a municipality, the corporate name of such municipality which has enacted such code, and the date of publication of such code, and, in the case of a code of any municipality, the notice shall contain a specific reference to the code of a given municipality as it existed and was effective at a given date. The requirements as to the reading of the adopting ordinance are as provided in section 31-16-107.

Section 31-16-204. Adopting ordinance--adoption of penalty clauses by reference prohibited.

After the hearing the governing body may amend, adopt, or reject the adopting ordinance in the same manner in which it is empowered to act in the case of other ordinances; but nothing in this part 2 shall permit the adoption by reference of any penalty clauses which may appear in any code which is adopted by reference. Any such penalty clauses may be enacted only if set forth in full and published in the manner which is required for ordinances; except that changes or additions which are not substantive in nature made in connection with any codification or compilation of existing ordinances of the adopting municipality may be posted at the municipal offices in lieu of publication of such changes or additions.

Section 31-16-205. Publication of ordinance.

Nothing in this part 2 shall relieve any municipality from the requirement of publishing in full the ordinance which adopts any such code, and all provisions applicable to such publication shall be fully carried out. The adopting ordinance shall contain the same description of the primary adopted code as required in the notice of hearing in section 31-16-203.

Section 31-16-206. Filing of public record--sale of copies.

Not less than one copy of each primary code adopted by reference and of each secondary code pertaining thereto, all certified to be true copies by the mayor and the clerk, shall be filed in the office of the clerk at least fifteen days preceding the hearing and shall be kept there for public inspection while the ordinance is in force. After the adoption of the code by reference, a copy of the primary code and of each secondary code may be kept in the office of the chief enforcement officer instead of in the office of the clerk. Following the adoption of any code, the clerk shall at all times maintain a reasonable supply of copies of the primary code available for purchase by the public at a moderate price.

*Example 5: Denver City Charter*

Section B1.9-1.

All ordinances or resolutions, except ordinances making appropriations, shall be confined to one subject, which shall be clearly expressed in the title. If any subject shall be embraced in any ordinance which shall not be expressed in the title, such ordinance shall be void only as to much thereof as shall not be so expressed. Ordinances making appropriations shall be confined to the subject of appropriations. No ordinance shall be read aloud before the purpose. No

ordinance shall take effect until published in some newspaper of general circulation published in the city and county, or in book or pamphlet form, by authority of the council. The manner of publication shall not be changed after the beginning of the fiscal year.

#### Section B1. 9-2.

No bill or resolution shall be passed until after the expiration of five calendar days from and after the introduction of same, nor until one publication of the title and a description, a new title and description shall be published in like manner before final passage of the bill.

#### Section B1. 9-3.

No ordinance shall be revised or amended, or the provisions thereof extended or conferred by reference to title only. So much thereof as is revised, amended, extend or conferred, shall be re-enacted at length.

### Article I. In General

#### Section 1-1-13-10. Reserved.

### Article II. Ordinance Adoption Procedure

#### Section 13-11. Bills for ordinances.

(a) Filing of bills and resolutions requiring publication. All bills for ordinances and all resolutions requiring publication shall be filed in the council office in their entirety, unless otherwise authorized by the president of council, no later than 12:00 noon on the Thursday preceding the meeting of the council at which such bills or resolutions shall be introduced; or, if Thursday is a legal holiday, then such bills or resolutions shall be so filed no later than 12:00 noon on the Wednesday preceding such meeting of the council.

(b) Late filings. Bills for ordinances and resolutions requiring publication may be introduced as late filings, provided that a unanimous vote of the council present at a meeting of the council approves a suspension of the rules of council procedure to permit introduction of such bills or resolutions. Resolutions that do not require publication may be introduced by any council member at any time during a meeting of the council as late filings, and shall not require a motion to suspend the rules of council procedure.

(c) Introduction of bills. Subject to the provision of subsections (a) and (b), bills for ordinances and resolutions requiring publication may be introduced by any council member, and any such bill for an ordinance or resolution requiring publication shall, when introduced, have the name of the council member introducing it plainly written thereon. Bills for ordinances and all resolutions shall be numbered from the first of January each year in the order of their introduction.

(d) Printing bills. Before the final consideration of any bill for an ordinance or resolution requiring publication, or before the same shall have been put upon its final passage, it shall be the right of a majority of the council members to require such bill to be printed and copies thereof to be distributed among the members of the council.

### Section 13-12. Reference to city attorney.

(a) Examination as to form. All bills for ordinances introduced for passage shall, unless the rules are suspended for their passage, be referred to the city attorney, and it shall be the duty of the city attorney to make an examination thereof and to report to the council, in writing, any irregularity in form thereof, or legal objection thereto.

(b) Numbering of amendments. The city attorney shall examine any and all bills for amendments to this Code or bills for general ordinances affecting or supplemental hereto before their introduction in city council and assign to every section of each such bill an appropriate section number in harmony with the general plan of this Code. The city attorney shall insert in such bill appropriate repeal or repeal and re-enactment clauses if the context so required.

### Section 13-13. Revising, reenacting, and amending ordinances.

(a) Any bill for an ordinance that amends an appropriating ordinance to appropriate additional funds, to rescind funds, or to transfer funds shall show the auditor's number of the affected agency or appropriation account, the appropriation account's or agency's name, and the amount to be appropriated, rescinded or transferred.

(b) Any bill for an ordinance that amends an ordinance authorizing the acquisition of capital equipment to alter the list of items that an agency is authorized to acquire shall contain the auditor's number of the affected agency, the agency's name, and the items being added or deleted.

(c) Any bill for an ordinance, other than those listed in subsections (a) and (b) of this section, that amends, revises, or reenacts an existing ordinance shall set forth at length the section, subsection, or lesser subdivision that is being changed by the bill. No bill shall amend or revise an existing ordinance by reference to the title only or by merely striking, substituting, or adding words.

### Section 13-14. Publication.

(a) Prior to passage by council, the title and a description of each bill for an ordinance or resolution requiring publication shall be published in accordance with Charter subdivision B1.92, in the city's official newspaper as designated by the manager or general services under Charter subdivision A12.3-7.

(b) After passage by council and the approval by the major, the failure to veto by the mayor, or the overriding of a mayoral veto by council, notice shall be given of each ordinance and resolution requiring publication in the city's official newspaper, by publishing its title and description.

(c) A publication of bills and resolutions pursuant to paragraphs (a) and (b) of this section shall contain a statement notifying the reader that the full texts of the bills or resolutions are available in pamphlet form in the city clerk's office.

(d) The city clerk shall provide a copy of the full text of any bill, ordinance, or resolution to any person who requests a copy; provided, however, that the clerk may establish charges for the copies which are, in the clerk's opinion, reasonable.

## Section 13-15. Recordation.

All ordinances shall, after having passed and received the signature of the mayor, be recorded by the clerk in the record books prepared for that purpose, and the clerk shall also certify with such records the date of publication and the paper wherein the same was published, or whether the same was published in book or pamphlet form by authority of the council.

### *Example 6: City of Lakewood Charter*

## Article VII Ordinances, Resolutions, and Motions

### Section 7.1. Forms of City Council Action.

The City Council shall act by ordinance, resolution, or motion. In addition to any other provision of this Charter, the following actions by the City Council shall be by ordinance that:

- (a) Authorizes the borrowing of money;
- (b) Imposes or levies any tax;
- (c) Establishes any regulation for violation of which a penalty may be imposed, or
- (d) Places a burden upon or limits the use of property.

### Section 7.2. Votes Required.

(a) Every ordinance adopted by the City Council shall require an affirmative vote of a majority of those members of City Council present and voting, except that no ordinance shall be adopted with less than five affirmative votes of such majority. Resolutions and motions shall require an affirmative vote of a majority of those members of City Council present and voting.

(b) A member of the City Council shall not vote on any ordinance, resolution, or motion in which that member has a personal, financial, or business interest, nor shall a member of Council vote when that member has been excused from voting by the unanimous consent of the other members present at such meeting. An individual member of City Council shall not vote on any question or issue relative to the conduct of that individual member. Each member of City Council present shall vote on all other ordinances, resolutions, or motions at any regular, special, or emergency meeting of City Council.

### Section 7.3. Form of Ordinance.

The enacting clause for all ordinances adopted by the City Council shall be as follows: "Be it Ordained by the City Council of the City of Lakewood, Colorado."

### Section 7.4. Ordinance Enactment Procedures.

(a) The procedure for enactment of an ordinance shall be as follows:

- (1) A proposed ordinance shall be introduced and read by title at any regular, special, or

emergency meeting of the City Council;

(2) Upon an affirmative vote of a majority of those members present, such proposed ordinance shall be ordered published in full and a day and time fixed for a public hearing at a subsequent regular, special, or emergency meeting of the City Council;

(3) The public hearing and consideration by the City Council on a proposed ordinance at such subsequent regular, special, or emergency meeting shall be not less than ten days from the date of publication;

(4) The proposed ordinance shall again be read by title. After a public hearing, the City Council may consider and vote upon the adoption of the ordinance, and

(5) If such ordinance is adopted by the City Council, it shall be published by title only, except that any amendment to such ordinance shall be included in the publication.

(b) No ordinance shall take effect and be in force before thirty days after adoption by the City Council and publication by title, except that ordinances necessary for the immediate preservation of the public peace, health, or safety shall take effect and be in force after the following: Adoption by an affirmative vote of two-thirds of all members of City Council; signature on the ordinance by the Mayor or Mayor Pro Tem, and provided such ordinance contains in a separate section the emergency nature of such ordinance. Such ordinance shall then be published by title only, except that any amendment to the ordinance shall be included in the publication.

(c) Notwithstanding any provision to the contrary in subsection (b) above, no ordinance that zones, rezones, or changes any zoned district shall be subject to any emergency provision and no such ordinance shall take effect and be in force before forty-five days after adoption by the City Council and publication by title.

#### Section 7.5. Publication of Ordinances.

The publication of any ordinance, either in full or by title, shall be in a newspaper of general circulation in the City or in such other news media as authorized by the City Council by ordinance.

#### Section 7.6. Codes.

(a) The City Council shall cause ordinances of a general and permanent nature to be codified and maintained thereafter in current form.

(b) The City Council may adopt, by ordinance, standard codes by reference in such manner as it deems appropriate.

#### Section 7.7. Authentication of Ordinances.

A true copy of each ordinance adopted by City Council shall be numbered and recorded in the Permanent Ordinance Record with a certificate of adoption and publication authenticated

by the signature of the Mayor or Mayor Pro Tem and the City Clerk or designated deputy thereof.

*Example 7: Home Rule Charter for the City of Broomfield, Colorado*

Chapter VI Legislation

Section 6.1 Prior City Legislation.

(a) All by-laws, ordinances, resolutions, rules and regulations of the City which are not inconsistent with this Charter and which are in force and effect on the effective date of this Charter shall continue in full force and effect after the effective date of this Charter until repealed or amended.

(b) If any such by-law, ordinance, resolution, rule or regulation provides for the appointment of any officers or any members of any board of commission by the Mayor, such officers or members of any board or commission shall, after the effective date of this Charter, be appointed by the Council, except as otherwise provided in this Charter.

(c) Those provisions of any effective valid by-law, ordinance, resolution, rule or regulation which are inconsistent with this Charter are hereby repealed.

Section 6.2 Council Acts.

Council shall act only by ordinance, resolution or motion. All legislative enactments must be in the form of ordinances; all other actions, except as herein provided, may be in the form of resolutions or motions. All ordinances and resolutions shall be confined to one subject except in case of repealing ordinances, and ordinances making appropriations shall be confined to the subject of appropriations.

Section 6.3 Voting.

A vote by "Yes" or "No" shall be taken upon the passage of all ordinances, resolutions and motions and entered upon the records, except that where the vote is unanimous it shall only be necessary to state that the vote was unanimous. Every ordinance shall require the affirmative vote of the majority of the membership of the entire Council for final passage. Resolutions and motions shall require the affirmative vote of a majority of the members present for passage. Every member, when present, must vote upon ordinances, resolutions and motions, except he shall be excused from voting on matters involving the consideration of his own official conduct or when his personal or financial interest is involved. For every member excused from voting, the quorum and total membership of Council shall be reduced by one for the purpose of action on each and every ordinance, resolution and motion. (Amendment passed 11/2/76).

Section 6.4 Action by Ordinance Required.

In addition to such acts of the Council as are required by other provisions of this charter



to be by ordinance, every act making an appropriation, creating an indebtedness, authorizing borrowing of money, levying a tax, establishing any rule or regulation for the violation of which a penalty is imposed, or placing any burden upon or limiting the use of private property, shall be by ordinance; provided, however, that this section shall not apply to the adoption of the budget and levying of an ad valorem tax, as provided in this Charter.

#### Section 6.5 Form of Ordinance-Effective Date.

All ordinances shall be introduced in written or printed form and no ordinance or section thereof shall be amended or repealed except by an ordinance regularly adopted. The enacting clause of all ordinances shall be "Be it ordained by the City Council of the City of Broomfield, Colorado." With the exception of emergency ordinances, the effective date of all ordinances shall be seven days after public notice following final passage unless a later date is prescribed in the ordinance, or it is vetoed by the mayor as provided in Section 6.7 of this charter.

#### Section 6.6 Procedure for Passage of Ordinances.

Except for emergency ordinances, ordinances making general codification of existing ordinances, and ordinances adopting standard codes, the following procedure for enactment of ordinances shall be followed:

- (a) The ordinance shall be introduced at any regular or special meeting of the Council by any member thereof.
- (b) The ordinances shall be read in full, or in cases where copies of the ordinance are available to the Council and to those persons in attendance at said Council meetings, said ordinance may be read by title only.
- (c) After the first reading of the ordinance, the same shall be approved or rejected by a vote of the Council.
- (d) If the ordinance is approved on first reading, it shall be published in full unless otherwise provided herein. The Council shall set a day, hour and place at which Council shall hold a public hearing on the ordinance and notice of said day, hour and place shall be included in the first publication.
- (e) The ordinance shall be introduced at Council a second time, at a meeting not earlier than seven days after first publication for final approval, rejection, or other action as may be taken by vote of the Council. This meeting may be the same meeting at which the public hearing on the ordinance is held. The ordinance may be amended before final approval by vote of the Council.
- (f) Except as otherwise provided in this Charter, an ordinance, if amended in substance, shall be published in full after final passage, but if not amended in substance, it shall be published either by title or in full as the Council may determine.
- (g) Whenever an ordinance shall be published by reference or by title, the publication shall contain a summary of the subject matter of said ordinance and shall contain a notice to the public

that copies the proposed ordinance are available at the office of the City Clerk. The publication of any ordinance by reference or by title as provided herein must set forth in full any penalty clause contained in said ordinance.

#### Section 6.7 Veto by Mayor

The Mayor shall have the power to veto any ordinance passed by Council subject to the following:

- (a) The Mayor must veto the ordinance passed by Council and must exercise the power of veto with a complete written explanation of the reasons thereof addressed and delivered to each Council member not later than seven (7) days from the date of its final passage.
- (b) The Mayor's veto may be overridden only by an affirmative vote of two-thirds (2/3) membership of the entire Council at the next regular Council meeting following the veto.
- (c) If the Mayor does not exercise the veto power, ordinances shall take effect as provided elsewhere in this Charter.

#### Section 6.8 Emergency Ordinances.

- (a) An ordinance which is declared therein to be an emergency ordinance and which is immediately necessary for the preservation of the public peace, health, safety or welfare may be enacted at the regular or special meeting at which it is introduced by unanimous minus one vote of council members present and without any requirement of a second reading and passage. The purpose of the emergency must be clearly stated in the ordinance. Such emergency ordinances, after passage, shall take effect eight days therefrom, but shall for information purposes, be published as required in this Charter for ordinances after final passage.
- (b) No ordinance granting any special privilege, levying taxes, incurring indebtedness, authorizing borrowing money or fixing rates charged by any City-owned utility shall ever be passed as an emergency measure, except as provided by Section 12/10(b), Emergency Appropriations, and Section 14.2, Short-Term Notes.
- (c) The Mayor shall not have veto power on an emergency ordinance. (Amendment passed 6/2/76)

#### Section 6.9 Publication of Ordinances.

Pursuant to requirements for publication of ordinances as provided elsewhere in this Charter, said ordinances shall be published in a newspaper of general circulation in the City.

#### Section 6.10 Codification.

The Council shall cause the ordinances to be codified and maintained thereafter in current form. Revisions to the codes may be accomplished by reference as provided in this Charter.

#### Section 6.11 Codes Published by Reference.

Standard codes, promulgated by the Federal Government, the State of Colorado, or by an agency of either of them, or by any municipality within the State of Colorado, or by recognized trade or professional organizations, or amendments or revisions thereof, may be adopted by reference; provided the publication of the ordinance adopting any said code shall advise that copies thereof are available for inspection at the office of the City Clerk, and provided that any penalty clause in said codes may be adopted only if set forth in full and published in the adopting ordinance.

#### Section 6.12 Disposition of Ordinances.

A true copy of every ordinance, as adopted by Council, shall be numbered and recorded in the official records of the City. Its adoption and publication shall be authenticated by the signature of the Mayor, or Mayor Pro-Tem, and the City Clerk, and by the certificate of publication. A true copy of every ordinance, as adopted by the vote of the electors of the City, shall be separately numbered and recorded commencing with "Peoples" Ordinance No. 1." But the failure to so file and authenticate such ordinance shall not invalidate it or suspend its operation.

*Example 8: The Charter of the City of Boulder*

#### Section 16. Legislative Procedure.

The council shall act only by ordinance, resolution, or motion. All legislative enactments must be in the form of ordinances; all other procedure may be in the form of resolutions or motions. The enacting clause of all ordinances passed by the council shall be in these words: "*Be it ordained by the city council of the City of Boulder.*" All ordinances and resolutions shall be confined to one subject clearly expressed in the title, and ordinances making appropriations shall be confined to the subject of appropriations. The final reading shall be in full, unless the measure shall have been printed and a copy thereof furnished to each council member prior to such reading. The ayes and noes shall be taken upon the passage of all ordinances, resolutions, or motions and entered upon the journal of council proceedings, and every ordinance, resolution, or motion shall require on final passage the affirmative vote of a majority of the council members present. Should any council member being present refuse to vote on any measure, said member's vote shall be recorded in the affirmative; and no council member shall be excused from voting except on matters involving the consideration of said member's official conduct or where said member's financial interests are involved.\*

#### Section 17. Emergency Measures.

No ordinance shall be passed finally on the date it is introduced, except in cases of emergency, for the preservation of the public peace, health, or property, and then only by a two-thirds vote of the council members present. The facts showing such urgency and need shall be specifically stated in the measure itself. No ordinance making grant of any franchise or

special privilege shall ever be passes as an emergency measure.

#### Section 18. Publication of Ordinances.

Every proposed ordinance shall be published once in full with all amendments in final form in a daily newspaper of the city, at least ten days before its final passage. Within five days after such final passage, it shall be again published once in a daily newspaper, and shall not take effect until thirty days after final passage, except that an emergency ordinance shall take effect upon passage, and be so published on the following day; and except that the tax levy ordinance, the annual appropriation ordinance, any ordinance providing for a vote by or submission to the people, and ordinances ordering improvements initiated by petition and to be paid for by special assessments shall take effect immediately upon publication.

#### Section 18A. Publication by Reference.

When the council deems it appropriate, publication of the title of an ordinance, or the title of an amendment thereto, together with a statement that the published text is available for public inspection and acquisition in the office of the city clerk, shall be sufficient publication. Publication by title shall be deemed to meet all requirements of Section 18. (Added by Ord. No. 1632 (1951), § 1, adopted by electorate on November 6, 1951. Amended by Ord. No. 4773 (1983), § 1, adopted by electorate on November 8, 1983.)

#### Section 19. Amendment or Repeal.

No ordinance or section thereof shall be amended, superseded, or repealed except by an ordinance regularly adopted.

#### Section 20. Ordinances Granting Franchises.

No proposed ordinance granting any proposed franchise shall be put upon its final passage within sixty days after its introduction, nor until it has been published not less than once a week for two consecutive weeks in one daily newspaper of the city in general circulation.

(Amended by Ord. No. 4773 (1983), § 1, adopted by electorate on November 8, 1983.)

#### Section 21. Record of Ordinances.

A true copy of every ordinance when adopted shall be numbered and recorded in a book marked "Ordinance Record," and a certificate of adoption and publication shall be authenticated by the certificate of the publisher and by the signatures of the mayor and city clerk. The ordinances adopted by the vote of the qualified electors of the city shall be separately numbered and recorded, commencing with "people's ordinance No. 1."

#### APPENDIX

## COUNCIL PROCEDURE

### V. Procedure in Handling Ordinances, Resolutions and Important Motions

A. Two Readings. All ordinances require at least two readings, since the city charter requires ten days' advance publication in final form. The agenda committee may require similar publication of complex or important motions and resolutions, in order to assure informed citizen participation.

B. Notice. all documents delivered to council members' residences prior to any meeting shall be deemed to have been received and read, unless a council member indicates to the contrary during consideration of the matter. In the event that council member has not received and read the document in question, the mayor shall determine and appropriate course of action, which may consist of an explanation of the substance of the document by a person familiar with its contents, or a recess. Abstentions are not permitted by the city charter under these circumstances.

C. First Reading. On first reading, the clerk reads the title or the general description of the item set forth on the agenda, and the council has an opportunity to ask questions of the staff. Whenever practicable, council members ask first reading questions in writing or by e-mail to "hotline" in advance of the meeting. Noon on the day following the meeting is the cutoff time. Any remaining questions are asked at the meeting. Complex questions are subject to the "rule of five" for information and research requests set forth in Section VIII, Research and Study Sessions, Subsection A, Information/Research Requests/Rule of Three. The mayor then requests an appropriate motion. However phrased, an affirmative motion is construed as one to order the item published. Unless otherwise stated in the motion, all publication shall be by title only. The mayor then states the question, followed by proposal of amendments, if any, restates the question if necessary, and puts the question to vote. After the conclusion of the vote, the mayor declares the item to have been ordered published or to have been rejected for publication. Publication does not constitute substantive approval of an item.

D. Second Reading. On second reading, the clerk reads the title or the general description of the item set forth on the agenda, followed by the staff presentation, and then the council has an opportunity to ask questions of the staff. Thereafter, the mayor opens a public hearing and supervises the public hearing. If any council member wishes, questions may be asked of persons testifying. Council may consider a response the following week, but the normal response is in the council members' actions on the agenda. The mayor then requests an appropriate motion. The motion should be one to adopt the ordinance, and, however phrased, an affirmative motion shall be so construed. Unless otherwise stated in the motion, all publication shall be by title only. The mayor then states the question, followed by discussion by the council, the city manager and the city attorney and dialogue with staff in response to questions raised by the council, followed by debate, proposal of amendments, if any, and consideration thereof in the form of motions. After debate, the mayor restates the question and requests that the clerk conduct a roll call vote. After the conclusion of the roll call vote, the mayor declares the ordinance adopted or defeated.

E. Resolutions. Resolutions are handled in the same manner as the second reading of an ordinance, except that the vote need not be by roll call.

F. Emergencies. Ordinances may be passed by emergency on first or second reading, upon appropriate findings of urgency and need. In the event of passage by emergency on first reading, the first reading is handled in the same manner as the second reading of an ordinance, and the second reading is omitted.

G. Non-emergency ordinances which are amended in substance rather than in form on second reading are republished (either in full or by title only), as amended, and voted on again at a third reading, without further staff presentation or public hearing. The council retains the discretion to set a public hearing on third reading by majority vote. The same procedure applies to later substantive amendments as well.

*Example 9: Nederland Municipal Code*

Article V Ordinances and Resolutions

Section 2-131. Introduction.

(a) All ordinances, except emergency ordinances, shall be introduced to the Board of Trustees and in the meeting in printed or written form at least forty-eight (48) hours prior to the meeting. Emergency ordinances shall be introduced to the Board of Trustees and in the meeting in printed or written form.

(b) All resolutions shall be introduced to the Board of Trustees and in the meeting in printed or written form at least forty-eight (48) hours prior to the meeting. (Ord. 413 § 8.2, 1995).

Section 2-133. Appropriation ordinance.

The Town Attorney shall not review or prepare any ordinance, nor shall the Town Clerk accept for filing any proposed ordinance providing for the appropriation of money unless the same shall be accompanied by a form devised by the Town Treasurer, which shall show fully the purpose of the appropriation and the fund to which it is to be charged. (Ord. 413 § 8.3, 1995)

Section 2-134. Reading of ordinances and resolutions.

Ordinances shall be read in full or by title only where copies are available to the Board of Trustees and those in attendance and may be amended prior to adoption. Upon introduction and prior to adoption, any three (3) Board members may request a second reading of any ordinance at the next regular meeting or at a special meeting. After proper publication, the ordinances will be in effect thirty (30) days following adoption with the exception of ordinances that are repealed prior to the thirty-day limit. All ordinances adopted containing an emergency clause are effective immediately. (Ord. 413 § 8.4, 1995)

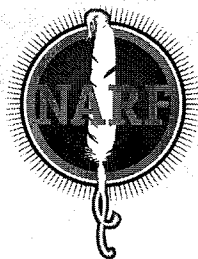
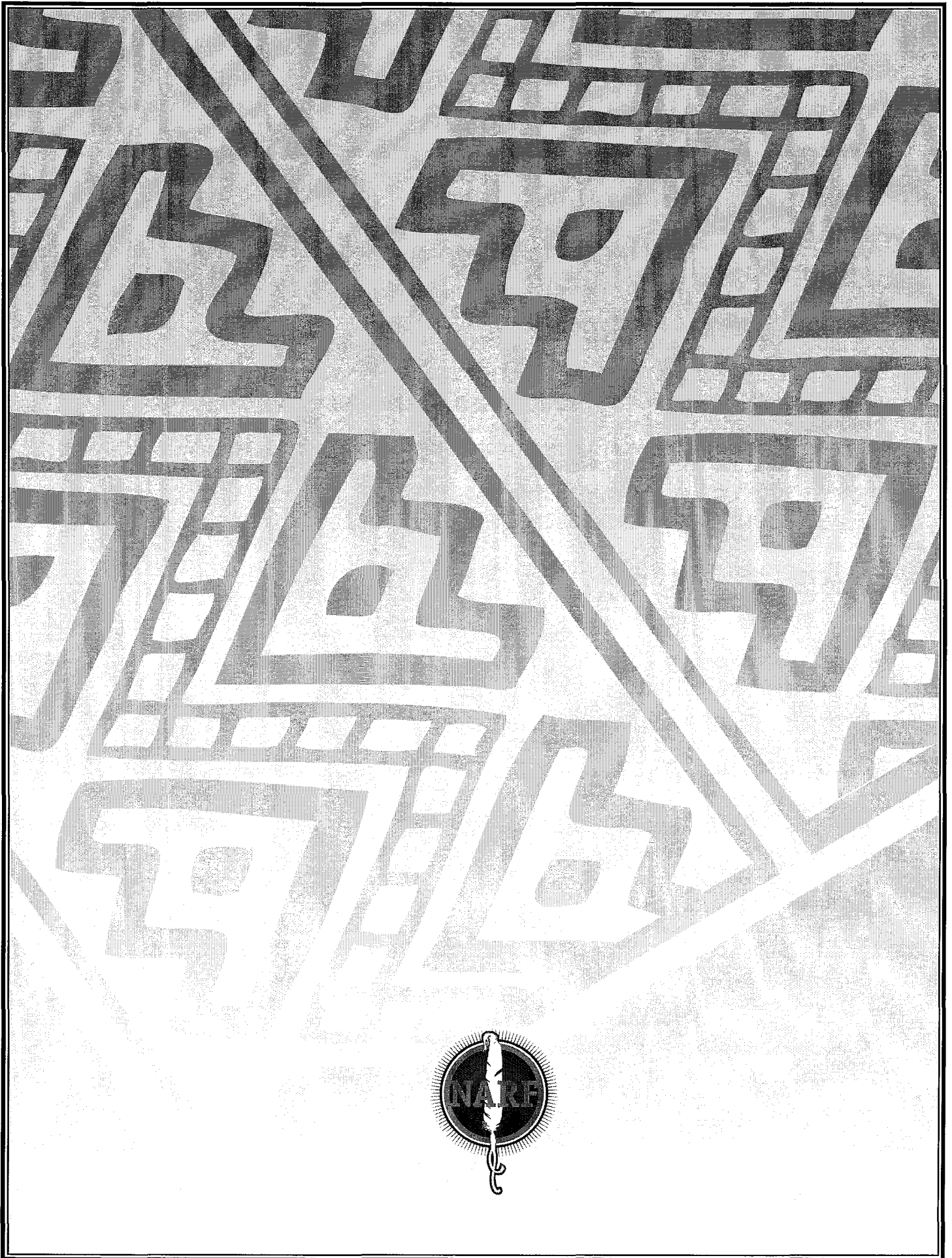
Section 2-135. Amendment of ordinances.

If an ordinance is proposed as an amendment to a previously adopted ordinance, it shall be reported as an amending ordinance. An amending ordinance shall be accompanied by an exhibit showing the part of the original ordinance to be amended, properly identified by page, section or paragraph referenced to the original ordinance, and having a line drawn through the part stricken out and that part added shown in italics or in a different colored ink or underscored. Copies of the exhibit shall be furnished to each member of the Board of Trustees. (Ord. 413 § 8.5, 1995)

Section 2-136. Report by committee.

All ordinances and resolutions referred to committee must be reported by the committee within ten (10) days after date of reference, except as otherwise provided in these rules, or at the next meeting succeeding the expiration of ten (10) days. If not reported as above provided, any member of the Board of Trustees may call the document out of committee by notifying the Town Clerk and Mayor in open session of said member's intention. It shall then be the duty of the Clerk to place the document before the Board of Trustees for consideration at the next succeeding meeting without any further reference. (Ord. 413 § 8.6, 1995)

Sections 2-137-2-150. Reserved.





## M. TRIBAL JUDICIARY

### A. Considerations.

A threshold concern for dispute resolution is whether the tribe wants a western-style judicial system, a more so-called traditional system, or both. While it may be important to offer a judicial system that is similar to the majority culture for business and commercial dispute resolution, a tribal community may determine that it would better to establish and operate a community-based dispute resolution system such as a peacemaker court.

At present, tribes are faced with a necessity of having a western-style judicial system because of Indian gaming. Often gaming compacts between a state and tribe will require a tribe to establish and operate a tribal court based on a western-style judicial system where litigants will pursue and defend their lawsuits under familiar rules and laws. Leaving aside Indian gaming, many tribes have decided to adopt a western-style judicial system for whatever reasons.

Within the last couple of decades, some tribes have decided to establish an alternative forum for their tribal members to resolve disputes that involve purely internal tribal matters. The forum is often called a peacemaker court, which often uses traditions and customs to resolve disputes between tribal members. With the advent of this alternative forum, many tribes adopted this peacemaker process even though it was foreign to their own traditional way of resolving disputes between tribal members. It has simply become another possibility in the options available to tribal peoples.

Another factor to consider is whether your tribe has the opportunity to join an inter-tribal court system.

As a practical matter, if your Tribe has yet to establish and operate a tribal judiciary, a separation of powers might turn on whether funding is available to establish a tribal judiciary. This situation is mostly relevant for non-federally acknowledged tribes or very small tribes who have a limited need for a tribal court. The federal government provides grants from time to time such as the Tribal Courts Assistance Program (TCAP) for tribal court projects, but funding is only for a certain period of time. In the end, tribes must fund their judiciary through tribal revenues. One source, at present, is gaming revenue.

If it has been decided by your tribe to establish an independent judicial branch of tribal government, it is important to make sure that the governing body does not use its executive/legislative functions to influence the courts and that the courts are able to objectively review cases, especially when it involves funding a tribal judiciary with tribal revenues. Otherwise, a tribal judge may be reluctant to rule against the tribe in fear of losing his/her judgeship. If that fear exists, litigants, tribal and non-tribal, may be denied an objective forum for resolving disputes, which leads to instability within tribal government. It also harms the economic endeavors of the tribe because business is reluctant to enter into an unstable economic environment. A strong independent judiciary fosters tribal self-government and economic self-sufficiency.

In considering the powers of the judiciary branch, note that some courts, such as the federal courts, are courts of limited jurisdiction that have the power to hear certain specified types of cases. Others, such as some state and tribal courts, are courts of general jurisdiction, which means there is a presumption that they have jurisdiction over a particular case unless a showing is made to the contrary.

## **B. Questions.**

1. Should the tribal courts be courts of limited or general jurisdiction? Should they hear cases arising under federal law?
2. Should there be an intermediate appellate court to appeal a trial court decision? Should there be a supreme court to act as the only appellate court?
3. Should the tribal judges be appointed for life? During good behavior? Should they be elected and for what term? Should they be appointed by the governing body? Should they be subject to removal and, if so, how?
4. Should the tribal courts be limited just to tribal members? Just members of federally recognized tribes?
5. Should the tribe waive its sovereign immunity for certain types of lawsuits? Or lawsuits brought by certain litigants such as tribal members?
6. Should the highest appellate court be allowed to issue advisory opinions to the other(s) branch of tribal government? Or is the tribal attorney most qualified to give such opinions?
7. Should the justice or judge be a barred attorney?
8. Should there be objective qualifications for judgeship? Subjective qualifications?
9. In the situation where an alternative forum, such as a peacemaker court, is considered, there would need to be a carefully structured description for how it would work, especially in relation to its counterpart. Would a case be transferred from a tribal court to a peacemaker court? Would it be voluntary or involuntary? What types of cases would be appropriate for a peacemaker court? Who would select and train the peacemakers? Who would qualify as a peacemaker? Is a peacemaker limited to tribal members? Is a peacemaker paid for his/her services? What are the powers and duties of a peacemaker? Is a peacemaker protected by judicial immunity? What are the peacemaking procedures before, during and after a peacemaking session? What are the procedures for a peacemaker disqualification or removal? Overall, what are the guiding principles for peacemaking? Do the participants pay any costs of the peacemaker process? Is the result from a peacemaker process – e.g. money owed from one party to another – enforceable in the tribal court or by some other method? Since participation is usually voluntary the result isn't subject to appeal. Should there be any exceptions to this?

C. **Existing Provisions.** [to be filled in by tribe]

D. **Suggested Provisions.**

## Article - Tribal Judiciary

### Section 1. Structure.

(a) The Tribal Judiciary shall be composed of one Supreme Court and of such lower courts as are designated to be established in this Article, and as may be established by ordinance by the governing body as it deems appropriate to meet the needs of the Tribe.

(b) The Supreme Court of the Tribe shall have jurisdiction over appeals from all final decisions of the lower courts of the Tribe and original jurisdiction over those cases defined by ordinance. The Supreme Court shall be composed of \_\_\_\_ Judges. Supreme Court Judges who may, if necessary and if so instructed by the governing body also serve as Judges of the lower courts; *provided, however*, in such a situation the Supreme Court Judge shall be disqualified from participating in a review of any decision entered by that Judge while sitting as a lower court judge.

(c) The governing body shall, promptly after the adoption of this Constitution, determine and establish the number of lower trial courts necessary to serve the judicial needs of the Tribe. Such trial courts shall have general and original jurisdiction over all cases of a civil or criminal nature. Each trial court shall be presided over by one Judge.

(d) If the governing body establishes special kinds of lower courts with original jurisdiction over specified subject areas, the governing body shall specify whether such jurisdiction is exclusive or concurrent with the jurisdiction of the trial courts established in subsection (c) of this Section.

(e) If the governing body establishes an intermediate level of courts to hear appeals from all final decisions of the lower courts, then the Supreme Court shall hear appeals only from decisions of the intermediate courts of appeals. In addition, the governing body may authorize the Supreme Court to exercise its discretion in all or designated kinds of cases in deciding whether to hear an appeal in any particular case.

### Section 2. Appointment and Term of Office.

(a) The governing body shall, by ordinance, establish a procedure for selection of judges.

(b) Tribal Judges shall be appointed by no less than \_\_\_\_ votes of the entire governing body.

(c) Lower Court Judges shall be appointed to a term of \_\_\_\_ years.

(d) Supreme Court Judges shall be appointed to a term of \_\_\_\_ years.

### Section 3. Compensation.

Tribal Judges shall receive for their services a reasonable compensation, as fixed from time to time, by the governing body. The governing body shall not diminish the compensation of a Tribal Judge during that Tribal Judge's term of office.

### Section 4. Qualifications and Disqualifications.

(a) To hold the office of Tribal Judge, a person shall be a member of the Tribe, at least \_\_\_\_ years of age, having a minimum education of a high school graduate or an equivalent, and shall demonstrate fitness and competency for the office [option: by taking an appropriate examination relevant to demonstrate competence for the office of Tribal Judge.].

(b) No person shall be eligible to be appointed to the office of Tribal Judge who has been convicted of a felony or a crime of moral turpitude.

### Section 5. Removal from Office by Governing Body and Automatic Vacancies.

(a) Tribal Judges may be removed from office by the Governing Body by the affirmative vote of at least \_\_\_\_ members of the entire Governing Body present at a regular or special meeting, but only upon grounds of inability to carry out the duties of the office, failure to carry out the duties of the office or lack of a requisite qualification for serving as a Tribal Judge. The Governing Body shall notify the Tribal Judge in question and the Supreme Court, in writing, not less than \_\_\_\_ days prior to the meeting at which the Judge's removal is to be considered and voted upon. The notice shall specify the charge or charges and shall state the facts in support thereof. The Tribal Judge in question shall have full opportunity at the meeting at which that Judge's removal is to be considered and decided upon to examine all adverse witnesses and to present witnesses. The decision of the Governing Body shall be final and not appealable to the Tribal Judiciary. The Supreme Court may upon receipt of notice of the removal charges suspend the Tribal Judge in question from office pending final action of the Governing Body.

(b) The office of any Tribal Judge who is convicted of a felony or a crime of moral turpitude, and who has exhausted all appeals, who dies, or who resigns shall be deemed to be automatically vacant. Resignation from office shall be written and shall be deemed to be effective as of the date tendered unless otherwise designated in the resignation document.

### Section 6. Rules of Tribal Courts.

The Supreme Court shall by order establish written rules of procedure and ethics for all Tribal Courts. Such rules may from time to time be amended as deemed necessary or appropriate by the Supreme Court. The Supreme Court shall consult with the Judges of the lower courts in establishing rules of procedure for the lower courts.

### Section 7. Records and Court Clerk.

The Supreme Court shall implement the system of keeping records of proceedings of the Tribal Judiciary. The Supreme Court shall appoint a court clerk who shall be responsible for keeping the records of the Judiciary and generally for administering the daily business of the

Judiciary.

Section 8. Appropriations.

The Governing Body shall give priority for appropriations of such funds as may be necessary to enable the Tribal Judiciary to carry out the provisions of this Article.

Section 9. Enforcement.

The Governing Body shall implement this Article by ordinance.

**E. Examples.**

*Example 1: Constitution of the Cherokee Nation of Oklahoma*

Article VII. Judicial

The purpose of this Tribunal shall be to hear and resolve any disagreements arising under any provisions of this Constitution or any enactment of the Council. The decision of the Judicial Appeal Tribunal shall be final insofar as the judicial process of the Cherokee Nation is concerned.

*Example 2: Constitution for The Pueblo of Isleta, New Mexico*

Article IX -The Judicial Branch

Section 5.

The trial court shall have jurisdiction over all criminal and civil causes included in the approved Code of Laws of the Pueblo of Isleta, or otherwise lawfully brought before it. In addition, the trial court shall determine the constitutionality of enactments of the council submitted to the court for review.

Section 6.

The Council of the Pueblo of Isleta shall constitute the Appellate Court for the Pueblo of Isleta. Appeals shall be granted as a matter of right. The council may delegate its appellate authority to such appeal committee, appellate judge or judges or other appellate body as the council may from time to time establish by ordinance duly enacted by the council. The decisions of the council or delegated appellate body shall be final in all appeal cases.

*Example 3: Constitution of The Mohegan Tribe of Indians of Connecticut*

Article X -Powers & Duties of The Council of Elders

Section 1.

All judicial review powers of The Mohegan Tribe not exercised by the Gaming Disputes Court shall be vested in the Council of Elders, and in such subordinate commissions and/or courts as the Tribal Council may from time to time ordain and establish. The Council of Elders shall exercise its judicial review powers in accordance with this Constitution and the laws of the United States applicable to Indian tribes, provided that judicial actions taken prior to the effective date of this Constitution shall remain in effect unless and until changed by the subsequent action of the Council of Elders or until any such action expires of its own terms.

Section 2.

The powers of the Council of Elders shall include all judicial review powers reasonable and necessary to achieve the tribal goals recited in the Preamble hereof, and shall further specifically include, but not be limited to, the following powers:

- (a) To rule over cases and controversies arising under this Constitution and arising under all laws of The Mohegan Tribe, but not to issue advisory opinions or decisions in cases which are moot;
- (b) To appoint from within their body member(s) to serve in the capacity of "Justice of the Peace";
- (c) To provide traditional Mohegan names to tribal members;
- (d) To appoint and define all religious and ceremonial positions, including but not limited to the Medicine Person, Chief or Sachem, Pipe Carrier, Tribal Historian, Sagamores, Nonners, Fire Keepers, etc.; the persons so appointed to said positions shall act under the supervision of, and subject to the removal by, the Council of Elders, and shall fulfill their respective duties in accordance with traditional Mohegan customs and traditions;
- (e) To advise the Tribal Council in all matters related to tribal culture;
- (f) To allocate within its budget the amounts deemed necessary for the advice and assistance of legal counsel, and to exercise its discretion in determining when to seek the advice and assistance of said counsel;
- (g) To appropriate available tribal funds for the benefit of The Tribe, up to the amount allocated by the Tribal Council in the annual budget of the Council of Elders;
- (h) To establish and enforce rules of tribal custom, consistent with applicable federal statutes and the applicable regulations of the Secretary of the Interior, for the management of tribal society, including but not limited to, the conduct of tribal ceremonies and rituals;
- (i) To promote and protect the health, peace, morals, and general welfare of The Tribe and its members, and to establish traditional policies regarding education of tribal members;
- (j) To establish and enforce ordinances governing tribal membership and enrollment;
- (k) To recommend and submit for a vote, as it deems necessary and wise, amendments to this Constitution, as prescribed in Article XVI and XVII; and
- (l) To entertain recommendations from other tribal members regarding amendments to this Constitution, and to submit said recommendations to a tribal vote, as prescribed in Article XVI and Article XVII.

*Example 4: Constitution of the Confederated Tribes of Siletz Indians of Oregon*

Article III -Authority of Government

Section 2. Tribal Court.

The Tribal Court shall consist of one Chief Judge and such Associate Judges and staff as are deemed necessary by the Tribal Council. The Tribal Court is empowered to exercise all judicial authority of the government. Said authority shall include but is not limited to the power to review and overturn tribal legislative and executive actions for violations of this Constitution or of the Federal Indian Civil Rights Act of 1968 as well as to perform all other judicial and court functions. The Tribal Council shall set forth qualifications for Tribal Court Chief Judge, Associate Judges, and staff positions by ordinance, and shall appoint persons to fill said positions for a term of not less than four years for Chief Judge, not less than two years for Associate Judges. During the tenures of his or her appointment, the Chief Judge, or an Associate Judge may be suspended or dismissed only for cause by the Tribal Council upon due notice and an opportunity for a hearing open to tribal members.

*Example 5: Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada*

Article 8 -Judicial Branch of Government

Section 1. Tribal Courts.

There shall be a court of general jurisdiction and a Supreme Court of appellate jurisdiction.

Section 2. Powers of the Courts.

All judicial powers of the Tribe shall be vested in the Judicial Branch of Government, including such powers as may in the future be granted to the Tribe by any law of the United States, or other authority.

Section 3. Jurisdiction.

The judicial power shall extend to all cases in law or equity arising under this Constitution or Tribal enactments. Decisions of the Tribal Courts shall be binding upon all persons and property within the jurisdiction of the Tribe as referenced in Article 2. Jurisdiction of suits against the Tribe or any constituent Band is limited to suits brought by a member, or members, of the Tribe or by one of the Bands or by the Tribe. The appellate court of the Tribe shall be the final interpreter of this Constitution and tribal laws.

*Example 6: Constitution and Bylaws of The Chippewa Cree Indians of The Rocky Boy's Reservation, Montana*

Article XII -Judicial Branch

Section 1.

There shall be established a Judicial Branch within the tribal government to enforce ordinances and laws of the Business Committee, the Election Board and/or to administer justice through a tribal court. The Judicial Branch shall also provide an appellant body for tribal members who are aggrieved by decisions of the tribal court.

Section 2.

There shall be established, the positions of Chief Judge and two (2) Associate Judges for the tribal court who shall be responsible to carry out the tribe's judicial functions in accordance with an approved tribal law and order code.

*Example 7: Constitution and Bylaws of the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California*

Article XII Judiciary

Section 1. Judiciary.

The judiciary power of the Colorado River Indian Tribes shall be vested in a tribal court having tribal jurisdiction and an appeals court having appellate jurisdiction over matters and persons subject to their jurisdiction as provided by this constitution and bylaws, the ordinances of the tribes, and the authority of the constitution and laws of the United States.

Section 2. Jurisdiction.

The judicial power of the courts of the Colorado River Indian Tribes shall extend to all cases and matters in law and equity arising under this constitution and bylaws, and the ordinances of the tribes, subject to any limitations, restrictions or exceptions imposed by or under the authority of the Constitution or laws of the United States.

*Example 8: Constitution of the Timbisha Shoshone Indian Tribe, Inyo County, Death Valley, California*

Article XIII Judiciary

Section 1.

The judicial power of the Tribe shall be vested in a Supreme Court and in such other inferior courts as the Tribal Council may from time to time establish. The Tribal Courts shall exercise jurisdiction over all cases and controversies within the Tribe's jurisdiction, in law and



equity, whether civil or criminal in nature, that arise under this document, the laws of the Tribe, or which is vested in the Tribal courts by federal law.

*Example 9: Constitution of the Choctaw Nation of Oklahoma*

Article XIII Privileges, Duties and Powers of Judicial Department

Section 1.

The Tribal Court shall have exclusive jurisdiction to decide disputes, by vote of two (2) members, arising under any provision of this Constitution or any rule or regulation enacted by the Tribal Council.

Section 2.

Rules of procedure for the Tribal Court shall be prescribed by the Tribal Council and shall insure the members due process of law.

Section 3. The decision of the Tribal Court shall be final.

*Example 10: Constitution of The Jamestown Klallam Tribe of Indians*

Article VIII -Tribal Court

The Tribal Court shall consist of one (1) Chief Judge and such Associate Judges and Staff as are deemed necessary to the Tribal Council. The Tribal Court is empowered to exercise all judicial authority of the Tribe. Said authority shall include, but is not limited to, the power to review and overturn tribal legislative and executive actions for violations of this Constitution or of the Federal Indian Civil Rights Act of 1968, as well as to perform all other judicial and court functions.

*Example 11: Amended Constitution of The Yankton Sioux Tribal Business and Claims Committee*

*Article 1. Amended Constitution*

Section 3.

The judicial power shall remain in the Tribal membership and upon request of five members of any just cause, such cause shall be submitted at any regular Tribal meeting for action.

*Example 12: Constitution of the Otoe-Missouria Tribe of Indians*

Article XII -Tribal Court

Section 1. Until such time as the Tribal Council determines that the Tribe is financially and otherwise prepared to maintain a separate Tribal Court, the judicial authority of the Tribe

shall be exercised by the Court of Indian Offenses. The jurisdiction of the Court of Indian offenses shall include, but not be limited to, criminal and civil jurisdiction, including settlement of tribal disputes and interpretation of this Constitution and tribal enactments.

Section 3. If the Tribal Council determines that the Tribe shall maintain a separate Tribal Court, or courts, that court shall possess all of the judicial powers of the Tribe, including such powers that may, in the future, be granted to the Tribe by Federal law. The Tribal Council shall enact a judicial ordinance subject to approval by the Secretary of the Interior to provide for the Tribal Court to exercise judicial powers including those set forth in Section 1 of this Article. Other features of the Tribal Court are set forth below:

- (a) The authority of the Tribal Court shall extend to all criminal offenses committed by Indians which occur within the jurisdiction of the Tribe and all civil matters occurring within the Tribe's jurisdiction.
- (b) The duties and procedures of the court of courts shall be established by ordinance of the Tribal Council, which shall also include the tenure and compensation for tribal judges.
- (c) The tribal court shall consist of a Chief Judge and two (2) Associate Judges, appointed by the Chairman of the Tribal Council and confirmed by a majority vote of the Tribal Council.
- (d) In order to qualify for appointment to the Tribal Court, a person must meet the requirements set forth in Section 5 of Article VII, except that he/she must be at least thirty (30) years-of-age and not more than seventy (70) years of age.
- (e) Tribal judges may be unseated from their positions only by expiration of their term of appointment or by the removal or forfeiture provision of Article IX.
- (f) The judicial ordinance may include provisions for a Tribal Police Force.

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## N. RIGHTS OF INDIVIDUALS

### A. Considerations.

All federally recognized Indian tribes are subject to the federal law known as the *Indian Civil Rights Act* (ICRA), 25 U.S.C. §§ 1301 and 1302. A copy of the Act is included in this section. Essentially, the ICRA places certain limitations upon the exercise of tribal powers by a tribal government by conferring civil rights to individuals.

The Act is very similar to the Bill of Rights of the United States Constitution with five differences: (1) there is no clause prohibiting the establishment of religion in consideration of the theocratic governments of some Indian tribes; (2) individual Indian defendants are guaranteed the right of counsel only at their own expense in tribal courts as opposed to requiring the tribal government to pay for a defense attorney; (3) there is no clause to prevent a tribe from discriminating in tribal voting because of race because there is a possibility that non-Indians who live within that tribe's reservation would outnumber the tribal members; (4) tribes are not required to convene a jury in civil trials; and (5) tribes are not required in a criminal case to issue grand jury indictments.

In sum, a tribe is bound by the ICRA to respect the individual rights of its members as enumerated in that Act. You should also note that the rights apply to all other persons, non-Indian or non-member Indian, who are subject to tribal jurisdiction.

### B. Questions.

1. Should all or some of the provisions of the Indian Civil Rights Act be incorporated into the constitution? This question arises because if the rights are not in the tribal constitution, then, if Congress repeals the Act, the tribal government would no longer have to respect those rights. Such rights may also be a reflection of fundamental values of the culture and tradition of the tribe. Thus, if you think the rights listed in the Act are important and fundamental rights, then you probably should incorporate them into the tribal constitution.

2. Are there any other rights that are so fundamental to the lifestyle of the tribe that they should be protected in this section?

(a) Should a prohibition against the establishment of religion be included?

(b) Should the tribe be required to furnish counsel free of charge to Indian defendants in tribal criminal proceedings?

(c) Some tribes have a provision guaranteeing equal opportunity to participate in the economic resources and activities of the tribe - a right that reflects the fact that all tribal members own in common all tribal assets. Of course, it could be argued that this right is included in the rights protected by the equal protection clause of the Indian Civil Rights Act; however, you may wish to emphasize the importance of such right by including it in a separate clause. Should such a clause be included in the constitution?

(d) Some tribal constitutions contain a provision that guarantees its members the right "to hunt, fish, gather roots and berries, subject to tribal laws and regulations." The intention of such a provision is to prohibit the tribal government from unreasonably curtailing the right of

tribal members to exercise their rights to hunt and fish. It may also provide the framework for the protection of traditionally held fishing sites, or gathering grounds. Should such a provision be included in the constitution? Should commercial gathering be allowed or is that reserved to the tribe? Should there be a limitation based on conservation of such resources?

(e) Some tribes guarantee to tribal members the right to keep and bear arms subject to tribal regulation such as licensing. The United States Constitution contains a similar guarantee for United States citizens. Should such a provision be included in the constitution?

(f) Finally, many tribal constitutions contain a provision guaranteeing its members the right to vote in tribal elections; however, such a provision is not necessary where the constitution contains a separate provision establishing tribal membership as one qualification for voting in tribal elections.

### **C. Suggested Provision.**

#### **Article – Rights of Individuals**

##### **Section 1. Civil Rights.**

The Tribe in exercising its power of self-government over persons subject to Tribal jurisdiction shall not:

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and a fine of \$5,000, or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

##### **Section 2. Rights Retained by the People**

The enumeration in this Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

**Copy of Indian Civil Rights Act of 1968 (25 U.S.C. §§ 1301-03)**

**§ 1301. Definitions**

For purposes of this subchapter, the term -

1. "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;
2. "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;
3. "Indian court" means any Indian tribal court or court of Indian offense.

**§ 1302. Constitutional rights**

No Indian tribe in exercising powers of self-government shall -

1. make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
2. violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
3. subject any person for the same offense to be twice put in jeopardy;
4. compel any person in any criminal case to be a witness against himself;
5. take any private property for a public use without just compensation;
6. deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;
7. require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and [1] a fine of \$5,000, or both;
8. deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
9. pass any bill of attainder or ex post facto law; or
10. deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

**§ 1303. Habeas corpus**

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

#### **D. Examples.**

##### *Example 1: Constitution and Bylaws of the Menominee Indian Tribe of Wisconsin*

#### Article IX - Rights of Tribal Members and Other Persons Subject to Tribal Jurisdiction

##### Section 1. Hunting, Fishing, Trapping, Gathering

In addition to such other rights as are guaranteed by this Constitution and Bylaws, members of the Menominee Indian Tribe of Wisconsin shall have the right to hunt, fish, trap, and gather food from plants subject only to those tribal laws which are necessary to conserve these natural resources of the Tribe; provided that, this right shall not include the right to engage in commercial uses of such tribal resources; such right is reserved to the Tribe acting through its Tribal Legislature in accordance with Section 2 of Article X of this Constitution. Non-tribal members shall have no right to hunt, fish, trap, and gather foods from plants except as may be permitted by tribal ordinance approved by the Tribe in accordance with Section 3 of Article VI of this Constitution.

##### Section 2. Rights of Persons Subject to Tribal Jurisdiction.

The Menominee Indian Tribe and its officers and agencies in exercising the powers of self-government over persons subject to tribal jurisdiction shall not:

- (a) establish an official government religion;
- (b) make or enforce any law (1) prohibiting the free exercise of religion or of the dictates of conscience, or (2) abridging the freedom of speech or of the press, or of peaceful assembly or association, or the right to petition for a redress of grievances;
- (c) violate a person's right to be safe against unreasonable searches and seizures of person and property;
- (d) permit searches and seizures unless a Tribal Court issues a warrant upon a sworn statement presented to the Tribal Court showing reasonable grounds to believe that an offense against the tribal law has been committed and that the person or place to be searched holds evidence of the offense or that the persons to be seized committed the offense; or that the thing to be seized is evidence of the offense, and describing specifically the person or place to be searched or the person or thing to be seized; provided that, searches and seizures may be permitted without a warrant where justified by compelling circumstances as shall be defined by ordinance.
- (e) Subject any person for the same offense to be put in jeopardy of loss of liberty more than once;
- (f) In any criminal proceeding against any person:
  - (1) compel such person to be a witness against the person's own interest including any instance where the person's testimony reasonably might lead to the institution of criminal proceedings against that person;



(2) deny such person the right to:

(a) a speedy and public trial;

(b) to be informed of the nature and cause of the accusation;

(c) to confront adverse witnesses;

(d) to have witnesses in such person's favor compelled to appear to testify; and

(e) to have, at such person's own expense, the assistance of counsel in defending against the accusation.

(3) deny to any person who is accused of a major offense as defined in Bylaw V of this Constitution & Bylaws, the right to a trial by jury of not less than six (6) persons, provided that, such person affirmatively requests such right and further provided that any person accused of an offense not punishable by imprisonment, shall have such right only at such person's own expense.

(4) require excessive bail, impose excessive fines, or inflict cruel and unusual punishments.

(g) Deny to any person the equal protection of tribal laws, provided that, this clause shall not be interpreted to grant to non-tribal members those rights and benefits to which the tribal members are entitled by virtue of their membership in the Tribe.

(h) Deprive any person of liberty or property (1) without fully complying with procedural processes of tribal law, or (2) application of tribal laws which have no reasonable relation to the purpose for which they were enacted; and

(i) Enact any law imposing punishment on one person, or enact any law which makes an action a crime which was not a crime when such action was committed, or which increases punishment for a crime committed before the effective date of the law, or which deprives a person in any accusatory proceeding of any substantial right or immunity to which the person was entitled before the effective date of the law.

*Example 2: Constitution and Bylaws of the Chitimacha Tribe of Louisiana*

Article IX - Bill of Rights

The protections guaranteed to individual tribal members by Title II of the Civil Rights Act of 1968 (82 Stat. 77) against actions of a tribe in exercising its powers of self-government, shall apply where appropriate to members of the Chitimacha Tribe of Louisiana.

*Example 3: Constitution and Bylaws of the Upper Skagit Indian Tribe*

Article VII -Bill of Rights

Section 1. Economic Resources.

All members of the tribe shall be accorded equal opportunities to participate in the economic resources and activities of the tribe.

Section 2. Civil Liberties.

All members of the tribe may enjoy freedom of worship, conscience, speech, press, assembly, and association.

*Example 4: Constitution of the Kickapoo Traditional Tribe of Texas*

Article X - Rights of Members and Other Persons

Section 1. All members of the Kickapoo Traditional Tribe of Texas residing within the jurisdiction of the Tribe as defined in Article I shall enjoy equal rights to life, liberty, industrial pursuits, and the economic resources and activities of the Tribe.

Section 2. The Kickapoo Traditional Tribe of Texas, in exercising its powers of self-government shall not:

- (a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
- (b) Violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- (c) Subject any person for the same offense to be twice put in jeopardy;
- (d) Compel any person in any criminal case to be a witness against himself;
- (e) Take any private property for a public use without just compensation;
- (f) Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;
- (g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one (1) year or a fine of \$5,000.00 or both, or such other terms or

penalties as may be authorized by federal law;

(h) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(i) Pass any bill of attainder or ex post facto law; or;

(j) Deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

*Example 5: Constitution of the Cherokee Nation of Oklahoma*

Article II. - Bill of Rights

Section 1. The judicial process of the Cherokee Nation shall be open to every member of the Cherokee Nation. Speedy and certain remedy shall be afforded under the terms of this Constitution for every wrong and injury to person, property or reputation wherein said remedy does not conflict with the laws of the United States. The Council shall prescribe the procedures pertinent thereto. The appropriate protections guaranteed by the Indian Civil Rights Act of 1968 shall apply to all members of the Cherokee Nation.

*Example 6: Constitution for The Pueblo of Isleta, New Mexico*

Article III - Rights of Members

Section 1. The Pueblo of Isleta, in exercising its powers of self-government, shall not:

(a) Make or enforce any law prohibiting the free exercise of religion; or abridging the freedom of speech, or of the press, or denying the rights of members peaceably to assemble and to petition the council of the pueblo for a redress of grievances;

(b) Violate the right of all members to be secure in their persons, homes, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons or thing to be seized;

(c) Subject any person for the same offense to be twice put in jeopardy;

(d) Compel any person in any criminal case to be a witness against himself;

(e) Take any private property for public use without just compensation;

(f) Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witness against him, to have compulsory process for obtaining witnesses to his favor, and at his own expense to have the assistance of counsel for his defense;

(g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishment and in no event impose for conviction of any one offense any penalty or punishment greater than

imprisonment for a term of six months or a fine of \$500, or both;

(h) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(i) Pass any bill of attainder or ex post facto law;

(j) Enact any ordinances discriminating against individuals specifically named.

Section 2. The enumeration in this constitution of certain rights shall not be construed to deny or limit other rights possessed by the people.

*Example 7: Constitution of The Mohegan Tribe of Indians of Connecticut*

Article XI - Individual Rights of Tribal Members

Section 1. The Mohegan Tribe, in exercising its powers of self-government, shall make no law inconsistent with The Indian Civil Rights Act of 1968 (25 U.S.C. §§ 1301-1303; 82 Stat. 77), which requires that the Tribe not:

(a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(b) Violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(c) Subject any person for the same offense to be twice put in jeopardy;

(d) Compel any person in any criminal case to be a witness against himself;

(e) Take any private property for a public use without just compensation;

(f) Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and, at his own expense, to have the assistance of counsel for his defense;

(g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one (1) year or a fine of \$5,000.00, or both;

(h) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without the process of law;

(i) Pass any bill of attainder or ex post facto law;

(j) Deny to any person accused of any offense punishable by imprisonment, the right, upon request, to a trial by jury of not less than six persons; or

(k) Prohibit any person from testing the legality of his detention, by order of The Mohegan Tribal Court, by petitioning for a writ of habeas corpus in a court of the United States.

Section 2. In the event that the Indian Civil Rights Act of 1968 is amended in the future, the Tribal Council may, through legislative action, provide that said amendment shall be deemed a part of this Constitution without the need to adopt formal amendments to this Constitution.

*Example 8: Constitution of the Confederated Tribes of Siletz Indians of Oregon*

Article II - Rights of Members

Section 1. Individual Rights.

Each duly enrolled member of the Confederated Tribes of Siletz Indians of Oregon shall have the following rights:

The right of equal opportunity to participate in the economic resources and activities of the Confederated Tribes of Siletz Indians of Oregon in accordance with eligibility requirements set by the tribal and Federal governments; and the right to exercise traditional rights and privileges of members of the Confederated Tribes of Siletz Indians of Oregon where not in conflict with other provisions of this Constitution, tribal laws and ordinances, or the laws of the United States.

*Example 9: Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota Constitution*

Article XIII - Rights of Members

All members of the Minnesota Chippewa Tribe shall be accorded by the governing body equal rights, equal protection, and equal opportunities to participate in the economic resources and activities of the Tribe, and no member shall be denied any of the constitutional rights or guarantees enjoyed by other citizens of the United States, including but not limited to freedom of religion and conscience, freedom of speech, the right to orderly association or assembly, the right to petition for action or the redress of grievances, and due process of law.

*Example 10: Constitution of the Absentee-Shawnee Tribe of Indians of Oklahoma*

Article X - Bill of Rights

The protections guaranteed to persons by Title II of the Civil Rights Act of 1968 (82 Stat. 77), against actions of a tribe in exercising its powers of self-government shall apply to the Absentee-Shawnee Tribe of Indians of Oklahoma, its officers and all persons within its jurisdiction.

All members of the Absentee-Shawnee Tribe of Indians of Oklahoma shall be accorded equal rights pursuant to tribal law. No member shall be denied any of the rights or guarantees enjoyed by citizens under the Constitution of the United States, including, but no limited to, freedom of religion and conscience, freedom of speech, the right to orderly association or assembly, the right to petition for action or the redress of grievances, and due process of law. Employment of legal counsel for the tribe shall be in accord with Title VI of the Civil Rights Act of 1968. It is provided in this Constitution that the acceptance of the Indian Civil Rights Act (82 Stat. 77) does not waive the tribe's inherent right of immunity from suit.

*Example 11: Constitution of The Te-Moak Tribe of Western Shoshone Indians of Nevada*

Article 9 - Bill of Rights

Section 1. Rights of Tribal Members. The Tribe, in exercising powers of self-government, shall not:

- (a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
- (b) Violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable search and seizure, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- (c) Subject any person for the same offense to be twice put in jeopardy;
- (d) Compel any person in any criminal case to be a witness against himself/herself;
- (e) Take any private property for a public use without just compensation;
- (f) Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him/her, to have compulsory process for obtaining witnesses in his/her favor, and, at his/her own expense, to have the assistance of counsel for his/her defense;
- (g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one (1) offense any penalty or punishment greater than imprisonment for a term of six (6) months or a fine or five hundred dollars (\$500) or both;
- (h) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of laws;
- (i) Pass any bill of attainder or ex post factor law; or
- (j) Deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six (6) persons.

*Example 12: Constitution and Bylaws of the Confederated Tribes of the Goshute Reservation, Utah*

Article VIII - Bill of Rights

Section 1. All members of the Confederated Tribes over the age of twenty-one years shall have the right to vote in all tribal elections. The residence qualifications established by Article V, section 2, of this Constitution shall apply to all elections.

Section 2. All members of the Confederated Tribes shall be accorded equal opportunities to participate in the economic resources and activities of the reservation.

Section 3. All members of the Confederated Tribes may enjoy without hindrance freedom of worship, conscience, speech, press, assembly, and association.

Section 4. Any member of the Confederated Tribes accused of any offense shall have the right to a prompt, open and public hearing, with due notice of the offense charged, and shall be permitted to summon witnesses on his own behalf. Trial by jury may be demanded by any prisoner accused of any offense punishable by more than 30 days' imprisonment. Excessive bail shall not be required and cruel punishment shall not be imposed.

*Example 13: Constitution of the Confederated Salish and Kootenai Tribes of the Flathead Reservation*

Article VII - Bill of Rights

Section 1. All members of the Confederated Tribes over the age of 21 years shall have the right to vote in all tribal elections, subject to any restrictions as to residence as set forth in article IV.

Section 2. All members of the Confederated Tribes shall be accorded equal opportunities to participate in the economic resources and activities of the reservation.

Section 3. All members of the Confederated Tribes may enjoy without hindrance freedom of worship, speech, press and assembly.

Section 4. Any member of the Confederated Tribes accused of any offense, shall have the right to a prompt, open and public hearing, with due notice of the offense charged, and shall be permitted to summon witnesses in his own behalf and trial by jury shall be accorded, when duly requested, by any member accused of any offense punishable by more than 30 days imprisonment, and excessive bail or cruel or unusual punishment shall not be imposed.

*Example 14: Constitution and Bylaws of the Chippewa Cree Indians of the Rocky Boy's Reservation, Montana*

Article XI - Rights of Members

In compliance with the Civil Rights Act of 1968 (82 Stat. 77), the Chippewa Cree Tribe in exercising its powers of self-government shall not:

- (a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
- (b) Violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- (c) Subject any person for the same offense to be twice put in jeopardy;
- (d) Compel any person in any criminal case to be a witness against himself;
- (e) Take any private property for a public use without just compensation;
- (f) Deny to any person in criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;
- (g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six (6) months or a fine of five hundred dollars (\$500) or both;
- (h) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
- (i) Pass any bill of attainder or ex post facto law; or
- (j) Deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six (6) persons.

*Example 15: Constitution and Bylaws of the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California*

Article III - Rights of Members

Section 1. Political Power.

All political power of the tribes is inherent in the members. This constitution and bylaws is the expression of the will of the members and enumeration of rights and privileges herein shall



not be construed to impair or deny others retained by the members.

## Section 2. Inherent Rights.

All members of the Colorado River Indian Tribes have certain inherent rights, namely, the enjoyment of life, liberty, and the acquiring and ownership of possessions, and pursuing happiness and safety. These rights cannot be protected unless the members recognize their corresponding obligations and responsibilities.

## Section 3. Bill of Rights.

All rights secured to the citizens of the United States of America by the Federal or State Constitutions shall not be impaired or abridged by this constitution and bylaws. These rights include freedom of religion, speech, the press, assembly and petition, a guarantee of due process and equal protection under the law, protection from illegal search and seizure, and expeditious trial after legal indictment or charge with opportunities for bail and protection against excessive punishment, and such other rights as may be protected by effective legislation of the Congress of the United States of America. Except as otherwise provided by this constitution and bylaws, all members of the Colorado River Indian Tribes shall be accorded equal political rights and equal opportunity to participate in the economic resources and activities of the tribes.

*Example 16: Constitution and Bylaws of the Confederated Tribes of the Warm Springs Reservation of Oregon*

## Article VII - Bill of Rights

Section 1. All members of the Confederated Tribes shall be accorded equal opportunities to participate in the economic resources and activities of the Reservation.

Section 2. All members of the Confederated Tribes may enjoy without hindrance, freedom of worship, speech, press and assembly.

Section 3. Any member of the Confederated Tribes accused of any offense, shall have the right to a prompt, open and public hearing, with due notice of the offense charged, and shall be permitted to summon witnesses in his own behalf and trial by jury shall be accorded, when duly requested by any member accused of any offense punishable by more than 30 days' imprisonment. Excessive bail or cruel or unusual punishment shall not be imposed.

*Example 17: Constitution and Bylaws of The Cheyenne-Arapaho Tribes of Oklahoma*

## Article III - Individual Rights and Present Services

Section 1. To the extent applicable, no person shall be denied by the tribes in exercising self-government those rights guaranteed in Title II of the Act of April 11, 1968, including freedom of speech, conscience, worship, and assembly.

Section 2. Individual rights in allotted and inherited lands shall not be disturbed by anything contained in this constitution and bylaws.

Section 3. No treaty rights of the tribes shall be in anyway affected by any provision of this constitution and bylaws.

Section 4. The rights of members as citizens of the United States and of the State of Oklahoma shall not be disturbed by anything contained in this constitution and bylaws.

Section 5. Existing aids and services extended to the tribes, such as health service, education, extension service, etc., shall not be curtailed because of anything contained in this constitution and bylaws.

Section 6. In all recommendations by the tribes for employment of persons to fill positions with the tribes or within the jurisdiction of the Concho Agency, first preference shall be given to enrolled members of this organization; and second preference shall be given to persons married to members of this organization.

Section 7. All enrolled members of the tribes shall be eligible for all rights, privileges, and benefits given by this constitution and bylaws, such as claim credits, acquisition of land, all educational grants, and any other future benefits.

*Example 18: Constitution of the Timbisha Shoshone Indian Tribe, Inyo County, Death Valley, California*

#### Article XIV - Bill of Rights

Section 1. All members of the Tribe shall enjoy without hindrance, freedom of worship, conscience, speech, press, assembly and association.

Section 2. This constitution shall not in any way alter, abridge or otherwise jeopardize the rights and privileges of the members of the Tribe as citizens of the State of California or the United States.

Section 3. The individual property rights of any member of the Tribe shall not be altered, abridged or otherwise affected by the provisions of this document.

Section 4. Tribal members shall have the right to review all Tribal records, including financial records, at any reasonable time in accordance with procedures established by the Tribal Council.

Section 5. In accordance with Title II of the Indian Civil Rights Act of 1968 (82 Stat. 77) the Tribe in exercising its powers of self-government shall not:

(a) Make or enforce any law prohibiting the full exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

- (b) Violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable search and seizure, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- (c) Subject any person for the same offenses to be twice put in jeopardy;
- (d) Compel any person in any criminal case to be a witness against himself;
- (e) Take any private property for a public use without just compensation;
- (f) Deny to any person in a criminal proceeding the right to a speedy trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and, at his own expense, to have the assistance of counsel for his defense;
- (g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six (6) months or a fine of \$500.00 or both;
- (h) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.
- (i) Pass any bill of attainder or ex post facto law;
- (j) Deny to any person accused of imprisonment the right, upon request, to a trial by jury of not less than six (6) persons.

*Example 19: Constitution of the Skokomish Indian Tribe*

Article IX - Rights of Individuals

The Skokomish Tribal Government shall not deny to any person within its jurisdiction freedom of speech, press, or religion or the right to assemble peacefully. The tribal government shall not deny to any person the equal protection of tribal laws or deprive any person of liberty of property without due process of law. The tribe shall provide to all persons within its jurisdiction the rights guaranteed by the Indian Civil Rights Act of 1968.



## O. INITIATIVE AND REFERENDUM

### A. Purpose.

1. Initiative. (One or More Ordinary Citizens Initiate A Law Drafted By Them): The purpose of an initiative is to permit ordinary citizens to put to a vote of the people a law drafted and proposed by the initiating citizens, bypassing entirely the governing body. The disadvantage of this procedure is that generally lay people lack the expertise of government officials in drafting of laws and also do not have access to all pertinent information available to government officials. The advantage is that it permits legislative action by ordinary citizens when the governing body fails to act.

2. Referendum. (One or More Ordinary Citizens Force A Law To Be Referred For Approval To A Vote Of The People): Generally, there are three purposes for a referendum provision: (1) To permit ordinary citizens to require that a vote be taken on a law in order for that law to be effective; (2) to require that certain types of laws be submitted to a vote of the people; and (3) to permit government officials at their option to refer important policy questions to the people.

### B. General.

#### I. CONSIDERATIONS.

The initiative and referendum provisions are usually included in one constitutional article because both are initiated by a petition of voters, and, if all requirements are satisfied, both result in action by the governing body. Thus, one common procedure can be established for both initiative and referendum. Also, because these two devices are checks upon the performance of the governing body, it is usually advised that the constitutional article establishing them be self-executing, that is, that the article not be subject to implementation, or modification by action of the governing body, but be complete in itself. In this way, the governing body is denied any opportunity to frustrate the effectiveness of these two checks upon its performance. This means that this article will generally be quite detailed because it must contain all the language that is necessary for the initiative and referendum devices to function without help from the governing body in the form of legislation. Another consideration for these vehicles is that they should not be available for use by a mere minority of voters. If it takes too few voters to initiate this process, significant time and expense can be engendered by a fractional group pressing an issue that lacks broad support. The number of supporters necessary to force the initiative or referendum should be high enough to assure that there is significant support to justify the cost of the vote that will likely be paid for by the tribe.

#### II. QUESTION

Should the tribe draft into its constitution one or both or none of the two devices of initiative and referendum?

**C. Existing Provisions.** [to be filled in by tribe]

**D. Suggested Provisions.**

Article - Initiative and Referendum

Section 1. General Authority.

(a) Initiative. Registered voters of the Tribe may propose any ordinance to the governing body for consideration, in accordance with the procedures set forth in this Article, except ordinances concerning the budget of the Tribal government, appropriations of funds, levy of taxes, salaries of Tribal officials, employees or appointees, per capita payments or ordinances establishing Tribal businesses. If the governing body votes not to enact the proposed ordinance, or if the governing body votes to enact the proposed ordinance with substantive amendments, the proposed ordinance, in the original form and in the amended form if any, shall be submitted to the registered voters of the Tribe at a Tribal election for their approval or rejection in accordance with Section 5 of this Article.

(b) Referendum.

(1) By action of registered voters. Registered voters of the Tribe may require the governing body to consider the repeal of any ordinance, in accordance with the procedures set forth in this Article, except ordinances concerning the budget of the Tribal government, appropriations of funds, levy of taxes, salaries of Tribal officials, employees or appointees, per capita payments, emergency ordinances or ordinances establishing Tribal businesses. If the governing body fails to repeal such ordinance, the ordinance shall be submitted to the registered voters of the Tribe at a Tribal election for their approval or repeal in accordance with Section 5 of this Article.

(2) By action of the governing body. The governing body, on its own motion, may submit at a tribal election any proposed ordinance or other proposed action of the governing body to a vote of the registered voters of the Tribe for their approval or rejection.

Section 2. Procedure.

(a) Petitioners' Committee. Any registered voters of the Tribe may commence initiative or referendum proceedings by filing with the Tribal Election Board an affidavit (1) stating their names, addresses and the name and address to which all notices regarding the petition are to be sent, and (2) that they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, and (3) if an initiative petition is involved, setting forth in full the proposed ordinance to be subject to this initiative proceeding; *provided that*, referendum proceedings shall be commenced no later than \_\_\_\_ [Calendar? Business?] days after the governing body enacts the ordinance.

(b) Issuance of Petition Forms. Promptly upon filing the affidavit of the petitioners' committee, the Tribal Election Board shall prepare and issue an appropriate number of certified petition forms to the petitioners' committee.

(c) Petitions.

(1) Form and Content. Each petition form issued to the petitioners' committee shall contain the full text of the ordinance in question. Every petition form issued shall be numbered and recorded. Every page of each petition form shall be attached as one instrument, shall be numbered as part of the whole, *i.e.*, page 1 of 10 pages, and shall be certified as a page of the petition by the Tribal Election Board. Every signature on the petition shall be followed by the address of the person who signed.

(2) Number of signatures. Both initiative and referendum petitions must be signed by at least \_\_\_\_ percent of the total number of registered tribal voters.

(3) Affidavit of Circulator. Each petition shall be circulated by one person and upon filing a completed petition, that person shall attach a personal affidavit to the petition stating that he or she personally witnessed the signing of each signature and corresponding address contained in the petition, and that he or she believes each signature and corresponding address to be the name and address of the person who signed them, and that each person who signed the petition read or had explained to him or her the full text of the ordinance in question and the purpose of the petition.

(d) Time for Filing Petitions. Initiative or referendum petitions must be circulated and filed within \_\_\_\_ [Calendar? Business?] days after issuance by the Tribal Election Board.

(e) Certificate of Sufficiency. Within \_\_\_\_ work days after a petition is filed, the Tribal Election Board shall certify as to its sufficiency.

(1) If Certified Insufficient. If the petition is certified insufficient, the Tribal Election Board shall state in the certificate with particularity the reasons it is insufficient. A copy of the certificate of insufficiency shall be promptly sent to the petitioners' committee by registered mail or served personally upon the petitioners' committee. A petition certified insufficient for lack of required number of valid signatures may be supplemented once and for this purpose an appropriate number of petition forms shall be mailed or given personally to the petitioners' committee along with the certificate of insufficiency. Such supplemental petition shall comply with the requirements of this section. Petitioners' committee shall \_\_\_\_ [Calendar? Business?] have days after receipt of the certificate of insufficiency to file a supplemental petition with the Tribal Election Board. Within \_\_\_\_ work days after the filing of the supplemental petition, the Tribal Election Board shall certify as to the sufficiency of the petition as supplemented and promptly send a copy of such certificate to the petitioners' committee by registered mail or shall serve a copy personally upon the petitioners' committee.

(2) If Certified Sufficient. If an original petition or a petition as supplemented in accordance with Section 2(e)(1) of this Article is certified as sufficient by the Tribal Election Board, a copy of the certificate of sufficiency shall promptly be sent by registered mail to or served personally upon the petitioners' committee, and the certificate of sufficiency shall promptly be presented to the governing body.

(f) Review of Determination of Sufficiency. The final determination of the Tribal Election Board in accordance with the procedure in Section 2(e)(1) of this Article that an initiative or a referendum petition is insufficient shall be reviewable as follows: The petitioners' committee must file a request for review with the Tribal Chairperson within \_\_\_\_ [Calendar? Business?] days after receipt of the final certificate notifying them of the insufficiency of their petition. Review shall first be made by the governing body at its next meeting following the filing of the request for review. If the governing body affirms the finding of the Tribal Election Board then that decision may be appealed to the Tribal Judiciary in accordance with the rules of court procedure. Pending a final decision by the Tribal Judiciary, a new petition concerning the same matter may not be commenced.

(g) Withdrawal of Petitions. An initiative or referendum petition may be withdrawn at any time prior to the final certification of sufficiency by filing with the Tribal Election Board a request for withdrawal signed by a majority of the petitioners' committee. The petition shall have no further force or effect and all proceedings thereon shall be terminated.

### Section 3. Referendum Petitions: Suspension of Effect of Ordinance in Question.

When a referendum petition is certified as sufficient by the Tribal Election Board in accordance with the procedure set forth in Section 2 of this Article, the ordinance in question shall be suspended, if in effect, or from taking effect, if not in effect. Such suspension shall terminate if the petitioners' committee withdraws its petition or if a majority of registered voters on submission of the ordinance in question to them vote to retain the ordinance.

### Section 4. Action on Petitions.

(a) Action by Governing Body. When an initiative or referendum petition has been determined sufficient, the governing body shall:

(1) Enact the ordinance as submitted by an initiative petition; or

(2) Repeal the ordinance, or part thereof, referred by a referendum petition; or

(3) Decide to submit the proposal in a petition to the registered voters of the Tribe; *provided, however*, that the governing body may change the detailed language of any proposed initiative ordinance and may affix the title thereto, so long as the general character of the measure will not be substantially altered.

Appropriate action by the governing body shall be taken under this subsection within \_\_\_\_ [Calendar? Business?] days after a referendum petition is certified sufficient, and within \_\_\_\_ [Calendar? Business?] days after an initiative petition is certified sufficient.

(b) Submission to Voters. The election on an initiated or referred ordinance shall be held within [Calendar? Business?] days after the date of the final Tribal Council vote thereon. Copies of the initiated or referred ordinance shall be made available to registered voters of the Tribe not less than work days before the election and also at the polls at the time of the election.



## Section 5. Results of Election.

(a) **Initiative.** If a majority of the registered voters of the Tribe voting on a proposed initiated ordinance vote in its favor, then it shall be considered effective upon certification of the election results. If conflicting ordinances are approved at the same election, then the one receiving the greater number of affirmative votes shall prevail.

(b) **Referendum.** If a majority of the registered voters of the Tribe voting on a referred ordinance vote for repeal, then it shall be considered repealed upon certification of the election results. If a majority of the registered voters of the Tribe voting on a referred ordinance vote to approve such ordinance, then it shall be considered approved upon certification of the election results.

(c) **Voting Percentage requirements.** No Initiative or referendum election shall be effective unless at least \_\_\_\_ percent of the total number of registered voters of the Tribe vote in that election.

## E. Examples

*Example 1: Constitution of the Absentee-Shawnee Tribe of Indians of Oklahoma*

## Article VI

### Section 7. Kinds of Elections.

(b) **Tribal Referendum:** An election conducted by voting at polling places rather than at a General Council meeting. Referendum elections are for the purpose of deciding on issues of major importance which are usually set forth in Tribal Ordinances. This is an opportunity for the voters to participate in making Tribal laws pursuant to this Constitution. A majority of votes cast shall decide the issue. Certain kinds of issues are required by this Constitution to be decided by referendum. The Executive Committee or a General Council meeting may also refer issues or questions to the registered voters for a referendum election. See Article IX.

(c) **Initiative.** A referendum election which is initiated by the registered voters in the manner set forth in Article IX.

(d) **Recall.** An election initiated by the registered voters through a petition for the purpose of voting on whether an elected official should be recalled from office. Upon its receipt of a valid petition as set forth in Article VII, the Election Commission is required to conduct a referendum election to consider recall of an elected official. A majority of ballots cast shall decide the matter. Any resulting vacancy shall be filled pursuant to Article VIII.

## Article IX - Initiative and Referendum

### Section 1. Initiative.

The procedure whereby registered voters may exercise their right to enact legislation that will be binding on the Executive Committee and the Tribe. Upon receipt of a valid petition signed by at least twenty percent (20%) of the registered voters, it shall be the duty of the Election

Commissioner to call and conduct such initiative election within sixty (60) days, presenting to the registered voters for their determination such issues or questions which are set forth in the petition. The decision of the majority of those voting shall be binding on the tribe.

## Section 2. Referendum.

The procedure whereby all registered voters of the tribe have an opportunity to express themselves directly by voting on any enacted or proposed legislation (See Sec. 7(b) of Article VI). Both secret balloting and an opportunity for absentee voting shall be provided in tribal referendum elections pursuant to the Election Ordinance.

### *Example 2: Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada*

## Article II - Popular Participation in Government

### Section 1. Tribal Initiative.

The registered voters of the Tribe shall have the right to propose legislation and vote by secret ballot to determine whether it will be adopted or rejected. Upon receipt of a valid petition signed by at least thirty percent (30%) of the registered voters, the Secretary of the Tribal Council shall direct the Tribal Election Board to call an election to be conducted pursuant to the election ordinance no later than thirty (30) days after receipt of the valid petition; provided, that if the next regular election is six (6) months or less from the date the petition is filed, the balloting on the initiative shall take place at that election. An affirmative vote by a majority of those who cast ballots shall determine whether the proposal is adopted; provided, that at least thirty percent (30%) of the registered voters cast ballots in such election.

### Section 2. Tribal Referendum.

Upon the request of the majority of the members of the Tribal Council, any enacted or proposed ordinance or resolution of the Tribal Council shall be submitted by the Election Board to a popular referendum of registered voters. The registered voters shall by majority vote, in such referendum, decide whether the ordinance or resolution shall thereafter be in effect; provided, that at least thirty percent (30%) of the registered voters shall vote in such referendum.

### Section 3. Band Initiative.

The registered voters of each Band shall have the right to propose legislation within the scope of Band authorities and vote by secret ballot to determine whether it will be adopted or rejected. Upon receipt of a valid petition by at least thirty percent (30%) of the Band's registered voters, the Band Secretary shall direct the Band Election Committee to call an election to be conducted pursuant to the Tribal election ordinance. The election shall be conducted in the manner set forth in Section I of this Article and the same time periods shall apply.

#### Section 4. Band Referendum.

Upon the request of the majority of the members of the Band Council, any enacted or proposed resolution of the Band Council shall be submitted by the Band Election Committee to a popular referendum of the registered voters. The registered voters shall, by majority vote, in such referendum, decide whether the resolution shall thereafter be in effect; provided, that at least thirty percent (30%) of the registered voters shall vote in such referendum.

*Example 3: Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota*

#### Article XIV - Referendum

##### Section 1.

The Tribal Executive Committee, upon receipt of a petition signed by 20 percent of the resident voters of the Minnesota Chippewa Tribe, or by an affirmative vote of eight (8) members of the Tribal Executive Committee, shall submit any enacted or proposed resolution or ordinance of the Tribal Executive Committee to a referendum of the eligible voters of the Minnesota Chippewa Tribe. The majority of the votes cast in such referendum shall be conclusive and binding on the Tribal Executive Committee. The Tribal Executive Committee shall call such referendum and prescribe the manner of conducting the vote.

##### Section 2.

The Reservation Business Committee, upon receipt of a petition signed by 20 percent of the resident voters of the Reservation, or by an affirmative vote of a majority of the members of the Reservation Business Committee, shall submit any enacted or proposed resolution or ordinance of the Reservation Business Committee to a referendum of the eligible voters of the Reservation. The majority of the votes cast in such referendum shall be conclusive and binding on the Reservation Business Committee. The Reservation Business Committee shall call such referendum and prescribe the manner of conducting the vote.

*Example 4: Constitution of the Poarch Band of Creek Indians*

#### Article VIII - Popular Participate in Government

##### Section 1. Initiative

Upon receipt and verification by the Election Board of a petition of at least thirty (30) percent of the General Council of the Poarch Band of Creek Indians a proposed ordinance or resolution made by the people shall be submitted for a vote by the General Council at a regular or special election to be held within sixty (60) days of verification of the petition by the Election Board. The vote of a majority of those actually voting shall be conclusive and binding upon the Tribal Council.

## Section 2. Referendum

Upon the request of two-thirds (2/3) of the total membership of the Tribal Council, any proposed or previously enacted ordinance or resolution of the Tribal Council shall be submitted for a vote by the General Council at a regular or special election to be held within sixty (60) days of the vote by the Tribal Council. The vote by a majority of at least thirty (30) percent of the General Council shall be conclusive and binding upon the Tribal Council.

## Section 3. Recall

Upon receipt and verification by the Election Board of a petition of at least thirty (30) percent of the General Council of the Poarch Band of Creek Indians, resolution for authorization of an election to vote upon adoption of the proposed amendment.

## Section 2.

If adopted by a majority of the qualified voters voting in an election authorized by a Tribal Council Resolution at which election at least thirty (30) percent of those qualified to vote cast their ballots, the amendment shall become effective.

### *Example 5: Constitution of the Confederated Tribes of Siletz Indians of Oregon*

## Article VII - Initiative, Referendum, Recall, and Expulsion

### Section 1. Initiative.

Upon receipt and verification by the Election Board of a petition of at least one-third of the General Council of the Confederated Tribes of Siletz Indians of Oregon, a proposed ordinance or resolution made by the people shall be submitted to a vote of the General Council at a regular or special election to be held within sixty days of verification of the petition by the Election Board. The vote of a majority of those actually voting shall be conclusive and binding upon the Tribal Council.

### Section 2. Referendum.

Upon receipt and verification by the Election Board of a petition of at least one-third of the General Council of the Confederated Tribes of Siletz Indians of Oregon or upon the request of two-thirds of the total membership of the Tribal Council, any proposed or previously enacted ordinance or resolution of the Tribal Council shall be submitted to a vote of the General Council at a regular or special election to be held within sixty days of verification of the petition by the Election Board or vote of the Tribal Council. The vote of a majority of those actually voting shall be conclusive and binding upon the Tribal Council.

### Section 3. Recall.

Upon receipt and verification by the Election Board of a petition of at least one-third of the General Council of the Confederated Tribes of Siletz Indians of Oregon, it shall be the duty of the

Tribal Council to call a special election to consider the recall of the elected tribal official named in the petition. The election shall be held within thirty days of verification of the petition by the Election Board, provided that if the petition is submitted within six months of the next annual election the Tribal Council may direct that the matter be placed on the ballot for that election. If a majority of those actually voting favor the recall of the official, the office shall be declared vacant and filled in accordance with Article VI, Section 6 of this Constitution.

#### Section 4. Expulsion.

The Tribal Council may be a two-thirds vote of the total members of the Tribal Council, after due notice and an opportunity to be heard, expel any Tribal Council member for neglect of duty or gross misconduct. Any member so expelled shall have the right to appeal the expulsion to the Tribal Court with complete review of all matters at issue.

#### Section 5. Ordinance.

Initiative, referendum, recall, and expulsion procedures shall be set by ordinance by the Tribal Council, provided that the procedures shall accord with the elections article of this Constitution where appropriate.

### *Example 6: Constitution of the Mohegan Tribe of Indians of Connecticut*

#### Article XII - Right to Petition

##### Section 1.

The members of The Tribe reserve to themselves the power to propose ordinances and resolutions and to enact or reject the same at the polls independent of the Tribal Council upon petition of thirty-five (35) of the registered voters within seven (7) days of such action.

##### Section 2.

Forty percent (40%) of the registered voters shall (a) have the right by petition to initiate and propose amendments to this Constitution and to propose ordinances and resolutions; and (b) have the right by petition to force the conduct of a referendum on any subject of concern to the members of The Tribe, excepting the question of recall of the elected tribal officials which shall be governed by the provisions of Article VIII.

##### Section 3.

Upon receipt of a petition for an initiative or referendum election, the Tribal Council shall, after ascertaining that forty percent (40%) of the registered voters have signed the petition, cause to be held an election on the question within sixty days of receipt of said petition.

##### Section 4.

Any measure referred to the tribal members by initiative or by referendum shall take effect and be in force when approved by a majority of the votes cast in such election.

## Section 5.

Referendum or initiative petitions filed under this Article shall be accompanied by a cover letter bearing the notarized signatures of at least three sponsors who are members of The Tribe and who are registered to vote in tribal elections, and filed in accordance with any other procedures established by the Tribal Council.

### *Example 7: Constitution of the Cherokee Nation of Oklahoma*

## Article XV - Initiative, Referendum and Amendment

### Section 1.

Notwithstanding the provisions of Article V, the people of the Cherokee Nation reserve to themselves the power to propose laws and amendments to this Constitution and to enact or reject the same at the polls independent of the Council, and also reserve power at their own option to approve or reject at the polls any act of the Council.

### Section 2.

Any amendment or amendments to this Constitution may be proposed by the Council, and if the same shall be agreed to by a majority of all the members of the Council, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered into the Journal and referred by the Secretary-Treasurer to the people for their approval or rejection, at the next regular general election, except when the Council, by a two-thirds (2/3) vote, shall order a special election for that purpose. If a majority of all the registered voters voting at such election shall vote in favor of any amendment thereto, it shall thereby become a part of this Constitution.

### Section 3.

The first power reserved by the people of the Cherokee Nation is the initiative and ten percent of the registered voters shall have the right to propose any legislative measures by petition and fifteen percent (15%) of the registered voters shall the right to propose amendments to the Constitution by petition, and every such petition shall include the full text of the measure so proposed. The second power is the referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety), either by petition signed by five percent of the registered voters or by the Council as other enactments are effectuated. The ratio and percent of registered voters hereinbefore stated shall be based upon the total number of votes cast at the last general election for the officer receiving the highest number of votes at such election.

### Section 4.

Referendum petitions shall be filed with the Secretary-Treasurer not more than ninety (90) days after the final adjournment of the session or meeting of the Council which passed the bill on which the referendum is demanded. The veto power of the Principal Chief shall not extend to measures voted on by the people. All elections on measures referred to the people of the Cherokee

Nation shall be had at the next regular general election except when the Council or the Principal Chief shall order a special election for the express purpose of making such reference. Any measure referred to the people by the initiative shall take effect and be in force when it shall have been approved by a majority of the votes cast thereon and provided that no measure which is required to be approved by the President of the United States or his authorized representative shall be effective until approved.

#### Section 5.

Petitions and orders for the initiative and for the referendum shall be filed with the Secretary-Treasurer and addressed to the Principal Chief of the Cherokee Nation, who shall submit the same to the people. The Council shall make suitable provisions for carrying into effect the provisions of this Article.

#### Section 6.

The referendum may be demanded by the people against one or more items, sections or parts of any enactment of the Council in the same manner in which such power may be exercised against a complete enactment. The filing of a referendum petition against one or more items, sections or parts of an enactment shall not delay the remainder of such act from becoming operative.

#### Section 7.

If two or more amendments are proposed they shall be submitted in such manner that electors may vote for or against them separately.

#### Section 8.

No proposal for the amendment of this Constitution which is submitted to the voters shall embrace more than one general subject and the voters shall vote separately for or against each proposal submitted; provided, however, that in the submission of proposals for the amendment of this Constitution by articles, which embrace a general subject, each proposed article shall be deemed a single proposal or proposition.

*Example 8: Constitution of the Kickapoo Traditional Tribe of Texas*

### Article IX - Popular Participation in Government

#### Section 1. Initiative

Upon receipt of a valid petition signed by at least one hundred (100) eligible votes of the Tribe, it shall be the duty of the Chairman of the Traditional Council to call within forty-five (45) days an initiative election for the purpose of presenting to all qualified voters such issue requested by the initiative, except that no initiative election may be held for the purpose of voting on whether to distribute any tribal funds as per capita payments. The initiative vote shall be conclusive and binding on the Traditional Council provided that at least thirty percent (30%) of the eligible voters

shall vote in the election. No initiative shall serve to abrogate, modify or amend any properly approved contract or agreement.

## Section 2. Referendum

Upon receipt of a valid petition signed by at least one hundred (100) eligible votes of the Tribe, or upon request of a majority of the Traditional Council, any enacted or proposed ordinance or resolution or other action of the Traditional Council shall be submitted to a popular referendum in an election called by the Chairman and held within forty-five (45) days of the receipt of the petition or request. The referendum vote shall be conclusive and binding on the Traditional Council provided that at least thirty percent (30%) of eligible voters shall vote in the election. No referendum shall serve to abrogate, modify or amend any properly approved contract or agreement.

## Section 3.

Whenever possible, any initiative or referendum election shall be held in conjunction with any scheduled regular or special Traditional Council meeting or General Membership Meeting.

## Section 4.

No initiative or referendum which has been submitted to the members and rejected shall be considered again for at least twelve (12) months.

### *Example 9: Constitution and Bylaws of the Upper Skagit Indian Tribe*

## Article VIII - Referendum

Within thirty (30) days of the receipt of a petition of one-third or more of the eligible voters or the written request of the majority of the members of the tribal council, the chairman shall call a special meeting of the general council, to consider any proposed resolution or ordinance or other proposed action of the tribal council. The vote of the majority of the voting membership attending the special meeting will decide whether the proposed ordinance, resolution, or other action shall thereafter be in effect, provided that one-third or more of the eligible voters shall vote on such referendum.

## Article IX - Initiative

The members of the Upper Skagit Tribe may propose a resolution, ordinance, or other action permitted under the tribal constitution by an initiative petition signed by at least one-third of the eligible voters. Within thirty (30) days from the receipt of said petition, the chairman shall call a special general council meeting to vote on the initiative. A majority vote of the voters attending the meeting shall determine whether the initiative shall go into effect, provided that one-third or more of the eligible voters shall vote on the initiative.



*Example 10: Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, Colorado*

Article VI - Referendum

Section 1.

Upon receipt of a petition signed by at least twenty percent (20%) of the registered voters of the Southern Ute Indian Tribe, or upon the adoption of a resolution of the tribal council supported by no less than four (4) members thereof, the tribal council shall direct the election board to call and hold a special election at which the registered voters of the Southern Ute Indian Tribe may vote upon any enacted or proposed ordinance or resolution of the tribal council. Such election shall be held within thirty (30) days following receipt of said petition or adoption of the foregoing resolution by the tribal council. The decision of the tribal electorate shall be final, PROVIDED, that not less than fifty percent (50%) of the registered voters of the Southern Ute Indian Tribe vote in such referendum.

Section 2. Limits of Referendum.

No referendum shall serve to abrogate, modify or amend any properly approved contract or agreement to which the tribal council is a party. Once a referendum has been voted upon and fails, that issue shall not be considered against until twelve (12) months have passed.

Section 3. Procedures.

Special elections for referendum purposes shall be held in conformity with procedures established in the election ordinance of the Southern Ute Indian Tribe.

*Example 11: Constitution and Bylaws of the Chitimacha Tribe of Louisiana*

Article VIII - Referendum

Upon receipt of a petition signed by twenty percent (20%) of the registered voters of the Chitimacha Tribe, or upon request of a majority of the members of the tribal council, any enacted or proposed ordinance or resolution of the council shall be submitted to popular referendum, and the vote of the majority of the registered voters, voting in such referendum, conducted pursuant to Section 3, Article VI, shall be conclusive and binding upon the tribal council.

*Example 12: Constitution and Bylaws of the Menominee Indian Tribe of Wisconsin*

Article VIII - Initiative and Referendum

Section 1. General Authority.

(a) Initiative. Eligible voters of the Tribe may propose any ordinance to the Tribal Legislature for consideration, in accordance with the procedures set forth in this Article, except ordinances concerning the budget of the tribal government, appropriations of funds, levy of taxes, salaries of

tribal officials, employees or appointees, or ordinances establishing tribal businesses. If the Tribal Legislature votes not to enact the proposed ordinance, or if the Tribal Legislature votes to enact the proposed ordinance with substantive amendments, the proposed ordinance, in the original form and in the amended form if any, shall be submitted to the eligible voters of the Tribe at a tribal election for their approval or rejection in accordance with Section 5 of this Article.

(b) Referendum.

(1) By action of eligible voters. Eligible voters of the Tribe may require the Tribal Legislature to consider the repeal of any ordinance, in accordance with the procedures set forth in this Article, except ordinances concerning the budget of the tribal government, appropriations of funds, levy of taxes, salaries of tribal officials and employees or appointees, emergency ordinances, or ordinances establishing tribal businesses. And, if the Tribal Legislature fails to repeal such ordinance, the ordinances shall be submitted to the eligible voters of the Tribe at a tribal election for their approval or repeal in accordance with Section 5 of this Article.

(2) By action of the Tribal Legislature. The Tribal Legislature, on its own motion, may submit at a tribal election any proposed ordinance or other proposed action of the Legislature to a vote of the eligible voters of the Tribe for their approval or rejection.

Section 2. Procedure.

(a) Petitioners' Committee. Any twenty-five (25) eligible voters of the Tribe may commence initiative or referendum proceedings by filing with the Tribal Election Commission an affidavit (1) stating their names, addresses and the address to which all notices regarding the petition are to be sent, and (2) that they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form and (3) if an initiative petition is involved, setting forth in full the proposed ordinance to be subject to this initiative proceeding; provided that, referendum proceedings shall be commenced no later than thirty (30) days after the Tribal Legislature enacts the ordinance.

(b) Issuance of Petition Forms. Promptly upon filing the affidavit of the petitioners' committee, the Tribal Election Commission shall prepare and issue an appropriate number of certified petition forms to the Committee.

(c) Petitions.

(1) Form and Content. Each petition form issued to the committee shall contain the full text of the ordinance in question. Every petition form issued shall be numbered and recorded. Every page of each petition form shall be attached as one instrument, shall be numbered as part of the whole, i.e., page 1 of 10 pages, and shall be certified as a page of the petition by the Tribal Election Commission. Every signature on the petition shall be followed by the address of the person who signed.

(2) Number of signatures. Both initiative and referendum petitions must be signed by at least fifteen percent (15%) of the total number of eligible tribal voters.

(3) Affidavit of Circulator. Each petition shall be circulated by one person and upon filing a completed petition, that person shall attach his or her personal affidavit to the petition stating that he or she personally witnessed the signing of each signature and corresponding address contained in the petition, and that he or she believes each signature and corresponding address to be the name and address of the person who signed them, and that each person who signed the petition read or had explained to him or her the full text of the ordinance in question, and the purpose of the petition.

(d) Time for Filing Petitions. Initiative or referendum petitions must be circulated and filed within thirty (30) days after issuance by the Tribal Election Commission.

(e) Certificate of Sufficiency. Within five (5) work days after a petition is filed, the Tribal Election Commission shall certify as to its sufficiency.

(1) If Certified Insufficient. If the petition is certified insufficient, the Tribal Election Commission shall state in the certificate with particularity the reasons it is insufficient. A copy of the certificate of insufficiency shall be promptly sent to the petitioners' committee by registered mail, or served personally upon the committee. A petition certified insufficient for lack of required number of valid signatures may be supplemented once, and for this purpose an appropriate number of petition forms shall be mailed or given personally to the petitioners' committee along with the certificate of insufficiency. Such supplemental petition shall comply with the requirements of this section. Petitioners' committee shall have fifteen (15) days after receipt of the certificate of insufficiency to file a supplemental petition with the Tribal Election Commission. Within five (5) days after the filing of the supplemental petition, the Tribal Election Commission shall certify as to the sufficiency of the petition as supplemented and promptly send a copy of such certificate to the petitioners' committee by registered mail, or shall serve a copy personally upon a member of the committee.

(2) If Certified Sufficient. If an original petition or a petition as supplemented in accordance with Section 2(e)(1) of this Article is certified as sufficient by the Tribal Election Commission, a copy of the certificate of sufficiency shall promptly be sent by registered mail to or served personally upon the petitioners' committee, and the certificate of sufficiency shall promptly be presented to the Tribal Legislature.

(f) Review of Determination of Sufficiency. The final determination of the Tribal Election Commission in accordance with the procedure in Section 2(e)(1) of this Article that an initiative or a referendum petition is insufficient shall be reviewable as follows: The petitioners' committee must file a request for review with the Tribal Chairperson within ten (10) days after receipt of the final certificate notifying them of the insufficiency of their petition. Review shall first be made by the Tribal Legislature at its next meeting following the filing of the request for review. If the Tribal Legislature affirms the finding of the Tribal Election Commission, that decision may be appealed to the Tribal Judiciary in accordance with the rules of court procedure. Pending a final decision by the Tribal Judiciary, a new petition concerning the same matter may not be commenced.

(g) Withdrawal of Petitions. An initiative or referendum petition may be withdrawn at any time prior to the final certification of sufficiency by filing with the Tribal Election Commission a request for withdrawal signed by a majority of the petitioners' committee. The petition shall have no further force or effect and all proceedings thereon shall be terminated.

### Section 3. Referendum Petitions: Suspension of Effect of Ordinance in Question.

When a referendum petition is certified as sufficient by the Tribal Election Commission in accordance with the procedure set forth in Section 2 of this Article, the ordinance in question shall be suspended, if in effect, or from taking effect, if not in effect. Such suspension shall terminate if the petitioners' committee withdraws its petition or if a majority of eligible voters on submission of the ordinance in question to them for vote, vote to retain the ordinance.

### Section 4. Action on Petitions.

(a) Action by Tribal Legislature. When an initiative or referendum petition has been determined sufficient, the Tribal Legislature shall:

(1) Enact the ordinance as submitted by an initiative petition; or

(2) Repeal the ordinance, or part thereof, referred by a referendum petition; or

(3) Decide to submit the proposal in a petition to the eligible voters of the Tribe; provided, however, that, the Tribal Legislature may change the detailed language of any proposed initiative ordinance and may affix the title thereto, so long as the general character of the measure will not be substantially altered.

Appropriate action by the Tribal Legislature shall be taken under this subsection within fifteen (15) days after a referendum petition is certified sufficient, and within thirty (30) days after an initiative petition is certified sufficient.

(b) Submission to Voters. The election on an initiated or referred ordinance shall be held within thirty (30) days after the date of the final Tribal Legislature vote thereon. Copies of the initiated or referred ordinance shall be made available to eligible voters not less than ten (10) days before the election and also at the polls at the time of the election.

#### Section 5. Results of Election.

(a) Initiative. If a majority of the eligible tribal voters voting on a proposed initiated ordinance vote in its favor, it shall be considered effective upon certification of the election results. If conflicting ordinances are approved at the same election, the one receiving the greater number of affirmative votes shall prevail.

(b) Referendum. If a majority of the eligible tribal voters voting on a referred ordinance vote for repeal, it shall be considered repealed upon certification of the election results. If a majority of the eligible tribal voters voting on a referred ordinance vote to approve such ordinance, it shall be considered approved upon certification of the election results.

(c) Voting Percentage Requirements. No initiative or referendum election shall be effective unless at least fifteen percent (15%) of the total number of eligible voters vote in that election.

*Example 13: Constitution of the Otoe-Missouria Tribe of Indians*

### Article X - Popular Participation in Government

#### Section 1. Initiative.

Upon receipt of a valid petition signed by at least one hundred fifty (150) adult enrolled tribal members, it shall be the duty of the Election Board to call and conduct within sixty (60) days, an initiative election to be conducted at a special meeting of the General Council. Such meeting shall be for the purpose of presenting to the qualified voters for their determination any issue or question, except recall, and as otherwise provided by this Constitution.

A decision by the majority of those voting shall be binding on the Tribal Council until it expires by its own terms or is otherwise changed by action of the voters. A quorum must be present to validate such action. Once an initiative issue has been submitted to the voters and rejected, that same issue shall not again be considered for such action for at least six (6) months.

## Section 2. Referendum.

Upon receipt of a valid resolution supported by an affirmative vote of at least four (4) members of the Tribal Council, the Election Board shall refer to the voters for their determination, such issue requested by the Tribal Council. The referendum may be conducted at an annual or special meeting of the General Council. Except for special meetings called for referendum purposes, it shall not be necessary to give prior notice of the matter being referred to the voters. A majority of those who vote shall decide the issue and such decision shall be binding on the Tribal Council until otherwise changed by the voters; provided, a quorum is present. The Tribal Council's request for a referendum election may include decisions related to those powers reserved to the General Council set forth in Section 2(a) 1 and 2 of Article VIII.

### *Example 14: Constitution of the Skokomish Indian Tribe*

## Article VIII - Initiative

### Section 1. Right of Initiative

Voters of the Skokomish tribe shall have the right to cause a vote of the General Council on any legislation proposed by the voters and on any proposed or enacted ordinance or resolution of the Tribal Council. No later than thirty (30) days after he or she receives a petition signed by at least one-third (1/3) of the eligible voters, the President of the General Council shall call an election according to the procedures for calling special General Council meetings.

### Section 2. Initiative Procedure

Voting on all initiatives shall be by secret, written ballot. No initiative vote shall be valid unless the number of persons casting ballots is equal at least to sixty percent (60%) of the number of persons who cast ballots in the most recent annual tribal election. Unless at least two-thirds (2/3) of all persons who cast ballots vote in favor of the proposed measure or action, the initiative proposal shall be deemed to have failed.

### *Example 15: Constitution of the Jamestown Klallam Tribe of Indians*

## Article V

### Section 6. Initiative.

The qualified voters may proposed legislation by submitting to the Tribal Council, a petition signed by at least one-third (1/3) of the registered voters. Each page of the petition shall contain a description of the proposed enactment. Within thirty (30) days from the Tribal Council's receipt of a valid petition, the Chairperson shall call an election to be held in conjunction with a special meeting of the General Council, making provision for absentee balloting; provided, that if an initiative petition is received within ninety (90) days before the annual meeting of the General Council, the initiative election shall be delayed until that time. A majority of those who vote shall decide the issue; provided, that at least one-third (1/3) of the registered voters cast ballots on the proposed legislation. The decision of the voters shall be

binding on the Tribal Council and the Tribe and shall remain in force until amended or rescinded by subsequent action by the voters, or expire by its own terms.

#### Section 7. Referendum.

The Tribal Council, by an affirmative vote of at least three (3) of its members, shall call an election to be conducted within forty-five (45) days of such Tribal Council decision, for the purpose of deciding issues or questions that are either within the authority of the General Council or those powers vested in the Tribal Council. An affirmative vote by at least a majority of those who vote shall be necessary to decide the issue or question; provided, that no less than one-third (1/3) of the registered voters cast ballots in that election. The decision of the voters shall be binding in the same manner as provided in Section 6 of this Article.

#### Section 8. Recall.

Upon receipt of a valid petition signed by at least one-third (1/3) of the registered voters requesting the recall of an individual official holding an elective office, it shall be the duty of the Tribal Council to call a special election to vote on the recall of that official. Such election shall be held within forty-five (45) days of receipt of the valid petition; provided, that if the petition is submitted within six (6) months of the next annual election, the Tribal Council may direct that the matter be placed on the ballot for that election. If a majority of those actually voting favor the recall of the official, the office shall be declared vacant and filled in accordance with Section 2 of Article VI. No individual shall be subjected to recall more than once during his/her term of office.

#### *Example 16: Constitution of the Choctaw Nation of Oklahoma*

### Article XVI - Initiative and Referendum

#### Section 1.

The members shall have the right to propose any legislative measure by a petition signed by at least thirty percent (30%) of the registered voters. Each such petition shall contain the entire text of the measure proposed. The petition shall be filed with the Chief at least sixty (60) days prior to the next election for Chief at which time it shall appear on the ballot. If such petition is filed more than one (1) year prior to the next election for Chief, a special election shall be called and conducted. If approved by a majority of those participating in the election, it shall be in full force and effect immediately.

#### Section 2.

The Tribal Council by approval of at least eight (8) members, may refer any legislative measure to the members of the Choctaw Nation by directing that said measure be placed on the ballot at the next election for Chief or by calling for a special election. Decisions to refer any matter to the people shall be made at least sixty (60) days prior to the election at which it is presented.

### Section 3.

All petitions for initiative shall be submitted under a cover letter signed by at least three (3) sponsors who are qualified electors of the Choctaw Nation.

*Example 17: Constitution and By-Laws of The Cheyenne-Arapaho Tribes of Oklahoma*

### Article X - Referendum

#### Section 1. Referendum shall be required as follows:

- (a) To approve the sale, exchange, or mortgage of tribal lands.
- (b) To approve the expenditure of tribal monies, the incurrence of tribal indebtedness, or the encumbrance or obligation of tribal assets for any single transaction or purpose amounting to more than \$15,000.00.
- (c) Should a valid petition bearing the signatures of at least 25 council members be submitted to the business committee, the committee shall direct the election board to call and hold, within no less than sixty-five (65) days from the date of receiving the petition, a referendum as directed by the petitioners. Until such referendum is held, action on the issue in question shall be suspended.

#### Section 2.

The majority of votes in any referendum shall be final and conclusive providing one-third (1/3) of the ballots mailed out are returned for counting; and no issue may be subjected again to a referendum for a period of at least six (6) months.

*Example 18: Constitution & Bylaws of the Fort Belknap Indian Community of the Fort Belknap Indian Reservation - Montana*

### Article VI - Initiative and Referendum

Whenever a matter of great importance come before the council the councilmen shall, by resolution duly passed, submit the matter to the vote of the people. If they do not so agree to submit the question, any two members of the council, or one hundred members of the community, may within thirty (30) days after the vote of the council, call such a popular referendum, but no councilman shall call more than two referendum elections during any calendar year. When a referendum election has been called, the question to be voted on shall be posted at the voting places for at least ten (10) days prior to the election. The notice shall contain the ordinance or resolution to be voted on with the accompanying words: "Shall the ordinance (or resolution) be approved. Yes ( ) No ( )." The will of the majority of those voting shall be the law, provided at least one-third (1/3) of the eligible voters actually vote.

*Example 19: Article of Incorporation of the Tunica-Biloxie Indians of Louisiana, Inc.*

Article XV - Initiative and Referendum

Section 1. Powers reserved to members of the band.

The members of the band reserve to themselves the power to propose amendments to these articles of constitution and to propose ordinances and resolutions and to enact or reject the same at the polls independent of the tribal council. The members of the band also reserve power at their own option to approve or reject at the polls any act of the tribal council.

Section 2. Reserved powers -determination of percentages.

The first power reserved by the members of the band is the initiative and fifteen percent of the registered voters shall have the right to propose amendments to this constitution and to propose ordinances and resolutions.

The second power is the referendum and may be ordered upon petition signed by fifteen per centum of the voters.

Section 3. Petitions.

An election on an initiative or referendum petition shall be called by the chairman after ascertaining that sufficient number of registered voters have signed.

Any measure referred to the band by the initiative or by the referendum shall take effect and be in force when approved by a majority of the votes cast in such election in which at least thirty percent (30%) of the registered voters voted.

All measures referred to the band shall begin with the words, (Be it Enacted by the Members of the Tunica-Biloxie Indians of Louisiana, Inc.”

*Example 20: Constitution and Bylaws of the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California*

Article X - Referendum

Section 1.

Upon receipt of a petition signed by the eligible voters of the Colorado River Indian Tribes constituting at least one-third (1/3) of the number of voters who were registered at the last regular tribal election, or upon the request of a majority of the members of the tribal council present at a valid meeting, any enacted or proposed ordinance or resolution shall be submitted to popular referendum within thirty (30) days, and the vote of a majority of the qualified voters in such referendum shall be conclusive and binding on the tribal council, provided that at least thirty (30) per cent of the registered voters shall vote in such election.



*Example 21: Constitution and By-laws with Amendments Incorporated and Enrollment Ordinance No. 1 of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana*

#### Article XIV - Referendum

Upon a petition of at least twenty-five percent (25%) of the eligible voters of the Tribes, or upon request of a majority of the Tribal Executive Board members, any enacted or proposed enactment of the Tribal Executive Board shall be submitted to a popular referendum and the vote of a majority of the qualified voters at that election shall be conclusive.

*Example 22: Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation*

#### Article VIII - Referendum

Upon a petition signed by at least 10 percent of the qualified voters of each community, demanding a referendum on any proposed or enacted ordinance or resolution of the Tribal Business Council, the council shall call an election and the vote of a majority of the qualified voters voting in such referendum shall be binding upon the Tribal Business Council, provided that at least 30 percent of the eligible voters shall vote in such referendum.

*Example 23: Constitution of the Confederated Salish and Kootenai Tribes of the Flathead Reservation*

#### Article IX - Referendum

##### Section 1.

Upon a petition of at least one-third (1/3) of the eligible voters of the Confederated Tribes, or upon the request of a majority of the members of the Tribal Council, any enacted or proposed ordinance or resolution of the Council shall be submitted to a popular referendum, and the vote of a majority of the qualified voters voting in such referendum shall be conclusive and binding on the Tribal Council, provided that at least thirty percent (30%) of the eligible voters shall vote in such election.

*Example 24: Constitution and Bylaws of the Confederated Tribes of the Goshute Reservation, Utah*

#### Article X - Referendum

Upon receipt of a petition signed by at least one-third of the eligible voters of the Confederated Tribes, or upon the request of a majority of the members of the Business Council, any enacted or proposed ordinance or resolution of the Council shall be submitted to a popular referendum and the vote of the majority of the qualified voters voting in such referendum shall be conclusive and binding on the Business Council; Provided, That at least 30 percent of the eligible voters shall vote in such election and provide further that all enacted ordinances and resolutions shall be in effect until rescinded by the Council or by a referendum of the Tribes.



## **P. NON-IMPAIRMENT OF CONTRACTS**

### **A. Considerations.**

This Article prohibits the governing body from enacting any law that retroactively impairs contract rights. It applies only to tribal legislation and not to a tribal judicial decision. This prohibition is found in the Constitution of United States, state constitutions and some tribal constitutions. For tribes, it has become an important consideration since the advent of Indian gaming. Because of the huge sums of financing that a tribe would need to borrow for its gaming enterprise, a lender requires assurances that a contract between it and the tribe will not later be impaired if it lends funds to a tribe. The suggested provision below is very broad, so keep it in mind since your tribe may want to limit the scope of this type of clause.

**Questions:** Should the prohibition be general? Or should it be limited to certain types of contracts such as gaming-related contracts? Should the Article stand alone or should it be included as part of the Civil Rights Article?

### **B. Existing Provision. [to be filled in by tribe]**

### **C. Suggested Provision.**

The Tribe shall enact no law or exercise its police power to impair the obligations of contracts entered into by the governing body of the Tribe or subordinate organizations, agencies, instrumentalities or corporations of the Tribe.

### **D. Examples.**

*Example 1:* MOHEGAN TRIBE- CONTRACT CLAUSE

#### **ARTICLE XIV – Non- Impairment of Contracts**

The Tribe shall enact no law impairing the obligations of contracts entered into in furtherance of development, construction, operation, and promotion of Gaming on tribal lands. Neither the Tribal Council nor any committee, agency, board or other official body, and no officer or official of The Tribe shall, by exercise of the police power or otherwise, act to modify, amend, or in any manner impair the obligations of contracts entered into by the Tribal Council or the Tribal Gaming Authority or other parties in furtherance of the financing, development, construction, operation, or promotion of Gaming on tribal lands without the written consent of the non-tribal parties to such contract. Any such action or attempted action shall be void ab initio. (Const. Amd., 7-15-95).

*Example 2: Pokagon Band Of Potawatomi Indians*

ARTICLE XX - Impairment of Contracts

The Pokagon Band shall not adopt any law, code, or resolution, either through any act of Tribal Council or through the membership, impairing the obligation of any written and properly executed contract of the Band or of any agent, corporation, or member of the Band. Any law, code, or resolution which, by its terms or in effect, would impair the availability of any judicial remedy in such contract shall be considered an impairment of contract.

*Example 3: Snoqualmie Indian Tribe*

ARTICLE XI - § 1 (9) Impairment of Contracts

Section 1. The Snoqualmie Indian Tribe shall not in exercising powers of self-government:

9. Pass any bill of attainder or ex post facto law, or adopt any law, code or Resolution, through any act of the Tribal Council, General Council or other Tribal Entity, impairing the obligation of any legitimately written, authorized, and executed contract of the Tribe or of any valid agent, corporation, or member of the Tribe:

*Example 4: Passamaquoddy Tribe*

ARTICLE IV - INDIVIDUAL RIGHTS

Section 1. Civil Rights

The government of the Pleasant Point Reservation shall not:

- (a) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
- (b) violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable search and seizures, not issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.
- (c) subject any person for the same offense to be twice put in jeopardy;
- (d) compel any person in any criminal case to be a witness against himself or herself;
- (e) take any private property for a public use without due process of law and just compensation;
- (f) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witness against him or her, to have compulsory process for obtaining witnesses in his or her favor, to have the assistance of counsel for his or her defense, and to have counsel appointed for any indigent member in any action in which he or she faces possible incarceration;
- (g) require excessive bail, impose excessive fines, inflict cruel and unusual punishment, or in any event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and a fine of \$5,000 or both, or such other penalties as may be provided by the Indian Civil Rights Act;

- (h) deny to a person subject to its jurisdiction the equal protection of its laws or deprive any persons of liberty or property without due process of law;
- (i) pass any bill of attainder or ex post facto law, or any law impairing the obligation of contracts; and
- (j) deny to any person accused of an offense punishable by imprisonment, the right, upon request, to trial by jury of not less than six (6) persons.

*Example 5: The Constitution Of The Muskogee (Creek) Nation.*

#### ARTICLE VIII.

Sec. 1. No laws impairing contracts shall be passed.

Sec. 2. No laws taking effect upon things that occurred before the enactment of the law shall be passed.

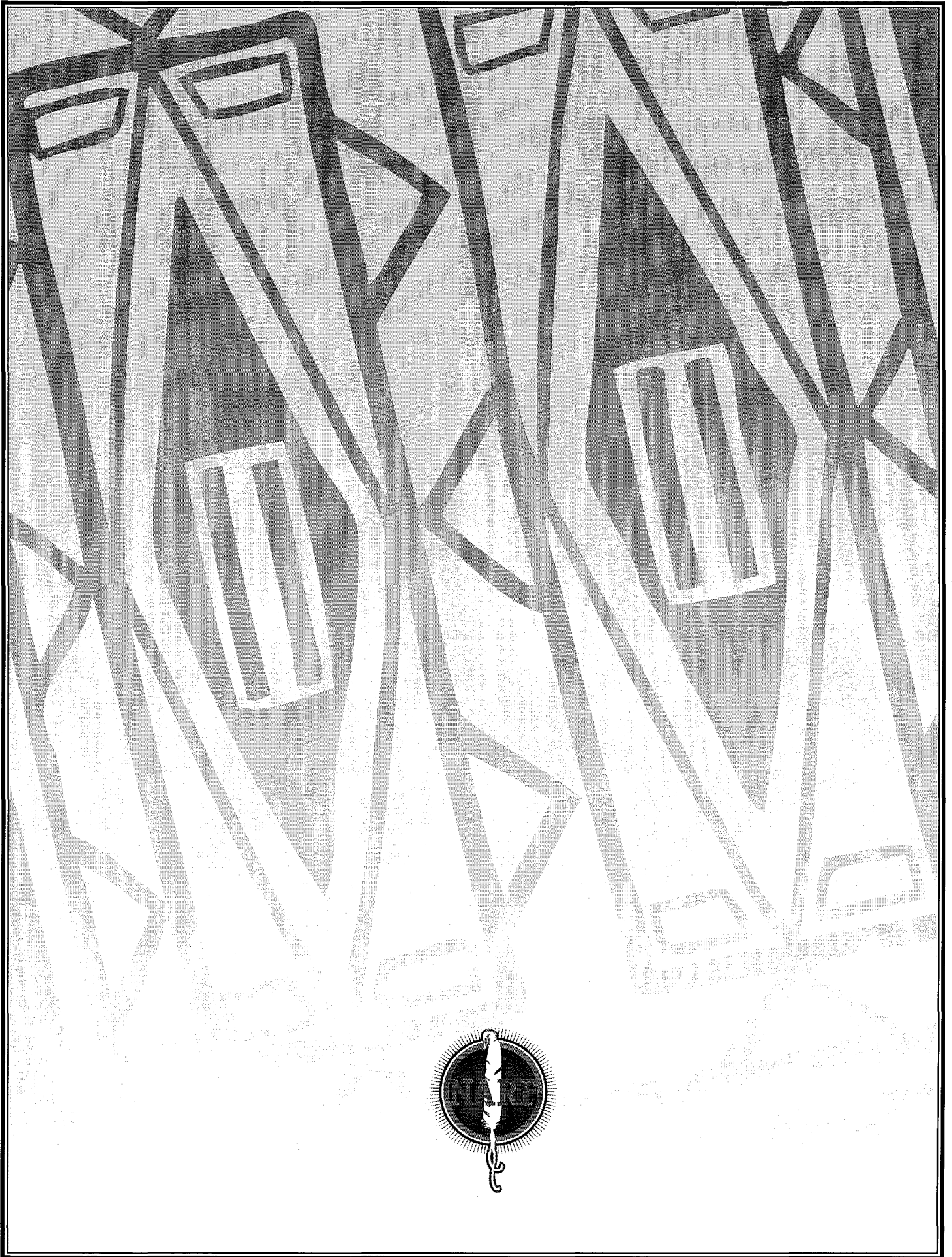
*Example 6: Constitution And Bylaws Of The Mandan, Hidatsa And Arikara Nation*

#### ARTICLE XII - IMPAIRMENT OF CONTRACTS

Section 1. The Legislature and the Legislative Sub-Committee shall not pass any law impairing the obligation of contracts.

*Example 7: Federal Contract Clause*

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.





## Q. AMENDMENTS

### A. Considerations.

#### I. General Considerations.

The purpose of this provision is to establish the way in which the tribal constitution can be amended. As discussed before in this Practical Guide, a constitution is intended to establish a lasting government. Accordingly, the government established by the constitution should have the consent and support of as many of the governed as possible. For these reasons, the percentage of votes required to adopt a constitution is usually at least a majority. For the same reasons, the percentage of votes required to amend the constitution is also usually at least a majority.

Thus, a majority vote of those actually voting in the election to adopt the constitution is required to adopt the Constitution, provided that at least 30 percent, for example, of those registered actually vote. Depending upon which of the two alternatives discussed below you decide to adopt, you may adopt this same voting requirement for the amendment article or adopt a higher voting requirement. The voting history of the tribe, however, should be kept in mind so as not to set an unrealistically high voting requirement.

There are two possible alternatives in drafting a provision governing the adoption of amendments to the Constitution:

Alternative 1. Any tribe that has not voted to reject the IRA under the authority of 25 U.S.C. § 476 may still, in its constitution, authorize the Secretary of the Interior to call and hold elections to amend the constitution as well as establish the procedure by which the Secretary can be requested to do so. By so doing, the tribe would be subject to the same federal regulations that govern elections to amend § 476 tribal constitutions.

Alternative 2. If the tribe decides not to authorize the Secretary to hold amendment elections pursuant to his regulations, the tribe must then provide in the amendment article of the constitution the complete way in which the constitution can be amended. Unless otherwise specified, the provision in the tribal constitution governing general tribal elections will then be applicable to the holding of such elections, as will any tribal election ordinance.

The next part of this discussion will deal in more detail with each of these two alternatives.

### B. The Two Alternatives.

*Alternative 1. Draft an Amendment Article that authorizes the Secretary of the Interior to hold elections to amend the constitution; the Secretary will do so under § 476.*

The tribe may still, in the amendment article of the tribal constitution, provide that amendment elections shall be conducted by the Secretary of the Interior upon request of the tribe. The amendment article may also provide for a petition process by which such a request is made to the Secretary. In such a situation, 25 C.F.R. §§ 81 and 82, discussed below, are applicable to such elections.

The Indian Reorganization Act, 25 U.S.C. § 476 (a) (1), states that the tribal constitution and bylaws, and any amendments thereto:

[S]hall become effective when ratified by a majority vote of the adult members of the tribe . . . at a special election authorized and called by the Secretary under such rules and regulations as the Secretary may prescribe....

Under the authority of the above law, the Secretary has prescribed rules and regulations establishing in detail the procedures governing amendment elections. These rules and regulations are published in Title 25 of the Code of Federal Regulations as Parts 81 and 82. These are readily retrieved on the “web.” The user is urged to check the law since the Regulations change from time to time.

Part 81 sets up detailed procedures governing the holding of amendment elections. The following is a brief overview of the rules contained in Part 81:

1. The Secretary of the Interior must be requested to hold an amendment election. The tribal constitution in the amendment article must establish the procedure by which such a request can be made. (§ 81.5(d))
2. The amendment election will be conducted by the Secretary in the manner prescribed in Part 81, unless the amendment article of the constitution provides otherwise. (§ 81.5(d))
3. The Secretary is authorized to propose amendments to the tribal constitution unless the Constitution expressly denies him that power. (§ 81.5(d))
4. An election board is established that consists of a local BIA representative and two tribal representatives. The board is responsible for conducting the amendment election in accordance with federal regulations. (§ 81.8)
5. To be entitled to vote, a tribal member must satisfy the following requirements:
  - (a) Register with the Election Board (§ 81.6(b)(1), 81.11(a));
  - (b) Be at least 18 years of age (§ 81.6(b)(1), 81.11(a)); and
  - (c) Be a member of the Tribe (§ 81.6(b), 81.11(a)).
6. Absentee ballots are permitted; the form of such ballot is established, as is the procedure for this kind of voting. (§ 81.6(b)(2), 81.19)
7. The Election Board must prepare an official list of registered voters. (§ 81.12)



8. The Election Board hears and makes the final decision before an election on any person's claim that he or she has a right to vote. (§ 81.13)
9. The Election Board must provide tribal voters with notice of a scheduled election not less than 30 and no more than 60 days before the election. (§ 81.14)
10. The Election Board is responsible for providing all eligible tribal voters with a copy of the proposed amendment. (§ 81.14)
11. Polls open from 8 a.m. to 7 p.m., local time, unless the Election Board notices different hours in the election notice. (§ 81.15)
12. Voting is by secret ballot (§ 81.18(a)), and the form of the ballot is prescribed in § 81.20.
13. A voter may challenge the results of an election within three days after announcement of the results by filing with the BIA representative on the Election Board a written statement of the grounds for the challenge along with appropriate evidence. The Secretary reviews and makes a final decision. If the Secretary decides the challenge is valid, he may order a recount or a new election. (§ 81.22)
14. Interpreters may be provided where needed to explain the voting procedures to tribal voters. (§ 81.16)
15. Campaigning is forbidden during voting hours within 50 feet of any voting place. (§ 81.17)
16. The form and procedure for announcing the results of the election is set forth in § 81.23.
17. An amendment is considered adopted if (a) a majority of those actually voting voted in favor of adoption, and (b) the total vote cast is not less than 30 percent of those entitled to vote, unless the constitution provides otherwise. However, the amendment is not considered effective until the Secretary approves its effectiveness, unless otherwise stated in the constitution. (§ 81.7)

Part 82 becomes applicable where the amendment article of a tribal constitution authorizes a petition method of requesting the Secretary to schedule an amendment election. (See number 1 above). Part 82 establishes the form of the petition and the procedure by which it is certified as a valid request for a Secretarial election to amend the tribal constitution.

*Alternative 2. Reject Alternative 1 following the § 476 Constitution Amendment Model and draft an amendment that does not authorize the Secretary of the Interior to hold Amendment Elections.*

If the tribe decides not to adopt an amendment article following the procedures under § 476 of the IRA, the tribe may then draft an amendment article that does not authorize the Secretary of the Interior to hold amendment elections. In such a situation, the amendment article in the constitution must establish a procedure for calling and holding tribal elections to amend the constitution.

Under this alternative, the tribe would, of course, not be bound by federal law and regulations governing the amendment of tribal constitutions. The election requirements

established in the tribal constitution or by tribal ordinance would be applicable to amendment elections, such as voter eligibility requirements. The amendment article could require a percentage of votes greater than a simple majority of those actually voting to adopt a proposed constitutional amendment.

One disadvantage under this alternative is that because the amendment election is a tribal election rather than a Secretarial election, the tribe, rather than the Secretary of Interior, will be responsible for paying all costs incurred in conducting the election. Having said that, the minimal costs may be outweighed by the benefits especially where an amendment is required on quick basis for whatever reasons, especially during this era of tribal economic self-sufficiency where tribes are entering into significant contractual obligations that may require an amendment to the constitution to satisfy investors, bankers, underwriters, financiers, and other such financial people and entities.

## **B. Questions.**

1. Which of the above two alternative approaches to the amendment article is favored?

2. If alternative 1 is favored, you must establish in the amendment article the means by which the Secretary can be requested to call and conduct an amendment election under federal law and regulations. The following questions are relevant to establishing such means:

(a) Should one or more of the following have the power to request an amendment election:

(1) The governing body? Should a special vote requirement be established more than the normal requirement of a majority vote of a quorum? For example, a majority of the entire governing body, or 2/3 or 3/4 of the entire governing body? Should tribal members be able to propose amendments for the consideration and action of the governing body?

(2) A special committee of the governing body? What should be the composition, and voting requirement for such a committee? Should members be appointed by the governing body? What should be the qualifications for these committee members? Should there be a procedure by which tribal members can propose amendments for the consideration of this committee?

(3) A certain number or percentage of tribal members who are qualified to vote in tribal elections by signing a petition. What number or percentage of voter signatures should be required to constitute a valid request by petition for an election?

(b) Should the Secretary be prohibited from proposing amendments to the constitution to be voted upon at the amendment election?

3. If alternative 2 is favored, the following questions arise:

(a) What should be the voting requirement for adoption of a proposed amendment? Majority of those voting? Some percentage more than a majority? Should the

percentage be of all eligible voters rather than voters actually voting? If you favor a percentage of those actually voting, should a minimum number or percentage of voters be required to have voted in order for the proposed amendment to be adopted? You will note that the federal regulations require that 30 percent of all eligible voters vote in order for the election to be effective.

(b) Who should be authorized to propose an amendment and what should the procedure for proposing an amendment be? See the questions under B.1 above.

(c) Should the Secretary be allowed to propose amendments to the tribal constitution for a tribal vote?

(d) What should be the requirements for voter eligibility? Should these be the same as are listed in the election article of the constitution? Should they be registered voters?

(e) Should the amendment article include a special election procedure as detailed as that contained in Part 81 of the federal regulations? Or should the governing body be directed to enforce this article by appropriate legislation, including establishing such election procedures as needed? Or, if the election article sets forth a procedure for tribal elections, should that be applicable to amendment elections? Should certain special provisions be included in the election procedure article, if any, applicable only to amendment elections, such as a higher than usual vote requirement?

(f) Should the initiative procedure be applicable to constitutional amendments?

There is a strong argument that the election procedure should be set forth in the constitution itself, either in the tribal election article or in the amendment article, rather than leaving this to action by the governing body. Amendments to the constitution are so fundamentally important to the well-being of the tribal government that the amendment process should not be dependent upon action by the governing body to enforce it. Rather, the amendment process should be automatic and the amendment article self-executing and, therefore, not dependent on action by the governing body for effectiveness.

If you decide that this article should be self-executing, you must draft election procedures into the constitution.

**C. Existing Provisions.** [to be filled in by tribe]

#### **D. Suggested Provisions.**

##### Article -Amendments

###### OPTION 1:

###### Section 1. Amendments to the Constitution

This Constitution may be amended by a majority vote of the registered voters of the Tribe voting at an election called for that purpose by the Secretary of the Interior, pursuant to 25 C.F.R. §§ 81 and 82, provided at least thirty percent of those registered to vote shall vote in such election. The election shall be conducted in accordance with the rules and regulations set forth in 25 C.F.R. § 81 and in this Constitution.

###### Section 2. Election for Amendments

It shall be the duty of the Secretary of the Interior to authorize an election on any proposed amendment upon receipt of a resolution adopted by at least \_\_\_\_ members of the entire governing body, or upon receipt of a petition signed by at least \_\_\_\_ percent of the registered voters of the Tribe. The Secretary of the Interior shall not propose amendments to this Constitution.

###### OPTION 2:

This Constitution may be amended by a majority vote of the registered voters of the Tribe voting at an election called for that purpose by the governing body provided at least \_\_\_\_ percent of those registered to vote shall vote in such election. The election shall be conducted in accordance with this Constitution.

#### **E. Examples.**

*Example 1: Constitution & Bylaws of the Menominee Indian Tribe of Wisconsin*

##### Article XIX - Amendments to Constitution and Bylaws

This Constitution and Bylaws is adopted pursuant to Section 16 of the Indian Reorganization Act (25 U.S.C. s476, 48 Stat. 987) and may be amended in accordance with the rules and regulations adopted by the Secretary of the Interior pursuant to that section. The Secretary of the Interior shall hold an election on the adoption of an amendment or amendments to this Constitution and Bylaws when requested by a vote of two-thirds (2/3) of the entire Tribal Legislature or by a petition signed by at least three hundred (300) eligible tribal voters and validated in accordance with applicable rules of the Secretary, or if none, with applicable tribal ordinance. The Secretary of the Interior shall not propose amendments to this Constitution and Bylaws.

##### Bylaw VI -Amendments to Bylaws

These Bylaws are an integral part of this Constitution; therefore, these Bylaws shall be subject to amendment in the same manner as the Constitution, in accordance with Article XIX of the Constitution.

*Example 2: Constitution and Bylaws of the Chitimacha Tribe of Louisiana*

Article X - Amendments

Section 1.

This constitution may be amended by a majority of the registered voters of the Chitimacha Tribe, as provided in Section 2 of Article VI, voting in an election authorized for that purpose by the Secretary of the Interior or his authorized representative, provided that at least thirty percent (30%) of those entitled to vote shall cast ballots in such election; but no amendment shall become effective until it is approved by the Secretary of the Interior. Such election shall be conducted pursuant to the Secretary's regulations.

*Example 3: Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, Colorado*

Article XII - Constitutional Amendments

Section 1. This constitution may amended at an election authorized by the Secretary of the Interior :

If, at such election, the amendment is adopted by majority vote of the registered voters of the tribe voting therein, and if the number of ballots cast represents not less than thirty percent (30%) of the registered voters, such amendment shall be submitted to the Secretary of the Interior and, if approved by him, it shall thereupon take effect.

*Example 4: Constitution and Bylaws of the Upper Skagit Indian Tribe*

Article X - Amendments

This constitution and bylaws may be amended by a majority vote of the qualified voters of the tribe voting at an election called for that purpose by the Secretary of the Interior; provided, that at least thirty (30) percent of those entitled to vote shall vote in such election. Amendments shall become effective when approved by the Secretary of the Interior.

It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment upon receipt of a petition signed by one-third of the eligible voters, or by a resolution passed by a majority of the tribal council.

*Example 5: Constitution of the Kickapoo Traditional Tribe of Texas*

Article XII - Amendments

Amendments to this Constitution may be proposed by a valid petition signed by at least one hundred fifty (150) qualified voters, or by a majority vote of the Traditional Council. Upon receipt of a proposed amendment, a special election shall be call by the Secretary of the Interior pursuant to applicable regulations. If in such election at least thirty percent (30%) of eligible voters of the Tribe vote in the election, and the amendment is adopted by a majority vote, it shall be in effect upon approval by the Secretary of the Interior.

*Example 6: Constitution of the Cherokee Nation of Oklahoma*

Article XV. - Initiative, Referendum and Amendment

Section 10.

No amendment or new Constitution shall become effective without the approval of the President of the United States or his authorized representative.

*Example 7: Constitution for the Pueblo of Isleta, New Mexico*

Article XIII - Amendments

This constitution may be amended by a majority vote of the members of the pueblo twenty-one (21) years of age or over, voting for that purpose in an election authorized by the Secretary of the Interior or his authorized representative, provided that at least thirty (30) percent of those entitled to vote shall vote in such election; but no amendment shall become effective until it shall have been approved by the Secretary of the Interior, or his authorized representative. It shall be the duty of the Secretary of the Interior or his authorized representative to authorize an election on any proposed amendment at the request of a majority of the council or upon receipt of a petition signed by at least one-third (1/3) of the voters eligible to vote on said amendment.

*Example 8: Constitution of the Mohegan Tribe of Indians of Connecticut*

Article XVII - Amendment

Except as provided for in Article XIII and Article XIV, this Constitution may be amended in the same manner as that set forth in Article XVI, provided that the Chair of the Tribal Council shall call an election to amend the Constitution as requested by the Council of Elders.

*Example 9: Constitution of the Confederated Tribes of Siletz Indians of Oregon*

Article VIII - Amendment

This Constitution may be amended by a majority vote of the qualified voters of the Confederated Tribes of Siletz Indians of Oregon voting at an election called for that purpose by the Secretary of the Interior. The election shall be conducted in accordance with rules and regulations as set forth by the Secretary of the Interior. It shall be the duty of the Secretary of the Interior to authorize an election on any proposed amendment at the request of the majority of the

Tribal Council, or upon the presentation of a petition signed by at least one-third of the General Council. The Secretary of the Interior may not authorize elections to amend this Constitution without consent of the Tribal Council.

*Example 10: Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota*

Article XII - Amendment

Section 1.

This constitution may be revoked by Act of Congress or amended or revoked by a majority vote of the qualified voters of the Tribe voting at an election called for that purpose by the Secretary of the Interior if at least 30 percent of those entitled to vote shall vote. No amendment shall be effective until approved by the Secretary of the Interior. It shall be the duty of the Secretary to call an election when requested by two-thirds of the Tribal Executive Committee.

*Example 11: Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada*

Article 13 - Amendments

Section 1. Amendments to the Constitution.

This Constitution may be amended by a majority vote of the qualified voters of the Tribe who cast ballots in an election called for that purpose by the Secretary of the Interior and conducted pursuant to his/her regulations; provided, that at least thirty percent (30%) of those duly registered to vote shall cast ballots in such election; but no amendment shall become effective until it is approved by the Secretary of the Interior or his authorized representative.

Section 2. Election for Amendments.

It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment upon receipt of a resolution adopted by two-thirds (2/3) of the entire Tribal Council or upon receipt of a petition signed by at least twenty-five percent (25%) of the registered voters of the Tribe.

*Example 12: Constitution of the Absentee-Shawnee Tribe of Indians of Oklahoma*

Article VI

(f) Constitutional Amendment.

Conducted by the Bureau of Indian Affairs pursuant to regulations of the Secretary of the Interior and the provisions of Article XII of this Constitution.

Article XII - Amendments

Amendments to this Constitution may be proposed by a resolution of the Executive Committee, or by a petition signed by at least twenty percent (20%) of the registered voters of the Tribe, and if approved by the Secretary of the Interior, shall be submitted to a referendum vote conducted pursuant to the Secretary's regulations and shall be effective if ratified by a majority vote of those who cast ballots, provided at least twenty percent (20%) of those registered to vote, cast ballots in such election.

*Example 13: Constitution and Bylaws of the Confederated Tribes of the Goshute Reservation, Utah*

#### Article XI - Amendments

Amendments to the Constitution and Bylaws may be ratified and approved in the same manner as this Constitution and Bylaws. Whenever the Business Council shall be a vote of four or more members call for the submission of an amendment, the Secretary of the Interior shall call for an election upon the proposed amendment. If at such election the amendment is adopted by a majority of the qualified voters of the Tribes voting thereon, and if at least 30 percent of those entitled to vote shall vote in such election, such amendment shall be submitted to the Secretary of the Interior and if approved by him, shall thereupon take effect.

*Example 14: Constitution of the Confederated Salish and Kootenai Tribes of the Flathead Reservation*

#### Article X - Amendments

##### Section 1.

This Constitution and Bylaws may be amended by a majority vote of the qualified voters of the Confederated Tribes voting at an election called for that purpose by the Secretary of the Interior, provided that at least thirty percent (30%) of those entitled to vote shall vote in such election; but no amendment shall become effective until it shall have been approved by the Secretary of the Interior. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment, at the request of two-thirds of the Council, or upon presentation of a petition signed by one-third (1/3) of the qualified voters, members of the Confederated Tribes.

*Example 15: Constitution and Bylaws with Amendments Incorporated and Enrollment Ordinance No. 1 of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana*

#### Article XV - Amendment

This Constitution and Bylaws may be amended by a majority vote of the qualified voters of the Tribes voting at an election called for that purpose by the Tribal Executive Board or General Council or under the provisions of Article XIV of this Constitution. (Amended No. 6 approved 08/13/88.)

#### Article V - Amendments

##### Section 1. Amendment.



Amendment of these By-Laws shall become effective upon adoption of a resolution approved in writing by the Tribal Executive Board. Written amendments shall be officially mailed to each Board of Directors at least two weeks prior to the next scheduled meeting, along with a copy of the current Constitution and By-Laws.

*Example 16: Articles of Incorporation of the Tunica-Biloxie Indians of Louisiana, Inc.*

#### Article XVI - Amendments

These articles and bylaws may be amended by a majority vote of the qualified voters of the tribe voting at an election called for that purpose provided that at least thirty (30%) percent of those entitled to vote shall vote in such election; but no amendment shall become effective until it shall have been approved by the tribal council.

The Board of Directors shall, at any meeting with a quorum present, have the power to make, amend and repeal bylaws for the governing and regulating of the affairs of the corporation; provided only that same be not inconsistent with the Articles and Louisiana Law. All actions relating to the bylaws shall require a two-thirds (2/3) vote of directors present and voting.

THUS DONE AND SIGNED before me, Notary and undersigned competent witness on the date first above written, after due reading of the whole.

WITNESSES:

NOTARY PUBLIC

*Example 17: Constitution and By-Laws of the Agua Caliente Band of Cahuilla Indians, California -Amended June 1, 1977*

#### Article VIII - Adoption and Amendments

This Constitution and By-laws shall be in full force and effect when adopted by a majority vote of the duly qualified members of the Agua Caliente Band of Mission Indians at the annual election or at any special election called for that purpose. Written notice specifying the purpose of the election shall be mailed to each member of the Band at least five days prior to said election. Amendments to the Constitution and By-laws may be made in the same manner.

*Example 18: Constitution and Bylaws of the Confederated Tribes of the Umatilla Reservation in Oregon*

#### Article VII - Amendments

This Constitution and By-laws may be amended by a majority vote of the members of the General Council at an election called for that purposed by resolution of the Board of Trustees or majority vote of the General Council, provided that such amendment receives at least fifty (50) affirmative votes. The notice of said election shall set forth the proposed amendment in full. No

amendment shall become effective until approved by the Secretary of the Interior or his authorized representative.

*Example 19: Constitution and By-Laws of the Cheyenne-Arapaho Tribes of Oklahoma*

Article XIII - Amendments

Amendments to this constitution and by-laws may be proposed by the majority vote of the tribal council at an annual or special council meeting; and, if approved by the Secretary of the Interior, shall be submitted to a referendum vote of the members of the tribes and shall be effective if approved by a majority vote of those voting.

*Example 20: Constitution of the Timbisha Shoshone Indian Tribe, Inyo County, Death Valley, California*

Article XVI - Amendments

This document may be amended by a majority vote of the eligible voters of the Tribe in an election called for that purpose by the Secretary of the Interior, provided that at least fifty percent (50%) of those entitled to vote shall vote in such election. Amendments adopted in this way may be submitted for approval to the Secretary of the Interior. The Secretary-Treasurer shall call an election on a proposed amendment to the document upon receipt of a petition signed by at least one-third (1/3) of the eligible voters of the Tribe or upon receipt of a resolution of the Tribal Council.

*Example 21: Constitution of the Choctaw Nation of Oklahoma*

Article XVIII - Amendment

Section 1.

Amendments to this Constitution may be proposed by the Tribal Council and shall require at least eight (8) affirmative votes by a petition containing the entire text of the amendment and signed by not less than thirty percent (30%) of the total number of qualified voters voting in the last Chief's election.

Section 2.

Adoption by not less than fifty-one (51%) of the total number of qualified voters of the Nation voting in the last Chief's election shall be required to amend this Constitution. Amendments shall be effective upon approval by the Secretary of the Interior.

*Example 22: Constitution of the Jamestown Klallam Tribe of Indians*

Article X - Amendments

This Constitution may be amended by a majority vote of the qualified voters of the Tribe voting at an election called for that purpose by the Secretary of the Interior and conducted

pursuant to Federal Regulations (25 CFR Part 81); provided, that at least thirty (30%) percent of those entitled to vote shall vote in such election. Amendments shall become effective when approved by the Secretary of the Interior.

It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment upon receipt of a valid petition signed by at least one-third (1/3) of the qualified voters, or by a resolution passed by an affirmative vote of at least three (3) members of the Tribal Council.

*Example 23: Amended Constitution of the Yankton Sioux Tribal Business and Claims Committee*

#### Article XI - Amendments

##### Section 1.

An amendment to this Constitution may be proposed at any regular or special Tribal meeting by vote of majority of the members present at such meeting in favor of any proposed amendment. To officially adopt such proposed amendments there must be an election as to which there shall be written notices posted at proper places throughout the reservation at least thirty (30) days and not more than sixty (60) days in advance of the date such amendment is to be considered, such notices to give the time and place of the meeting and also the specify what the proposed amendment is.

##### Section 2.

The final procedure on any proposed amendments shall be voting by secret ballot at a polling place, time and place of such voting to be determined and designed by the Committee.

##### Section 3.

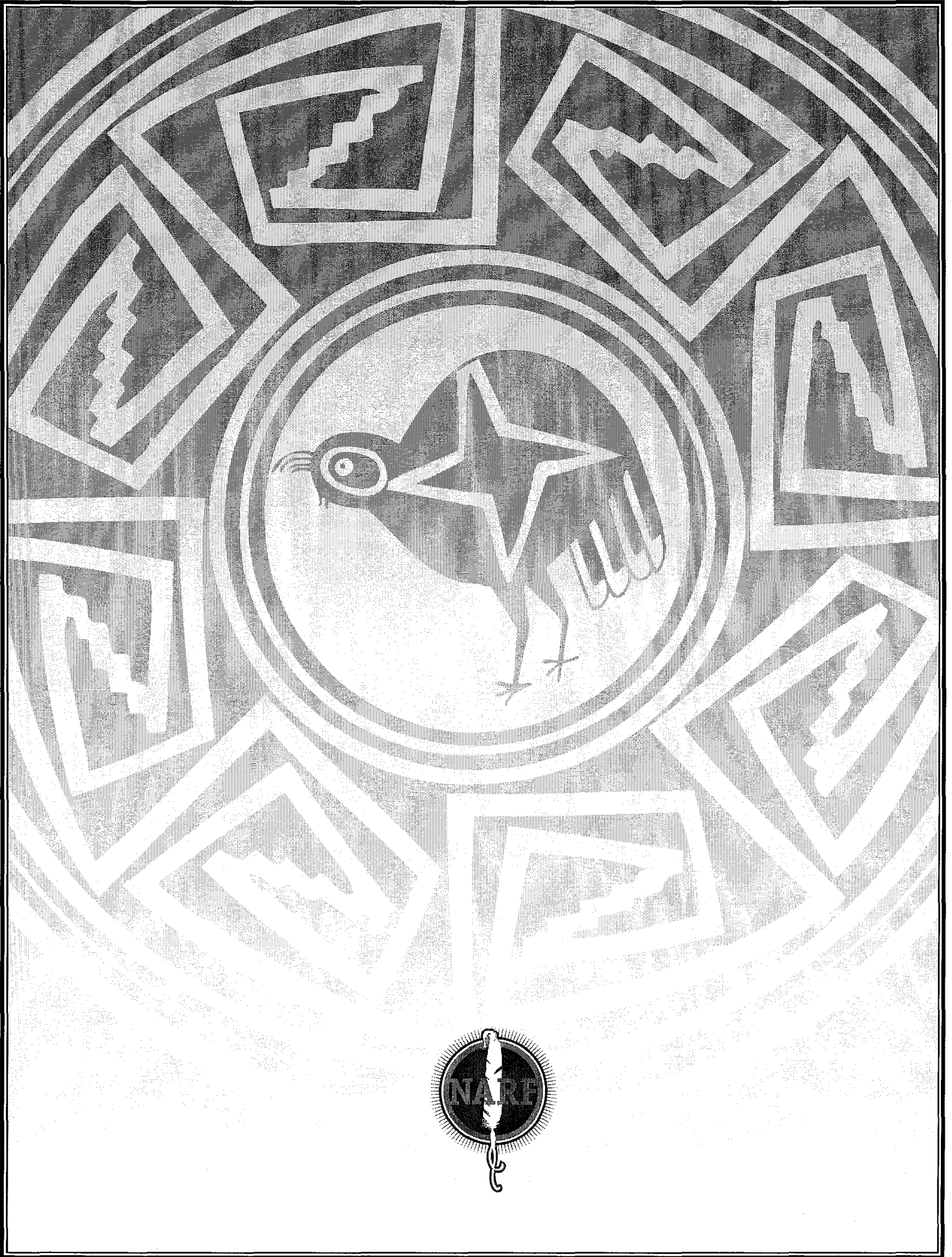
All eligible voters of the Tribe may vote on any proposed amendment by presenting themselves at the polling place.

##### Section 4.

All or any part of this Constitution is subject to amendment repeal or ratification subject to the approval of the Secretary of the Interior.

#### Article XIII - Amendments

Section 1. The procedure for amending these By-Laws shall be in accordance with ARTICLE II of the Constitution.



## **R. CERTIFICATE OF RESULTS OF ELECTION AND SAVINGS**

### **A. Considerations.**

A constitutional provision that clarifies the conditions upon which the new constitution will become effective is necessary, especially when these matters are not dictated by federal law. Many constitutions adopted under federal law, however, incorporate that law into the constitution. *See, e.g.,* Chitimacha Constitution adopted under the IRA.

### **B. Existing Provision. [to be filled in by tribe]**

### **C. Suggested Provision.**

#### Article -Adoption and Certification of Election Results

This Constitution, when adopted by a majority vote of the registered voters of the Tribe voting in an election called for that purpose by the governing body, in which at least \_\_\_\_ percent of those eligible to vote shall cast their ballots, shall be effective from the date the governing body certifies by resolution the election results adopting this Constitution.

### **D. Examples.**

*Example 1: Constitution & Bylaws of the Menominee Indian Tribe of Wisconsin.*

#### Article XX - Adoption of Constitution and Bylaws

This Constitution and Bylaws, when adopted by a majority vote of the eligible voters of the Menominee Indian Tribe of Wisconsin, voting in an election called for that purpose by the Secretary of the Interior, in which at least thirty percent (30%) of those entitled to vote shall cast their ballots, and submitted to the Secretary of the Interior for his approval, shall be effective from the date of approval.

*Example 2: Constitution and Bylaws of the Chitimacha Tribe of Louisiana.*

#### Article III - Adoption

This constitution was drafted November 22, 1969, by the following council members: Chairman Leonard Stouff, Vice-Chairman Leroy Burgess, Secretary-Treasurer Leslie Proctor, Councilman Alvin Vilcan, and Councilman Archie Vilcan. When adopted by a majority vote of the registered voters of the Chitimacha Tribe voting in a special election authorized by the Secretary of the Interior in which at least thirty percent (30%) of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his approval and shall be in force from the date of such approval in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended by the Act of June 15, 1935 (49 Stat. 378).

## Certificate of Results of Election

Pursuant to an election authorized by Acting Associate Commission, Flore Lekanof of Indian Affairs on June 23, 1970, under delegated authority, the attached Constitution and By-Laws of the Chitimacha Indians of Louisiana was submitted to the qualified voters of the Tribe and was on November 7, 1970 duly adopted by a vote of 85 for, and 6 against, in an election in which at least 30 percent of the 139 members entitled to vote cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

*Example 3: Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, Colorado.*

### Article XV - Adoption of Constitution

This constitution when adopted by a majority vote of the qualified voters of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, voting at a special election authorized by the Secretary of the Interior, in which at least thirty percent (30%) of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his approval and shall be in force from the date of such approval.

Ignacio, Colorado  
September 26, 1975

Commissioner Bureau of Indian Affairs  
U.S. Department of Interior  
1951 Constitution Avenue, N.W.  
Washington, D.C.

Certificate of results of election pursuant to an election authorized by the Secretary of Interior on August 13, 1975 was submitted to the qualified voters of the tribe and was on September 26, 1975 duly adopted by a vote of 92 for and 55 against in which at least 30 percent of the 268 members entitled to vote cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the act of June 15, 1935 (49 Stat. 378).

*Example 4: Constitution and Bylaws of the Upper Skagit Indian Tribe.*

### Article VII - Adoption of Constitution and Bylaws

If this constitution and bylaws is ratified by a majority of the qualified voters of the Upper Skagit Indian Tribe in an election called for that purpose by the Secretary of the Interior and at least thirty (30) percent of those qualified vote in such an election, the constitution shall be submitted to the Secretary of the Interior and shall be effective upon approval by the Secretary or his authorized representative.

Amendments I, II, III, & IV Adopted by Tribe on March 26, 1977 Approved by Area Director on

April 8, 1977

## Article II -Certification of Election

It shall be the duty of the tribal council, or a board appointed by it, to certify the election of the newly-elected tribal council members within five days after the election, and thereupon they shall be notified by the secretary of the council of their election.

*Example 5: Constitution of the Kickapoo Traditional Tribe of Texas.*

## Article XV - Adoption

This Constitution, when adopted by a majority vote of the qualified voters of the Kickapoo Traditional Tribe of Texas voting in an election called for that purpose by the Secretary of the Interior, and conducted pursuant to federal regulations, provided, that at least thirty percent (30%) of those entitled to vote cast ballots in that election, shall become effective when approved by the Secretary of the Interior.

## Article XVI - Certification of Results of Election

Pursuant to an order issued by John Geary, Acting Deputy to the Assistant Secretary of the Interior, Indian Affairs, on April 21, 1989, the Constitution of the Kickapoo traditional Tribe of Texas, was submitted for adoption to the qualified voters of the Kickapoo Traditional Tribe of Texas and was on May 27, 1989 duly adopted by a vote of 132 for, and 15 against, in an election in which at least thirty percent (30%) of the 198 persons entitled to vote cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934, (48 Stat. 984), as amended.

*Example 6: Constitution of the Cherokee Nation of Oklahoma.*

## Article XVIII - Adoption

This constitution shall become effective when approved by the President of the United States or his authorized representative and when ratified by the qualified voters of the Cherokee Nation at a election conducted pursuant to rules and regulations promulgated by the Principal Chief. It shall be engrossed on parchment and signed by the Principal Chief and the Secretary of the Interior. It shall be filed in the office of the Cherokee Nation and sacredly preserved as fundamental law of the Cherokee Nation.

*Example 7: Constitution of the Mohegan Tribe of Indians of Connecticut.*

## Article XVI - Adoption

Except as provided for in Article XIII and Article XIV, this Constitution shall take effect if and when adopted by a majority of all votes cast, where at least thirty percent (30%) of the registered voters of The Tribe have voted, in a special election called for that purpose by the Tribal Chair.

*Example 8: Constitution of the Confederated Tribes of Siletz Indians of Oregon.*

Article IX - Adoption

This Constitution, when adopted by a majority of the qualified voters of the Confederated Tribes of Siletz Indians of Oregon who actually vote at an election called for that purpose by the Secretary of the Interior, shall be submitted to the Secretary of the Interior for his approval, and shall be effective from the date of approval.

*Example 9: Constitution of the Poarch Band of Creek Indians.*

Article XI - Adoption

This Constitution, when adopted by a majority of vote of the qualified voters of the Poarch Band of Creek Indians voting at an election called by the Tribal Council, in which at least thirty (30) percent of those entitled to vote shall cast their ballots, shall be adopted upon certification of the Tribal Election Board.

*Example 10: Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada.*

Article 12 - Adoption of Constitution

Section 1. Adoption.

This Constitution shall become effective when adopted by a majority vote of the qualified voters who cast ballots at an election called and conducted pursuant to regulations of the Secretary of the Interior for the purpose of adopting this Constitution; provided, that at least thirty percent (30%) of those registered to vote, cast their ballots and the Secretary of the Interior shall have approved the same. This Constitution shall become effective on the date of such approval.

Section 2. First Election.

- (a) Incumbent members of the governing body on the effective date of this Constitution shall continue to serve until replaced in accordance with this Section.
- (b) Within sixty (60) days following the effective date of this Constitution, a special election shall be called and conducted by the incumbent governing body to choose persons for Band Councils. A subsequent election shall be held within thirty (30) days, thereafter, to elect a Tribal Chairperson.
- (c) The first election shall be conducted pursuant to regulations of the existing governing body which shall comply with provisions of this Constitution as much as possible.



### Section 3. Savings Clause.

All ordinances, resolutions and other expressions of policy of the Tribe or the Band Councils of whatever nature predating the effective date of this Constitution are ratified and continued in full force and effect if such are consistent with this Constitution.

### Section 4. Prior Disharmonious Actions Nullified.

The Constitution and Bylaws of the Te-Moak Bands of Western Shoshone Indians, Nevada, approved August 24, 1938, is hereby superseded.

### Article 14 - Certification of Results of Election

Pursuant to an order issued on April 30th, 1982 by John W. Fritz, Deputy Assistant Secretary -Indian Affairs (Operations), this Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada, was submitted for adoption to the qualified voters of the Tribe and was on August 17th, 1982, duly adopted by a vote of 64 for and 43 against, in an election in which at least thirty percent (30%) of the 193 entitled to vote, cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended by the Act of June 15, 1935 (49 Stat. 378).

*Example 11. Constitution and Bylaws of the Seneca-Cayuga Tribe of Oklahoma.*

### Article V - Adoption

This Constitution and Bylaws shall be effective when approved by the Secretary of the Interior and ratified by a majority vote of the Indians of the Seneca-Cayuga Tribe voting at an election called by the Secretary of the Interior under regulations which he may prescribe pursuant to Section 3 of the Oklahoma Indian Welfare Act of June 26, 1936.

### Certificate of Results of Election

Pursuant to an order approved November 20th, 1972, by the Acting Commissioner of Indian Affairs, the attached Amendment I to the Constitution and Bylaws of the Seneca-Cayuga Tribe of Oklahoma was submitted for ratification to the adult members of the Seneca-Cayuga Tribe, and was on 28<sup>th</sup> January, 1973, duly ratified by a vote of 22 for, and 9 against, in an election in which 32 cast their ballots in accordance with Article XI of the constitution and Section 3 of the Act of June 26, 1936 (49 Stat. 1967). One (1) ballot was left blank.

Pursuant to an order approved November 20th, 1972, by the Acting Commissioner of Indian Affairs, the attached Amendment II to the Constitution and Bylaws of the Seneca-Cayuga Tribe of Oklahoma was submitted for ratification to the adult members of the Seneca-Cayuga Tribe, and was on 28th January, 1973, duly ratified by a vote of 29 for, and 3 against, in an election in which 32 cast their ballots in accordance with Article XI of the constitution and Section 3 of the Act of June 26, 1936 (49 Stat. 1967).

Pursuant to an order approved November 20th, 1972, by the Acting Commissioner of Indian Affairs, the attached Amendment III to the Constitution and Bylaws of the Seneca-Cayuga Tribe of Oklahoma was submitted for ratification to the adult members of the Seneca-Cayuga Tribe, and was on 28th January, 1973, duly ratified by a vote of 30 for, and 2 against, in an election in which 32 cast their ballots in accordance with Article XI of the constitution and Section 3 of the Act of June 26, 1936 (49 Stat. 1967).

*Example 12: Articles of Incorporation of the Tunica-Biloxie Indians of Louisiana, Inc.*

### Article III - Adoption

These revised articles and bylaws, were adopted by a majority vote of the adult members of the Tunica-Biloxie Indians of Louisiana, Inc., in which at least thirty (30%) percent of those entitled to vote, voted, shall be in force from date of such approval. Certificate of Results of Elections

Pursuant to an election on 26th October, 1974, the attached Articles and Bylaws of the Tunica-Biloxie Indians of Louisiana, Inc., was submitted to the qualified voters of the tribe and was duly adopted by a vote of 100% in an election in which at least 100% of the members entitled to vote cast their ballots.

*Example 13: Constitution and Bylaws of the Agua Caliente Band of Cahuilla Indians of California. Amended June 1, 1977.*

### Article VIII - Adoption and Amendments

This Constitution and Bylaws shall be in full force and effect when adopted by a majority vote of the duly qualified members of the Agua Caliente Band of Mission Indians at the annual election or at any special election called for that purpose. Written notice specifying the purpose of the election shall be mailed to each member of the Band at least five days prior to said election. Amendments to the Constitution and Bylaws may be made in the same manner.

*Example 14: Constitution of the Skokomish Indian Tribe.*

### Article X - Adoption

This constitution shall take effect when it has been adopted by a majority of the qualified voters at an election called by the Secretary of the Interior in which at least fifty percent (50%) of those entitled to vote cast ballots and when the constitution has been approved by the Secretary of the Interior.

### Certificate of Results of Election

Pursuant to an order issued on September 7, 1979, by the Acting Deputy Commissioner of Indian Affairs, the foregoing Constitution of the Skokomish Indian tribe was submitted for adoption to the qualified voters of the tribe and was on January 15, 1980 duly adopted by a vote of 41 for and 21 against, in a election which at least fifty percent (50%) of the 95 entitled to vote

cast their ballots in accordance with Article X of the existing Constitution of the Skokomish Indian Tribe and Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 982) as amended by the Act of June 15, 1935 (49 Stat. 378).

*Example 15: Constitution of the Absentee-Shawnee Tribe of Indians of Oklahoma.*

#### Article XIX - Ratification

This Constitution shall be effective when approved by the Secretary of the Interior, or his authorized representative, and ratified by a majority of the General Council of the tribe voting in an election authorized by the Secretary of the Interior and conducted under regulations promulgated pursuant to Section 3 of the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967).

#### Certificate of Results of Election

Pursuant to an order approved February 4, 1977, by the Acting Deputy Commissioner of Indian Affairs, the foregoing Constitution of the Absentee-Shawnee Tribe of Indians of Oklahoma was submitted for ratification to the adult members of the Absentee-Shawnee Tribe of Indians of Oklahoma and was on June 4, 1977, duly ratified by a vote of 95 for, and 77 against, in an election in which a majority of the 172 qualified voters cast their ballots in accordance with Article X of the tribe's constitution and Section 3 of the Act of June 26, 1936 (49 Stat. 1967).

*Example 16: Constitution and Bylaws of the Chippewa Cree Indians of the Rocky Boy's Reservation in Montana.*

#### Certificate of Results of Election -Amendment I

Pursuant to an election authorized by the Deputy Commissioner of Indian Affairs on March 30, 1972, under delegated authority, the attached Amendment II to the Constitution and Bylaws of the Chippewa Cree Tribe of the Rocky Boy's Reservation, Montana, was submitted to the qualified voters of the tribe and was on April 24, 1972, duly (adopted) by a vote of 78 for, and 55 against, in an election in which at least thirty (30) percent of the 278 entitled to vote cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

#### Certificate of Results of Election -Amendment II

Pursuant to an election authorized by the Deputy Commissioner of Indian Affairs on March 30, 1972, under delegated authority, the attached Amendment III to the Constitution and Bylaws of the Chippewa Cree Tribe of the Rocky Boy's Reservation, Montana, was submitted to the qualified voters of the tribe and was on April 22, 1972, duly (adopted) by a vote of 67 for, and 66 against, in an election in which at least thirty (30) percent of the 278 entitled to vote, cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

### Certificate of Results of Election -Amendment III

Pursuant to an election authorized by the Deputy Commissioner of Indian Affairs on March 30, 1972, under delegated authority, the attached amendment VI to the Constitution and Bylaws of the Chippewa Cree Tribe of the Rocky Boy's Reservation, Montana, was submitted to the qualified voters of the tribe and was on April 22, 1972, duly (adopted) by a vote of 80 for, and 53 against, in an election in which at least thirty (30) percent of the 278 entitled to vote, cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 25, 1935 (49 Stat. 378).

### Certificate of Results of Election -Amendment IV

Pursuant to an election authorized by the Deputy Commissioner of Indian Affairs on March 30, 1972, under delegated authority, the attached Amendment VII to the Constitution and Bylaws of the Chippewa Cree Tribe of the Rocky Boy's Reservation, Montana, was submitted to the qualified voters of the tribe and was on April 22, 1972, duly (adopted) by a vote of 79 for, and 51 against, in an election in which at least thirty (30) percent of the 278 entitled to vote, cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

### *Example 17: Constitution of the Otoe-Missouria Tribe of Indians.*

#### Article XVII - Certificate of Approval

I, John W. Fritz, Deputy Assistant Secretary -Indian Affairs (Operations) by virtue of the authority granted to the Secretary of the Interior by the Act of June 26, 1936 (49 Stat. 1967), as amended, and delegated to me by 209 D.M. 8.3, do hereby approve this Constitution of the Otoe-Missouria Tribe of Indians. It shall become effective upon ratification by the qualified voters of the Tribe in an election in which at least thirty percent (30%) of those entitled to vote cast ballots; provided, that nothing in this approval shall be construed as authorizing any action under this Constitution that would be contrary to Federal Law.

#### Article XVIII - Certificate of Ratification

Pursuant to an order approved by John W. Fritz, Deputy Assistant Secretary -Indian Affairs (Operations), on October 6, 1983, this Constitution of the Otoe-Missouria Tribe of Indians was submitted for ratification to the qualified voters of the Otoe-Missouria Tribe of Indians and was on February 4, 1984, duly ratified by a vote of 98 for, and 49 against, in an election in which at least thirty percent (30%) of the 256 entitled to vote cast their ballots in an election called for that purpose.

*Example 18: Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation.*

Certificate of Adoption

Pursuant to an order, approved March 11, 1936, by the Secretary of the Interior, the attached Constitution and Bylaws was submitted for ratification to the members of the Arickara, Gros Ventres, and Mandan Tribes of the Fort Berthold Reservation and was on May 15, 1936, duly ratified by a vote of 366 for, and 220 against, in an election in which over 30 percent of those entitled to vote cast their ballots, in accordance with section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the act of June 15, 1935 (49 Stat. 378).

W. R. Beyer, Superintendent.

I, Harold L. Ickes, the Secretary of the Interior of the United States of America, by virtue of the authority granted me by the act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the attached Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation.

All rules and regulations heretofore promulgated by the Interior Department or by the Office of Indian Affairs, so far as they may be incompatible with any of the provisions of the said Constitution and Bylaws are hereby declared inapplicable to the members of the Three Affiliated Tribes.

All officers and employees of the Interior Department are ordered to abide by the provisions of the said Constitution and Bylaws.

Approval recommended June 3, 1936.

JOHN COLLIER,

Commissioner of Indian Affairs.

HAROLD L. ICKES,

Secretary of the Interior.

WASHINGTON, D.D., June 29, 1936.



## IV. SAMPLE CONSTITUTIONS

The following section contains four sample constitutions:

- (1) Constitution of the Absentee-Shawnee Tribe of Indians of Oklahoma
- (2) Constitution of the Jamestown Klallam Tribe of Indians
- (3) Constitution of the Timbisha Shoshone Indian Tribe
- (4) Constitution of the Mohegan Tribe of Indians of Connecticut

CONSTITUTION  
OF THE  
ABSENTEE-SHAWNEE TRIBE OF INDIANS  
OF  
OKLAHOMA

PREAMBLE

We, the people of the Big Jim and White Turkey Bands of the Shawnee Nation of American Indians initially organized pursuant to a constitution and bylaws ratified December 5, 1938, as the Absentee-Shawnee Tribe of Indians of Oklahoma, in order to protect our just claims and rights of treaties and treaty agreements with the United States; to protect our culture, heritage, and religion; to protect and maintain our reserved, allotted, and other lands; to manage our tribal land and property; to transact our tribal business and economic enterprises in domestic and foreign trade; to negotiate with representatives of Federal, State, local and tribal governments, in regard to all matters of ourselves and our posterity, do hereby establish this Constitution.

ARTICLE I - NAME

The name of this federally recognized Indian tribe shall be the Absentee-Shawnee Tribe of Indians of Oklahoma.

ARTICLE II - JURISDICTION

The jurisdiction of the Absentee-Shawnee Tribe shall extend to all tribally owned land and all restricted or trust land belonging to tribal members within the boundary of the reservation established by Agreement dated June 26, 1890, and ratified by the Act of March 3, 1891 (26 Stat. 1019), and such other land, or interest in land, which may be subsequently acquired.

ARTICLE III - MEMBERSHIP

Section 1. The membership of the Absentee-Shawnee Tribe of Indians of Oklahoma shall consist of the following persons:

(a) All persons of Indian blood enrolled or who were entitled to be enrolled on the official census roll of the tribe as of January 1, 1937. All Indian blood shown on that roll shall be considered to be blood of the Absentee-Shawnee Tribe.

(b) All children of Absentee-Shawnee blood born to any member of the tribe between January 1, 1937, and April 17, 1954, the effective date of Amendment II to the 1938 constitution and bylaws.



(c) All children born since April 17, 1954, who are of at least one-fourth (1/4) degree Absentee-Shawnee blood.

Sec. 2. From and after the effective date of this Constitution no person shall be enrolled as a member of the Absentee-Shawnee Tribe unless he possesses at least one-fourth (1/4) degree Absentee-Shawnee Indian blood.

Sec. 3. Any person entitled to membership who has been enrolled as a member of another tribe may be enrolled in the Absentee-Shawnee Tribe; provided that person has not shared in land or money as a member of another tribe; and provided further, that person relinquishes in writing and officially terminates membership in the other tribe.

Sec. 4. All persons, desiring to be enrolled members of the tribe, who are not presently enrolled, must submit an enrollment application to the Secretary of the Executive Committee for subsequent approval or disapproval of the Executive Committee. Applications for membership must be supported by birth certificates or other records recognized by State or Federal officials. Such document or copies thereof shall be kept by the Executive Committee for their permanent records.

Sec. 5. The General Council shall have power to prescribe rules and regulations by ordinance, covering future membership including adoptions and the loss of membership.

#### ARTICLE IV - TRIBAL GOVERNMENT

Section 1. General Council. The supreme governing body of the tribe shall be the General Council consisting of all members of the tribe eighteen (18) years of age or older who are duly registered to vote pursuant to Article VI, Section 3 of this Constitution. The General Council shall have the power by majority vote of a quorum to dictate the actions of the Executive Committee through actions taken at General Council meetings within limitations set forth in this Constitution. The General Council shall also have the power to direct all entities of the tribal government through the procedures of initiative and/or referendum as specified in Article IX, and shall exercise such other powers as defined in this Constitution.

The tribal government, as described in this Article, is composed of two (2) separate branches, i.e., the Judicial Branch and the Legislative/Executive Branch. In addition, there is an independent body charged with the responsibility for conducting tribal elections. Each of these entities is directly responsible to the General Council.

Sec. 2. Legislative/Executive Branch.

(a) Executive Committee. There shall be an Executive Committee consisting of five (5) representatives including Governor, Lt. Governor, Secretary, Treasurer and a Representative, all of which shall be elected by referendum. Such committee shall have both legislative and executive powers as set forth in Article V.

(b) Previous Governing Body. The five (5) Business Committee members elected under the previous constitution shall serve until the expiration of their terms of office, unless earlier removed, or until their successors are duly elected and installed.

The first election for Executive Committee members and other elective officials under this Constitution shall be conducted by the Bureau of Indian Affairs and held on the third Saturday of June following the ratification of this Constitution. At that election the positions of Governor and Secretary shall each be filled for a two (2) year term, the offices of Lt. Governor, Treasurer and Representative shall be filled for a one (1) year term. Thereafter, there shall be annual elections in June and all terms shall be two (2) years in length.

Sec. 3. Judicial Branch. There shall be a tribal judicial system consisting of a Tribal Court and an Appeals Court. Members of each court shall be elected by tribal referendum. Candidates must meet those qualifications set forth in Article XIV.

(a) Tribal Court. The lower court shall be composed of five (5) members initially elected at the first regular election (third Saturday in June) following ratification of this Constitution. The Tribal Court shall consist of a Chief Judge, Associate Judge, Clerk of the Court, and two (2) Tribal Judges. At the first election the Chief Judge and one (1) Tribal Judge shall each be elected for a three (3) year term, the Clerk of the Court and the other Tribal Judge shall each be elected for a two (2) year term, and the Associate Judge shall be elected for a one (1) year term. Thereafter, there shall be annual elections in June and all terms shall be three (3) years in length.

The Chief Judge shall be the presiding officer and the remaining four (4) members, including the Clerk of the Court, shall participate in the deliberations of that body.

The Tribal Court shall have duties and jurisdiction as established by tribal ordinances. The Tribal Court shall make known its decisions in writing to the Executive Committee, or other tribal entity whose decision is being disputed, and the aggrieved party. Such tribal entity will then reconsider its previous decision based on those recommendations.

(b) Appeals Court. There shall be an Appeals Court composed of five (5) members initially elected at the first regular election (third Saturday in June) following ratification of this Constitution. The Appeals Court shall consist of a Chief Justice, Associate Justice, Court Recorder and two (2) Appellate Justices.

At the first election the Chief Justice and one (1) Appellate Justice shall each be elected for a four (4) year term, the Associate Justice shall be elected for three (3) years, the Court Recorder shall be elected for two (2) years and the remaining Appellate Justice shall be elected for a term of one (1) year. Thereafter, there shall be annual elections in June and all terms shall be four (4) years in length.

The Chief Justice shall be the presiding officer and the remaining four (4) members, including the Court Recorder, shall participate in the deliberations of that body.

The Appeals Court may hear appeals of decisions resulting from actions by the Tribal Court. The Appeals Court shall render its decision in writing to all concerned parties including the Executive Committee, which decision shall be final and binding on all concerned parties.

Sec. 4. Independent Commissions. Included as part of the tribal government is an Election Commission established pursuant to Article VI. Other such entities may be created as needed by referendum of the General Council.

## ARTICLE V - POWERS

Section 1. The General Council of the Absentee-Shawnee Tribe of Indians of Oklahoma assembled, shall exercise all powers pertaining to the tribe, subject to any limitations imposed by this Constitution or by Federal Law, and except as otherwise provided in Section 2 of this Article. Only the General Council shall exercise the following

powers unless specifically delegated in accordance with Article IX:

- (a) Borrowing money which mortgages, encumbers, or endangers any tribal properties, holdings, or assets.
- (b) Purchase land or property with tribal assets.
- (c) Such additional powers, not so stipulated in this Constitution may be assigned and/or delegated to the various branches of government by referendum.

Sec. 2. The authorities and responsibilities of the Executive Committee shall include the following except as otherwise provided in this Constitution.

- (a) To call and conduct all regularly scheduled or special meetings of the General Council or the Executive Committee.
- (b) To maintain the tribal treasury, a system of safekeeping of tribal records, documents and correspondence, to propose and make available for review semi-annual financial status reports.
- (c) Maintain the tribal membership roll, including the processing of membership applications, annotating the roll to reflect deceased members, recording name changes and correct addresses.
- (d) Execute leases, contracts and permits; implement goals and objectives adopted by the General Council.
- (e) Appoint such subcommittees as are necessary to develop the proposals suggested herein or any other worthwhile endeavors including delegation of such authorities to these subcommittees as is commensurate with their responsibilities.
- (f) Employ legal counsel to represent the tribe.

Sec. 3. The authorities and responsibilities of the Judicial Branch shall include the following:

(a) Shall call and conduct hearings pursuant to the provisions of this Constitution and tribal ordinances for the purpose of rendering a decision resulting from an internal disputed issue. Specific responsibilities and procedures shall be set forth in ordinances drafted by this Branch working in concert with the Executive Committee and ratified by a referendum of the General Council. Included shall be a draft of a personnel management ordinance which shall provide safeguards for tribal employees and guarantee their right of access to the tribal courts. These drafts shall be presented to the General Council for adoption or rejection at the second General Council meeting in April following the ratification of this Constitution.

(b) The Judicial Branch shall be made up of a lower court called the Tribal Court and an upper court called the Appeals Court.

Sec. 4. The authorities of the Election Commission shall be in accordance with Article VI of this Constitution.

#### ARTICLE VI - ELECTIONS

Section 1. First Election. The first election of tribal officials under this Constitution (on the third Saturday in June following its ratification) shall be conducted by the Bureau of Indian Affairs under procedures it develops. Such election shall include balloting to elect persons to serve on the Executive Committee, the Tribal Court, the Appeals Court, and the Election Commission.

Sec. 2. Election Commission. There shall be an Election Commission consisting of five (5) tribal members including Election Commissioner, Deputy Election Commissioner, Secretary, and two (2) Election Commission Members, all of which shall be elected by referendum. At the first election cited in Section 1 above, the positions of Election Commissioner and Election Secretary shall each be filled for a three (3) year term, the offices of Deputy Election Commissioner and one (1) Member shall each be filled for a two (2) year term; the remaining Member shall be elected to a one (1) year term of office. Thereafter, there shall be annual elections in June and all terms shall be three (3) years in length.

(a) Duties. The Election Commission shall be available at all times during the year, as needed, to conduct any of the tribal elections provided for in this Constitution. Such elections shall be conducted pursuant to an Election Ordinance required by this Article. Also included among its duties is: to establish and maintain a system of voter registration, determine eligibility of prospective candidates for tribal offices (both elective and appointive), receive petitions and determine their validity, and perform all other functions necessary to insure that the democratic elective process is honestly and fairly administered.

(b) Installation of Officers. Except for the first election under this Constitution, the Election Commissioner shall call the first meeting of the Executive Committee within thirty (30) days following the date of the June election and preside over the installation of newly elected officers which shall include those elected to the Judicial Branch and the Election Commission.

Sec. 3. Election Ordinance. All tribal elections specified in this Constitution shall be conducted in accordance with an Election Ordinance to be drafted jointly by the Executive Committee and the Election Commission in cooperation with representatives of the Judicial Branch. That ordinance shall become effective upon its ratification by a referendum of the General Council. In order to have procedures available for the Election Commission to use in conducting the second annual election under this Constitution, a proposed Election Ordinance shall be presented to a referendum vote no later than October following the first annual election under this Constitution. Until an Election Ordinance is duly ratified, the Election Commission shall use those regulations developed for the first election.

The Election Ordinance shall be consistent with this Constitution and shall include, but not be limited to, the following provisions: voter registration, absentee balloting, secret ballots, settling of election disputes, avoidance of nepotism, handling of petitions which shall be signed only by registered voters and which shall require the designation of a spokesman empowered to clarify the intent of such petition and shall require that a summary of the petition's objective shall appear on each sheet of the petition, the installation of newly elected officials, recall of officials, and any other matters relating to the responsibility of the Election Commission.

Sec. 4. Fees. The Election Commission is empowered to establish reasonable fees which shall be required of all those who file as

candidates for elective office, and shall be responsible for using such fees to pay for necessary costs in conducting the election process. The Commission shall adopt a procedure for the safe handling of all funds by a Treasurer it shall elect from within the Commission membership, who shall be bonded in the manner provided for the Treasurer in Section 4 of Article XIII. The Commission shall have conducted an annual audit of its finances and present a copy of such audit report to the General Council at the October semi-annual meeting. Copies shall also be provided to the Executive Committee and, upon request, to any tribal member.

Sec. 5. Conflict of Interest. Members of the Election Commission shall be responsible to disqualify themselves and withdraw from all functions of their positions during any election or process in which a conflict of interest exists. Such persons shall resume their duties only when there is no longer a conflict of interest. The Commission shall have authority, by majority vote, to disqualify any of its members in the event they continue to function in a conflict of interest situation.

The Election Ordinance shall describe what constitutes a conflict of interest. However, included in that description shall be the event where someone from the immediate family of a Commission Member is a candidate for any elective tribal office. Also to be included is a provision that Commission Members shall not be eligible to become candidates for any elective tribal office, other than for reelection to the Commission, until one (1) year has passed following completion of their service on the Election Commission.

Sec. 6. Alternates. In order to keep the Election Commission up to its full complement, that body is empowered to appoint alternates who shall attend meetings of that body and be available to function as regular members as the need arises during conflict of interest situations or other absences.

Sec. 7. Kinds of Elections.

(a) Annual Election: Held on the third Saturday in June primarily for the purpose of electing persons to fill those positions whose terms expire for the given year. It is conducted by the Election Commission. Voting is by secret ballot at polling places. Absentee voting is permitted. Unless provision is made in the Election Ordinance for a run off, the outcome of this election shall be decided by plurality.

(b) Tribal Referendum: An election conducted by voting at polling places rather than at a General Council meeting.

Referendum elections are for the purpose of deciding on issues of major importance which are usually set forth in Tribal Ordinances. This is an opportunity for the voters to participate in making Tribal laws pursuant to this Constitution. A majority of votes cast shall decide the issue. Certain kinds of issues are required by this Constitution to be decided by referendum. The Executive Committee or a General Council meeting may also refer issues or questions to the registered voters for a referendum election. See Article IX.

(c) Initiative. A referendum election which is initiated by the registered voters in the manner set forth in Article IX.

(d) Recall. An election initiated by the registered voters through a petition for the purpose of voting on whether an elected official should be recalled from office. Upon its receipt of a valid petition as set forth in Article VII, the Election Commission is required to conduct a referendum election to consider recall of an elected official. A majority of ballots cast shall decide the matter. Any resulting vacancy shall be filled pursuant to Article VIII.

(e) General Council Election. There are certain powers which, by terms of this Constitution, are to be exercised by the registered voters of the tribe meeting in General Council. Such enactments by a majority vote of a quorum of the General Council meeting, which are consistent with this Constitution and Tribal Ordinances, are binding on the Executive Committee. Voting at General Council meetings on tribal legislation shall be by secret ballot.

(f) Constitutional Amendment. Conducted by the Bureau of Indian Affairs pursuant to regulations of the Secretary of the Interior and the provisions of Article XII of this Constitution.

#### ARTICLE VII - REMOVAL, RECALL AND FORFEITURE

Section 1. Removal. Each elected body of the government shall have the power to remove any of its member for a justifiable cause by an affirmative vote of three (3) of its members. The Judicial Branch and Executive Committee shall jointly enact regulations providing



for such removals. These regulations shall be used in removal proceedings by each of the other elected bodies of the tribal government. Included in these regulations shall be procedures for the defendant to confront the plaintiff in answer to a written statement of the charges at a special meeting of the responsible committee, court, or commission, called for that purpose. The defendant shall be provided with the written statement of charges at least fifteen (15) days prior to the removal meeting.

Sec. 2. Recall. Upon receipt of a valid petition signed by at least thirty percent (30%) of the registered voters of the tribe, it shall be the duty of the Election Commission to call and conduct within sixty (60) days, an election for the purpose of recall of an elected tribal official. The election shall be conducted pursuant to the Election Ordinance. Only one (1) member of that elected body shall be considered for recall at any given recall election. This shall not prohibit one (1) member from each elected body from being considered for recall during a single election.

Sec. 3. Forfeiture. It shall be the duty of the affected elected body to immediately declare a position within its body vacant and to promptly fill such vacancy in the manner provided in Article VIII when it is determined that the incumbent:

- (a) Has tendered resignation;
- (b) Has been convicted of a crime involving dishonesty in a court of competent jurisdiction;
- (c) Has been convicted of a felony while in office by a court of competent jurisdiction;
- (d) Has falsified his application or has omitted information concerning a conviction of a felony or any crime involving dishonesty, when filing to be a candidate for elective office.

#### ARTICLE VIII - VACANCIES

Section 1. Vacancies in any elective office shall be promptly filled by the remaining members of the affected body appointing a person who qualifies pursuant to Article XIV. Such appointee shall serve until a replacement is duly elected at the next annual election and installed in office, except as it relates to filling a vacancy in the office of Governor in Section 2 of Article XIII.

Sec. 2. An appointee shall not be used to temporarily fill a vacancy in either of the two (2) highest ranking positions on an elective body.

Rather, it shall be the responsibility of that body to temporarily shift its members so that appointees shall serve in positions of lesser rank.

Sec. 3. In the event two (2) vacancies exist in the Executive Committee, the authorities of that body are limited to the payment of utility bills and salaries until those vacancies have been filled by appointment.

#### ARTICLE IX - INITIATIVE AND REFERENDUM

Section 1. Initiative. The procedure whereby registered voters may exercise their right to enact legislation that will be binding on the Executive Committee and the Tribe. Upon receipt of a valid petition signed by at least twenty percent (20%) of the registered voters, it shall be the duty of the Election Commissioner to call and conduct such initiative election within sixty (60) days, presenting to the registered voters for their determination such issues or questions which are set forth in the petition. The decision of the majority of those voting shall be binding on the tribe.

Sec. 2. Referendum. The procedure whereby all registered voters of the tribe have an opportunity to express themselves directly by voting on any enacted or proposed legislation (See Sec. 7(b) of Article VI). Both secret balloting and an opportunity for absentee voting shall be provided in tribal referendum elections pursuant to the Election Ordinance.

#### ARTICLE X - BILL OF RIGHTS

The protections guaranteed to persons by Title II of the Civil Rights Act of 1968 (82 Stat. 77), against actions of a tribe in exercising its powers of self-government shall apply to the Absentee-Shawnee Tribe of Indians of Oklahoma, its officers and all persons within its jurisdiction.

All members of the Absentee-Shawnee Tribe of Indians of Oklahoma shall be accorded equal rights pursuant to tribal law. No member shall be denied any of the rights or guarantees enjoyed by citizens under the Constitution of the United States, including, but not limited to, freedom of religion and conscience, freedom of speech, the right to orderly association or assembly, the right to petition for action or the redress of grievances, and due process of law. Employment of legal counsel for the tribe shall be in accord with Title VI of the Civil Rights Act of 1968.

It is provided in this Constitution that the acceptance of the Indian Civil Rights Act (82 Stat. 77) does not waive the tribe's inherent right of immunity from suit.

#### ARTICLE XI - SAVINGS CLAUSE

All actions of the Business Committee taken under the previous Constitution shall remain in full force and effect except to the extent they are inconsistent with this Constitution.

#### ARTICLE XII - AMENDMENTS

Amendments to this Constitution may be proposed by a resolution of the Executive Committee, or by a petition signed by at least twenty percent (20%) of the registered voters of the Tribe, and if approved by the Secretary of the Interior, shall be submitted to a referendum vote conducted pursuant to the Secretary's regulations and shall be effective if ratified by a majority of those who cast ballots, provided at least twenty percent (20%) of those registered to vote, cast ballots in such election.

#### ARTICLE XIII - DUTIES OF OFFICERS

Tribal officers may, from time to time, in carrying out their official responsibilities, be required to attend functions of National, State, local or private organizations as an official representative of the tribe. In such cases, it shall be the duty and responsibility of the tribal official to conduct himself in a manner befitting the office he holds and the people he represents.

Section 1. The Governor shall call and preside over all meetings of the General Council and the Executive Committee except as provided in Article XVI or any other applicable provision of this Constitution or subsequent ordinances, and shall be accountable for the exercise of those duties specifically assigned to him by this Constitution, and such additional authorities which may be delegated by either the General Council or the Executive Committee. He shall be held responsible for executing the policies established by the General Council. A semi-annual report shall be given to the General Council at its April and October meetings. Such report shall be given orally and in writing by the Governor as outlined in Article V. The Governor shall make an oral report on all of his activities, meetings, and conferences at the monthly Executive Committee meetings. The Governor shall file

an agenda with the Executive Committee Secretary, three (3) days prior to a regularly scheduled Executive Committee meeting. The Governor shall not vote except in the case of a tie.

Sec. 2. The Lieutenant Governor, in the absence of the Governor, or during procedures to remove or recall him, shall possess all of the privileges, authority, and responsibility of the office of Governor. In case of a vacancy in the office of the Governor, the Lieutenant Governor shall succeed at once to that office and shall serve for the remainder of the Governor's unexpired term. The resulting vacancy in the office of Lieutenant Governor shall be filled pursuant to Article VIII. The Lieutenant Governor shall have such other duties as may be delegated to him by the Governor, by actions of the Executive Committee, or General Council.

Sec. 3. The Secretary shall prepare an agenda for all meetings under the direction of the Governor. The Secretary shall be responsible for preparing timely notices of all meetings and the dissemination of such notices, as appropriate, to the Executive Committee and General Council. The Secretary shall prepare and read the minutes of the previous meeting and call to the attention of the Executive Committee any unfinished business. The Secretary shall read to the Committee all communications of official business which must be acted upon by the Executive Committee. The Secretary shall certify all official business transactions taken by the General Council and the Executive Committee. All records, minutes, documents and correspondence for which the Secretary is responsible shall be on file at the tribal headquarters at all times. The Secretary shall be the custodian of the tribal membership roll and shall give priority to keeping it current. Responsibilities as tribal membership roll custodian shall be limited to the following: (a) The timely processing of new membership applications which shall be approved or disapproved by the Executive Committee. (b) Annotating the roll to reflect deceased members. (c) Recording official name changes and/or changes of address. (d) Prompt reply to questions and confirmation of enrollment.

The Secretary shall have a working knowledge of the Treasurer's duties and responsibilities. The Secretary shall accept and be responsible for other duties as assigned by the Executive Committee. In the absence of the Governor, and the Lieutenant Governor, the Secretary shall assume the position of Governor Pro-Tem, except in case of vacancies of the two (2) top positions.

Sec. 4. The Treasurer shall be the custodian of all monies, and related bookkeeping functions, which come under the jurisdiction or control of the tribe. The Treasurer shall conserve, invest, and pay out money pursuant to the provisions of this Constitution. All expenditures shall be reviewed and approved or disapproved by the Executive Committee

before payment. The authority to approve or disapprove such expenditures shall be based on constitutional authority and/or a duly adopted General Council resolution or ordinance pursuant to the provisions of this Constitution. Subject to the limitations above, the Executive Committee shall render in writing such approval or disapproval that shall be maintained as a permanent part of the bookkeeping record. The Treasurer shall, upon receipt of written approval, be authorized to sign checks or otherwise make payment on behalf of the tribe. The Treasurer shall keep and maintain an accurate account of all receipts and disbursements and shall report the accurate amounts of each account to the Executive Committee at each regular meeting. The Treasurer shall submit financial reports and results of audits pursuant to the provisions in Article V. Such reports and audits shall be equivalent to National Accounting Association practices and standards. The Treasurer shall keep double-entry accounting records, which shall be fully implemented within one (1) year following the first election of officers under this Constitution. The financial records shall be maintained at the tribal headquarters. The Treasurer shall be bonded by a bonafide bonding company in an amount satisfactory to the Executive Committee and such bonding fees shall be paid from tribal funds or program funds if authorized by the funding agency.

Sec. 5. The Representative shall be a full voting member of the Executive Committee and shall perform such duties and responsibilities as may be delegated to him by the Executive Committee and/or the General Council.

Sec. 6. Judicial Branch Officials. The duties of such officials shall be set forth in the Judicial Ordinance which shall be consistent with this Constitution. That ordinance shall include a provision for the Chief Justice to call and conduct any meeting or election that the Executive Committee or Election Commission has failed to call even though such meeting or election has been mandated by this Constitution or a valid petition, except as provided in Section 2 of Article XVI.

Sec. 7. Independent Commissions. The duties of Election Commission officials shall be set forth in the Election Ordinance. Any future commissions, which may be established by referendum, shall be subject to a separate ordinance which shall be established pursuant to this Constitution and any limitations placed on it by the General Council within the scope of its stated purpose.

#### ARTICLE XIV - QUALIFICATIONS OF CANDIDATES

Section 1. Before being declared a candidate for any elective office,

each prospective candidate must show that the following qualifications have been met:

- (a) An enrolled member of the tribe.
- (b) A registered voter for purposes of voting in tribal elections.
- (c) At least twenty-one (21) years of age on the date of the election for which he desires to be a candidate.
- (d) Physically reside within the following Oklahoma counties: Cleveland, Potawatomie, Oklahoma, McClain, Garvin, Pontotoc, Seminole, Lincoln, or Okfuskee.
- (e) In cases where a prospective candidate has been convicted of a felony, such person shall not be eligible for consideration as a candidate until at least five (5) years have passed following completion of the penalty for such conviction(s).
- (f) Not more than one (1) member of an immediate family shall be a candidate for election to the same tribal elective body. Provisions shall be set forth in the Election Ordinance to deal with such concept.

Sec. 2. Specific qualifications, in addition to those in Section 1, may be imposed if approved by tribal referendum.

Sec. 3. Appointments to fill vacancies, or for any other purpose, shall be filled by persons who meet the qualifications of this Article and any specific qualifications which may be imposed pursuant to Section 2 of this Article.

#### ARTICLE XV - INSTALLATION OF OFFICERS

Section 1. First Election. Within ten (10) days following certification of results of the first election under this Constitution, the Superintendent of the Bureau of Indian Affairs shall call and conduct a meeting of newly elected persons for the purpose of installing the successful candidates in their respective offices.

Sec. 2. After the first installation of officers, it shall be the duty of the Election Commissioner to call and conduct meetings of newly elected officials within ten (10) days following certification of election results, for purposes of installing them in office which shall include administering

an oath of office. The content of such oath shall be set forth in the Election Ordinance.

#### ARTICLE XVI - MEETINGS

Section 1. General Council meetings shall be held semi-annually in April and October on dates to be set by the Executive Committee. Notices shall be posted at appropriate places at least fifteen (15) days prior to each General Council meeting.

Sec. 2. Special General Council meetings may be called by the Governor and shall be called and conducted by him when directed to do so by a majority vote of a quorum of the Executive Committee. In the event he refuses to call a meeting when so directed, the highest ranking official who favors calling the meeting, shall be empowered to exercise that authority.

Sec. 3. Executive Committee meetings shall be held monthly at tribal headquarters on dates to be established by the Executive Committee by public notice. Written notification shall be provided to each Committee Member at least five (5) days in advance. The Committee may hold meetings at another location provided all members are so advised in the advance notice.

Sec. 4. Special meetings of the Executive Committee may be called by the Governor as necessary with advance individual written notice. Any three (3) members of the Executive Committee may call a special meeting of that body by presenting a written notice to all members of the Committee. If the Governor fails to attend, the highest ranking of those who called the meeting shall be empowered to conduct the meeting, provided a quorum is present.

Sec. 5. All meetings of each of the tribal elective bodies are closed to non-tribal members unless they are on official business with the tribe, or are otherwise invited to attend by the respective body.

Sec. 6. Procedures for calling and conducting meetings of tribal elective bodies, other than the Executive Committee, shall be set forth by each such body in an appropriate resolution which shall be consistent with this Constitution.

Sec. 7. Except where otherwise provided in this Constitution, all meetings shall be conducted in accordance with adopted procedures.

Sec. 8. Legal notices shall be published in a local newspaper in the counties mentioned in Article XIV, Sec. 1(d).

## ARTICLE XVII - QUORUM

Section 1. Executive Committee, Tribal Court, Appeals Court, and Election Commission Meetings. In any duly called meeting of the above elected bodies any three (3) members of that particular body shall constitute a quorum to transact business within the scope of authority of that body.

Sec. 2. General Council meeting. Fifty (50) members of the General Council, who are registered tribal voters, shall constitute a quorum to transact business at any duly called General Council Meeting.

## ARTICLE XVIII - TRIBAL LEGISLATION

The Executive Committee is the body primarily responsible for legislative functions. However, the General Council, by means of referendum, initiative, or in meetings of that body, has reserved to itself certain legislative authorities. Enactments of the General Council shall, in most cases, be set forth in ordinances. The Executive Committee, in implementing such ordinances, or in executing its legislative function, shall adopt resolutions. Recognizing that there are certain actions or expressions each governing entity will make which do not specifically constitute tribal legislation, they shall be set forth in motions. A motion is an expression initiated in a General Council meeting by any registered tribal voter, or in meetings of the Executive Committee by a member of that body. The forms of tribal legislation are defined as follows:

Resolution. A formal written expression of opinion or will. Resolutions are subordinate to, and must be consistent with Tribal Ordinances and terms of this Constitution. Resolutions shall be used as necessary to set forth rules, regulations, and procedures for the purpose of implementing the intent of Tribal Ordinances.

Ordinance. An enactment of the General Council at a tribal referendum; a separate document which shall have long-range effect, such as, establishing procedures governing: the conduct of elections, removing elected officials or the manner of enrolling tribal members. Ordinances are tribal laws which shall have general application and shall remain in effect until amended or rescinded in the same manner in which they were enacted. Ordinances shall not conflict with this Constitution. In the event a subsequent constitutional amendment is enacted that would conflict with an ordinance, that ordinance, or conflicting portion thereof, shall be null and void.



ARTICLE XIX - RATIFICATION

This Constitution shall be effective when approved by the Secretary of the Interior, or his authorized representative, and ratified by a majority of the General Council of the tribe voting in an election authorized by the Secretary of the Interior and conducted under regulations promulgated pursuant to Section 3 of the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967).

APPROVAL

I, \_\_\_\_\_, Commissioner of Indian Affairs,  
by virtue of the authority granted to the Secretary of the Interior by  
the Act of June 26, 1936 (49 Stat. 1967), as amended, and delegated  
to me by 230 DM 1.1, do hereby approve the Constitution of the  
Absentee-Shawnee Tribe of Indians of Oklahoma; provided that nothing  
in this approval shall be construed as authorizing any action under the  
constitution that would be contrary to Federal law.

(SGD) THEODORE KRENZKE

Commissioner of Indian Affairs

Washington, D. C.

Date: FEB 4 1977

CERTIFICATE OF RESULTS OF ELECTION

Pursuant to an order approved February 4, 1977, by the Acting Deputy  
Commissioner of Indian Affairs, the foregoing Constitution of the  
Absentee-Shawnee Tribe of Indians of Oklahoma was submitted for  
ratification to the adult members of the Absentee-Shawnee Tribe of  
Indians of Oklahoma and was on June 4, 1977, duly ~~rejected~~ <sup>ratified</sup> by a  
vote of 95 for, and 77 against, in an election in which a  
majority of the 172 qualified voters cast their ballots in  
(number)  
accordance with Article X of the tribe's constitution and Section 3 of the  
Act of June 26, 1936 (49 Stat. 1967).

John T. Taylor  
Chairman, Election Board

Estelene S. Schulerberg  
Election Board Member

Wallace L. Tynes  
Election Board Member

Date: June 4, 1977

JAMESTOWN KLALLAM TRIBE

TABLE OF CONTENTS

CONSTITUTION .....	1
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Note:     The Jamestown Klallam Tribal Code was under  
          revision and unavailable at the time of  
          printing this collection.

# CONSTITUTION OF THE JAMESTOWN KLALLAM TRIBE OF INDIANS

## PREAMBLE

We, the Indians of the Jamestown Klallam Tribe, create and adopt this constitution for the Jamestown Klallam Tribe for the purpose of forming a better tribal government, establishing a tribal community organization, promoting the social and economic well-being of our people, securing our aboriginal land and any and all natural resources therein, preserving our culture and institutions, fostering justice and freedom, and advancing our mutual welfare.

## ARTICLE I - NAME AND TERRITORY

Section 1. Name. The legal name of the tribal organization shall be the Jamestown Klallam Tribe of Indians.

Sec. 2. Territory. The territory and jurisdiction of the Jamestown Klallam Tribe shall extend over the following to the fullest extent possible under Federal Law:

- (a) All lands, waters, property, airspace, other natural resources and any interest therein either now, or in the future, owned by the Tribe or individual tribal members held in trust status or located within the boundaries of a reservation which may be proclaimed for the Jamestown Klallam Tribe, notwithstanding the issuance of any patent or right-of-way;
- (b) All persons, property and activities located or found within the Tribe's jurisdiction;
- (c) All members exercising or purporting to exercise any rights reserved by the Tribe under the Treaty of Point No Point concluded January 26, 1855 (12 Stat. 933) and all property or activity to the extent necessary to implement and protect all rights and powers reserved or granted to the Tribe by the Treaty of Point No Point, the United States Constitution or other Federal Law.

Sec. 3. Hunting and Fishing Rights. Nothing in this Article shall restrict the exercise of hunting and fishing rights reserved by the Tribe under the Treaty of Point No Point including the right to hunt on all open and unclaimed lands, and to fish at all of the Tribe's usual and accustomed grounds and stations.

## ARTICLE II - MEMBERSHIP

Section 1. The membership of the Jamestown Klallam Tribe shall consist of the following:

- (a) All persons whose names appear on the list of members submitted by the Jamestown Klallam Tribe in its petition for Federal acknowledgment as an Indian tribe pursuant to 25 CFR Part 54 (1978), who met the membership criteria specified in the petition. The Tribal Council may correct the list subject to approval by the Secretary of the Interior.
- (b) All lineal descendants of persons who qualify for membership under subsection 1(a), above; provided, that such descendants possess at least one-fourth (1/4) degree Jamestown Klallam blood.

Sec. 2. Limitation. No person shall qualify for membership in the Jamestown Klallam Tribe who is a member of any other organized tribe, band, or Indian community officially recognized by the Secretary of the Interior, unless he or she has relinquished in writing his or her membership in such tribe, band or community.

Sec. 3. Adoption. The Tribal Council shall have the power to enact ordinances governing the adoption of persons as members who have a significant community relationship with the Jamestown Klallam Tribe. Adoption ordinances shall be subject to approval by the Secretary of the Interior.

Sec. 4. Regulation of Membership. The Tribal Council shall have power to enact ordinances regulating membership as to admission and loss of membership; provided, that any person who may lose his or her tribal membership is entitled to a hearing before the Tribal Council and to adequate notice of such hearing.

## ARTICLE III - TRIBAL COUNCIL

Section 1. The representative governing body of the Jamestown Klallam Tribe shall be known as the Jamestown Klallam Tribal Council.

Sec. 2. Membership. The Tribal Council shall consist of five (5) members duly elected to serve two (2) year terms whose terms shall be staggered as provided in Section 3. Tribal Council members shall remain in office until their successors are duly elected and installed.

Sec. 3. Tribal Officers. The Tribal Council shall consist of (1) a Chairperson, (2) a Vice-Chairperson, (3) a Secretary, (4) a Treasurer and (5) a Councilperson. The Tribal Council may appoint such other officials and committees as are considered necessary, however, those appointees shall have no vote in the deliberations of the Tribal Council. The Chairperson and the Secretary shall be elected in odd-numbered years and the Vice-Chairperson, Treasurer and Councilperson shall be elected in even-numbered years. All members of the Tribal Council at the time this Constitution becomes effective, shall continue to serve until the end of their terms.

Sec. 4. Quorum. Three (3) members of the Tribal Council shall constitute a quorum.

## ARTICLE IV - GENERAL COUNCIL

Section 1. Composition. The General Council shall be composed of all tribal members who are duly registered to vote.

Sec. 2. Powers. The powers of the General Council shall be as follows:

- (a) electing Tribal Council members in accordance with Article V
- (b) deciding on initiative, referendum and recall issues in accordance with Article V
- (c) adopting or rejecting constitutional amendments in accordance with Article X
- (d) dealing with those matters not expressly delegated to the Tribal Council by Section 1 of Article VII.

Sec. 3. Annual Meeting. The Tribal Council shall determine the exact date of the annual meeting which shall be held on one (1) of the last two (2) Saturdays of September or the first two (2) Saturdays of October. Advance notice of the meeting shall be given as directed by the Tribal Council.

Sec. 4. Special Meetings. Special meetings of the General Council may be called by the Tribal Chairperson with at least fifteen (15) days advance notice posted in public places where tribal members frequent and other appropriate means that may be required by action of the Tribal Council. Special meetings shall be called by the Tribal Chairperson upon his/her receipt of a written request signed by at least three (3) of the five (5) members of the Tribal Council. If the Chairperson fails to call the requested meeting, one (1) of the three (3) requestors shall be empowered to call and conduct that session.

Sec. 5. Quorum. Twenty-five (25) members of the General Council shall constitute a quorum for purposes of conducting business; provided, that a quorum shall not be required for the election of tribal officials.

## ARTICLE V - TRIBAL ELECTIONS

Section 1. Voter Qualifications. Duly enrolled tribal members shall be qualified to vote only if they meet the following conditions:

- (a) must be at least eighteen (18) years of age on the date of the election, and;
- (b) must be duly registered pursuant to the tribe's voter registration system.

Sec. 2. Qualifications for Candidates. Those who meet the following requirements, are eligible to become candidates for either elective or appointive office; provided, that if they have been convicted of a felony, at least five (5) years must have passed since completion of the penalty for such offense (Penalty shall include any period of restriction on civil rights):

- (a) must be registered to vote pursuant to Section 1(b) above,
- (b) must be at least twenty-one (21) years of age on the date of the election.

Sec. 3. Election Dates. Regular elections for the Tribal Council shall be held in conjunction with the annual meeting of the Tribe's General Council as provided in Section 3 of Article IV.

Sec. 4. Election Board. The Tribal Council shall appoint an Election Board whose three (3) members shall serve for three (3) year staggered terms of office. Election Board members shall be subject to removal from office only for cause in the manner set forth in Article VI. The Election Board shall be responsible for impartially carrying out the provisions of the election ordinance described in Section 5 of this Article. No person who holds any elective or appointive tribal office, or is a candidate for such office, shall serve on the Election Board.

Sec. 5. Election Procedures. The Tribal Council shall enact an election ordinance, consistent with this Constitution, setting forth the procedures to be followed in conducting each of the various types of tribal elections called for in this Constitution. The ordinance shall include mandatory provisions for secret balloting, voter registration, maintaining a current list of qualified voters, absentee voting, screening of prospective candidates, and settling election disputes. Further, the ordinance shall spell out the procedure and format to be used whenever it is necessary to submit petitions and describe how such petitions are to be determined valid.

Sec. 6. Initiative. The qualified voters may propose legislation by submitting to the Tribal Council, a petition signed by at least one-third (1/3) of the registered voters. Each page of the petition shall contain a description of the proposed enactment. Within thirty (30) days from the Tribal Council's receipt of a valid petition, the Chairperson shall call an election to be held in conjunction with a special meeting of the General Council, making provision for absentee balloting; provided, that if an initiative petition is received within ninety (90) days before the annual meeting of the General Council, the initiative election shall be delayed until that time. A majority of those who vote shall decide the issue; provided, that at least one-third (1/3) of the registered voters cast ballots on the proposed legislation. The decision of the voters shall be binding on the Tribal Council and the Tribe and shall remain in force until amended or rescinded by subsequent action by the voters, or expire by its own terms.

Sec. 7. Referendum. The Tribal Council, by an affirmative vote of at least three (3) of its members, shall call an election to be conducted within forty-five (45) days of such Tribal Council decision, for the purpose of deciding issues or questions that are either within the authority of the General Council or those powers vested in the Tribal Council. An affirmative vote by at least a majority of those who vote shall be



necessary to decide the issue or question; provided, that no less than one-third (1/3) of the registered voters cast ballots in that election. The decision of the voters shall be binding in the same manner as provided in Section 6 of this Article.

Sec. 8. Recall. Upon receipt of a valid petition signed by at least one-third (1/3) of the registered voters requesting the recall of an individual official holding an elective office, it shall be the duty of the Tribal Council to call a special election to vote on the recall of that official. Such election shall be held within forty-five (45) days of receipt of the valid petition; provided, that if the petition is submitted within six (6) months of the next annual election, the Tribal Council may direct that the matter be placed on the ballot for that election. If a majority of those actually voting favor the recall of the official, the office shall be declared vacant and filled in accordance with Section 2 of Article VI. No individual shall be subjected to recall more than once during his/her term of office.

## ARTICLE VI - REMOVAL FROM OFFICE AND FILLING VACANCIES,

### Section 1. Removal.

- (a.) Should any of the following circumstances occur involving a Tribal Council member, the remaining members of the Tribal Council may by resolution remove such person from office:
  - 1. Failure to satisfy the requirements for holding office in Article V, Section 2;
  - 2. Absence from three (3) successive Tribal Council meetings without good reason;
  - 3. Gross misconduct in office, neglect of duty or conviction of a felony after his or her election;
  - 4. Becoming physically or mentally incapable of performing his or her duties.
- (b.) Any Tribal Council member subject to removal shall, before a vote is taken, be provided with reasonable and detailed written notice of the charges against him or her and with a fair opportunity to reply to such charges and present evidence on his or her behalf at an open hearing called for that purpose. At least three (3) of the remaining members of the Council must vote in favor of removal to make it valid. The chairperson shall be permitted to vote if he/she is not object of removal proceedings.

Sec. 2. Filling of Vacancies. If any vacancies occur due to removal, recall, resignation or death, the Tribal Council shall appoint a new member, who qualifies pursuant to Section 2 of Article V, to serve until the next regular election when a successor shall be elected to fill the remainder of the term so as to preserve the system of staggered terms of office.

## ARTICLE VII - POWERS OF THE TRIBAL COUNCIL

Section 1. Enumerated Powers. The Tribal Council of the Jamestown Klallam Tribe shall be authorized to exercise the following powers, subject to any limitations imposed by Federal Law or the Constitution of the United States, and subject further to all express restrictions upon such powers contained in this Constitution:

- (a) To negotiate with the Federal, state and local governments on behalf of the Tribe and to advise and consult with representatives of the Department of the Interior on all activities of the Department that may affect the Jamestown Klallam Tribe.
- (b) To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior as long as such approval is required by Federal Law.
- (c) To approve or veto any sale, disposition, lease, or encumbrance of tribal lands, interest in lands, or other tribal assets; provided, that tribal lands shall neither be encumbered nor sold unless such sale or encumbrance is authorized by Federal Law, nor shall any tribal lands be leased for a period exceeding the time authorized by Federal Law.
- (d) To advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Jamestown Klallam Tribe prior to the submission of such estimates to the Office of Management and Budget and to Congress.
- (e) To manage all economic affairs and enterprises of the Tribe.
- (f) To appropriate any available funds for tribal purposes.
- (g) To levy taxes on all persons, property and activities within the Tribe's jurisdiction.
- (h) To prescribe conditions upon which non-members may remain within the territory of the Tribe. Such conditions shall be enforced by order of the Tribal Court.
- (i) To enact ordinances and laws governing the conduct of all persons and defining offenses against the Jamestown Klallam Tribe; to maintain order and protect the safety, health and welfare of all persons within the Jamestown Klallam Tribe's jurisdiction; and to enact any ordinances or laws necessary to govern the administration of justice, and the enforcement of all laws, ordinances or regulations.
- (j) To charter and regulate corporations, cooperatives, associations, special districts, educational, and charitable institutions, political subdivisions and any other organizations.

- (k) To regulate the domestic relations of tribal members within the Tribe's jurisdiction.
- (l) To provide for the Tribal Court to appoint guardians for minors and mental incompetents.
- (m) To regulate and define the duties and procedures of the Tribal Council, of all Tribal Council members and/or subordinate tribal committees and organizations and otherwise establish policies and procedures for tribal governmental personnel.
- (n) To delegate advisory authority to subordinate boards or to cooperative associations which are open to all members of the Tribe regarding any of the enumerated powers of the Tribal Council; provided, that any actions taken by such subordinate boards or cooperative associations shall be effective only when approved by the Tribal Council.
- (o) To purchase, or accept any land or other property for the Jamestown Klallam Indian Tribe.
- (p) To request the Secretary of the Interior to confer trust or reservation status on lands granted to or purchased by the Tribe.
- (q) To accept gifts on behalf of the Jamestown Klallam Tribe.
- (r) To assert as a defense to lawsuits against the Tribe, and to waive only by express written agreement, the sovereign immunity of the Tribe.
- (s) To develop, manage, protect and regulate the use of water, fish, animals, wildlife, minerals, timber and all other natural resources within the Tribe's jurisdiction.
- (t) To deal with questions concerning the encumbrance, lease, use, management, assignment, zoning, exchange, mortgage, purchase, acquisition, sale, placement in trust and disposal of land and other assets owned by the Tribe or held in trust for the Tribe; and regulate land use and development in areas within the Tribe's jurisdiction.
- (u) To exercise any power or duty which may now or in the future be delegated to the Tribal Council by the Federal or state government.
- (v) To take any and all actions necessary and proper for the exercise of the foregoing powers and duties and all other powers and duties now or hereafter delegated to or vested in the Tribal Council.

Sec. 2. Reserved Powers. Notwithstanding the above, the Jamestown Klallam Tribe may exercise all other inherent tribal powers not expressly listed without amendment to this Constitution. Such powers may be exercised by the Tribe's registered voters at a validly called meeting of the General Council under this Constitution.

## ARTICLE VIII - TRIBAL COURT

The Tribal Court shall consist of one (1) Chief Judge and such Associate Judges and Staff as are deemed necessary by the Tribal Council. The Tribal Court is empowered to exercise all judicial authority of the Tribe. Said authority shall include, but is not limited to, the power to review and overturn tribal legislative and executive actions for violations of this Constitution or of the Federal Indian Civil Rights Act of 1968, as well as to perform all other judicial and court functions. The Tribal Council shall set forth qualifications for the Tribal Court Chief Judge, Associate Judges, and staff positions by ordinance, and shall appoint persons to fill said positions for a term of not less than four (4) years for Chief Judge, not less than two (2) years for Associate Judges. During the tenure of his or her appointment, the Chief Judge, or an Associate Judge may be suspended or dismissed by the General Council only for criminal activity, misconduct, negligence, or absence from duty upon due notice and an opportunity for an open hearing.

## ARTICLE IX - BILL OF RIGHTS

The Jamestown Klallam Indian Tribe, in exercising powers of self-government, shall not:

1. make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
2. violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
3. subject any person for the same offense to be twice put in jeopardy;
4. compel any person in any criminal case to be a witness against himself;
5. take any private property for public use without just compensation;
6. deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;
7. require excessive bail, impose excessive fines, inflict cruel and unusual punishment, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six (6) months or a fine of \$500, or both;
8. deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

9. pass any bill of attainder or ex post facto law;
10. deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six (6) persons.

#### ARTICLE X - AMENDMENTS

This Constitution may be amended by a majority vote of the qualified voters of the Tribe voting at an election called for that purpose by the Secretary of the Interior and conducted pursuant to Federal Regulations (25 CFR Part 81); provided, that at least thirty (30%) percent of those entitled to vote shall vote in such election. Amendments shall become effective when approved by the Secretary of the Interior.

It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment upon receipt of a valid petition signed by at least one-third (1/3) of the qualified voters, or by a resolution passed by an affirmative vote of at least three (3) members of the Tribal Council.

#### ARTICLE XI - SAVINGS CLAUSE

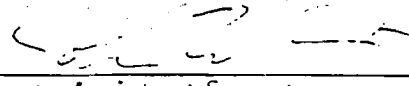
All enactments of the Tribe adopted before the effective date of this Constitution shall continue in effect to the extent that they are consistent with this Constitution.

#### ARTICLE XII - RATIFICATION

This Constitution, when approved by the Secretary of the Interior and ratified by a majority vote of the qualified voters of the Jamestown Klallam Tribe voting in an election called for that purpose by the Secretary of the Interior and conducted pursuant to Federal Regulations (25 CFR Part 81); provided, that at least thirty percent (30%) of those entitled to vote, cast ballots in that election, shall become effective upon the date of such ratification.

#### ARTICLE XIII - APPROVAL

I, John W. Fritz, Deputy Assistant Secretary - Indian Affairs (Operations), by virtue of the authority granted to me by 209 D.M. 8.3, do hereby approve this Constitution of the Jamestown Klallam Tribe of Indians. It shall become effective upon ratification; provided, that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal Law.

  
 Deputy Assistant Secretary -  
 Indian Affairs (Operations)

Washington, D.C.

AUG 17 1983

## ARTICLE XIV - CERTIFICATE OF RATIFICATION

Pursuant to an order issued on AUG 17, 1983, by /S/ John T. Fritz, Deputy Assistant Secretary - Indian Affairs (Operations), this Constitution was approved and submitted to the qualified voters of the Jamestown Klallam Tribe of Indians and was on \_\_\_\_\_, 1983 duly <sup>ratified</sup> <sub>rejected</sub> by a vote of            for, <sup>(number)</sup> and            against, in an election in which at least thirty percent (30%) of the <sup>(number)</sup> entitled to vote, cast their ballots in accordance with Article XII of this <sup>(number)</sup> Constitution.

\_\_\_\_\_  
Chairman, Election Board

\_\_\_\_\_  
Election Board Member

\_\_\_\_\_  
Election Board Member

Date: \_\_\_\_\_

JUDICIAL SYSTEM  
OF THE  
JAMESTOWN KLALLAM TRIBE

**LOCATION:** Sequim, Washington

**AGENCY:** Supt., BIA, Olympic Peninsula Agency, P.O. Box 120, Hoquim, Wash. 98550

**TRIBAL OFFICE:**

Jamestown Klallam Tribe  
150 South 5th-Suite 2  
Sequim, Washington 98382  
(206) 683-1109/1001  
Chairman: Wm. Ron Allen

**JUDICIAL OFFICE:**

Jamestown Klallam Tribal Court  
150 South 5th-Suite 2  
Sequim, Washington 98382  
(206) 683-1109  
Chief Judge: Jim Bowen

**TRIBAL ORGANIZATION:**

Jamestown Klallam Tribal Council  
Authorization: Tribal Constitution  
Approved: 11-19-83 IRA  
Number of Council Members: 5  
Term of Office: 2 years

**JUDICIAL ORGANIZATION:**

Jamestown Klallam Tribal Court  
Authorization: Tribal Const.  
Article VIII, Sec. 1(I)  
Number of Court Personnel: 3  
Term of Office (Chief Judge): 4 yrs

**RESERVATION ACREAGE BIA '81:**

Tribal	2.12
Allotted	.00
Federal	.00
Total	2.12

**COURT COMPOSITION '83:**

Judges	1
Juvenile	0
Clerks	1
Other	1
Total	3

**POPULATION BIA '85:**

Indian	188
Probate Cases '83	0
Indian Child Welfare '83	0

**CASELOAD '83:**

Criminal	1
Civil	1
Juvenile	1
Other	
Total	3

**COURT JURISDICTION:**

The court exercises the full range of civil and fishing jurisdiction but at the present has no need to exercise criminal jurisdiction.

**COURT PERSONNEL:**

Court personnel includes one judge, one clerk and one other staff person.

**FACILITIES:**

The tribal council office houses the court system.

**AGREEMENTS WITH OTHER JURISDICTIONS:**

The Klallam Tribe has no formal agreements with other jurisdictions.

**TRIBAL COURT PROCEDURES:**

The court has adopted temporary court procedures.

CONSTITUTION OF THE  
TIMBISHA SHOSHONE INDIAN TRIBE  
Inyo County  
Death Valley, California

PREAMBLE

We, the Timbisha Shoshone Indian Tribe, being a sovereign native people, in order to organize for our common good, to maintain and foster our tribal culture, to protect and conserve our land and natural resources, to promote the social, economic and general welfare of our people, to maintain peace and order, and secure the rights and powers inherent in our sovereign status, guaranteed to us by the laws of the United States, do hereby establish and adopt this document in accordance with the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended which from this time forward shall govern the Timbisha Shoshone Indian Tribe.

ARTICLE I

Name

The name of this organization shall be the Timbisha Shoshone Indian Tribe, hereinafter referred to as "the Tribe".

ARTICLE II

Territory and Jurisdiction

The jurisdiction of the Tribe shall extend to all lands,



water and resources within the exterior boundaries of what shall become the Timbisha Shoshone Indian Reservation and to such other lands, water and resources as may be thereafter acquired by the Tribe.

### ARTICLE III

#### Membership

##### Section 1.

Membership in the Timbisha Shoshone Indian Tribe shall consist of the following:

a. All persons who filed as Timbisha Shoshone Indians and were listed on the genealogy roll prepared as of March, 1978 and used to request federal acknowledgment and recognition of the Tribe;

b. All persons who are lineal descendants of any person designated in subsection (a) above and who possess at least one-fourth (1/4) degree Indian blood of which one-sixteenth (1/16) degree must be Timbisha Shoshone blood;

c. All persons of Indian blood upon whom membership is conferred by adoption.

##### Section 2.

A person who has been allotted or given a land assignment on another reservation or is officially enrolled with or is a recognized member of some other tribe or band shall not be enrolled.

##### Section 3.

The official membership roll shall be prepared in accordance with an ordinance adopted by the tribal council. Such ordinance shall contain provisions for enrollment procedures, enrollment committees, application form, approval or disapproval of

applications, rejection notices, appeals, corrections, adoptions, disenrollment procedures and provisions for keeping the roll on a current basis.

Section 4.

No person shall be enrolled as an adopted member of the Tribe unless he/she possesses at least one-fourth (1/4) degree Indian blood and has been approved by a majority vote of the General Council.

Section 5.

Any person who wishes to withdraw from membership in the Tribe must submit his withdrawal in writing to the Tribal Council Chairperson who shall direct the enrollment committee to adjust its records accordingly.

Section 6.

The Tribal Council shall revoke membership status from any individual whom the enrollment committee has determined was erroneously, fraudulently or otherwise incorrectly enrolled.

ARTICLE IV

Governing Body

Section 1.

The powers of the government of the Tribe shall be divided into three distinct branches; the General Council, the Tribal Council and the Tribal Judiciary. No branch, group or person charged with the exercise of powers properly belonging to one of these branches shall exercise any powers belonging to one of the other branches, except as otherwise specified in this document.

Section 2.

The governing body of the Tribe shall be the General

Council. The General Council shall consist of all tribal members sixteen (16) years of age or older. All members of the General Council shall be able to vote at all General Council meetings and all tribal elections, referenda, initiatives, recalls and repeals.

### Section 3.

In addition to the General Council, there shall be elected from the General Council, a Tribal Council. The Tribal Council shall be composed of five (5) persons elected by the General Council. The Tribal Council shall exercise, concurrently with the General Council, all powers delegated to it by the General Council in Article V of this document and otherwise vested in the Tribal Council by this document.

Any member of the Tribe who is eighteen (18) years old or older shall be eligible to serve as a member of the Tribal Council, provided that not more than one additional immediate family member of any person already serving on the Tribal Council may serve on the Tribal Council. For purposes of this section, "immediate family member" shall mean mother, father, brother, sister, spouse or child.

## ARTICLE V

### Powers

#### Section 1. General Council

a. All powers of the Tribe shall be vested in the General Council, subject to any limitation imposed upon such powers by the laws of the United States, including those powers delegated to the Tribal Council and any such other powers as may in the future be granted or delegated to the Tribe by federal law.

b. The General Council shall exercise its powers of self-government through the initiative, referendum, repeal and recall powers as set forth in this document.

c. The following powers shall be exclusively reserved to the General Council. No exercise of these powers by the Tribal Council or by any other agency or officer of the Tribe shall be effective unless the General Council has given its consent to such action in accordance with Article V of this document:

1. No sale, disposition, encumbrance of tribal lands, interest in lands or other Tribal assets shall be made without the consent of the General Council.
2. The power to regulate any tribal hunting or fishing rights.
3. The power to revoke, terminate or diminish a right reserved or delegated to the Tribe by federal law.
4. The power to grant or relinquish any tribal jurisdiction to any other government, political subdivision of a government agency, organization, association or person.
5. The power to waive the Tribe's immunity from suit.
6. The power to set compensation for Tribal Council members, officers and committee members, as it believes is advisable.
7. The power to reassume jurisdiction over juvenile matters pursuant to the Indian Child Welfare Act of 1978, Public Law 95-608, 92 Stat. 3069.

All powers that are not expressly mentioned in this document or which are not expressly delegated in this document by the General Council to the Tribal Council or any other officer or agency of the Tribe, shall not be abridged but shall be reserved to the General Council.

## Section 2. Tribal Council

The General Council hereby delegates to the Tribal Council the following enumerated powers subject only to those limitations imposed by this document and the laws of the United States:

- a. On behalf of the Tribe, to consult, negotiate, contract or conclude agreements with federal, state, local and tribal governments and with private persons and organizations;
- b. To employ legal counsel of its choice on behalf of the Tribe or for the benefit of tribal members and to fix the fees for such counsel in accordance with federal law;
- c. To make recommendations to the Secretary of the Interior or to his authorized representative with regard to all appropriation estimates for all projects which are for the benefit of the members of the Tribe, prior to the submission of such estimates to the Office of Management and Budget and Congress, or to the State of California;
- d. To borrow money from public and private sources and to pledge, mortgage or assign tribal assets except as provided in Sections 2, 3, 4, and 5 of this Article;
- e. To set aside and to spend tribal funds for tribal purposes;
- f. To impose taxes on all persons, property and business activities located or conducted within tribal jurisdiction,

provided no tax shall be imposed on real property held in trust by the United States of America;

g. To regulate the use and development of all tribal lands, whether assigned or unassigned, and to manage, lease or otherwise use all unassigned tribal lands. Toward this end the Tribal Council shall, within one year of the effective date of this document, submit for approval to the General Council a land assignment and a land use law;

h. To charter and regulate corporations, cooperatives, associations, special districts, housing authorities, educational and charitable institutions, political subdivisions and other entities;

i. To license and regulate the conduct of all business activities within tribal jurisdiction;

j. To establish business enterprises as branches or agencies of the tribal government and otherwise to engage in business activities and projects which promote the economic well-being of the Tribe and its members;

k. To purchase and to acquire in other ways land and other property;

l. To condemn for tribal purposes real property or interest in real property within tribal jurisdiction, provided that the owners of assignments or property condemned by the Tribal Council shall be paid fair market value for the assignment or property and all improvements made thereon by the assignee or owner, and provided further that an assignee of condemned tribal lands shall be assigned alternative tribal lands of comparable condition and value; and provided further that no assignments shall be con-

demned without the approval of the General Council;

m. To manage, develop, protect and regulate the use of water, minerals and all other natural resources within tribal jurisdiction;

n. To enact laws, statutes and codes governing conduct of individuals and proscribing offenses against the Tribe; to maintain order, to protect the safety and welfare of all persons within tribal jurisdiction; and to provide for the enforcement of the laws and codes of the Tribe;

o. To establish tribal courts or courts of Indian offenses from time to time as may be required, and to provide for the court or courts jurisdiction, procedures and a method for the selection of judges;

p. To prescribe conditions under which non-members may enter and remain on the reservation and to establish procedures for the exclusion of non-members from any land within the Tribe's jurisdiction;

q. To assert as a defense to lawsuits against the Tribe, the sovereign immunity of the Tribe, except that no waiver of sovereign immunity can be made by the Tribal Council without prior approval of the General Council;

r. To regulate the domestic relations of members of the Tribe; to provide for the guardianship of minors and incompetent persons within tribal jurisdiction; to provide services for the peace, safety, health, education and general welfare of the members of the Tribe;

s. To regulate the inheritance of all lands within tribal jurisdiction and all property owned by persons within tribal

jurisdiction; and to provide for escheat of property to the Tribe, provided that no law, statute, code or ordinance governing the inheritance of property owned by tribal members shall be in violation of federal law;

t. To enact ordinances consistent with this document establishing procedures for the nomination, election, removal and recall of tribal officers;

u. To appoint, direct and set the compensation of a tribal business administrator or manager; and to establish policies and procedures for the employment of tribal personnel;

v. Subject to any limitations contained in this document to delegate any powers vested in the Tribal Council to subordinate tribal officers, tribal employees or other appropriate persons;

w. To take all actions which are necessary and proper for the exercise of the powers enumerated in this document and which are otherwise consistent with, and in furtherance of, tribal customs, traditions and beliefs, and any other powers which may hereafter be vested in the Tribal Council; and

x. Except as provided in this document, to establish its own rules of procedures.

### Section 3. Reserve Powers of General Council

The Tribal Council shall have all the appropriate powers necessary to implement specific provisions of this document and to effectively govern tribal affairs. All powers heretofore vested in the Tribe, but not specifically referred to in this document, shall not be abridged, but shall be reserved to the General Council.

### Section 4. Limited Power to Transfer Tribal Land Out of



## Tribal Ownership

The Tribal Council shall not transfer land or interests therein out of tribal ownership by any means unless prior to any such transfer taking effect, such proposed transfer is approved by:

a. A vote of two-thirds (2/3) of the General Council provided that at least forty-five (45) people who are entitled to vote are present;

b. The Secretary of the Interior;

Provided, however, the Tribal Council may exchange land, prior to it becoming tribal land, however, such exchanges must be approved by a two-thirds (2/3) vote of the General Council before the exchange.

### Section 5. Limited Power to Encumber Tribal Land

a. Except as permitted by Subsection (b) of this Section, the Tribal Council shall not pledge, mortgage, lease or grant licenses to use land, (whether revocable or irrevocable) or otherwise encumber tribal land or interests therein unless it is approved by the Secretary of the Interior and by a vote of a majority of the General Council voting on the question, Provided that at least forty-five (45) persons who are entitled to vote are present.

b. The Tribal Council may authorize the following encumbrances by a vote of a majority of the entire Tribal Council:

1. Grants of permission to members of the Tribe and qualified non-members in accordance with provisions of this document, to use specified portions of tribal land for residential, agricultural, com-

mercial or industrial purposes.

2. Grants of rights-of-way over tribal land or interests therein; for the purposes of providing municipal services, such as water, sewer disposal, electricity, telephone and roads, to and for the benefit of tribal members, or the heirs and descendants of tribal members who had a land use assignment or lease.

#### Section 6. Limited Power to Develop Natural Resources

The Tribal Council shall not develop on a commercial or industrial basis any natural resources of the Tribe without the consent of a majority vote of the General Council, provided that at least forty-five (45) persons who are entitled to vote are present.

#### Section 7. Principal of Construction

Section 5, 6 and 7 of this Article shall not be construed to deny to the Tribal Council its governmental power and authority to regulate activities on tribal land for the Tribe's general welfare, including, but not limited to, zoning, the regulation of commercial ventures, fishing, hunting and other sports activities, and for the purpose of promoting the health, safety and welfare of tribal members and the conservation and protection of tribal resources.

### ARTICLE VI

#### Elections

##### Section 1.

An election board, appointed by the chairperson and approved by the Tribal Council, shall supervise and administer all elec-

tions in accordance with the election ordinance enacted by the Tribal Council in accordance with this document, within three months of the effective date of this document.

#### Section 2.

Members of the Tribal Council shall be chosen by secret ballot, the form of which shall be established by the election ordinance enacted by the Tribal Council. The Tribal Council shall also make provision in the election ordinance for absentee voting.

#### Section 3.

All present officials shall continue to hold office until the first general election date following the adoption and ratification of this document. The first election of Tribal Council members and officers of the Tribe under this document shall be held on the first general election date following the effective date of this constitution. Procedures for the first election shall be consistent with the provisions of this Article and the election ordinance, should it be established at that time, and be administered by the present officials. Thereafter all elections shall be conducted in accordance with this document and the election ordinance.

At the first election held pursuant to this document, the two members receiving the highest number of votes shall hold office for three (3) years and the remaining members shall hold office for two years. Thereafter, the candidate(s) receiving the highest number of votes shall fill the vacancy or vacancies for two year terms of office.

#### Section 4.

a. Any qualified member of the Tribe who desires that his or her name be placed on the ballot as a candidate for the Tribal Council shall file with the Tribal secretary a statement of intent stating his or her name and address. Such statement shall be filed thirty (30) days prior to the next general election or special election. If only one qualified member files a statement of intent for a tribal office, a special meeting of the General Council shall be convened for the purpose of taking nominations from the floor for a candidate or candidates for that office; however, no more than the first three (3) nominations will be accepted from the floor for any one position.

b. General elections to vote for Tribal Council members shall be held annually on the second Tuesday of the month of November. Notice of the general elections shall be posted by the secretary of the Tribal Council at least twenty (20) days before each such election at the Tribe's business office, the voting place, and in three or more additional public places. In case the date of the general election should conflict with a holiday, the election shall be held on the following work day.

c. All newly elected officials shall assume their offices thirty (30) days after the election in which they were elected.

d. A tie vote shall be decided only by holding a general election within thirty (30) days from the date of the previous general election that resulted in a tie. Only those receiving the same number of votes shall be candidates in the subsequent election. The person receiving the highest number of votes for the particular office shall hold that office.

Section 6.

After the first election held under this document, Tribal Council members shall elect the following officers from the Tribal Council:

1. Chairperson;
2. Vice-Chairperson; and
3. Secretary/Treasurer.

The officers shall be elected by a majority vote and shall serve two year terms.

After all subsequent Tribal Council elections, the Tribal Council members shall elect officers from the Tribal Council when the prior officer's term has expired or vacated.

#### ARTICLE VII

##### Duties of Officers

###### Section 1.

a. The Chairperson shall have the following duties:

1. To preside at all meetings of the Tribal and General Councils;
2. To vote at Tribal and General Council meetings only when it is necessary to break a tie vote;
3. Subject to the approval of the Tribal Council, to appoint all non-elected officials and employees of the Tribal government and direct them in their work, subject only to applicable restrictions embodied in this document or in enactments of the Tribal Council establishing personnel policies or government personnel management;
4. Subject to the approval of the Tribal Council, to establish such boards, committees, or sub-committees as

the business of the Tribal Council may require and to serve as an ex-officio member of all such committees and boards;

5. Subject to the approval of all contracts by the Tribal Council, to serve as a contracting officer or agent for the Tribe including the authority to retain legal counsel;
6. Subject to such regulations and procedures as may be prescribed by statute enacted by the Tribal Council and subject to approval by the Tribal Council, to grant pardons or restore Tribal members to eligibility for elective office in the Tribal government;
7. Subject to the approval of the Tribal Council to appoint tribal judges and tribal law enforcement officials as are from time to time required to assure the administration and enforcement of tribal laws;
8. The Chairperson shall hold no other Tribal office or engage in private remunerative employment which may pose a conflict of interest with the Tribe's enterprises or business activities during his term of office;
9. To prepare and cause to be published at least five (5) days before the meetings, an agenda for each General Council meeting. The agenda shall include, but not be limited to:
  - a) A report by the Tribal Secretary/Treasurer on the finances of the Tribal government during the quarter immediately preceding the meeting; and,

b) A list of all the laws enacted by the Tribal Council during the quarter immediately preceding the meeting, with a short summary explaining each law. During the meeting the Tribal Council chairperson will ensure that this agenda, including the financial report, will be available for inspection by any member of the General Council upon request. All items on the agenda will be considered by the General Council before considering new matters from the floor.

#### Section 2.

The Vice-Chairperson shall, with the consent of the Tribal Council, in the absence of the Chairperson, perform all duties and assume all the responsibilities vested in the chairperson. The vice-chairperson shall, upon the request of the chairperson, assist in carrying out the duties of the chairperson. The vice-chairperson shall perform such other duties as the chairperson may direct.

#### Section 3.

The Secretary-Treasurer shall

a. Call the roll, handle all official correspondence of the Tribal Council, keep the minutes of all regular and special meetings of the Tribal and General Councils, and certify to the Superintendent of the Bureau of Indian Affairs, Central California Agency, the duly elected officers of the Tribal and General Councils within fifteen (15) days from the date of any election;

b. Accept, keep and safeguard all funds under the exclusive control of the Tribe by depositing them in a bank insured

by an agency of the federal government or in an IIM account or Tribal trust account with the Bureau of Indian Affairs, as directed by the Tribal Council and shall keep or cause to be kept an accurate record of such funds and shall report on all receipts and expenditures and the amount and nature of all funds in his or her custody to the Tribal and General Councils at regular meetings and at such other times as requested by either Council. The Secretary-Treasurer shall not pay or otherwise disburse any funds in the custody of the Tribal Council except when properly authorized to do so by the Tribal Council;

c. At such times as the Tribal Council or General Council may direct, have the books and records of the Tribe audited by a competent independent auditor employed by the Tribal Council.

d. Be present at all meetings of the Tribal and General Councils unless prevented by illness or circumstances beyond his or her control;

e. Required to give a surety bond satisfactory to the Tribal Council if the Tribal Council so desires;

f. Sign and approve all checks drawn on Tribal funds and all vouchers with at least one officer or designated check signer of the Tribe in accordance with a written procedure approved and adopted by the Tribal Council by resolution; and

g. In the absence of the Chairperson and Vice-Chairperson, with the approval of the Tribal Council, the Secretary-Treasurer shall carry out the duties of the Chairperson.

#### Section 5.

The Tribal Council may require all responsible tribal offi-



cials and employees to be bonded, the person responsible for the cost of such bonding to be determined by the Tribal Council.

## ARTICLE VIII

### Meetings

#### Section 1.

All meetings of the General or Tribal Councils shall be open to all tribal members, except in those cases where the matter under discussion would invade the privacy of an individual tribal member.

#### Section 2.

All meetings of the Tribal Council shall be held in accordance with the following provisions:

a. The Tribal Council shall meet at least once per month. The Council may schedule additional regular meetings as necessary, provided that it shall publish the schedule of all such meetings.

b. A majority of the members of the Tribal Council shall constitute a quorum at all Council meetings. No business shall be conducted in the absence of a quorum.

c. Special meetings of the Tribal Council may be called by the Chairperson or by any three (3) members of the Council. The notice in regard to any special meeting shall be given at least three (3) days prior to the meeting and shall specify the purpose of the meeting.

d. Each member of the Tribal Council shall have one vote on all matters, and all matters to be acted on at a Tribal Council meeting shall be approved or disapproved by a majority vote of those present and voting, unless provided to the contrary in

this document.

### Section 3.

All meetings of the General Council shall be held in accordance with the following provisions:

a. The annual General Council meeting shall be held on the last Saturday of October. The Tribal Council may set more frequent meetings of the General Council as necessary, provided it shall publish a schedule of all such meetings.

b. Special meetings of the General Council may be called by the Tribal Chairperson or by any member of the General Council who submits a petition with ten (10) signatures of General Council members to the Tribal Council requesting a special meeting. The notice in regard to any special meeting shall be given at least three (3) days prior to the meeting and shall specify the purpose of the meeting.

c. No business shall be transacted in the absence of a quorum. A majority of the voting members of the General Council shall constitute a quorum at all Council meetings.

## ARTICLE IX

### Enactments

#### Section 1.

All final decisions on matters of general and permanent interest to members of the Tribe shall be embodied in ordinances, such as an enrollment or an election ordinance. Such enactments shall be available for inspection by members of the General Council during normal office hours.

#### Section 2.

All final decisions on matters of short term or one time in-

terest where a formal expression is needed shall be embodied in a resolution. Other decisions of a temporary nature or relating to particular individuals, officials or committees shall be put in the form of motions and noted in the minutes and shall be available for inspection by members of the General Council during normal business hours.

### Section 3.

All ordinances and resolutions shall be dated and numbered and shall include a certification showing the presence of a quorum and the number of members voting for and against the proposed enactment.

### Section 4.

The General and Tribal Councils shall submit Tribal laws and enactments to the Secretary of the Interior for his review, comment and approval only when required to do so by federal law. Both the General and Tribal Councils may submit any Tribal law or enactment to the Secretary of the Interior for his review, comment and approval if they so desire when not required to do so by federal law. However, the failure of the General or Tribal Councils to submit any Tribal law or enactment to the Secretary or the failure of the Secretary to approve any Tribal law or enactment, when approval is not required by federal law, shall in no way affect the legal validity of such Tribal law or enactment enacted pursuant to this document.

## ARTICLE X

### Vacancies

#### Section 1.

The Tribal Council shall declare a Tribal Council position

vacant for any of the following reasons:

- a. When a Tribal Council member dies;
- b. When a Tribal Council member resigns;
- c. When a Tribal Council member is convicted of a crime that is classified as a felony by either state or federal law;
- d. When a Tribal Council member is removed from office;
- e. When a Tribal Council member is recalled from office.

If less than twelve (12) months of vacant term remains, the Tribal Council shall fill the vacancy by appointment of a General Council member who qualifies for candidacy for the vacant position. If more than twelve (12) months remain in the vacant term a special election shall be held to fill the vacant position. Such a special election shall be held within thirty (30) days after the Tribal Council declares the position vacant.

## ARTICLE XI

### Removal and Recall

#### Section 1. Removal

Any member of the Tribal Council may be removed from office for any of the following reasons:

- a. Absence from regular Tribal or General Council meetings three (3) successive, unexcused times, or three (3) unexcused times in any twelve (12) month period;
- b. Conviction of a crime involving the moral character of the Tribal Council member;
- c. Neglect of duty;
- d. Misconduct in office.

1. Any member of the Tribe can request removal of any Tribal Council member by submitting a written statement of

charges to the Chairperson of the Tribal Council, or in the case of a request for removal of the Chairperson, to the Vice-Chairperson of the Tribal Council. Such written statement must be received by the accused Council member no later than ten (10) days before the next regular Council meeting at which he or she is to appear.

2. At the next regular Tribal Council meeting following the submission of such written statement, the charging party shall present his or her allegations and proof against the accused member of the Tribal Council, and the accused member shall be given an opportunity to reply to all charges by presenting his or her allegations and proof to the Tribal Council.

3. After hearing all the charges and proof presented by both sides, the Tribal Council shall take a vote on whether the accused member shall be removed from office. If a majority of the Tribal Council vote to remove the accused Council member, his or her seat shall be declared vacant. The Tribal Council member who is the subject of the removal request shall not vote nor serve in his or her capacity as a Tribal Council member in the removal proceedings.

## Section 2. Recall

Every person elected to a position on the Tribal Council or who is an elected officer of the Tribe shall be subject to recall from such office by the General Council as follows:

a. Any member of the Tribe may circulate one or more petitions among the eligible voters of the Tribe requesting a special recall election, which petition(s) shall contain the name(s) of the person(s) whose recall is sought and shall state the charges

being preferred against such person(s) in 25 words or less. If one-third (1/3) of the eligible voters of the General Council shall sign the petition(s), such petition(s) shall be presented to the Tribal Council Chairperson, or if charges are being preferred against the Tribal Council Chairperson, to the Vice-Chairperson of the Tribal Council.

b. The Tribal Council Chairperson, or if charges are being preferred against the Tribal Chairperson, the Tribal Council Vice-Chairperson, shall then certify the validity of such signatures of eligible voters maintained by the Tribe. If the required number of valid signatures appear on the recall petition, the Tribal Council shall call a special recall election within sixty (60) days from receipt of the petition(s).

c. Within thirty (30) days after the special recall election has been established, a General Council meeting shall be held. The charging party shall present his or her allegations and proof against the accused member of the Tribal Council, and the accused member shall be given an opportunity to reply to all charges by presenting his or her allegations and proof to the General Council.

d. The ballot used for a recall election shall contain the question: "Shall [name of member(s)] be recalled from office on the Timbisha (Tribal) Council?". The ballot shall contain a space opposite such question in which the words "Yes-No" shall be printed so that the voter may indicate with a mark whether he or she wishes to vote for or against the recall of the member(s) so named. In the case of a recall of two (2) or more Council members, there shall be a separate ballot for each member being

recalled.

e. If a majority of the General Council members voting in a special recall election vote to recall the Council member(s) or any other officer(s) of the Tribe named on the ballot, and provided that two-thirds (2/3) of the General Council vote in said election, the Tribal Council shall immediately declare the Council member(s) or officer(s) to be recalled from office and his or her seat(s) shall be declared vacant.

## ARTICLE XII

### Referendum and Repeal

#### Section 1.

Upon receipt of a petition signed by three (3) Tribal Council members or at least one-third (1/3) of the General Council members by the Secretary-Treasurer of the Tribal Council demanding a referendum or a repeal of any proposed or enacted Tribal law or any action undertaken by the Tribal Council, the action(s) of the Tribal Council shall be either modified, repealed or sustained by the General Council in a general or special election to be held within twenty (20) days after receipt of the petition by the Tribal Secretary-Treasurer.

The election shall be called by the Tribal Council Chairperson and the vote of a majority of the members of the General Council voting in such referendum or repeal shall be conclusive and binding on the Tribal Council provided that at least two-thirds (2/3) of the members of the General Council are present and cast their ballots therein. No absentee voting shall be allowed.

#### Section 2.

No referendum or repeal conducted pursuant to the provisions of Section 1 above shall serve to abrogate, modify or amend any properly executed contract or agreement approved by the Tribal Council and entered into with third parties.

#### ARTICLE XIII

##### Judiciary

###### Section 1.

The judicial power of the Tribe shall be vested in a Supreme Court and in such other inferior courts as the Tribal Council may from time to time establish. The Tribal Courts shall exercise jurisdiction over all cases and controversies within the Tribe's jurisdiction, in law and equity, whether civil or criminal in nature, that arise under this document, the laws of the Tribe, or which is vested in the Tribal courts by federal law.

###### Section 2.

The Supreme Court shall consist of a chief judge, appointed by the Tribal Council and confirmed by a majority vote of the General Council.

###### Section 3.

The duties and procedures of the courts shall be determined by the Tribal Council pursuant to Tribal law.

###### Section 4.

The tenure and salary of Tribal judges shall be established by statute of the Tribal Council. No person shall be appointed to the office of Tribal judge unless he or she is an enrolled member of the Tribe, not less than twenty-one (21) years of age and has never been convicted of a felony or, within one year preceding his or her appointment, of a misdemeanor.



Section 5.

In all criminal prosecutions, the accused shall enjoy the right to a speedy jury trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, the right of cross-examination, to have compulsory process for obtaining witnesses in his or her favor, and to have the assistance of an advocate for his or her defense admitted to practice before the Tribal courts.

Section 6.

The General Council shall sit as a Court of Appeals whenever necessary and may hear appeals from the Supreme Court at any regular or special meeting. Whenever the General Council sits as an appellate court, their decision shall be final and binding upon all parties to the suit and not subject to review. The procedures of the General Council sitting as an appellate court shall be determined by the General Council at any regular or special meeting.

ARTICLE XIV

Bill of Rights

Section 1.

All members of the Tribe shall enjoy without hindrance, freedom of worship, conscience, speech, press, assembly and association.

Section 2.

This constitution shall not in any way alter, abridge or otherwise jeopardize the rights and privileges of the members of the Tribe as citizens of the State of California or the United States.

Section 3.

The individual property rights of any member of the Tribe shall not be altered, abridged or otherwise affected by the provisions of this document.

Section 4.

Tribal members shall have the right to review all Tribal records, including financial records, at any reasonable time in accordance with procedures established by the Tribal Council.

Section 5.

In accordance with Title II of the Indian Civil Rights Act of 1968 (82 Stat. 77) the Tribe in exercising its powers of self-government shall not:

a. Make or enforce any law prohibiting the full exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

b. Violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable search and seizure, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

c. Subject any person for the same offenses to be twice put in jeopardy;

d. Compel any person in any criminal case to be a witness against himself;

e. Take any private property for a public use without just compensation;

f. Deny to any person in a criminal proceeding the right to

a speedy trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and, at his own expense, to have the assistance of counsel for his defense;

g. Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six (6) months or a fine of \$500.00 or both;

h. Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.

i. Pass any bill of attainder or ex post facto law;

j. Deny to any person accused of imprisonment the right, upon request, to a trial by jury of not less than six (6) persons.

#### ARTICLE XV

##### Ratification

This document shall become effective when it has been ratified by a majority of the eligible voters of the Tribe at a special election called by the Secretary of the Interior in which at least thirty percent (30%) of the eligible voters vote and when it has been approved by the Secretary of the Interior.

#### ARTICLE XVI

##### Amendments

This document may be amended by a majority vote of the eligible voters of the Tribe in an election called for that pur-

pose by the Secretary of the Interior, provided that at least fifty percent (50%) of those entitled to vote shall vote in such election. Amendments adopted in this way may be submitted for approval to the Secretary of the Interior. The Secretary-Treasurer shall call an election on a proposed amendment to the document upon receipt of a petition signed by at least one-third (1/3) of the eligible voters of the Tribe or upon receipt of a resolution of the Tribal Council.

#### ARTICLE XVII

##### Severability

If any provision of this document shall in the future be declared invalid by a court of competent jurisdiction, the invalid provision shall be severed and the remaining provisions shall continue in full force and effect.

CONSTITUTION  
OF  
THE MOHEGAN TRIBE OF INDIANS OF CONNECTICUT

PREAMBLE

We, The Mohegan Tribe of Indians of Connecticut answerable to our ancestors, in order to secure to ourselves and our descendants the management of our own affairs as a sovereign American Indian Nation, to ensure the maintenance of our basic human rights, to exercise our sovereign rights as a federally recognized Indian tribe, including the right of self-determination and self-governance, and to promote the general welfare of The Mohegan People, do hereby establish, adopt and proclaim this Constitution.

ARTICLE I - NAME

The name of this organization shall be The Mohegan Tribe of Indians of Connecticut (hereinafter "The Mohegan Tribe" or "The "Tribe") and the members thereof shall be known as The Mohegan Nation.

ARTICLE II - POWERS

The powers of The Mohegan Tribe shall include all of the inherent sovereign rights and powers of an independent, indigenous sovereign nation.

ARTICLE III - JURISDICTION

Section 1. The jurisdiction of The Mohegan Tribe shall extend to all lands presently owned or leased by The Tribe, all trust lands of The Tribe, all lands hereinafter acquired by The Tribe, and all lands over which The Tribe has regulatory authority.

Section 2. The Tribe's jurisdiction shall extend to:

(a) all persons who are currently enrolled as members of The Tribe;

(b) all persons who make application to become enrolled as members of The Tribe prior to June 30, 1996, as

provided in this Constitution and The Tribal Enrollment Ordinance, who are subsequently accepted as members of The Tribe; and

(c) all other persons who may lawfully be subject to The Tribe's jurisdiction.

#### ARTICLE IV - GOVERNING BODIES

Section 1. The Mohegan Tribe shall be governed by The Mohegan People, and represented by a Tribal Council, consisting of nine tribal members, and a Council of Elders, consisting of seven tribal members, unless and until said number of members is increased through the enactment of a joint ordinance, approved by a majority of the Tribal Council and a majority of the Council of Elders.

Section 2. Members of the Tribal Council and Council of Elders shall serve for four-year staggered terms, subject to the provisions of Article VI, Section 3.<sup>1</sup>

Section 3. Meetings of the Tribal Council shall be held and conducted as follows:

(a) The Tribal Council shall hold regular meetings which shall be called by the Chair or upon written request of a majority of the members of the Tribal Council then in office.

(b) Five (5) members of the Tribal Council then in office shall constitute a quorum for the transaction of any tribal business, and a majority of a quorum may make decisions except for those requiring a higher vote under this Constitution.

(c) In conducting its business, the Tribal Council shall be governed by such rules as it may, in its discretion, adopt.

Section 4. The Officers of the Tribal Council shall be elected in the following manner: At the first regular meeting at which the newly elected members of the Tribal Council convene following the first election after the adoption of this Amendment [September 6, 2003], the Tribal Council shall elect from among the membership of the Tribal

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<sup>1</sup> Article IV, Sec. 2, Amended by Tribal Vote September 6, 2003

Council a Chair, a Vice-Chair, a Recording Secretary, a Corresponding Secretary, and a Treasurer. Those members who are elected to these positions shall have such additional powers and duties as are hereinafter enumerated. Thereafter, at its first regular meeting following every general election, the newly constituted Tribal Council, including its newly-sworn members, shall fill, by majority vote, any officer positions vacated by incumbents whose terms expired. Incumbents winning re-election may be reappointed to officer positions only upon majority vote of the newly constituted Tribal Council.<sup>2</sup>

Section 5. Meetings of the Council of Elders shall be held and conducted as follows:

(a) The Council of Elders shall hold regular meetings which shall be called by the Chair or upon written request of a majority of the members of the Council of Elders then in office.

(b) Five (5) members of the Council of Elders then in office shall constitute a quorum for the transaction of any tribal business, and a majority of a quorum may make decisions except for those requiring a higher vote under this Constitution.

(c) In conducting its business, the Council of Elders shall be governed by such rules as it may, in its discretion, adopt.<sup>3</sup>

Section 6. The Officers of the Council of Elders shall be elected in the following manner: At the first regular meeting at which the newly elected members of the Council of Elders convene following the first election after adoption of this Amendment [September 6, 2003], the Elders shall elect from among the membership of the Council of Elders, a Chair, a Vice-Chair, a Secretary, and a Treasurer. Those Elders who are elected to these positions shall have such additional powers and duties as are hereinafter enumerated. Thereafter, at its first regular meeting following every general election, the newly constituted Council of Elders, including its newly-sworn members, shall fill, by majority vote, any officer positions vacated by incumbents whose terms expired.

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<sup>2</sup> Article IV, Sec. 4, Amended by Tribal Vote September 6, 2003

<sup>3</sup> Article IV, Sec. 5, Amended by Tribal Vote September 6, 2003

Incumbents winning re-election may be reappointed to officer positions only upon majority vote of the newly constituted Council of Elders.<sup>4</sup>

Section 7. The members of the Tribal Council and the members of the Council of Elders shall receive a compensation for their services, including any services performed in connection with any tribal business, and the compensation set forth herein shall be the sole compensation received for their services.

a. The compensation plans to be effective as of the date of adoption of this amendment [May 2, 2004] shall be the plans in effect as of January 1, 2004, except as follows:

1) no bonuses or increases in non-deferred compensation shall be authorized, except for: i) any changes to compensation approved by the Tribal membership pursuant to paragraph (b); and ii) annual cost of living adjustments not to exceed the percentage increase, if any, in the consumer price index upon which Social Security cost of living adjustments are calculated, which shall permanently alter the base pay of elected officials;

2) no pension, severance, transition payments, or any other form of deferred compensation, shall be authorized other than those payments authorized by the Council of Elders prior to January 1, 2004, for members of the Council of Elders who were in office on or before January 1, 2004, and authorized by the Tribal Council prior to January 1, 2004, for members of the Tribal Council who were in office on or before January 1, 2004; and

3) tribally funded life insurance coverage for members of the Tribal Council and Council of Elders who were not in office on or before January 1, 2004, shall be limited, while they are in office, to levels available to full-time employees of the Mohegan Tribe and such coverage shall cease when the elected official leaves office.

b. Following adoption of this amendment [May 2, 2004], the Tribal Council and Council of Elders, respectively and independently, may propose compensation plans for approval by the tribal membership in a special election; however, no

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<sup>4</sup> Article IV, Sec. 6, Amended by Tribal Vote September 6, 2003



increase in compensation shall be effective until approved by a majority of all votes cast in a special election called for that purpose.

c. The Tribal Council and the Council of Elders, respectively and independently, shall have discretion, at any time, to approve for those members then in office, less compensation than that herein authorized.

d. All amounts of and provisions for current and deferred compensation for current and former elected officials shall be disclosed in writing by each respective Council at least annually to every registered voter of the Tribe, including any and all compensation for the management of the gaming enterprise, and any other tribal businesses, and any salary, benefit, wage, or bonus distributed to elected officials or former elected officials of the Mohegan Tribe.

e. The sovereign immunity of the Mohegan Tribe is expressly waived to authorize Tribal members to bring actions for declaratory, injunctive and mandamus relief in the Mohegan Tribal Court for enforcement of the provisions of this Section.<sup>5</sup>

Section 8. The members of the Tribal Council and the members of the Council of Elders shall also be bonded, when legally required and/or deemed advisable, and the cost of such bonds shall be borne by The Tribe. The amount of the bonds shall be determined by the Tribal Council immediately upon adoption of this Constitution.

## ARTICLE V - MEMBERSHIP

Section 1. The membership of The Mohegan Tribe/Mohegan Nation shall consist of the following persons:

(a) All persons enrolled with the Mohegan Tribe as of May 11, 2002, as listed on the May 11, 2002 Mohegan Tribal Roll, as certified by the Council of Elders.

(b) All persons born on or after May 11, 2001, who are lineal descendants of those persons listed on the May 11, 2002 Mohegan Tribal Roll.<sup>6</sup>

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<sup>5</sup> Article IV, Sec. 7, Amended by Tribal Vote May 2, 2004

<sup>6</sup> Article V, Sec. 1, Amended by Tribal Vote August 10, 2002

Section 2. The persons identified in this Article V, Section 1, shall not be deprived of membership without their consent. Such a person may, however, be stripped of all rights and privileges attained by him or her as a result of his or her membership with The Mohegan Tribe, as provided for in The Tribal Enrollment Ordinance.

Section 3. No person shall be entitled to become a member of The Mohegan Tribe if his or her name is listed on the official roll of any other tribe of American Indians. Additionally, any person whose name is listed on the official roll of any other tribe of American Indians after he or she becomes a member of The Mohegan Tribe of Indians may be stripped of all rights and privileges attained by him or her as a result of his or her membership with The Mohegan Tribe, as provided for in The Tribal Enrollment Ordinance.

Section 4. Any person found to have committed fraud in attaining membership status with The Mohegan Tribe, including but not limited to the submission of falsified documents, shall have his or her "membership" deemed void and of no force and effect, as of the date that said status was previously conferred.

## ARTICLE VI - ELECTIONS

Section 1. In order to qualify for and seek election to a position on the Tribal Council, a person:

(a) Must be at least 21 years of age prior to the date of the election;

(b) Must be a registered voting member of The Tribe in good standing;

(c) Must not have been convicted of any violation of The Tribal Election Ordinance; and

(d) Must not have been convicted of either a felony or a misdemeanor involving moral integrity, such as forgery or bribery.

(e) Subsection (d) of Article VI, Section 1 may be waived by a majority vote of the Council of Elders.

Section 2. In order to qualify for and seek election to a position on the Council of Elders, a person:

(a) Must be at least 55 years of age prior to the date of the election;

(b) Must be a registered voting member of The Tribe in good standing;

(c) Must not have been convicted of any violation of The Tribal Election Ordinance; and

(d) Must not have been convicted of either a felony or misdemeanor involving moral integrity, such as forgery or bribery.

(e) Subsection (d) of Article VI, Section 2 may be waived by a majority vote of the Council of Elders.

Section 3. Council members in office as of the date of adoption of this Amendment shall serve the remainder of their terms unless vacancy/removal occurs pursuant to Article VIII. Following adoption of this Amendment, term lengths for the Tribal Council and Council of Elders shall be as follows:

(a) The first regular election for members of the Council of Elders shall occur on the last Sunday in August, 2004, at which seven tribal members shall be elected. The four highest vote-getters shall serve a four-year term and the remaining three successful candidates shall serve a two-year term. In the event of a tie between successful candidates, lots shall be drawn to determine which successful candidate shall serve the shorter term. Terms shall begin on the first Monday in October following the elections.

(b) The first regular election for members of the Tribal Council shall occur on the last Sunday in August, 2005, at which nine tribal members shall be elected. The five highest vote-getters shall serve a four-year term and the remaining four successful candidates shall serve a two-year term. In the event of a tie between successful candidates, lots shall be drawn to determine which successful candidate shall serve the shorter term. Terms shall begin on the first Monday in October following the elections.

(c) Beginning in 2006 and continuing every four years thereafter, regular elections for three positions of the Council of Elders shall be held on the last Sunday in August, and the newly elected members of the Council of Elders shall take office for a four-year term on the first Monday in October following the elections. Beginning in 2008 and continuing every four years thereafter, regular elections for four positions on the Council of Elders shall be held on the last Sunday in August, and the newly elected members of the Council of Elders shall take office for a four-year term on the first Monday in October following the elections.

(d) Beginning in 2007 and continuing every four years thereafter, regular elections for four positions on the Tribal Council shall be held on the last Sunday in August, and newly elected members of the Tribal Council shall take office for a four-year term on the first Monday in October following the elections. Beginning in 2009 and continuing every four years thereafter, regular elections for five positions on the Tribal Council shall be held on the last Sunday in August, and the newly elected members of the Tribal Council shall take office for a four-year term on the first Monday in October following the elections.<sup>7</sup>

#### ARTICLE VII- VOTING

Section 1. Any member of The Mohegan Tribe who attains the age of eighteen (18) shall be entitled to become a registered voter, pursuant to the procedures set forth in The Tribal Election Ordinance, and shall be entitled to vote in the next tribal election.

Section 2. In each tribal election, every registered voting member shall be entitled to cast one vote for each elective position available.

Section 3. All elections shall be by secret ballot and absentee ballots shall be allowed for registered voters. No votes in a tribal election, however, may be cast by proxy.

#### ARTICLE VIII - VACANCIES AND REMOVAL FROM OFFICE

Section 1. If a vacancy occurs among the members of either the Tribal Council or the Council of Elders, and

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<sup>7</sup> Article VI, Sec. 3, Amended by Tribal Vote September 6, 2003

less than three months remain of the term of the vacating member, the Tribal Council shall appoint a successor to such position, who shall serve until the next regular tribal election when a subsequent successor is duly elected and seated.

Section 2. If a vacancy occurs among the members of either the Tribal Council or the Council of Elders, and more than three months remain of the term of the vacating member, the Tribal Council shall cause to be held within sixty days a special tribal election for the purpose of filling the vacancy.

Section 3. Where any member of the Tribal Council or the Council of Elders, during the term for which he or she is elected or appointed:

(a) violates the provisions of this Constitution;  
(b) is convicted of a felony or misdemeanor involving moral integrity, such as forgery or bribery; or

(c) is absent from three consecutive regular meetings of the Tribal Council or the Council of Elders, unless such absence has been excused for good cause; he or she shall be subject to removal from office by action of the Tribal Council or the Council of Elders, provided that such removal shall be effective only after reasonable notice of the charges, an opportunity for the subject member to be heard, and upon approval by a majority of the members of the Council of Elders.

Section 4. Any member of the Tribal Council or Council of Elders shall be removed from office if, at least three months prior to the expiration of his or her term, a recall election is held and a majority of the voters vote for removal of said person. The Tribal Council and/or the Council of Elders shall hold a recall election within sixty (60) days of its receipt of a recall petition bearing the signatures of at least forty percent (40%) of the registered voters in The Tribe, accompanied by a cover letter bearing the notarized signatures of at least three sponsors who are members of The Tribe and who are registered to vote in tribal elections. Said petition shall also be filed in accordance with any other procedures established by the Tribal Council and Council of Elders.<sup>8</sup>

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<sup>8</sup> Article VIII, Section 4, Amended by Tribal Vote September 6, 2003

Section 5. The following rules shall govern the removal and/or vacancy of the officers of the Tribal Council:

(a) If a vacancy occurs in the office of Chair, Vice-Chair, Recording Secretary, Corresponding Secretary or Treasurer, such vacancy may be filled by the Tribal Council through a subsequent election of one of its members to the office.

(b) The Tribal Council may remove the Chair, Vice-Chair, Recording Secretary, Corresponding Secretary and/or Treasurer from office for cause, by a two-thirds (2/3) vote of the members of the Tribal Council then in office; the Tribal Council may not, however, terminate or affect an officer's status as a member of the Tribal Council through such action. The Tribal Council shall prescribe in The Tribal Election Ordinance the specific methods by which removal from such offices may be carried out.

Section 6. The following rules shall govern the removal and/or vacancy of the Officers of the Council of Elders:

(a) If a vacancy occurs in the office of Chair, Vice-Chair, Secretary or Treasurer, such vacancy may be filled by the Council of Elders through a subsequent election of one of its members to the office.

(b) The Council of Elders may remove the Chair, Vice-Chair, Secretary and/or Treasurer from office for cause by a two-thirds (2/3) vote of the members of the Council of Elders then in office; the Council of Elders may not, however, terminate or affect an officer's status as a member of the Council of Elders through such action. The Council of Elders shall prescribe in The Tribal Election Ordinance the specific methods by which removal from such offices may be carried out.

#### ARTICLE IX - POWERS AND DUTIES OF THE TRIBAL COUNCIL

Section 1. All legislative and executive powers of The Mohegan Tribe not granted to the Council of Elders shall be vested in the Tribal Council and shall be exercised in accordance with this Constitution and laws of the United States applicable to Indian tribes, provided, that legislative and executive actions taken prior to the

effective date of this Constitution shall remain in effect unless and until changed by the subsequent action of the Tribal Council or until any such action expires of its own terms.

Section 2. The powers of the Tribal Council shall include all executive and legislative powers reasonable and necessary to achieve the tribal goals recited in the Preamble hereof, and shall further specifically include, but not be limited to, the following powers:

(a) To negotiate with and to approve or disapprove contracts or agreements with tribal, foreign, federal, state, or local governments, with private persons or with corporate bodies;

(b) To approve or disapprove any sale, disposition, lease or encumbrance of tribal lands, interests in land, tribal funds or other tribal assets or resources with or without advertisement for any period not in excess of the period provided for by federal law;

(c) To establish procedures for the conduct of all tribal government and business operations except where elsewhere precluded in this Constitution;

(d) To advise the Secretary of the Interior with regard to all appropriation estimates of the Department of the Interior which are submitted for the benefit of The Mohegan Tribe of Indians of Connecticut prior to the submission of such estimates to the Office of Management and Budget or to Congress;

(e) To employ and pay legal counsel for The Mohegan Tribe, subject to the approval of the Secretary of the Interior to the extent that such approval is required by federal law;

(f) To appropriate available tribal funds for the benefit of The Tribe;

(g) To approve or disapprove operating budgets submitted by the Tribal Chair;

(h) To review the budget submitted annually by the Council of Elders and, in the event that said budget is

approved by a majority of the members of the Tribal Council, to allocate the funds called for by said budget;

(i) To approve or disapprove allocations or disbursements of tribal funds (or grant or contract funds under the administrative control of The Tribe) not specifically appropriated or authorized in a budget approved by the Tribal Council;

(j) To establish and enforce rules, consistent with applicable federal statutes and the applicable regulations of the Secretary of the Interior, for the management of tribal lands, including but not limited to, the making and revocation of assignments, and the disposition of timber, oil, and mineral resources;

(k) To create, or to provide by ordinance for the creation of organizations, including public and private corporations, for any lawful purpose, which may be nonprofit or profit-making, and to regulate the activities of such organizations by ordinance;

(l) To promote and protect the health, peace, morals, education, and general welfare of The Tribe and its members;

(m) To borrow money from any source whatsoever without limit as to amount, and on such terms and conditions and for such consideration and periods of time as the Tribal Council shall determine; to use all funds thus obtained to promote the welfare and betterment of The Tribe and its members; to finance tribal enterprises; or to lend money thus borrowed;

(n) To establish and enforce all ordinances governing tribal members, including, but not limited to, ordinances regarding tribal elections, ordinances establishing the civil and criminal jurisdiction of The Mohegan Tribal Court System, ordinances delineating the civil and criminal laws of The Mohegan Tribe, and ordinances providing for the maintenance of law, order and the administration of justice within The Mohegan Indian Reservation;

(o) To establish a tribal court system, defining the powers and duties of that court system;



(p) To regulate wholesale, retail, commercial or industrial activities on tribal lands;

(q) To establish a basic departmental structure for the executive branch of the tribal government; and to establish governmental sub-divisions and agencies and delegate appropriate powers to such subdivisions and agencies;

(r) To establish policies relating to tribal economic affairs and enterprises in accordance with this Constitution;

(s) To levy and collect taxes and raise revenue to meet with needs of The Tribe or to support tribal government operations;

(t) To pass any ordinances and resolutions necessary or incidental to the exercise of any of the foregoing powers and duties; to waive the sovereign immunity of The Tribe subject to such limitations and restrictions on the extent and enforcement thereof as the Tribal Council may determine; and to adopt and to do such acts of a governmental and/or public nature as are not prohibited by applicable laws or by this Constitution.

Section 3. The powers and duties of the Chair of the Tribal Council shall include, but not be limited to, the following:

(a) To serve as the chief executive officer of The Tribe and as head of the executive branch of the tribal government;

(b) To carry out the policies established by the Tribal Council through its passage of any ordinances and resolutions necessary or incidental to the exercise of any of the powers and duties enumerated in Article IX above, and to be accountable to the Council to see that said policies are faithfully executed;

(c) To negotiate, execute and carry out contracts or agreements with tribal, foreign, federal, state, and local governments, private persons, or corporate bodies, provided, that such contracts and agreements shall not be valid unless and until approved by the Tribal Council;

(d) To manage, administer and direct the operation of tribal programs, activities, and services and to report to the Tribal Council the status of each program at least annually;

(e) To direct the preparation of budgets, budget estimates and financial reports for submission to or at the direction of the Tribal Council;

(f) To assure the proper receipt, deposit, disbursement, and accounting of all funds (or funds under control of The Tribe) consistent with this Constitution and such policies as may be established by the Tribal Council;

(g) To provide for the protection and maintenance of the property, equipment, and official records of The Tribe;

(h) To provide for enforcement of the rules, regulations, and ordinances enacted by the Tribal Council;

(i) To preside over the meetings of the Tribal Council; and

(j) To exercise such additional powers as are necessary or incidental to the performance of the powers and duties enumerated above.

Section 4. In the absence of the Chair, it shall be the Vice-Chair's duty and responsibility to preside over the Tribal Council meetings. The Vice-Chair of the Tribal Council shall assist the Chair when called upon to do so and shall maintain a current list of members of The Mohegan Tribe.

Section 5. The Recording Secretary shall ensure that a full and complete record of all transactions of the Tribal Council and Tribal meetings are kept, and shall submit promptly to the Chair all copies of the minutes, resolutions adopted, and ordinances passed at all meetings of the Tribal Council.

Section 6. The Corresponding Secretary shall be responsible for all correspondence issued by the Tribal Council, and shall be responsible for communicating all appropriate information from the Tribal Council to other members of The Mohegan Tribe and/or to the Tribal Administration.

Section 7. The Treasurer shall cause to be audited all tribal funds and accounts at least once per year, and at such other times as requested by the Tribal Council or by any other lawful authority, and shall be the custodian of the liquid assets of The Mohegan Tribe. Additionally:

(a) Unless otherwise provided, the Treasurer and Chair shall sign and approve all disbursements of tribal funds or grant or contract funds under the administrative control of The Tribe.

(b) The Treasurer shall be included in the membership of any committee established by the Tribal Council, at least insofar as budgetary and financial matters are concerned.

Section 8. The Tribal Council may authorize the formation of committees to carry out its duties, as it deems necessary and proper. A committee of the Tribal Council shall be defined as a body of one or more persons appointed or elected by the Tribal Council to consider or investigate or take action in regards to those matters assigned to it by the Tribal Council. Tribal Council committees are subordinate to the Tribal Council, who shall delegate authority to each committee at its discretion, and who shall define the duties, membership and quorum for each committee.

#### ARTICLE X - POWERS & DUTIES OF THE COUNCIL OF ELDERS

Section 1. All judicial review powers of The Mohegan Tribe not exercised by the Gaming Disputes Court shall be vested in the Council of Elders, and in such subordinate commissions and/or courts as the Tribal Council may from time to time ordain and establish. The Council of Elders shall exercise its judicial review powers in accordance with this Constitution and the laws of the United States applicable to Indian tribes, provided that judicial actions taken prior to the effective date of this Constitution shall remain in effect unless and until changed by the subsequent action of the Council of Elders or until any such action expires of its own terms.

Section 2. The powers of the Council of Elders shall include all judicial review powers reasonable and necessary to achieve the tribal goals recited in the Preamble hereof,

and shall further specifically include, but not be limited to, the following powers:

(a) To rule over cases and controversies arising under this Constitution and arising under all laws of The Mohegan Tribe but not to issue advisory opinions or decisions in cases which are moot;

(b) To appoint from within their body member(s) to serve in the capacity of "Justice of the Peace";

(c) To provide traditional Mohegan names to tribal members;

(d) To appoint and define all religious and ceremonial positions, including but not limited to the Medicine Person, Chief or Sachem, Pipe Carrier, Tribal Historian, Sagamores, Nonners, Fire Keepers, etc.; the persons so appointed to said positions shall act under the supervision of, and subject to the removal by, the Council of Elders, and shall fulfill their respective duties in accordance with traditional Mohegan customs and traditions;

(e) To advise the Tribal Council in all matters related to tribal culture;

(f) To allocate within its budget the amounts deemed necessary for the advice and assistance of legal counsel, and to exercise its discretion in determining when to seek the advice and assistance of said counsel;

(g) To appropriate available tribal funds for the benefit of The Tribe, up to the amount allocated by the Tribal Council in the annual budget of the Council of Elders;

(h) To establish and enforce rules of tribal custom, consistent with applicable federal statutes and the applicable regulations of the Secretary of the Interior, for the management of tribal society, including but not limited to, the conduct of tribal ceremonies and rituals;

(i) To promote and protect the health, peace, morals, and general welfare of The Tribe and its members, and to establish traditional policies regarding education of tribal members;

(j) To establish and enforce ordinances governing tribal membership and enrollment;

(k) To recommend and submit for a vote, as it deems necessary and wise, amendments to this Constitution, as prescribed in Article XVI and XVII; and

(l) To entertain recommendations from other tribal members regarding amendments to this Constitution, and to submit said recommendations to a tribal vote, as prescribed in Article XVI and Article XVII.

Section 3. The powers and duties of the Chair of the Council of Elders shall include, but not be limited to, the following powers:

(a) To carry out the policies established by the Council of Elders through its passage of any ordinances and resolutions necessary or incidental to the exercise of any of the powers and duties enumerated in Article X above, and to be accountable to the Council of Elders to see that said policies are faithfully executed;

(b) To manage, administer and direct the operation of tribal cultural programs, activities, and services and to report to the Tribal Council the status of each program at least annually;

(c) To direct the preparation of budgets, budget estimates and financial reports for submission to or at the direction of the Tribal Council;

(d) To assure the proper receipt, deposit, disbursement, and accounting of all funds (or funds under control of The Tribe) consistent with this Constitution and such policies as may be established by the Council of Elders;

(e) To provide for the protection and maintenance of the property, equipment, and official records of the Council of Elders;

(f) To provide for enforcement of the rules, regulations, and ordinances enacted by the Council of Elders;

(g) To preside over the meetings of the Council of Elders; and

(h) To exercise such additional powers as are necessary or incidental to the performance of the powers and duties enumerated above.

Section 4. In the absence of the Chair, it shall be the Vice-Chair's duty and responsibility to preside over the meetings of the Council of Elders. The Vice-Chair of the Council of Elders shall also assist the Chair when called upon to do so.

Section 5. The Council of Elders may authorize the formation of committees to carry out its duties, as it deems necessary and proper. A committee of the Council of Elders shall be defined as a body of one or more persons appointed or elected by the Elders to consider or investigate or take action in regards to those matters assigned to it by the Elders. Committees of the Council of Elders are subordinate to the Council of Elders, who shall delegate authority to each committee at its discretion, and who shall define the duties, membership and quorum for each committee.

#### ARTICLE XI - INDIVIDUAL RIGHTS OF TRIBAL MEMBERS

Section 1. The Mohegan Tribe, in exercising its powers of self-government, shall make no law inconsistent with The Indian Civil Rights Act of 1968 (25 U.S.C. §§1301-1303; 82 Stat. 77), which requires that the Tribe not:

(a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(b) Violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(c) Subject any person for the same offense to be twice put in jeopardy;

(d) Compel any person in any criminal case to be a witness against himself;

(e) Take any private property for a public use without just compensation;

(f) Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and, at his own expense, to have the assistance of counsel for his defense;

(g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one (1) year or a fine of \$5,000.00, or both;

(h) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without the process of law;

(i) Pass any bill of attainder or ex post facto law;

(j) Deny to any person accused of any offense punishable by imprisonment, the right, upon request, to a trial by jury of not less than six persons; or

(k) Prohibit any person from testing the legality of his detention, by order of The Mohegan Tribal Court, by petitioning for a writ of habeas corpus in a court of the United States.

Section 2. In the event that the Indian Civil Rights Act of 1968 is amended in the future, the Tribal Council may, through legislative action, provide that said amendment shall be deemed a part of this Constitution without the need to adopt formal amendments to this Constitution.

## ARTICLE XII - RIGHT TO PETITION

Section 1. The members of The Tribe reserve to themselves the power to propose ordinances and resolutions and to enact or reject the same at the polls independent of

the Tribal Council upon petition of thirty-five (35) of the registered voters within seven (7) days of such action.

Section 2. Forty percent (40%) of the registered voters shall:

(a) have the right by petition to initiate and propose amendments to this Constitution and to propose ordinances and resolutions; and

(b) have the right by petition to force the conduct of a referendum on any subject of concern to the members of The Tribe, excepting the question of recall of the elected tribal officials which shall be governed by the provisions of Article VIII.

Section 3. Upon receipt of a petition for an initiative or referendum election, the Tribal Council shall, after ascertaining that forty percent (40%) of the registered voters have signed the petition, cause to be held an election on the question within sixty days of receipt of said petition.

Section 4. Any measure referred to the tribal members by initiative or by referendum shall take effect and be in force when approved by a majority of the votes cast in such election.

Section 5. Referendum or initiative petitions filed under this Article shall be accompanied by a cover letter bearing the notarized signatures of at least three sponsors who are members of The Tribe and who are registered to vote in tribal elections, and filed in accordance with any other procedures established by the Tribal Council.

#### ARTICLE XIII - TRIBAL GAMING AUTHORITY AMENDMENT

Section 1. Creation of Gaming Authority. All governmental and proprietary powers of The Mohegan Tribe over the development, construction, operation, promotion, financing, regulation and licensing of gaming, and any associated hotel, associated resort or associated entertainment facilities, on tribal lands (collectively, "Gaming") shall be exercised by the Tribal Gaming Authority, provided that such powers shall be within the scope of authority delegated by the Tribal Council to the Tribal Gaming Authority under the ordinance establishing



the Tribal Gaming Authority. Leases and other encumbrances granted by the Tribal Gaming Authority for Gaming development and financing shall be deemed to be for governmental purposes and may be for periods not to exceed 50 years. The Tribal Council shall, by ordinance, establish the Tribal Gaming Authority, which shall oversee, regulate, prudently hold and manage all of the Gaming assets of The Mohegan Tribe. The Tribal Gaming Authority shall have the power to grant a limited waiver of sovereign immunity as to Gaming matters, to contracts relating to Gaming, to the revenues of the Tribal Gaming Authority, to the assets within the control of the Tribal Gaming Authority, and as otherwise authorized by the Tribal Council, but shall have no such right as to other tribal revenues, assets or powers. Nothing contained in this Section shall limit the power of the Tribal Council to waive the sovereign immunity of The Mohegan Tribe as to Gaming or other matters, or with respect to other tribal revenues or assets. The Tribal Gaming Authority shall have the power to enter into contractual relationships which bind The Mohegan Tribe, provided that such contracts shall be within the scope of authority delegated by the Tribal Council to the Tribal Gaming Authority. Contracts of the Tribal Gaming Authority shall be the law of The Mohegan Tribe and shall be specifically enforceable in accordance with their terms. To the extent that tribal law does not otherwise govern a dispute, the Gaming Disputes Court may apply relevant provisions of Connecticut law. The Tribal Gaming Authority shall have the authority to submit disputes to arbitration. The Tribal Gaming Authority shall have the authority to stipulate for judgment before the Gaming Disputes Court created by Section 2 of this Article. Any stipulation for judgment made by the Tribal Gaming Authority shall be binding on The Mohegan Tribe, the Tribal Gaming Authority and upon the Gaming Disputes Court, provided that such stipulation is within the scope of authority delegated by the Tribal Council to the Tribal Gaming Authority. The Gaming Disputes Court shall grant the relief so stipulated upon a finding that all conditions for granting such relief expressly set forth in such stipulation have been met.

Section 2. Creation of Gaming Disputes Court. The Tribal Council shall establish by ordinance, the Gaming Disputes Court, which shall be composed of a Trial Branch and an Appellate Branch. Exclusive jurisdiction for the Tribe over disputes arising out of or in connection with the Gaming, the actions of the Tribal Gaming Authority, or

contracts entered into by The Mohegan Tribe or the Tribal Gaming Authority in connection with Gaming, including without limitation, disputes arising between any person or entity and the Tribal Gaming Authority, including customers, employees, or any gaming manager operating under a gaming management agreement with the Tribal Gaming Authority, or any person or entity which may be in privity with such persons or entities as to Gaming matters shall be vested in the Gaming Disputes Court. Notwithstanding the provisions of Article X of this Constitution, the Gaming Disputes Court shall also have exclusive jurisdiction to determine all controversies arising under this Constitution which in any way relate to Gaming.

2.1 Procedures. The Gaming Disputes Court shall have the power to enact reasonable rules of procedure. The Gaming Disputes Court may, in its discretion, receive evidence and adjudicate controversy de novo. All proceedings of the Gaming Disputes Court shall be conducted in the state of Connecticut, and shall be open to the public, absent a finding that justice otherwise requires.

2.2 Remedies. Nothing in this Article XIII shall preclude or modify the effect of any arbitration mechanism or other dispute resolution mechanism in any agreement otherwise within the jurisdiction of the Gaming Disputes Court. The Gaming Disputes Court shall have full jurisdiction and authority to compel arbitration, to enforce any arbitration order or other dispute resolution mechanism provision and to mandate any remedy which the Gaming Disputes Court finds justice may require. All findings and orders of the Gaming Disputes Court shall be in writing. In the event that either party to a contract which provides for arbitration seeks an order from the Gaming Disputes Court to compel such arbitration, the Gaming Disputes Court shall not review the merits of the dispute, but shall order the parties to arbitrate; all questions of the enforceability of the agreement to arbitrate, or an obligation to arbitrate the dispute in question, being for the arbitrators to decide.

2.3 Appointment of Judges. The Tribal Council shall appoint the Judges of the Gaming Disputes Court. The Tribal Council shall, within thirty days of the adoption of this Article XIII, appoint a minimum number of four Judges for the Gaming Disputes Court. At any time said number of judges falls below four, the Tribal Council shall within

thirty days, appoint such additional judges as necessary to restore the minimum number to four judges. If the Tribal Council fails to restore the minimum pool of four within said thirty days, the remaining Judges shall appoint the judges necessary to restore the number to four judges. All judges shall be selected from a publicly available list of eligible retired federal judges or Connecticut Attorney Trial Referees duly appointed by the Chief Justice of the Connecticut Supreme Court pursuant to Connecticut General Statute §52-434(a)(4), as amended from time to time, who remain licensed and qualified to practice law in the State of Connecticut, each of whom:

- (a) Has never been convicted of a felony or any gaming offense;
- (b) Is not a member of the Tribal Council, or a relative of any such member by blood, marriage, or operation of law;
- (c) Is of sound mind, trustworthy, and of good moral character;
- (d) Is able to determine in what cases he or she will be disqualified and is willing to disqualify himself or herself;
- (e) Is capable of carrying out the duties of the office, including staff administration and supervision, and
- (f) Is willing to commit, upon public oath of affirmation, to uphold this Constitution and to fairly and impartially adjudicate all matters before the Gaming Disputes Court.

2.4 Appeals. Appeals from any decision of the Trial Branch shall be heard by three Judges in the Appellate Branch. Decisions of the Appellate Branch shall be final. There shall be no further right of appeal within the Tribal Court.

2.5 Compensation. Judges of the Gaming Disputes Court shall be compensated by the Tribal Council in amounts appropriate to the duties and responsibilities of the office, which compensation shall not be diminished during a judge's continuation in office. The Gaming Disputes Court

shall have the power to take appropriate action to enforce this subsection.

2.6 Recall and Discipline. After appointment, Judges of the Gaming Disputes Court shall be subject to discipline and removal for cause pursuant to the Rules of the Court.

Section 3. Amendments. Amendments of the ordinances establishing the Tribal Gaming Authority and the Gaming Disputes Court shall require the vote of two-thirds of the members of the Tribal Council, ratified by a two-thirds majority of all votes cast, with at least 40% registered voters voting, in a special tribal meeting called for that purpose by the Tribal Chair. Prior to the enactment of any such amendment by the Tribal Council, any non-tribal party shall have the opportunity to seek a ruling of the Appellate Division of the Gaming Disputes Court that the proposed amendment would constitute an impermissible impairment of contract.

Notwithstanding the provisions of Articles XVI and XVII, amendments to this Article XIII shall require a two-thirds majority of all votes cast, with at least 40% registered voters voting, in a special election called for that purpose by the Tribal Chair. Prior to the adoption of any such constitutional amendment, any non-tribal party shall have the opportunity to seek a ruling of the Appellate Division of the Gaming Disputes Court that the proposed amendment would constitute an impermissible impairment of contract.

Notwithstanding any other provision of this Constitution, amendments to subsection 2.3 of Article XIII and to Article XIV shall require the affirmative vote of 75% of all registered voters of The Mohegan Tribe.

This Section 3 shall have no force or effect during any period in which no indenture or other contract binding on The Tribe or the Tribal Gaming Authority is outstanding or in effect which recites that it is entered into in reliance on this Section 3.

Section 4. Indian Civil Rights Act. Nothing in this Article XIII or any other provisions of this Constitution, or any other provision of tribal law shall foreclose or limit any right any person may otherwise have to bring an action in a court of competent jurisdiction to protect a

right or seek a remedy otherwise available pursuant to the Indian Civil Rights Act, 25 U.S.C. §1301 et seq.

#### ARTICLE XIV - NON-IMPAIRMENT OF CONTRACTS

The Tribe shall enact no law impairing the obligations of contracts entered into in furtherance of development, construction, operation, and promotion of Gaming on tribal lands. Neither the Tribal Council nor any committee, agency, board or other official body, and no officer or official of The Tribe shall, by exercise of the police power or otherwise, act to modify, amend, or in any manner impair the obligations of contracts entered into by the Tribal Council or the Tribal Gaming Authority or other parties in furtherance of the financing, development, construction, operation, or promotion of Gaming on tribal lands without the written consent of the non-tribal parties to such contract. Any such action or attempted action shall be void ab initio. (Const. Amd., 7-15-95).

#### ARTICLE XV - REPEAL AND SAVINGS CLAUSE

In the event that any sentence, paragraph, section, or article of this Constitution is subsequently held invalid by a court of competent jurisdiction, the remainder of this Constitution shall remain valid and in full force and effect.

#### ARTICLE XVI - ADOPTION

Except as provided for in Article XIII and Article XIV, this Constitution shall take effect if and when adopted by a majority of all votes cast, where at least thirty percent (30%) of the registered voters of The Tribe have voted, in a special election called for that purpose by the Tribal Chair.

#### ARTICLE XVII - AMENDMENT

Except as provided for in Article XIII and Article XIV, this Constitution may be amended in the same manner as that set forth in Article XVI, provided that the Chair of the Tribal Council shall call an election to amend the Constitution as requested by the Council of Elders. Such election shall be called by the Chair of the Tribal Council within forty-five (45) days of the request of the Council

of Elders and shall be completed within ninety (90) days of the request of the Council of Elders.<sup>9</sup>

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<sup>9</sup> Article XVII Amended by Tribal Vote September 6, 2003



**MARK C. TILDEN** (Navajo) was formerly with a private law firm from September, 1990 to September, 1994 when he then joined the Native American Rights Fund (NARF) as a staff attorney. He worked at NARF for 15 years prior to forming Tilden McCoy + Dilweg, LLC. He represents tribal governments on federal acknowledgment, general counsel matters, administrative law, water law, environmental law, Indian housing law, Indian gaming law and economic development, legislative advocacy at the state and federal level, Indian child welfare and protection services law and tribal governance. He writes, lectures and trains in some of these areas of federal Indian law.

He was awarded the Environmental Achievement Award by the U.S. Environmental Protection Agency for Outstanding Work with the Oglala Sioux Tribe on developing a Tribal Environmental Code. He was the Lead Attorney and Project Manager on the development and publication of "A Practical Guide to the Indian Child Welfare Act," as well as a contributing author. He is the co-author of "Indian Child Welfare Act Handbook: A Legal Guide to the Custody and Adoption of Native American Children" published by the American Bar Association.

He is admitted to practice law in Colorado, New York and the District of Columbia, as well as several federal and tribal courts. He is a member of a number of legal associations, including former service on the American Bar Association's Presidential Advisory Council on Diversity in the Profession, the ABA Steering Committee on the Unmet Legal Needs of Children and the ABA Commission on Homelessness and Poverty.



**DONALD R. WHARTON** is a senior attorney in the Boulder, Colorado office of the Native American Rights Fund. He works primarily in the areas of federal-Indian environmental and natural resource law. Don served as the Assistant Attorney General for Natural Resources and Special Projects during his tenure with the Navajo Nation's Department of Justice ('83-88). Prior to that he was the founding Director of Oregon Legal Services Native American Program ('79-83), served as a solicitor in the Indian Affairs Division of the Interior Department's Solicitor's Office in Washington, D.C. ('77-79), was Special Counsel to the American Indian Policy Review Commission (a joint congressional commission on federal-Indian policy) ('75-77), and was General Council to the Klamath Indian Tribe of Oregon ('73-75). He was appointed the J. Skelly Wright Fellow and Visiting Lecturer in Law at Yale Law School for the Spring Term of 1995. He received the 1998 "Environmental Achievement Award" from Region 8 United States Environmental Protection Agency for work with the Oglala Sioux Tribe. Don has been a Lecturer for the National Indian Justice Center, and served as President (1980-83) of the National Association of Indian Legal Services. Don is a 1973 graduate of the University of Colorado School of Law.



**A tribe's fundamental act of self-governance,  
that is, an exercise of inherent tribal sovereignty,  
is the writing or revising of a tribal constitution.**

A well-crafted constitution is the cornerstone of sound tribal governance that makes the exercise of tribal sovereignty a reality in the daily lives of tribal people. This Handbook is intended to help a tribe protect and foster its tribal sovereignty and self-governance, and to protect tribal members in the exercise of that self-governance.



The Native American Rights Fund (NARF) is the Nation's oldest—founded in 1970—and largest non-profit legal defense fund. NARF represents indigenous peoples, tribes, native Alaskan villages and tribal organizations on a wide range of issues, including tribal governance such as tribal law development, including tribal codes and constitutions. The lawyers at NARF represent a modern warrior society, concentrating their efforts in five key areas: the preservation of tribal existence; the protection of tribal natural resources; the promotion of Native American human rights; the accountability of governments to Native Americans; and the development of Indian law and educating the public about Indian rights, laws and issues. Its headquarters is located in Boulder, Colorado with branch offices in Washington, D.C. and Anchorage, Alaska.

Native American Rights Fund  
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