

ARTICLE VII-FORFEITURE, RECALL, SUSPENSION, REMOVAL

CURRENT

Section 1. Forfeiture – If a member of the Pawnee Business Council fails or refuses to attend two (2) regular or special meetings per year from the date of oath of office, unless excused by the Pawnee Business Council President for illness or other causes for which the member cannot be held responsible, his/her office shall be declared forfeited by a resolution of the Pawnee Business Council and the vacancy shall be filled.

Section 2. Recall –

- (i) A petition for recall of any member of the Pawnee Business Council shall be:
 - a) filed with the Pawnee Nation Election Commission,
 - b) verified by the Enrollment Department that **thirty five percent (35%)** of the number of voters who voted in the last regular election signed the petition, and
 - c) pay a filing fee not to exceed fifty percent (50%) of the total cost of the last regular election payable to the Election Commission.
- (ii) After receipt of the verified recall petition, the Election Commission shall call and hold a recall election within sixty (60) business days but not before thirty (30) business days.
- (iii) Recall shall be effective only if a majority of those voting shall vote in favor of such a recall and that at least fifty percent (50%) + one (1) of the number voting in the previous election vote in the recall election.
- (iv) Once a member has faced a recall attempt, no further recall action shall be brought against that member until at least twelve (12) consecutive months have passed. No member of the Pawnee Business Council shall be subject to a recall action within the first twelve (12) months of that member’s term.

PROPOSED REVISIONS

Section 1. Forfeiture – If a member of the Pawnee Business Council fails or refuses to attend **four (4) regularly called quarterly** or special meetings per year from the date of oath of office, unless excused by **vote of the Pawnee Business Council** for illness or other causes for which the member cannot be held responsible, his/her office shall be declared forfeited by a resolution of the Pawnee Business Council and the vacancy shall be filled **consistent with Vacancy provision of this Constitution.**

Section 2. Recall –

- (i) A petition for recall of any member of the Pawnee Business Council shall be:
 - a) filed with the Pawnee Nation Election Commission, **stating the violation and the article within the Pawnee Nation Constitution that was violated as reason for recall.**
 - b) verified by the Enrollment Department that thirty five percent (35%) of the number of voters who voted in the last regular election **and the petition shall be signed listing the following information: fullname, address, date of birth or enrollment number.**
 - c) pay a filing fee of fifty percent (50%) of the total cost of the last regular election payable to the Election Commission.
- (ii) After the verified recall petition **is received**, the Election Commission shall call and hold a recall election within sixty (60) business days but not before thirty (30) business days.
- (iii) Recall shall be effective only if a majority **of at least (50%) + one (1) of the number** of those voting, vote in favor of **the** recall.
- (iv) No member of the Pawnee Business Council shall be subject to a recall action within the first twelve (12) months of that member’s term.

Section 2. Recall –

- (i) A petition for recall of any member of the Pawnee Business Council shall be:
 - a) filed with the Pawnee Nation Election Commission,
 - b) verified by the Enrollment Department that **thirty five percent (35%)** of the number of voters who voted in the last regular election signed the petition, and
 - c) pay a filing fee not to exceed fifty percent (50%) of the total cost of the last regular election payable to the Election Commission.
- (ii) After receipt of the verified recall petition, the Election Commission shall call and hold a recall election within sixty (60) business days but not before thirty (30) business days.
- (iii) Recall shall be effective only if a majority of those voting shall vote in favor of such a recall and that at least fifty percent (50%) + one (1) of the number voting in the previous election vote in the recall election.
- (iv) Once a member has faced a recall attempt, no further recall action shall be brought against that member until at least twelve (12) consecutive months have passed. No member of the Pawnee Business Council shall be subject to a recall action within the first twelve (12) months of that member's term.

Section 2. Recall –

- (i) A petition for recall of any member of the Pawnee Business Council shall be:
 - a) filed with the Pawnee Nation Election Commission, stating the violation and the article within the Pawnee Nation Constitution that was violated as reason for recall.
 - b) verified by the Enrollment Department that thirty five percent (35%) of the number of voters who voted in the last regular election **and the petition shall be signed listing the following information: full name, address, date of birth or enrollment number.**
 - c) pay a filing fee **of** fifty percent (50%) of the total cost of the last regular election payable to the Election Commission.
- (ii) After the verified recall petition is received, the Election Commission shall call and hold a recall election within sixty (60) business days but not before thirty (30) business days.
- (iii) Recall shall be effective only if a majority of **at least (50%) + one (1) of the number of those voting, vote in favor of the recall.**
- (iv) No member of the Pawnee Business Council shall be subject to a recall action within the first twelve (12) months of that member's term.

Section 3. Suspension:

- (i) A Pawnee Business Council member shall be suspended from the Business Council without compensation when:
 - (a) charged with a criminal offense, and
 - (b) that offense would be cause for removal as defined in Section 4.iv.(a), and
 - (c) the charging jurisdiction guarantees similar civil rights and due process as is guaranteed within the Pawnee Nation.
- (ii) The suspension shall be effective from the date of the filing of the charges until dismissed.
- (iii) It is the duty of the defendant Business Council Member to timely notify the Business Council and the Attorney General of the charges.
- (iv) A suspended Business Council Member is excused from attending meetings and other official duty during the suspension.
- (v) Any vote cast or other official action taken after such charges have been filed shall be valid, but taking such official action while under suspension shall constitute the crime of unofficial misconduct.
- (vi) The Business Council may by majority vote, with the subject member abstaining, lift the suspension if it finds that the requirements of paragraph (i) are not met.
- (vii) The suspended Business Council Member may bring a declaratory judgment action in Pawnee Nation Tribal Court to challenge the application of this Section.
- (viii) If the charges are dismissed because the defendant is found innocent, the suspension is automatically removed and all withheld compensation shall be paid without interest.

Section 3. Suspension:

- (i) A Pawnee Business Council member shall be suspended from the Business Council without compensation when:
 - (a) charged with a **felony** criminal offense, and
 - (b) that offense would be cause for removal as defined in Section 4.iv.(a), and
 - (c) the charging jurisdiction guarantees similar civil rights and due process as is guaranteed within the Pawnee Nation.
- (ii) The suspension shall be effective from the date of the filing of the charges until dismissed.
- (iii) It is the duty of the defendant Business Council Member to timely notify the Business Council and the Attorney General of the charges.
- (iv) A suspended Business Council Member is excused from attending meetings and other official duty during the suspension.
- (v) Any vote cast or other official action taken after such charges have been filed shall be valid, but taking such official action while under suspension shall constitute the crime of unofficial misconduct.
- (vi) The Business Council may by majority vote, with the subject member abstaining, lift the suspension if it finds that the requirements of paragraph (i) are not met.
- (vii) The suspended Business Council Member may bring a declaratory judgment action in Pawnee Nation Tribal Court to challenge the application of this Section.
- (viii) If the charges are dismissed because the defendant is found innocent, the suspension is automatically removed and all withheld compensation shall be paid without interest.

Section 4 – Removal of Pawnee Business Council Members

- (i) Removal for Cause – Pawnee Business Council members may be removed for cause by petition filed in Pawnee Nation District Court with right of appeal to the Pawnee Nation Supreme Court.
- (ii) A petition may be filed only;
 - (a) by the Attorney General, or
 - (b) by Resolution of the Pawnee Business Council, or
 - (c) by any individual or individuals who deposits \$10,000 in cash or bond with the court clerk.
- (iii) Conviction is defined as a final conviction or a plea of no contest or guilty, whether or not dismissed, pardoned or expunged, and irrespective of whether it is denominated a felony, misdemeanor, or otherwise.
- (iv) Cause if defined as:
 - (a) conviction of any of the following offenses in any legitimate governmental jurisdiction:
 - A. Fraud
 - 1. Making false representation
 - 2. Knowledge of such false representation by the perpetrator
 - 3. Reliance on the false representation by the person defrauded
 - 4. An intent to defraud
 - 5. The actual act of committing fraud
 - 6. Passing bad checks
 - 7. Knowingly possessing stolen property
 - B. Evil Intent
 - 1. Arson
 - 2. Blackmail
 - 3. Embezzlement
 - 4. Extortion
 - 5. False pretenses
 - 6. Forgery
 - 7. Fraud
 - 8. Larceny (grand or petty)
 - C. Crimes against property
 - 1. Malicious destruction of property
 - 2. Receiving stolen goods (with guilty knowledge)
 - 3. Robbery
 - 4. Theft (when it involved the intention of permanent taking)
 - 5. Transporting stolen property (with guilty knowledge)

Section 4 – Removal of Pawnee Business Council Members

- (i) Removal– Pawnee Business Council members may be removed for cause by petition filed in Pawnee Nation District Court with right of appeal to the Pawnee Nation Supreme Court.
- (ii) A petition may be filed only;
 - (a) by the Attorney General, or
 - (b) by Resolution of the Pawnee Business Council, or
 - (c) by any individual or individuals who deposits \$10,000 in cash or bond with the court clerk.
- (iii) Conviction is defined as a final conviction or a plea of no contest or guilty, whether or not dismissed, pardoned or expunged, and irrespective of whether it is denominated a felony, misdemeanor, or otherwise.
- (iv) Cause is defined as:
 - (a) Conviction of a felony.
 - (b) Willful neglect or refusal to fulfill Constitution or statutory duties.
 - (c) Excessive Absences – a removal action shall commence when a member of the Pawnee Business Committee is absent from duly called meetings four (4) or more times in a one year period.
 - (d) Misconduct in office by (i) abusing the lawful authority of an elected official;
 - (e) Intentional conduct reflecting very negatively on the dignity and integrity of the tribal government.
- (v) Court Review
 - (a) The District Court shall review the removal petition in a new trial. The Judge must hold an initial hearing within 30 days and resolve the case within 90 days. The petitioner must prove the facts by clear and convincing evidence. Any party to the case shall have a right to appeal.
 - (b) The defending Council member may be represented by Counsel. If the Court denies the petition then the defending Council member shall be awarded costs and attorney fees not to exceed \$10,000.00.
 - (c) If the petition was filed by the Business Council or the Attorney General the cost of attorney fees shall be paid from tribal funds. If the petition was filed by an individual the cost of attorney fees shall be paid from the deposit. An exonerated Council member charged under paragraph (iv) (b) or (iv) (c) of this Section shall not be charged again under such paragraph until more than twelve months have passed since the previous petition was filed.
 - (d) If a petition filed by individual(s) is successful then their \$10,000 deposit shall be refunded. If the attorney fees of a winning defendant are less than \$10,000 then the balance shall be refunded.

D. Crimes against Governmental authority

1. Bribery
2. Counterfeiting
3. Fraud against revenue or other governmental functions
4. Mail fraud
5. Perjury
6. Harboring a fugitive from justice (with guilty knowledge)
7. Tax evasion (willful)
8. Carry a concealed weapon
9. Desertion from the Armed Forces
10. Dishonorable Discharge from the Armed Services
11. Failure to report for military induction
12. Drunk driving
13. Habitual drunkenness
14. Escape from prison
15. Gambling violations
16. Controlled Dangerous Substances violations
17. Liquor violations
18. Vagrancy

E. Crimes committed against person, family relationship, and sexual morality

1. Abandonment of a minor child (if willful and resulting in the destitution of the child)
2. Assault
 - a. Assault with intent to kill, commit rape, commit robbery or commit serious bodily harm
 - b. Assault with a dangerous or deadly weapon
3. Contributing to the delinquency of a minor
4. Gross indecency
5. Incest
6. Kidnapping
7. Lewdness
8. Manslaughter
 - a. Voluntary
 - b. Involuntary, where the statute requires proof of recklessness
9. Mayhem
10. Murder
11. Pandering
12. Prostitution
13. Rape (including "Statutory rape")
14. Sodomy

- 15. Libel/Slander
- 16. Mailing an obscene letter
- F. Crimes attempting, aiding and abetting, accessories, and conspiracy
 - 1. an attempt to commit a crime listed in this Section,
 - 2. Aiding and abetting in the commission of a crime listed in this Section,
 - 3. Being an accessory (before or after the fact) in the commission of a crime listed in this Section,
 - 4. Taking part in conspiracy (or attempting to take part in a conspiracy) to commit a crime listed in this Section.
- (b) Willful neglect or refusal to fulfill statutory duties.
- (c) Intentional conduct reflecting very negatively on the dignity and integrity of the tribal government.
- (v) Court Review
 - (a) The District Court shall review the removal petition in a new trial. The Judge must hold an initial hearing within 30 days and resolve the case within 90 days. The petitioner must prove the facts by clear and convincing evidence. Any party to the case shall have a right to appeal.
 - (b) The defending Council member may be represented by Counsel. If the Court denies the petition then the defending Council member shall be awarded costs and attorney fees not to exceed \$10,000.00.
 - (c) If the petition was filed by Business Council or the Attorney General the cost of attorney fees shall be paid from tribal funds. If the petition was filed by an individual the cost of attorney fees shall be paid from the deposit. An exonerated Council member charged under paragraph (iv) (b) or (iv) (c) of this Section shall not be charged again under such paragraph until more than twelve months have passed since the previous petition was filed.
 - (d) If a petition filed by individual(s) is successful then their \$10,000 deposit shall be refunded. If the attorney fees of a winning defendant are less than \$10,000 then the balance shall be refunded.