

CURRENT:

ARTICLE VII-FORFEITURE, RECALL, SUSPENSION, REMOVAL

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.

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 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 is 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)
 - 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.
- (a) 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.

SUGGESTED REVISIONS (REDLINED):

ARTICLE VII - FORFEITURE, RECALL, SUSPENSION, REMOVAL

Section 1. Forfeiture –

- (i) If a member of the Pawnee Business Council fails or refuses to attend two (2) regularly called quarterly or special meetings per year from the date of his/her oath of office, unless excused by majority vote of the Pawnee Business Council ~~President~~ for illness or other causes for which the member cannot be held responsible, his/her ~~seat~~office shall be declared forfeited by a resolution of the Pawnee Business Council and become vacant.
- ~~(ii)~~ Any~~the~~ vacancy shall be filled consistent with Vacancy provisions 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 with a statement alleging explicit facts and dates of actions or inactions by the Pawnee Business Council Member subject to recall, including the Article of the Pawnee Nation Constitution that was violated;
 - (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)~~ signed and include the following information for all individual signatures: full name, date of birth and signature.

~~(e) 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) Individual petitions shall be filed for each Pawnee Business Council Member who is subject to recall.~~

~~(iii) The petitioner shall be required to pay a filing fee of fifty percent (50%) of the total cost of the last regular election payable to the Election Commission for each individual Pawnee Business Council Member being recalled.~~

~~(ii)(iv) Once requirements of Section 2 (i)(a-c) and (iii) have been completed 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)(v) Notice of recall shall be sent to all eligible voters prior to the recall election.~~

~~(iv)(vi) Recall shall be effective when 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 favor of the recall election.~~

~~(vii) 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. A recall proceeding may not be initiated against a Council Member whose term expires within six (6) months.~~

~~(v)(viii) A Maximum of three (3) Council Members may be recalled at a time.~~

Section 3. Suspension:

(i) A Pawnee Business Council ~~m~~Member shall be suspended from the Business Council without compensation ~~if when:~~

(a) ~~charges are pending for with~~ a ~~felony eriminal~~ offense; ~~and~~

(b) ~~an~~that offense would be cause for removal as defined in Section 4. ~~iii~~(a-f); and

(c) the ~~charging~~ jurisdiction ~~where the charges are pending~~ guarantees ~~equal~~similar ~~civil~~ rights and due process as is guaranteed ~~under within~~ the Pawnee Nation Constitution.

(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 ~~immediately~~timely notify the Business Council and the Attorney General of ~~any pending felony the~~ charges.

(iv) A suspended Business Council Member is excused from attending meetings and other official ~~duty~~duties during the suspension.

(v) ~~No~~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 ~~be valid and will constitute the crime of un~~official 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)(vi) The suspended Business Council Member may bring a declaratory judgment action in Pawnee Nation Tribal Court to challenge the application of this Section.~~

~~(viii)(vii) If the Court dismisses the pending felony charges are dismissed because the defendant is found innocent, the suspension shall is automatically be removed and all withheld compensation shall be paid, without interest.~~

Section 4 – Removal of Pawnee Business Council Members

- (i) ~~Removal for Cause—A~~ Pawnee Business Council members may be removed for cause by a petition for removal filed in Pawnee Nation District Court with the right of appeal to the Pawnee Nation Supreme Court.
- (ii) A petition for removal may be filed ~~only; on behalf of the Pawnee Nation by resolution of the Pawnee Business Council.~~
 - ~~(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) Removal for cause includes, but is not limited to:
 - (a) A felony conviction by any Tribal, Federal, or State Court while serving on the Pawnee Business Council.
 - 1. Conviction means defined as a final conviction or a plea of no contest or guilty, regardless of being whether or not dismissed, suspended, pardoned, or expunged, and irrespective of whether it is denominated a felony, misdemeanor, or otherwise.
 - (b) Converting Pawnee Nation Property or monies for personal use, or financial gain or profit;
 - (c) Willful neglect or refusal to fulfill Constitution or statutory duties;
 - (d) Official misconduct in office or by abusing the lawful authority of an elected official:
 - 1. Official misconduct in office shall include but is not limited to harassment or unfair treatment of a Pawnee Nation citizen or employee by a Council Member due to religion, sex, age, or disability;
 - (e) Physical or mental incapacity; or
 - ~~(iii)(f)~~ Cessation of citizenship in the Pawnee Nation.
- (iv) Cause if defined as:
 - (a) (a) conviction of any of the following offenses in any legitimate governmental jurisdiction:
 - ~~(a) A. Fraud~~
 - ~~(b) Making false representation~~
 - ~~(c) Knowledge of such false representation by the perpetrator~~
 - ~~(d) Reliance on the false representation by the person defrauded~~
 - ~~(e) An intent to defraud~~
 - ~~(f) The actual act of committing fraud~~
 - ~~(g) Passing bad checks~~
 - ~~(h) Knowingly possessing stolen property~~
 - ~~(i) B. Evil Intent~~
 - ~~(j) Arson~~
 - ~~(k) Blackmail~~
 - ~~(l) Embezzlement~~
 - ~~(m) Extortion~~
 - ~~(n) False pretenses~~
 - ~~(o) Forgery~~
 - ~~(p) Fraud~~
 - ~~(q) Larceny (grand or petty)~~

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(r) Crimes against property
(s) Malicious destruction of property
(t) Receiving stolen goods (with guilty knowledge)
(u) Robbery
(v) Theft (when it involved the intention of permanent taking)
(w) Transporting stolen property (with guilty knowledge)
(x) Crimes against Governmental authority
(y) Bribery
(z) Counterfeiting
(aa) ——— Fraud against revenue or other governmental functions
(bb) ——— Mail fraud
(cc) ——— Perjury
(dd) ——— Harboring a fugitive from justice (with guilty knowledge)
(ee) ——— Tax evasion (willful)
(ff) Carry a concealed weapon
(gg) ——— Desertion from the Armed Forces
(hh) ——— Dishonorable Discharge from the Armed Services
(ii) Failure to report for military induction
(jj) Drunk driving
(kk) ——— Habitual drunkenness
(ll) Escape from prison
(mm) ——— Gambling violations
(nn) ——— Controlled Dangerous Substances violations
(oo) ——— Liquor violations
(pp) ——— Vagrancy
(qq) ——— E. Crimes committed against person, family relationship, and sexual morality
(rr) Abandonment of a minor child (if willful and resulting in the destitution of the child)
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(tt) Assault with intent to kill, commit rape, commit robbery or commit serious bodily harm
(uu) ——— Assault with a dangerous or deadly weapon
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(ww) ——— Gross indecency
(xx) ——— Incest
(yy) ——— Kidnapping
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(bbb) ——— a. Voluntary
(ccc) ——— b. Involuntary, where the statute requires proof of recklessness
(ddd) ——— Mayhem
(eee) ——— Murder
(fff) ——— Pandering
(ggg) ——— Prostitution
(hhh) ——— Rape (including “Statutory rape”)

~~(iii) Sodomy~~

~~(jjj) Libel/Slander~~

~~(kkk) Mailing an obscene letter~~

~~(lll) Crimes attempting, aiding and abetting, accessories, and conspiracy~~

~~(mmm) an attempt to commit a crime listed in this Section,~~

~~(nnn) Aiding and abetting in the commission of a crime listed in this Section,~~

~~(ooo) Being an accessory (before or after the fact) in the commission of a crime listed in this Section,~~

~~(ppp) 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.~~

~~Intentional conduct reflecting very negatively on the dignity and integrity of the tribal government.~~

(iv) The grounds for removal shall be set forth with specificity in the petition for removal and the Pawnee Business Council Member shall be suspended from office until the Court rules on the petition.

(v) Court Review

(a) The Pawnee Nation District Court shall review the removal petition in a new trial.

1. The Judge must hold a An initial hearing must be held within thirty (30) days of receipt of the petition with a decision reached by the Court and resolve the case within ninety (90) days.

~~(a) 2. The petitioner must prove the allegations contained in the petition facts by clear and convincing evidence. Any party to the case shall have a right to appeal.~~

(b) Before the Court rules on a petition for removal, the Court shall provide due process to each party, including:

1. A copy of the petition;

2. The right to respond to the petition; and

3. The right to present witnesses and other evidence in his/her defense.

(c) If the Court finds grounds for removal as stated in the petition do exist, the Pawnee Nation shall be awarded reasonable costs and expenses, including attorney fees, not to exceed \$10,000, and any other relief that the Court deems fair and reasonable.

(d) If the Court finds grounds for removal as stated in the petition do not exist, the defending Council member shall be reinstated to the Pawnee Business Council and awarded reasonable costs and expenses, including 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, and any other relief that the Court deems fair and reasonable.

1. The costs and expenses, including attorney fees shall be paid from the Pawnee Nation funds.

(e) All parties may be represented by an attorney of his/her choosing, provided at his/her own expense for the purposes of this Section.

~~(b) (f) Either party may seek an appeal of the decision of the District Court by filing an appeal with the Pawnee Nation Supreme Court.~~

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~~(e)(g)~~ 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. No Pawnee Business Council member shall be subject to removal until more than twelve (12) months have passed since the previous petition for removal was filed.

~~(d)(h)~~ A Pawnee Business Council member removed from office shall not be prohibited from running or holding office again at any time in the future, provided they meet eligibility requirements in Article IV. 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.

REVISIONS:

ARTICLE VII - FORFEITURE, RECALL, SUSPENSION, REMOVAL

Section 1. Forfeiture –

- (i) If a member of the Pawnee Business Council fails or refuses to attend two (2) regularly called quarterly or special meetings per year from the date of his/her oath of office, unless excused by majority vote of the Pawnee Business Council for illness or other causes for which the member cannot be held responsible, his/her seat shall be declared forfeited by a resolution of the Pawnee Business Council and become vacant.
- (ii) Any vacancy shall be filled consistent with Vacancy provisions of this Constitution.

Section 2. Recall –

- (i) A petition for recall of any member of the Pawnee Business Council shall be:
 - (d) filed with the Pawnee Nation Election Commission with a statement alleging explicit facts and dates of actions or inactions by the Pawnee Business Council Member subject to recall, including the Article of the Pawnee Nation Constitution that was violated;
 - (e) 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
 - (f) signed and include the following information for all individual signatures: full name, date of birth and signature.
- (ii) Individual petitions shall be filed for each Pawnee Business Council Member who is subject to recall.
- (iii) The petitioner shall be required to pay a filing fee of fifty percent (50%) of the total cost of the last regular election payable to the Election Commission for each individual Pawnee Business Council Member being recalled.
- (iv) Once requirements of Section 2 (i)(a-c) and (iii) have been completed, the Election Commission shall call and hold a recall election within sixty (60) business days but not before thirty (30) business days.
- (v) Notice of recall shall be sent to all eligible voters prior to the recall election.
- (vi) Recall shall be effective when fifty percent (50%) + one (1) of the number voting, vote in favor of the recall.

- (vii) 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. A recall proceeding may not be initiated against a Council Member whose term expires within six (6) months.
- (viii) A Maximum of three (3) Council Members may be recalled at a time.

Section 3. Suspension:

- (i) A Pawnee Business Council Member shall be suspended from the Business Council without compensation if:
 - (a) charges are pending for a felony offense;
 - (b) an offense would be cause for removal as defined in Section 4.iii (a-f); and
 - (c) the jurisdiction where the charges are pending guarantees equal rights and due process as is guaranteed under the Pawnee Nation Constitution.
- (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 immediately notify the Business Council and the Attorney General of any pending felony charges.
- (iv) A suspended Business Council Member is excused from attending meetings and other official duties during the suspension.
- (v) No vote cast or other official action taken after suspension shall be valid and will constitute official misconduct.
- (vi) The suspended Business Council Member may bring a declaratory judgment action in Pawnee Nation Tribal Court to challenge the application of this Section.
- (vii) If the Court dismisses the pending felony charges, the suspension shall automatically be removed and all withheld compensation shall be paid, without interest.

Section 4 – Removal of Pawnee Business Council Members

- (i) A Pawnee Business Council member may be removed for cause by a petition for removal filed in Pawnee Nation District Court with the right of appeal to the Pawnee Nation Supreme Court.
- (ii) A petition for removal may be filed on behalf of the Pawnee Nation by resolution of the Pawnee Business Council.
- (iii) Removal for cause includes, but is not limited to:
 - (a) A felony conviction by any Tribal, Federal, or State Court while serving on the Pawnee Business Council.
 - 1. Conviction means a final conviction or a plea of no contest or guilty, regardless of being dismissed, suspended, pardoned, or expunged.
 - (b) Converting Pawnee Nation Property or monies for personal use, or financial gain or profit;
 - (c) Willful neglect or refusal to fulfill Constitution or statutory duties;
 - (d) Official misconduct in office or by abusing the lawful authority of an elected official;
 - 1. Official misconduct in office shall include but is not limited to harassment or unfair treatment of a Pawnee Nation citizen or employee by a Council Member due to religion, sex, age, or disability;
 - (e) Physical or mental incapacity; or
 - (f) Cessation of citizenship in the Pawnee Nation.

- (iv) The grounds for removal shall be set forth with specificity in the petition for removal and the Pawnee Business Council Member shall be suspended from office until the Court rules on the petition.
- (v) Court Review
 - (a) The Pawnee Nation District Court shall review the removal petition in a new trial.
 - 1. An initial hearing must be held within thirty (30) days of receipt of the petition with a decision reached by the Court within ninety (90) days.
 - 2. The petitioner must prove the allegations contained in the petition by clear and convincing evidence.
 - (b) Before the Court rules on a petition for removal, the Court shall provide due process to each party, including:
 - 1. A copy of the petition;
 - 2. The right to respond to the petition; and
 - 3. The right to present witnesses and other evidence in his/her defense.
 - (c) If the Court finds grounds for removal as stated in the petition do exist, the Pawnee Nation shall be awarded reasonable costs and expenses, including attorney fees, not to exceed \$10,000, and any other relief that the Court deems fair and reasonable.
 - (d) If the Court finds grounds for removal as stated in the petition do not exist, the defending Council member shall be reinstated to the Pawnee Business Council and awarded reasonable costs and expenses, including attorney fees not to exceed \$10,000, and any other relief that the Court deems fair and reasonable.
 - 1. The costs and expenses, including attorney fees shall be paid from the Pawnee Nation funds.
 - (e) All parties may be represented by an attorney of his/her choosing, provided at his/her own expense for the purposes of this Section.
 - (f) Either party may seek an appeal of the decision of the District Court by filing an appeal with the Pawnee Nation Supreme Court.
 - (g) No Pawnee Business Council member shall be subject to removal until more than twelve (12) months have passed since the previous petition for removal was filed.
 - (h) A Pawnee Business Council member removed from office shall not be prohibited from running or holding office again at any time in the future, provided they meet eligibility requirements in Article IV.