TRIBAL CODE

CHAPTER 11

ELECTION CODE

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HISTORY NOTE:

Current Ordinance:

Approved and placed for referendum June 9, 1986, Resolution No. 195(86);
Adopted by referendum vote July 9, 1986, effective immediately.

Amendments:

Resolution No. 44(87), February 9, 1987 (ss. 11.105 and 11.124).
Resolution No. 253(87), August 3, 1987 (various amendments proposed by Election Board).

Resolution No. 325(89), September 18, 1989 (s. 11.115), changed provisions for absentee ballots.

Resolution No. 262(91), August 19, 1991 (various amendments proposed by Election Board).

Resolution No. 335(95), August 28, 1995 (revisions 11.107, 11.113, (4)&(5), 11.115 (1)&(2), deleting (6)&(7), 11.123, 11.124, 11.125, 11.126, 11.127, 11.128, 11.129, 11.130, 11.131, 11.132, 11.133, 11.134, adding the number 11.135).

Resolution No. 406(99), August 23, 1999 add subsection (8) to Section 11.126.

Prior Ordinances

Interim Referendum Election Ordinance adopted April 1, 1985, Resolution No. 103(85); repealed by s. 11.133 of the current ordinance.

TRIBAL CODE

CHAPTER 11

ELECTION CODE

11.101 Purpose and Authority.

The purpose of this Code is to establish rules and regulations governing all tribal elections in accordance with Article IV, Section 3 and Article VI, Sections (a), (t) and (u) of the Tribal Constitution.

11.102 Qualified Voters.

Any member of the Tribe who is eighteen (18) years of age or older on the date of the election and who presents himself or herself at the polls in person or by absentee ballot shall be entitled to vote.

11.103 Date of Elections.

The general election shall be held every year on the first Tuesday in October. If a primary election is required, the primary election shall be held on the first Tuesday in September. A referendum election shall be held on the date established by the Tribal Council in the resolution authorizing the referendum. When possible, a minimum of seven to ten days public notice shall be given in regard to referendum elections.

11.104 Election Board.

(1) There is hereby established an Election Board to conduct all elections and carry out the duties set forth in Section 11.105.

(2) The Election Board shall consist of a chairperson and two election clerks, two members at large, and five alternates.

(3) The Election Board members shall be appointed by the Tribal Council, for three (3) year terms. It is recommended that the Council consider the appointment of alternate members, when new appointments are necessary to ensure an experienced board is appointed.

(4) If a regular member is absent from any meeting or function of the Election Board, the chairperson of the board or, in the absence of the chairperson

the tribal president, may select a person from among the alternates to act as a member for that meeting or function.

(5) An Election Board member may be removed during a term in office only for improper conduct or gross neglect of duty.

(6) Should an Election Board member be related to any candidate by being the mother, father, son, daughter, wife, husband, sister or brother, this shall be considered a conflict of interest, and the Board member shall not serve at the primary or general election that year. This shall not stop any Board member from voluntarily removing themselves from working at the election, at such time as the Board member does not feel comfortable doing so.

11.105 Duties of Election Board.

The Election Board shall:

(1) have supervisory responsibility over all elections, including certain referenda;

(2) certify the results of the election or referendum to the Tribal Council;

(3) insure a fair election;

(4) determine the eligibility of candidates for office;

(5) resolve all questions as to the eligibility of voters;

(6) provide the polling place with sufficient ballots to enable all eligible voters to vote; and

(7) perform such additional duties as are provided for in this code or are necessary and incidental to the conduct of an election.

11.106 Conduct of Elections.

(1) At least five (5) members of the Election Board shall at all times be present at the polling place during an election, except when obtaining the vote of a shut-in as provided for herein, from the opening of the polls until all ballots have been counted, tallied, properly, recorded, reported, and certified. An alternate may be directed to be present during elections, to provide brief respite periods for the regular members, from time to time, on election day.

(2) The Election Board shall ensure that the polling place has private booths or areas where voters may mark their ballots in secret.

(3) The Election Board shall ensure that voters who require assistance with their vote are assisted only by members of the Election Board.

11.107 Polling Place.

The polling place shall be the Councilroom of the Lac du Flambeau William Wildcat Sr. Community Center, or such other location as shall be designated by the Tribal Council.

11.108 Election Hours.

The polls shall be open from 10:00 a.m. to 8:00 p.m., and to 6:00 p.m. for referendum elections; provided, that persons who are in line waiting to vote at the time the polls close shall be allowed to vote.

11.109 Policing of Polls.

The tribal law enforcement officer shall provide security during the election, and shall patrol the polling place, ensure that no prohibited practices occur, protect the right to secret ballot, and guard the ballot box and vote counting process. The law enforcement officer shall, at the direction of the Election Board, eject any person from the polling place who is violating this code, disturbing the election process, or committing a breach of the peace.

11.110 Nomination of Candidates.

(1) A person wishing to be a candidate for any elected tribal position shall become a candidate by notifying the Secretary in writing of his or her candidacy through the filing of a nominating petition signed and dated by at least fifteen (15) persons eligible to vote in the election to be held, and subscribed and sworn to by a circulator attesting that the persons who signed the petition are eligible to vote.

(2) Such notification and nominating petition shall be filed with the Secretary at least fifteen (15) days prior to the date of the primary election.

(3) No person may sign more than four (4) nominating petitions for candidates for the Tribal Council, or more than one (1) nominating petition for a candidate for each tribal officer position. In the event that this provision is

violated, the signatures in excess of the lawful limit which are latest in time shall be disregarded.

(4) (a) The Election Board shall meet no later than twelve (12) days prior to the date of the primary election to determine the validity of the nominating petitions and whether each candidate is eligible for office. The Board will also hear and dispose of any disputes regarding the candidate's qualifications at this time.

(b) Qualifications of Candidates.

The Tribal Constitution, ARTICLE III - GOVERNING BODY, Section 4 states: "No person shall be a candidate for membership on the Tribal Council unless he/she is an enrolled member of the Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin, at least twenty-five (25) years of age, a resident of the reservation for at least one year preceding the date of the election and at least one-quarter (1/4) degree of Lac du Flambeau Chippewa Indian Blood.

"Resident" is hereby defined as actual physical residence on the reservation.

11.111 Notice of Election.

At least ten (10) days prior to the election, the Secretary shall post a notice of election in conspicuous places in the community center and several other public places within the reservation. The notice shall state the date, time, and place of election, the names of the candidates for each position, and any other information considered appropriate. In the event a primary is not required, the Secretary shall post a notice of the general election at least ten (10) days prior to the date on which the primary election would have been held.

11.112 Primary Election.

(1) A primary election shall be held in the event that more than eight (8) candidates are nominated for the Tribal Council seats or more than two (2) candidates are nominated for any officer position. If a primary election is necessary for any position, it shall be held for all positions.

(2) The winning candidates in the primary election shall be the candidates for Tribal Council with the eight (8) largest vote totals and the candidates for each officer position with the two (2) largest vote totals. The candidates winning the primary election shall be placed on the ballot for the general election.

(3) The Annual General Election shall be defined as one election, which, if a primary is required, may be conducted in two parts, being the primary and general.

11.113 Ballots.

(1) The Secretary shall prepare and provide to the Election Board the ballots for each election, including sample ballots clearly marked "Sample". Only officially printed ballots shall be recognized as valid and have any bearing on the results of the election. Write-in candidates shall be allowed, and spaces for such candidates shall be provided on the ballot.

(2) Prior to the opening of the polls the Election Board shall ensure that ballots, sample ballots, voter lists, and other materials required for the election are present at the polls. The Election Board members shall count and certify the number of blank ballots on hand at the polls.

(3) If a voter spoils a ballot, that voter shall be entitled to receive an additional ballot provided that the spoiled ballot has not been placed in the ballot box. If a voter marks the wrong box, the election officials shall inform the voter to take the ballot back to the booth and mark all the boxes. Upon return of the spoiled ballot to the Election Board, another ballot shall be issued to the voter. Spoiled ballots shall be so marked and kept separately by the Election Board. At the close of the polls the Election Board shall count the spoiled ballots and seal them in an envelope marked "Spoiled Ballots".

(4) No person shall take or remove any ballot from the polling place except as authorized under Section 11.116 - Voting by shut-ins.

(5) Absentee voting shall be allowed in accordance with this code, only for voters who are temporarily absent from the reservation. Temporary absence shall be defined as voters who reside on the reservation, however, expect to be out of town or unavailable on the date of the election.

11.114 Voting Procedure at Polls.

(1) The chairperson of the Election Board shall verify in the presence of the other members that the ballot box is empty of all ballots and any other material prior to the opening of the polls. The ballot box shall then be locked and shall not be reopened until the counting of the votes

(2) The Secretary shall prepare a list of eligible voters for each election and shall post the voter list at least five (5) days prior to the election, except

that the Tribal Council may provide for a shorter period for a referendum. The list shall be provided to the Election Board before the opening of the polls. The voter shall place his or her signature next to their name as it appears on the voter list. If the name is not on the list, the voter's ballot shall be treated as a challenged ballot.

(3) One member of the Election Board shall initial each ballot prior to the ballot being given to the voter. For primary and general elections, another member of the Election Board shall check the ballots after they have been marked to ensure that all ballots have been folded so that the official initial is visible.

(4) Upon receipt of the official ballot, the voter shall promptly retire to the voting booth or designated area and there mark the ballot. In order to ensure a secret ballot, only one (1) person at a time shall occupy a booth or voting area. If a voter requires assistance, two (2) members of the Election Board shall assist the voter without in any way influencing the voter's decision.

(5) The voter shall mark the ballot himself or herself. To be valid, the mark must be identifiable within the space intended for a candidate. In primary and general elections each voter shall vote for only one (1) candidate for each officer position and for no more than four (4) Tribal Council candidates.

(6) The voter shall fold his ballot and deposit it in the ballot box. In primary and general elections, the ballot shall be folded so the official initial is visible and the ballot shall be checked by the designated member of the Election Board for the official initial prior to the placement of the ballot in the ballot box.

(7) In the event that the Tribe chooses to utilize computerized voting machines, standard procedures for utilizing said machines, shall be followed.

11.115 Absentee Voters.

(1) A voter may vote by absentee ballot if they are unable to vote at the polling place only because of temporary absence from the reservation.

(2) An absentee ballot shall be requested in writing. The Secretary shall verify that the person requesting the ballot will be eligible to vote in the election. Upon such verification the Secretary shall provide the voter with an absentee ballot together with a return envelope. The Secretary shall keep a log of each request.

(3) The absent voter shall mark the ballot, fold it, seal it in the return envelope provided, and execute the sworn statement contained on the outside of the return envelope before a notary public, justice of the peace, or county, city,

village or town clerk, who shall subscribe the statement. No ballot shall be counted unless it is received sealed in a signed and properly subscribed envelope.

(4) All complete absentee ballots shall be mailed, and held at the Post Office until the date of the election.

(5) On the day of the election, an Election Board official and the Tribal Police Officer shall retrieve all the absentee ballots from the post office (one mail call to be made in the morning, and another prior to the closing of the post office). All envelopes containing absentee ballots shall be delivered to the Election Board, who upon verification that the envelope has been properly signed and subscribed shall open the same, initial the ballot, and deposit it in the ballot box.

11.116 Voting by Shut-ins.

(1) Any person eligible to vote who is located within ten miles of the boundaries of the reservation who is unable due to age, infirmity, disability, illness or similar reason to come in person to the polling place may request the assistance in voting by contacting the Election Board before two o'clock of the day of the election. If a person is unable to provide a written request to the Board, however requests a shut-in ballot by phone or other means, said individual shall sign a formal request at such time as the Election Board members deliver the ballot to that person.

(2) In the event such a request is received two (2) Election Board members and a notary public shall be sent to the location of the person requesting assistance. The person shall vote in the manner prescribed for absentee voters in 11.115 (3) hereof, except that the Election Board member shall return the ballot to the polling place in a sealed, subscribed absentee ballot return envelope.

(3) Tribal members incarcerated at the Eagle River County jail may vote utilizing shut-in procedures, only if there are at least ten eligible voters wishing to vote.

11.117 Ascertainment of Intent of Voter.

(1) If a voter shall mark the ballot with a cross mark or any mark, it shall be considered sufficient to be tallied as a vote for the candidate whose name it is opposite.

(2) A ballot shall be declared void if a voter shall have voted for a greater number of candidates than specified, there is no official initial on the ballot, or the ballot has been marked or defaced so that the intent of the voter cannot be

readily determined. Only that portion of the ballot that is spoiled shall not be counted. The positions where the ballot is not spoiled shall be counted. If the entire ballot is spoiled, the Election Board shall then fold the ballot and shall write the word "void" on the outside, and shall write the reason for voiding the ballot. The total number of voided ballots shall be noted on the polling list and tally sheet.

(3) Ascertainment of Intent of Voter when using computerized voting machines shall be determined in the normal manner associated with the machines.

11.118 Poll Watchers.

Each candidate shall be entitled to designate one (1) poll watcher to be present at the polling place during the election and the tallying of votes. A candidate may not serve as a poll watcher. Poll watchers must identify themselves and their candidate to the Election Board and shall in no way interfere with the conduct of the election or the tallying of votes. Poll watchers shall be duly enrolled members of the Tribe.

11.119 Challenge of Voters.

(1) If a person who is not on the voter list seeks to vote, or if the eligibility of a voter shall be questioned by the Election Board or any poll watcher, the ballot of that voter shall be enclosed in an envelope which shall be endorsed with the voter's name, the reason for the challenge the name of the challenger, and any refutation to the challenge, offered by the voter. This envelope shall then be sealed and dropped into the ballot box. The Election Board, in consultation with the Enrollment Department, shall determine the eligibility of the challenged voters to vote prior to certifying the election; provided, that no person whose name does not appear on the official tribal membership roll shall be allowed to vote.

(2) Challenges shall be made only on the basis of eligibility for voting as specified in Article IV, Section 6 of the Tribal Constitution.

11.120 Counting of Votes.

(1) After the polls close the Election Board members shall immediately proceed to count the votes cast. The count shall be open to the public and shall continue without adjournment until completed and the results thereof publicly declared.

(2) One member of the Election Board shall read off the votes and two other members shall tally the votes on the official tally sheets. In the event computerized voting machines are utilized, standard procedures shall be followed.

(3) Upon completion of the count of the undisputed ballots, all challenged and voided ballots shall be reviewed and a final determination made. The Election Board shall then prepare and sign a certification of the election results and shall publicly announce the same.

11.121 Disposition of Ballots.

Upon certification of the election results the ballots shall be sealed in a container, and the sealed ballots, tally sheets, and all other election materials shall be delivered to the President or Secretary for safekeeping. Ballots may be destroyed after 60 days from the date of the election on motion of the Tribal Council.

11.122 Recount.

(1) A recount must be requested within three (3) days following an election. Such request must be made in writing to the Secretary. "Days" shall be defined throughout this ordinance as calendar days.

(2) If the difference in vote totals for candidates is three (3) votes or less, the recount shall be held at the expense of the Tribe upon the request of the losing candidate.

(3) In all other circumstances, the person requesting the recount shall pay the cost thereof and must post One Hundred Dollars ($100.00) toward such expense with the request for recount.

(4) A date shall be set by the Election Board for the recount. Opposing candidates may be present, in person or by legal representative, and may challenge ballots cast if there is evidence of tampering or the ballot appears spoiled or void.

11.123 Tie Vote.

In the event of a tie vote, those candidates with tie votes shall be subject to a “run-off” election.

11.124 Contest of Election.

(1) A contest of election may be brought by any eligible voter by submitting a written, signed complaint to the Secretary. The complaint shall set forth a concise statement of the facts on which the contest of the election is based and indicating in what way this Code has been violated.

(2) No complaint shall be considered unless filed within five (5) days after certification of the election and accompanied by a fee of Twenty-five Dollars ($25.00).

(3) The Secretary shall convene the Election Board, which shall consider each contest and render a decision within five (5) days after the contest is filed. If there has been fraud or irregularities of a serious nature in the election, the Election Board may order a new election. The decision of the Election Board shall be final.

(4) Upon final disposition of all contests the results of the election shall be declared final and a final certification of the election issued by the Election Board.

11.125 Referendum Elections.

(1) Except as provided in this section, Referendum elections shall be conducted in accordance with the general provision of this Code.

(2) Referendum elections shall be called for by resolution of the Tribal Council. The resolution shall establish the date of the referendum, the length of the time that notice of election and voter list must be posted (preferably 7 to 10 days), the wording of the referendum question or questions on the ballot, and who shall conduct the election pursuant to subsections (5) and (6), below.

(3) The Tribal Council may direct that a short explanatory statement of any referendum questions be placed on the ballot. Nothing herein shall prohibit the Tribal Council from directing persons who are familiar with the substance of the referendum questions to be present at the polls to explain the referendum questions to those who request such explanation; provided, however, that no attempt shall be made to persuade or advise a voter as to how to vote.

(4) No absentee or shut-in voting shall be allowed for referendum elections.

(5) A referendum election may be conducted by two (2) Election Board members.

(6) A referendum election shall be conducted by Tribal Government/Enrollment Department personnel when so directed by the Tribal Council.

11.126 Prohibited Election Day Campaigning.

(1) No Election Board member or poll watcher may engage in electioneering on the day of an election.

(2) No person may engage in electioneering during polling hours on the date of an election within 500 feet of an entrance to the community center.

(3) A member of the Election Board and/or the tribal law enforcement officer may remove posters or other advertising which is in violation of this section.

(4) "Electioneering" means any activity which is intended to influence voting at an election.

(5) No candidate may be present at the polling place or any entrance thereto during the time the polls are open except for the purpose of voting.

(6) No person shall be allowed within the polling place for the purpose of selling food, drink, or any other item, or for soliciting donations.

(7) Candidates shall be notified, prior to Election Day, that posters or signs on vehicles in the parking lot will be considered a violation of sec. 11.125(2).

(8) It shall be the responsibility of any candidate and the person who put up or erected any political sign to have the same removed and properly disposed no later than two weeks after the election.

11.127 Election Threats.

No person may himself/herself or through an agent make use of or threaten to make use of force, violence or restraint in order to induce or compel any person to vote or refrain from voting at an election; or by abduction, duress or any fraudulent device or contrivance impede or prevent the free exercise of the franchise at an election; or by his/her acts compel, induce or refrain from giving his/her vote at any election.

11.128 Election Bribery.

No person may:

(1) Offer, give, lend, or promise to give or lend, or endeavor to procure, any thing of value, or any office of employment or any privilege or immunity to, or for, any person, in order to induce any elector to:

(a) go to or refrain from going to the polls; or

(b) vote or refrain from voting.

(2) Receive, agree or contract to receive or accept any money, gift, loan, valuable consideration, office or employment for himself/herself or for any other person, in consideration that he or any elector will so act or has so acted.

(3) Advance, pay or cause to be paid any money to or for the use of any person with intent that such money will be used to bribe electors at any election.

11.129 Election Fraud.

No person may:

(1) Vote at any election if he or she does not have the necessary elector qualifications.

(2) Impersonate a registered elector or pose as another person for the purpose of voting at an election.

(3) Vote more than once in the same election.

(4) As a member of the Election Board, willfully neglect or refuse to perform any duties imposed by the Code.

(5) Disrupt the election process in any way.

(6) Procure, or assist someone to do any of the acts prohibited by this section.

11.130 Penalties.

Any person who, for himself or herself, or by his or her agent, servant, or employee or another, violates this Code, shall be liable for penalties as follows:

(1) For civil remedial money penalty of not less than $250.00 nor more than $500.00 for each violation.

(2) For civil remedial forfeiture of any property, including without limitation vehicles, used in the commission of the violation of this code.

(3) Court costs of $10.00 shall be assessed against any person found to have violated this code.

11.131 Parties to a Violation.

(1) Whoever is concerned in the commission of a violation of this code is a principal and may be so charged with the violation although he or she did not directly commit it and although the person who directly committed it has been convicted of the violation.

(2) A person is concerned in the commission of a violation of this code if the person:

(a) Directly commits the violation; or

(b) Aids and abets the commission of it; or

(c) Is a party to a conspiring with another to commit it or advises, hires, or counsels or otherwise procures another to commit it.

(3) Any person observing any violation of this Code is to notify the Law Enforcement Officer, who shall immediately investigate the matter, and promptly issue citations.

11.132 Enforcement Procedure.

Jurisdiction is hereby conferred upon the Lac du Flambeau Tribal Court over matters related to the violation of this Code. Forfeiture proceedings shall be conducted in accordance with Chapter IV of the Tribal Court Code; provided that citations issued thereunder may be served by ordinary mail.

11.133 Intent and Interpretation of Code.

(1) This code is intended to establish procedures through which fair, open and honest elections may be conducted. Substantial compliance shall satisfy this code. Technicalities shall not be used to interfere with, delay, or block elections, or to cause confusion or a loss of confidence in the election system.

(2) In the event that issues of election procedure arise which are not specifically provided for in this code, the Election Board may look to the election laws of the State of Wisconsin for guidance on the procedure to be followed.

11.134 Repealer.

The Interim Referendum Election Ordinance is hereby repealed in its entirety. All resolutions, ordinances and codes which are inconsistent with the provisions hereof are repealed to the extent of the inconsistency.

11.135 Effective Date.

This code shall take effect upon the date of certification of the referendum election at which this code is approved pursuant to the Interim Referendum Election Ordinance.