

CHAPTER 1-8
ELECTIONS (11/05/2005)

ELECTIONS

Table of Contents

1.	.....	Council Findings, Purpose and Construction
2.	.....	Voting
3.	.....	Removal From Office
4.	.....	Recall From Office
5.	.....	Vacancies
6.	.....	Referendum
7.	.....	General Council Meeting
8.	.....	Challenges to Voting Process
9.	.....	Amendment, Repeal by Referendum
EXHIBIT A	.....	Recall Petition
EXHIBIT B	.....	Application for Recall Petition
EXHIBIT C	.....	Referendum Petition
EXHIBIT D	.....	Application for Referendum Petition

ELECTIONS

§ 1. Council Findings, Purpose and Construction

1.1. The potential for Tribal sovereignty is best met by the Forest County Potawatomi Community electing the Tribal Executive Council members and officers in elections which are fair, democratic and orderly. Likewise, there is a need for processes which permit the removal or recall of Executive Council members and officers in a fair and orderly manner. Persons subject to removal shall be given adequate notice of the charges upon which their proposed removal is based, including the details of the specific acts or omissions alleged against them, and an opportunity to reply thereto in writing and to appear and be heard in a meeting of the General Council prior to any votes being taken on their removal. Procedures are also needed to fill vacancies which may occur in Tribal elective offices. In addition, the procedure for referenda to initiate the adoption of ordinances and resolutions is an important right guaranteed by the Tribal Constitution.

Therefore the Forest County Potawatomi General Tribal Council finds:

- (A) That Art. VI, Sec. 1 of the Forest County Potawatomi Community Constitution directs the enactment of an Ordinance governing the conduct of elections. The Ordinance shall be consistent with the Constitution and shall include, but not be limited to the following:
 - (1) Nomination of Candidates;
 - (2) Secret Ballots;
 - (3) Handling of Petitions;
 - (4) Conduct of Referendum Elections;
 - (5) Conduct of Recall and Removal Elections.
- (B) That Article VII of the Constitution provides for Referenda.
- (C) That Article VIII of the Constitution governs for Vacancies, Removals, and Recall from office.
- (D) That the Forest County Potawatomi Community in adopting this Ordinance asserts its Tribal sovereignty in a manner consistent with the Tribe's goal of self-government.

1.2. Purpose and Construction

- (A) Declaration of Purpose – this Code shall be interpreted and understood to accomplish the Tribal objectives:

- (1) To provide for fair, orderly and dignified voting processes essential to the Tribe's goal of self-government; and
 - (2) To address and resolve issues involving the acts and omissions of elected Tribal officers in a manner which reflects Tribal traditions of fairness and respect by providing for fair and impartial hearings consistent with dignity, due process and individual rights.
 - (3) To ensure that the sovereignty of the Forest County Potawatomi Community is preserved.
- (B) Construction – this code shall be liberally construed which means that it shall be read and understood in a manner that gives full effect to the purposes for which it is enacted which is to provide for fair and orderly procedures governing elections, removal, recalls, filling vacancies and referenda.

§ 2. Voting

2.1. Qualified Voters

Any enrolled member who is at least one-fourth (1/4) degree Potawatomi Indian blood and who is eighteen (18) years of age by the date of the election shall be considered a qualified voter.

2.2. Date of Election

- (A) Annual Election. The annual election of those three (3) offices whose terms expire at the Executive Council meeting in November shall be held on the Saturday prior to the regular Executive Council meeting in November.
- (B) Special Election. A Special Election shall be called by the Executive Council Secretary to fill a vacancy on the Executive Council that occurs more than three (3) months before the next regular election for that office. The Special Election shall be held at the next regular meeting of the General Council.
- (C) Referendum Election. A Referendum Election shall be called by the Executive Council. Referenda Elections shall be conducted as general elections and may not take place at General Council meetings.

2.3. Election Board

The Executive Council shall appoint an Election Board composed of one (1) Ballot Judge and three (3) Ballot Clerks for every Annual Election, for every Referendum Election and for every Special Election. Ballot Judges and Ballot Clerks cannot be an immediate family member of any person on the Ballot or the circulator of the matter placed on the Referendum. Immediate family is defined herein as Father, Mother, Brother, Sister, Son or Daughter. The Election Board members shall be compensated for their services in a manner as provided by law.

2.4. Duties of Election Board

The Election Board, acting through a majority thereof, shall have such supervisory responsibility over the election for which they are appointed so as to insure it is fair and impartial. The Election Board shall:

- (A) Maintain a list of eligible voters at the polls showing their names and addresses and recording thereon the name of the each person voting in that election.
- (B) Provide sufficient ballots at the polling place to enable eligible voters to vote.
- (C) Provide that the polling place has areas where voters may mark their ballots in secrecy.
- (D) It shall be the duty of the Ballot Clerks to take charge of the official ballots, place their initials on the back of each ballot, fold in the proper manner to be deposited, and to deliver a ballot duly initialed and folded to each voter as he enters the booth.
- (E) If requested by any voter, the Ballot Judge along with one (1) of the Ballot Clerks may assist that voter marking his or her ballot. While assisting such voters, the Ballot Judge and Ballot Clerk shall give no advice or suggestion regarding any candidate or issue nor express any preference for any candidate or issue.
- (F) Insure that no person within one thousand (1,000) feet of the polls distributes any campaign literature, card, or any other printed materials, or conduct any verbal campaign pertaining to candidates or issues at the election.
- (G) At least two (2) members of the Election Board shall be present at the polling place at all times on election day from the opening of the polls until the polls have closed, all ballots have been counted and tallies have been properly recorded, certified and announced.
- (H) It shall also be the duty of the Ballot Clerks immediately upon the closing of the polls and under the supervision of the Ballot Judge to count and destroy all remaining unused ballots.

2.5. Polling Place

- (A) There shall be one (1) polling place which shall be at Forest County Potawatomi Tribal Center.
- (B) The polls shall be open from 8:00 A.M. to 7:00 P.M. for the Annual Election or a Referendum Election and for not less than two (2) hours for any Special Election as set forth in the Special Notice of the General Council meeting, provided under Section 5.2(D).

2.6. Nominations

- (A) Annual Nomination Meeting. The Executive Council Secretary shall at least fourteen (14) days prior to the regular Executive Council meeting on the first Monday in October notify eligible voters of the meeting at which time nominations will take place for the annual election.
- (B) Special Nomination Meeting
 - (1) If a vacancy is declared with fifteen (15) days or more until the next regular General Council meeting, then a Special Election is called to fill a vacancy on the Executive Council. The Executive Council Secretary shall within five (5) business days, excluding Saturdays, Sundays and legal holidays, post and mail to all eligible voters advance written notice of the time and date of the special nomination meeting of the Executive Council at which time nominations for the vacancy will take place. The special nomination meeting shall be held as soon as practicable but not more than forty-five (45) days before the next regular General Council meeting when the Special Election will be held.
 - (2) If a vacancy is declared with fourteen (14) days or less until the next regular General Council meeting, then the agenda for the next regular General Council meeting shall be amended to include a notice consistent with Section 2.6(C) below. The nomination procedures shall be consistent with Section 2.6(D), below, except that Sections 2.6(D)(6) and (D)(9) shall not apply.
- (C) Notice. The written notice of a nomination meeting shall include the date, time and place of the nomination meeting which shall be in the Tribal Center, and shall list the vacancies to be filled.
- (D) Nomination Meeting Procedures. Nomination meetings shall be conducted under the following procedures:
 - (1) Nominations will be open to enrolled members of the Forest County Potawatomi Community who otherwise meet the qualifications for that office.
 - (2) The Chair will open nominations for each vacancy by stating which vacancy is open for nomination.
 - (3) If the Chairman's name is placed in nomination, then the remaining members of the Executive Council shall select another member of the Executive Council to chair the meeting and take nominations for that office. Thereafter, the Chairman shall resume the chair for nominations for any other office.
 - (4) Nominees must be present in order to be nominated.

- (5) Any person nominated shall be given an opportunity to decline such nomination.
- (6) A notice of the candidates whose names will appear on the ballot and the offices being filled shall be posted at the community within the forty-eight (48) hours after the nomination meeting is concluded.
- (7) The nominations shall be closed when the Chairman calls the nominations for the third time and there is no further response.
- (8) A member of the Executive Council, who is nominated for an office which is to be filled before the expiration of the regular term of office held by that Executive Council Member, shall, if he or she accepts the nomination, be deemed conclusively to have vacated and resigned from his or her current position, effective as of the date of the upcoming election. Nominations for the vacated position shall be called for at the end of positions scheduled for nominations. In accepting a nomination for another position on the Executive Council, an Executive Council Member shall not be prevented from carrying out his or her duties until his or her successor is duly installed, unless the Member has been elected and installed in the new position for which he or she was nominated. Under no circumstances shall an individual be allowed to run for two positions at one time, nor hold two positions at a time.
- (9) Any Candidate nominated for an elective position wishing to withdraw must give written notice to the Ballot Judge within twenty-four (24) hours after the close of nominations, and the Ballot Judge shall approve of such resignation and have the person's name removed from the Ballot. Any resignation will be final and the nominee's name cannot be reinstated. An Executive Council Member's withdrawal of his or her acceptance of a nomination shall not nullify the vacating and resignation from office deemed to have occurred by virtue of acceptance under subsection (8) above.

2.7. Ballots

The Executive Council Secretary shall arrange for all necessary election materials. Ballots shall indicate that they are official election ballots and shall bear the name of the Forest County Potawatomi Community.

- (A) Prior to the opening of the polls the Election Board shall ensure that the polling place has ballots, election lists, and other necessary materials required for the election. Election Board members at the polling place shall count and certify the number of blank ballots on hand prior to the opening of the polls.
- (B) If a voter spoils a ballot, that voter will be entitled to receive a replacement ballot. Upon returning the spoiled ballot to the Election Judge, the voter will be issued another ballot. Spoiled ballots shall be so marked and kept separately by the

Judge. At the close of the polls, the spoiled ballots shall be counted and sealed in an envelope that is marked "Spoiled Ballots."

- (C) No person shall take or remove any ballot from the polling place before the close of the polls.
- (D) There shall be no provision for absentee voting.

2.8. Voting Procedure

The following procedure shall be followed for all Executive Council, Referendum and Recall elections:

- (A) **Ballot Box** – The Election Judge at the polling place, in the presence of the members of the Election Board, shall verify that the ballot box is empty of all ballots and any other material prior to the opening of the polls and then the ballot box will be locked.
- (B) **Registration of Voters** – Voting shall be in person at the polling place. The name of each person seeking to vote must be entered on the polling list by a member of the Election Board.
- (C) **Official Ballots** – One member of the Election Board shall initial or stamp "Official Ballot Forest County Potawatomi Community" on each ballot prior to the ballot being given to the voter.
- (D) **Secret Vote** – Upon receipt of the official ballot the voter shall promptly retire to the voting booth or designated area and there mark his or her ballot. In order to ensure a secret ballot, no more than one (1) person shall be permitted to occupy booth or voting area at the same time. However, if a voter requests assistance, two (2) members of the Election Board shall assist the voter as provided in Section 2.4(E) above.
- (E) **Marking Ballots** – The voter shall mark his or her ballot himself or herself unless assisted as provided in Section 2.4(E). To be valid, the mark must be identifiable as intended for a specific candidate or referendum question.
- (F) **Write-in Votes Not Permitted** – Only votes for those candidates whose names appear on the printed ballot shall be counted. Write-in votes are not permitted and will not be counted, but shall not otherwise invalidate any other votes cast on a ballot.
- (G) **Casting Ballots** – After voting, each voter shall fold and deliver his or her ballot to the designated member of the Election Board who shall check the ballot for the official initial or stamp and the voter shall then deposit the ballot in the ballot box.
- (H) **Challenges to Voters** – If the eligibility of a voter shall be questioned by the Election Board, the ballot of that voter shall be enclosed in an envelope which

shall be endorsed with his or her name and the reason for the challenge. Challenges shall be made only on the basis of eligibility for voting membership in the Tribe as specified in Article VI, Section 5 of the Constitution of the Forest County Potawatomi Community. The eligibility of all challenged ballots must be determined by a majority of the Election Board before tallying any votes. If the voter is determined to be eligible that envelope will be opened and the ballot placed in the ballot box.

2.9. Counting Ballots

After the polls close the Election Board 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.

2.10. Procedure in the Event of a Tie

In the event of a tie, the Ballot Judge will declare a “TIE” and set a date for the run-off election between the candidates who are tied. The run-off election shall be conducted in the same manner as general election.

§ 3. Removal From Office

3.1. Constitutional Provisions – The following portions of the Constitution of the Forest County Potawatomi Community provide for removal of members of the Executive Council:

Article VIII, Section 2(a):

The General Council may remove any elective member of the Executive Council for, but not limited to, any of the following reasons: (1) willful and persistent misconduct reflecting on the dignity and integrity of the Community; (2) conviction of a felony while in office; (3) failure to carry out his or her official duties; (4) absence from two (2) or more successive meetings of the Executive and/or General Councils without a valid excuse; (5) or any form of dishonest act against the Community.

Article VIII, Section 2(b):

The accused officer shall be served personally with written notice of charges against him or her at least seventy-two (72) hours prior to the General Council meeting called for the purpose of considering his or her removal.

Article VIII, Section 2(c): The accused officer may present oral evidence in his or her defense but also must answer in written form the allegations levied against him or her.**

* Article VIII, Section 2(c) provides further: “Testimony for and against the officer by other persons is permitted.”

Article III, Section 3:

The Chairman may call a special meeting of the General Council, and shall hold a special meeting within fifteen (15) days from receipt of a written request signed by at least ten (10) qualified voters. Written notice shall be posted at least ten (10) days in advance of the meeting. Such notice shall include the date, time, place and purpose of the meeting.

3.2. Declaration of construction and interpretation of constitutional provisions for removal, and establishment of procedures governing same.

In order to clarify the Constitution and to insure a fair and full deliberation of the basis for removal of any elective member of the Executive Council, it is hereby declared and ordained that the Constitutional provisions relating to the convening of Special General Council meetings and removal of officers shall be carried out as provided in the following Sections.

3.3. Definitions:

“Answer” means the Answer required by Article VIII, Section 2(c) of the Constitution.

“Charges” mean each and any of the legal reasons for removal of a member of the Executive Council as specified under Article VIII, Section 2(a) of the Constitution and referred to in Article VIII, Section 2(b).

“Circulator” means the person or persons who circulate a request for a Special General Council meeting as allowed under Article III, Section 3 of the Constitution.

“Majority” means fifty (50%) percent plus one (1) vote of the total votes cast.

“Notice of Meeting” means a notice prepared by the Tribal Secretary or Chairman setting forth the time, date and place of the Special Council Meeting to consider the question of removal of the Executive Council member in question.

“Specifications” mean the fact which constitutes the basis for removal under the charges which are alleged to have been committed by the Executive Council member whose removal is sought.

“Written Notice” means the written notice of charges which must be served on the accused officer as provided for in Article VIII, Section 2(b) of the Constitution. This must include the Charges and Specifications set forth above.

“Written Request” means the written request for a Special Council meeting as provided for in Article III, Section 3 of the Constitution.

“Written Request for Adjournment” means a request in writing signed by the Executive Council member against whom the charges have been brought for a ten (10) day adjournment in the scheduling of the Special General Council meeting to enable that person to prepare the Answer required by Article VIII, Section 2(c) of the Constitution.

3.4. Requests, Notices, Charges, Specifications and Answers Pertaining to Removal.

- (A) The written request shall contain the following information in order to be allowed as a valid request:
 - (1) In addition to the names of the ten qualified voters signing the request, the written request shall plainly state the name of the Circulator of the request.
 - (2) The Circulator must be a qualified voter and may be one of the ten (10) signers of the request.
 - (3) In stating the purpose of the request for a Special Council meeting as required by Article III, Section 3 of the Constitution, if the purpose is to remove any Executive Council member, it must contain a written Notice of Charges required by Article VIII, Section 2(b) of the Constitution.
- (B) The written Notice of Charges must contain the following information:
 - (1) Each and every charge shall set forth separately one of the specific reasons in Article VIII, Section 2(a) of the Constitution.
 - (2) In addition the written notice shall set forth specifically and in detail the facts which are alleged to constitute a violation under that provision, including the specific acts complained of, dates, times, locations, persons present, and identify and include as an attachment any documentary evidence available. These facts will be known as and labeled “Specifications” in the written notice of charges.
- (C) The Answer required by Article VIII, Section 2(c) of the Constitution shall set forth in detail any denials, authorization, justification, and documentary evidence available to refute the allegations contained in each one of the charges and specifications contained in the written notice of charges.
- (D) The person so charged may request a ten (10) day delay in the scheduling of the General Council meeting beyond the seventy-two (72) hours set forth in Article VIII, Section 2(b) of the Constitution by serving a Notice of Request for Adjournment in writing upon the circulator of the petition and the Tribal Secretary or Chairman. The Notice of Request for Adjournment shall be signed by the person whose removal is sought and must state that the person has a valid defense and intends to prepare and present a written answer as provided for in Article VIII, Section 2(c) of the Constitution. The Notice of Request for Adjournment may be served by any adult enrolled member of the Tribe.
- (E) Upon the service of the Notice of Request for Adjournment, the Secretary or Chairman shall prepare and post a Notice of Meeting which sets forth the time, date and place of the General Council meeting at which the charges and specifications in the Notice for Removal will be considered and voted upon. The charges and specifications shall be attached to this Notice of Meeting. The date

shall not be more than fifteen (15) days from receipt of the written Request for a General Council meeting as specified in Article III, Section 3 of the Constitution. This Notice of Meeting is distinct from the request for meeting referred to in Article III, Section 3 of the Constitution.

- (F) The Secretary of the Executive Council shall copy and make available at the General Council meeting convened for the purposes of considering the removal at least ten (10) complete copies of both the written charges and supporting documents and the written answer and supporting documents.
- (G) No member of the Executive Council shall be required to answer to any verbal charges made at a General Council meeting called to consider removal, nor any written charges and specifications which are not served as provided for in this Ordinance.
- (H) Failure to include the written charges and specifications in the written request for a General Council meeting to consider removal as provided for in this Ordinance shall render the request invalid.
- (I) Failure to provide a written answer to the charges and specifications as provided for in this Ordinance shall be the basis for removal.
- (J) Once specific charges and specifications for removal and facts in support thereof have been heard and acted upon by a General Council meeting convened for that purpose, those charges and facts may not be brought again in subsequent written notices of charges and specifications. Repetitious charges based on specific facts will not be allowed and may not be acted upon at subsequent proceedings.

3.5. Removal Elections; Meeting Day and Voting Procedures

- (A) Special General Council Meetings called to consider removal shall only be held on Saturday.
- (B) The vote on removal shall be by written secret ballot at the Special General Council Meeting called to consider removal.
- (C) The polling place shall be at the Forest County Potawatomi Tribal Center.
- (D) There shall be a two (2) hour period for voting following the conclusion of the Special General Council meeting called for the purpose of considering removal.
- (E) The following provisions of the Election Ordinance shall apply to the Removal Election:
 - (1) Section 2.1 – Qualified Voters
 - (2) Section 2.3 – Election Board

- (3) Section 2.4 – Duties of Election Board
 - (4) Section 2.7- Ballots
 - (5) Section 2.8 – Voting Procedure
 - (6) Section 2.9 - Counting Ballots
- (F) In the event of a tie, the Ballot Judge will declare a “TIE” and the removal attempt will be deemed to have lost. In order to succeed, the vote in favor of removal must be by a majority, which is defined as fifty (50%) percent plus one (1) vote of the total votes cast.

§ 4. Recall From Office

4.1. Constitutional Provisions – The following portions of the Constitution of the Forest County Potawatomi Community provide for recall of a member of the Executive Council:

Article VIII, Section 3:

- (1) Upon receipt by the Executive Council of a valid petition signed by at least twenty (20) percent of the qualified voters requesting a recall election of a member of the Executive Council, the Executive Council shall conduct a recall election of the officer named in the petition. Recall election shall be conducted pursuant to the Election Ordinance enacted pursuant to Article VI, Sec. 1.
- (2) Recall decisions of the eligible voters of the Community casting ballots in an election called for the purpose of recalling a member of the Executive Council shall be final; provided, that at least twenty percent (20%) of the qualified voters shall have cast ballots in the recall election.

4.2. Declaration of construction and interpretation of constitutional provisions for recall and establishment of recall procedures

In order to clarify the Constitution and ensure a fair and full deliberation of the basis for recall of any elected member of the Executive Council, it is hereby declared and ordained that the Constitutional provisions relating to the recall of officers shall be carried out as provided in the following Sections.

- (A) **Qualified Persons:** Only an enrolled Tribal member who is eighteen (18) years of age or older may (i) file an Application for Recall Petition, attached hereto as Exhibit B, (ii) circulate a Recall Petition, (iii) sign a Recall Petition, (iv) vote in a Recall Election.
- (B) **Scope of Petition.** Only one member of the Executive Council may be the subject of a Recall Petition. A Recall Petition may not seek the recall of more than one member of the Executive Council.

- (C) Form of Petition. Each page of the petition shall be in the form and substance as attached hereto as Exhibit A.
- (D) Application for Petition. A person intending to circulate a Recall Petition shall file with the Tribal Court Clerk an Application setting forth his or her name, his or her intention to circulate and file a Recall Petition, and a specific statement of no more than one hundred words stating the grounds of the demand for the recall. The general statement shall be typed on the front page of the Petition.
- (E) Number and Record of Petition. On receipt of the Application, the Tribal Court Clerk shall assign a number to the Petition, which number shall appear on the face of each copy thereof, and issue that number to the Applicant. A record shall be maintained by the Tribal Court Clerk of each Application received, the date of its receipt and the number assigned to the Applicant.
- (F) Circulator. Only qualified voters may circulate a Recall Petition. Before distributing a Recall Petition to a qualified voter for circulation, the Tribal Court Clerk shall (i) insert on the top of each page of the Petition the full name of the Executive Council member whose recall is being sought, (ii) shall insert on each page the date the unsigned petitions are being provided to the Circulator, (iii) the number of the Petition, and (iv) shall insert the stated grounds for the demand for the recall as stated in the Application for Petition. The person who wishes to circulate a Recall Petition shall acknowledge receiving the petition by signing and dating a log maintained by the Tribal Court Clerk for that purpose.
- (G) Signatures. Only qualified voters may sign recall petitions. Each qualified voter signing a recall petition shall do so in the presence of the person circulating the petition. Each person signing a petition shall place his or her signature on the petition. To the right of the signature, the person shall print his or her name. To the right of his or her printed name, the person shall write his or her enrollment number. To the right of his or her enrollment number, the person shall insert the date on which he or she signed the petition.
- (H) Affidavit of Circulator. The person circulating the petition before whom the signatures were written on the signature sheet shall, in an Affidavit subscribed and sworn to before the Tribal Court Clerk, verify that each of the names on the sheet was signed in his or her presence on the date indicated, and that in his or her belief each signature was a qualified voter and a member of the Community.
- (I) Return of Petitions. Completed petitions must be returned to the Tribal Court Clerk within thirty (30) days from the date on which the Circulator obtained the petition forms from the Tribal Court Clerk and no signature on the petition may be counted unless the date of the signature is within such thirty (30) day period. Any petitions or portions thereof not timely returned shall be invalid. After completed petitions have been returned, no name may be added or removed.

- (J) Validity of Signatures.
- (1) No individual signature on a petition shall be valid if:
 - (a) The signature is not dated;
 - (b) The signature is dated outside the circulation period;
 - (c) The signature is dated after the date of the Tribal Court Clerk's jurat on the petition.
 - (d) The signature is not of a qualified voter.
 - (2) No signature on a petition shall be valid if:
 - (a) The petition circulator fails to sign the affidavit of Circulator;
 - (b) The Circulator is not a qualified voter.
 - (c) The Tribal Court Clerk fails to sign the jurat of the affidavit of Circulator;
 - (d) The commission of the person administering the oath has expired.
- (K) Review of Petition. Upon receipt of a completed petition, the Executive Council shall verify that the petition was returned within the time required and shall verify which signatures thereon are those of qualified voters. The Executive Council shall count all valid signatures of qualified voters and, if the petition has been signed by at least twenty (20%) percent of the qualified voters, the Executive Council shall announce and conduct a recall election of the officer named in the petition.
- (L) Notice. Upon the announcement of a recall election by the Executive Council, the Tribal Council Secretary or the appointed designee of the Executive Council shall within forty-eight (48) hours, excluding Saturdays, Sundays or other legal holidays, give written notice to the person against whom the petition is filed. The notice shall state that a recall petition has been filed, shall set forth the grounds thereof, (as stated in the Application for Petition) and shall notify the person to whom it is addressed that the person has the right to prepare and have printed on the ballot a statement containing not more than one hundred words defending the person's official conduct. If the person fails to deliver the defensive statement to the officer giving notice within ten (10) days thereafter, the right to have a statement printed on the ballot shall be considered waived.
- (M) Recall Election. The Recall Election shall be conducted on the third Saturday after the Executive Council announces the Recall Election. Ballots shall contain the general statement of the grounds of the demand for the recall taken from the

Application for Petition, and the defensive statement submitted by the person subject to the Recall, if any has been delivered pursuant to Paragraph (L) above.

- (N) Ordinance Provisions. The following provisions of the Election Ordinance shall apply to Recall Elections.
 - (1) Section 2.1 – Qualified Voters.
 - (2) Section 2.3 - Election Board.
 - (3) Section 2.4 – Duties of Election Board.
 - (4) Section 2.5 – Polling Place.
 - (5) Section 2.7 – Ballots.
 - (6) Section 2.8 – Voting Procedures.
 - (7) Section 2.9 – Counting Ballots.
- (O) Minimum Number of Ballot; Tie. No member of the Executive Council may be recalled in a Recall Election unless at least twenty percent (20%) of the qualified voters shall have cast ballots in the Recall Election. In order to succeed, the vote in favor of a recall must be by majority vote, which is defined as fifty percent (50%) plus one (1) vote of the total votes cast at the Recall Election. In the event of a tie in the Recall Election, the Ballot Judge will declare a “Tie” and the recall attempt will be deemed to have failed. In the event that less than twenty percent (20%) of the qualified voters shall have cast ballots in a Recall Election, the recall attempt will be deemed to have failed.

§ 5. Vacancies

5.1. Constitutional Provisions

Vacancies on the Executive Council shall be filled in accordance with Article VIII, Section 1 of the Constitution of the Forest County Potawatomi Community.

5.2. Additional Ordinance Provisions

- (A) When there is a vacancy caused by the resignation, death, Recall or removal of an Executive Council member less than three (3) months before the next regular election for that Executive Council member’s position, the applicable procedures set forth in Article VIII, Section 1(a) or (b) of the Constitution shall be followed to fill the vacant office.
- (B) When there is a vacancy caused by the resignation, death, recall or removal of an Executive Council member more than three (3) months before the next regular election for that same office, the nomination procedures for filling the vacant

office set out in Article VIII, Section 1(C) of the Constitution shall be followed as to the date of the election which shall be at the next regular General Council meeting.

- (C) The nomination procedure set above in Section 2.6(B)-(D) shall be followed prior to the General Council meeting where a vacancy on the Executive Council is to be filled.
- (D) The election shall be by secret ballot at the General Council meeting and names of the nominees and the hours for voting shall be as set forth in a Special Notice of the General Council meeting. The Executive Council shall set the hours for voting and appoint an Elections Board to serve as provided for in this Ordinance.

§ 6. Referendum

6.1. Referenda Elections shall be conducted in accordance with Article VII of the Constitution of the Forest County Potawatomi Community.

6.2. Upon presentation to the Executive Council of a petition signed by at least twenty (20) percent of the qualified voters of the Community, any enacted or proposed ordinance, resolution or other legislative act of the General Council shall be submitted to a Referendum of the qualified voters of the Community.

- (A) To prevent individuals or corporations from achieving unjust power or financial gain from the passage of a referendum action or question, no proposed referendum action or question may be placed on the ballot that would name any individual to hold any office or identify or name any private corporation to perform any function or to have any power or duty.
- (B) Not all legislative acts of the General Council shall be subject to a referendum, exceptions include matters containing urgency clauses, special or annual elections, matters involving the filling of vacancies, removal or recall from office, matters which cannot be undone, contractual matters which have been approved by the General Council, General Council actions with respect to the enrollment or removal of an individual from the tribal rolls.

6.3. Declaration of construction and interpretation of Constitutional provisions for Referendum Elections, and establishment of Referendum procedures

In order to clarify the Constitution and ensure a fair and full deliberation of the basis for a referendum concerning any enacted or proposed ordinance, resolution or other legislative act of the General Council it is hereby declared and ordained that the Constitutional provisions relating to the referendum shall be carried out as provided in the following Sections.

- (A) Qualified persons. Only an enrolled Tribal member who is eighteen (18) years of age or older may (i) file an Application for Referendum Petition as attached hereto as Exhibit D, (ii) circulate a Referendum Petition, (iii) sign a Referendum Petition, (iv) vote in a Referendum Election.

- (B) Scope of Petition. Only one action or question may be the subject of a Referendum Petition.
- (C) Form of Petition. Each page of the Petition shall be in the form and substance as attached hereto as Exhibit C.
 - (1) Every subject in any referendum action or question shall be expressed in the title; upon adoption of an action or question containing subjects not expressed in the title.
 - (2) If a Petition contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the Petition shall not be submitted to the Community for adoption or rejection at the polls.
- (D) Application for Petition. A person intending to circulate a Referendum Petition shall file with the Tribal Court Clerk an Application setting forth his or her name, his or her intention to circulate and file a Referendum Petition, along with a written statement of the specific action or question to be put on the Referendum. The general action or question shall be typed on the front page of the Petition. The signature of the applicant must be subscribed and sworn to before the Tribal Court Clerk.
- (E) The filing of a Referendum Petition against any item, section, or part of any enacted, proposed ordinance, resolution or other legislative act of the General Council shall not delay the remainder of the enacted proposed ordinance, resolution or other legislative act of the General Council from becoming operative.
- (F) Ordinance Department Review. Prior to the circulation of the Referendum Petition the Circulator must also serve a copy of the application for Petition and Referendum Petition of the proposed action or question upon the Ordinance Department for review and comment.
 - (1) Upon receipt of the Application for Petition and Referendum Petition the Ordinance Department shall prepare a Referendum Impact Statement for distribution which shall ensure a reasonable opportunity for the voters to become informed about the text of the Referendum and contains the title, summary of the main purposes, provision of the action or question sought, the impact of a yes or no vote, and any additional comments regarding the matter no later than three (3) weeks after receipt, unless withdrawn by the Circulator.
 - (2) Within the timeframe specified in § (1) above the Ordinance Department shall render its Referendum Impact Statement, and comments to the Circulator at a meeting or meetings open to the Community and shall cause the same to be mailed to the address of each qualified voter whose address is on file with the Enrollment Department, shall publish the

Referendum Impact Statement in the Tribal newspaper, and make it available to the voters at the poll(s) on the day of voting.

- (3) The Ordinance Department shall not have the power to require the amendment, modification, or alteration of the text of any such action or question.
- (G) Referendum Challenge. Any challenge to the constitutionality of the referendum shall be heard in the Tribal court of the Forest County Potawatomi Community. Any decisions of the Tribal Court shall be final.
- (H) Number and Record of Petition. On receipt of the Application, the Tribal Court Clerk shall assign a number to the Petition, which number shall appear on the face of each copy thereof, and issue that number to the Applicant. A record shall be maintained by the Tribal Court Clerk of each Application received, the date of its receipt and the number assigned and issued to the Applicant.
- (I) Circulator. Only qualified voters may circulate a Referendum Petition. Before distributing a Referendum Petition to a qualified voter for circulation, the Tribal Court Clerk shall (i) insert on the top of each page of the Petition the statement and action being sought by the Referendum, (ii) shall insert on each page the date the unsigned petitions are being provided to the Circulator, (iii) the number of the Petition. The person(s) who wishes to circulate a Referendum Petition shall acknowledge receiving the Petition by signing and dating a log maintained by the Tribal Court Clerk for that purpose.
- (J) Signatures. Only qualified voters may sign Referendum Petitions. Each qualified voter signing a Referendum Petition shall do so in the presence of the person circulating the Petition. Each person signing a Petition shall place his or her signature on the Petition. To the right of the signature, the person shall print his or her name. To the right of his or her printed name, the person shall write his or her tribal enrollment number. To the right of his or her enrollment number, the person shall insert the date on which he or she signed the Petition.
- (K) Affidavit of Circulator. The person circulating the Petition before whom the signatures were written on the signature sheet shall, in an Affidavit subscribed and sworn to before the Tribal Court Clerk, verify that each of the names on the sheet was signed in his or her presence on the date indicated, and that in his or her belief each signer was a qualified voter and a member of the Community.
- (L) Return of Petitions. Completed petitions must be returned to the Tribal Court Clerk within forty-five (45) days from the date on which the circulator obtained the petition forms from the Tribal Court Clerk and no signature on the Petition may be counted unless the date of the signature is within such forty-five (45) day period. Any Petitions or portions thereof not timely returned shall be invalid. After completed Petitions have been returned, no name may be added or removed.

At the end of the forty-five (45) day period the Tribal Court Clerk shall submit any and all Petitions to the Executive Council.

(M) Validity of Signatures.

(1) No individual signature on a petition shall be valid if:

- (a) the signature is not dated;
- (b) the signature is dated outside the circulation period.
- (c) the signature is dated after the date of the Tribal Court Clerk's jurat on the petition.
- (d) the signature is not of a qualified voter.

(2) No signature on a petition shall be valid if:

- (a) the petition circulator fails to sign the Affidavit of circulator;
- (b) the applicant fails to sign the application for Referendum Petition;
- (c) the Circulator is not a qualified voter;
- (d) the Applicant is not a qualified voter;
- (e) the Tribal Court Clerk fails to sign the jurat of the Affidavit of Circulator;
- (f) the Tribal Court Clerk fails to sign the jurat of the Affidavit of the Application for Referendum Petition;
- (g) the commission of the person administering the oath has expired.

(N) Review of Petition. Upon receipt of a completed petition, the Executive Council shall verify that the petition was returned within the time required and shall within ten (10) business days verify which signatures thereon are those of qualified voters. The Executive Council shall count all valid signatures of qualified voters and, if the petition has been signed by at least twenty (20) percent of the qualified voters, the Executive Council shall announce and conduct a Referendum Election on the statement and action specified in the petition on the next available Saturday following verification of the qualified voters but not earlier than ten (10) days from verification and not later than forty-five (45) days from verification.

(O) Referendum Election. The Referendum Election shall be conducted on the first available Saturday after the Executive Council announces the Referendum Election. Ballots shall contain the statement and action being requested taken from the Application for petition.

- (1) Minimum Number of Ballots; Tie. The majority of votes cast in such Referendum shall be conclusive and binding on the General Council and/or Executive Council; provided, that at least twenty (20) percent of the qualified voters shall cast ballots in the Referendum.
 - (2) In order to succeed, the vote must be by majority vote, which is defined as fifty percent (50%) plus one (1) vote of the total votes cast at the Referendum Election.
 - (3) In the event of a tie in the Referendum Election, the Ballot Judge will declare a "Tie" and the Referendum attempt will be deemed to have failed.
 - (4) In the event that less than twenty percent (20%) of the qualified voters shall have cast ballots in a Referendum Election, the Referendum attempt will be deemed to have failed.
 - (5) If any provision or provisions of two (2) or more measures, approved by the electors at the same election, conflict, the provisions of the measure receiving the highest affirmative vote prevails.
- (P) The following provisions of the Election Ordinance shall apply to Referendum Elections:
- (1) Section 2.1 – Qualified Voters
 - (2) Section 2.3 – Election Board
 - (3) Section 2.4 – Duties of Election Board
 - (4) Section 2.5 – Polling Place
 - (5) Section 2.7 – Ballots
 - (6) Section 2.8 – Voting Procedure
 - (7) Section 2.9 – Counting Ballots
 - (8) Section 8.1 – Challenges to Voting Process

§ 7. General Council Meetings

7.1. All General Council meetings, whether regular or special, shall be held on Saturdays in order to give the greatest number of Tribal members an opportunity to attend and participate.

7.2. The Secretary shall be responsible for posting Notices of all General Council Meetings and for preparing an agenda for each Meeting.

7.3. All items to be included on the agenda as well as all materials for distribution at any General Council meeting must be submitted to the Secretary at least forty-eight (48) hours in

advance. Failure to do so will result in the proposed agenda items or materials not being considered at the General Council meeting.

§ 8. Challenges to Voting Process

8.1. Any challenge or violation with respect to the Election Ordinance or voting process shall be submitted in writing to the Election Board Ballot Judge within forty-eight (48) hours of the event giving rise to the challenge or violation. Any challenge or violation shall be so identified.

8.2. Any person filing such written challenge or violation must specify the time of the event, a detailed description of the event, including the place, names of persons involved and witnessing the event, demonstrate to a reasonable degree of certainty, success on the merits of any such challenge or violation; demonstrate to a reasonable degree of certainty that the election results would have resulted in the election of different persons, if such event had not occurred, and attest that they were an eligible voter at the time of the election in question, and voted in the election.

8.3. Upon receipt of such written documentation, the Election Board Ballot Judge shall conduct an investigation and render a written decision within seventy-two (72) hours of the challenge being filed, which shall include any corrective action taken if deemed necessary.

8.4. Any appeal of the Election Board Ballot Judge's decision must be filed with the Tribal Court within forty-eight (48) hours of issuance. The Tribal Court shall hold a hearing within seventy-two (72) hours to review the matter and render its decision with twenty-four (24) hours of completion of the hearing. Any decision of the Tribal Court shall be final.

8.5. All timelines as specified within this section shall exclude Saturday, Sunday and tribally recognized holidays.

8.6. No challenge shall prevent an individual who has been elected from being sworn in and holding office until such time it is determined that the individual was not validly elected as provided herein.

§ 9. Amendment, Repeal By Referendum

This Ordinance may be amended or repealed only by Referendum pursuant to Article VII of the Tribal Constitution.

EXHIBIT A
RECALL PETITION
FOREST COUNTY POTAWATOMI COMMUNITY

We, the qualified voters of the Forest County Potawatomi Community from which _____, a member of the Executive Council, was elected, demand his or her recall.

The grounds of this demand for recall are (to be taken from the Application for Petition):

SIGNATURE	PRINTED NAME	TRIBAL ENROLLMENT #	DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

Affidavit of Petition Circulator:

I, _____, a qualified voter of the Forest County Potawatomi Community, under penalty of law, depose and say that each individual who signed this sheet of the foregoing petition did so in my presence on the date indicated, and I believe that each signatory's name is correctly stated, that each signatory is a qualified voter of the Forest County Potawatomi Community, and that, at all times during the circulation of this signature sheet, a copy of the Recall Petition was attached to the signature sheet.

 (SIGNATURE OF AFFIANT)

Subscribed and sworn to before me this ____ day of _____, 200__.

Signed:

Tribal Court Clerk

Tribal Court Seal
 (REQUIRED)

For Tribal Court Use Only:

Date Provided to Circulator: _____ Number: _____ Initials of Tribal Court Clerk: _____

Date Returned to Tribal Court Clerk: _____ Initials of Tribal Court Clerk: _____

EXHIBIT C
REFERENDUM PETITION
FOREST COUNTY POTAWATOMI COMMUNITY

We, the qualified voters of the Forest County Potawatomi Community as evidenced by our signatures below, hereby support a referendum election regarding the matter stated below:

SIGNATURE	PRINTED NAME	TRIBAL ENROLLMENT #	DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

Affidavit of Petition Circulator:

I, _____, a qualified voter of the Forest County Potawatomi Community, under penalty of law, depose and say that each individual who signed this sheet of the foregoing petition did so in my presence on the date indicated, and I believe that each signatory's name is correctly stated, that each signatory is a qualified voter of the Forest County Potawatomi Community, and that, at all times during the circulation of this signature sheet, a copy of the Recall Petition was attached to the signature sheet.

 (SIGNATURE OF AFFIANT)

Subscribed and sworn to before me this _____ day of _____, 200__.

Signed:

Tribal Court Clerk

Tribal Court Seal
 (REQUIRED)

For Tribal Court Use Only:

Date Provided to Circulator: _____ Number: _____ Initials of Tribal Court Clerk: _____

Date Returned to Tribal Court Clerk: _____ Initials of Tribal Court Clerk: _____

Legislative History:

- 10/24/2005 Executive Council approves motion verifying 194 valid signatures on petition to hold Referendum Election, satisfying requirement for signatures of 20% of qualified voters (161 signatures) and ordering Referendum Election for November 5, 2005
- 11/05/2005 Approved by Referendum Election

This Ordinance amends and supersedes the following Election Ordinances:

- 9/25/1982 General Council adopts resolution to enact Election Ordinance. Per meeting minutes, "James Thunder reviews Election Ordinance with the General Tribal Council. Lois Crowe moves to accept Resolution pertain[] to the Election Ordinance. Seconded by Eugene Shawano Sr. 26 for) oppose, 0 abstain. Motion carried."
- 12/9/1989 Amendment to Election Ordinance adopted by General Council Resolution No. GC 014-89
- 12/04/1993 Election Ordinance enacted by General Council Resolution No. GC 010-93
- 11/20/1999 "First Amendment to Election Ordinance" enacted by General Council Resolution No. GC 034-99
- 08/12/2000 "[Second] Amendment to Election Ordinance" enacted by General Council Resolution No. GC 011-2000

Notes:

The "First Amendment to Election Ordinance" enacted by General Council Resolution No. GC 034-99 amended the 1993 Election Ordinance by adding Section 4.1 "Recall From Office."

The "[Second] Amendment to Election Ordinance" enacted by General Council Resolution No. GC 011-2000 amended the 1993 Election Ordinance by

- making minor changes in wording at Section 1
- adding Section 2.2(B) "Special Election"
- adding references to the special elections at 2.3
- providing for special election poll hours at 2.5
- adding Section B, "Special Nomination Meeting" at 2.6
- adding provisions relating to nominations at 2.6(D)
- renumbering 2.6
- making minor changes to 5.1
- adding section 8 "Challenges to Voting Process"

The "Election Ordinance" enacted by Referendum November 5, 2005 reenacted the 1993 Ordinance, as amended by the amendments of 1999 and 2000, in its entirety. The 2005 Election Ordinance also made new changes and additions to the previous Ordinances by:

- conforming the small letters at 1.1B to remove the parenthesis
- making several other minor capitalization changes in Section 1.1
- adding 2.2C to authorize the Executive Council to call a Referendum Election
- amending 2.3 to refer to Referendum Elections and provide for compensation to Elections Board members
- amending 2.4 to change the prohibition on electioneering activity from 100 feet to 1000 feet from the polling place
- adding a reference to Referendum Elections at 2.8(E).
- adding requirements relating to petitions at 4.2 to address petitioner requirements
- making a minor change in wording to 5.2(C).
- replacing the one-sentence provision at 6.1 relating to referendum with a lengthy new section addressing Referendum Elections
- adding Section 9 describing procedures for amendment and repeal of the Ordinance

This Ordinance does not, by its express terms, govern judicial elections pursuant to the Tribal Court Code, 2-1 FCPC § 3.5 and 3.6.