

## **ORDINANCE IMPLEMENTING CONSTITUTIONAL PETITION AND CENSURE PROCESSES**

### **SECTION 1. Purpose**

The purpose of this Ordinance is to provide uniformity and standards for the submission and processing of petitions requesting the Tribal Executive Committee or a Band governing body to call a referendum under Article XIV or requesting a Band governing body to set a date for a hearing for removal or recall under Article X, Section 3.

### **SECTION 2. Form and Content of the Petition**

- 2.1 As used in this Ordinance, “petition” means a written request or a written notice of charges.
- 2.2 Petitions may consist of as many pages as necessary to accommodate the printed names, dates of birth, residence address, and signatures of the petitioners, as well as the date each signature was affixed.
- 2.3 Each sheet of a petition must set forth at least a summary of the objectives of the petitioners.
  - 2.3.1 A petition seeking a referendum under Article XIV must comply in all respects with Interpretation No. 11-09 and must state with specificity the resolution or ordinance of the Tribal Executive Committee or the Reservation Business Committee (a/k/a Band governing body) for which a referendum is sought.
    - 2.3.1.1 A petition under Article XIV must be filed within one (1) year of the effective date of the resolution or ordinance that is the subject of the petition.
  - 2.3.2 A petition to initiate the removal or recall process under Article X must identify at least one of the causes for removal set out in Article X, Section 2. It must also state enough facts to persuade a reasonable person that during the term of office the accused member has committed an act or omission that, if true, constitutes a cause for removal or recall. A mere conclusion without a factual basis is insufficient and will not require action by a Band governing body.
    - 2.3.2.1 A petition under Article X must be filed within five (5) years of commission of the act alleged as the basis for the petition.

- 2.4 Each sheet of a petition must in plain language provide notice that by signing, the person acknowledges that he or she understands the purpose of the document and that signatures may not be withdrawn.
- 2.5 Each sheet of a petition must bear a notarized statement of the collector of the signatures that attests that the signatures were affixed on the dates shown and by the individuals whose names appear thereon and that to the best of his/her knowledge the signatories are resident eligible voters.

### **SECTION 3. Who may sign petitions; time for circulation**

- 3.1 Tribal Executive Committee Petitions: All members eligible to vote who reside on one of the six Reservations shall be entitled to sign a petition to the Tribal Executive Committee.
- 3.2 Band Petitions: All members eligible to vote who reside on the Band's Reservation are entitled to sign a petition to a Band governing body.
- 3.3 Time for Circulation: Any petition must be filed not more than ninety (90) days after the date of the first signature.

### **SECTION 4. Filing of petitions**

- 4.1 Petitions to the Tribal Executive Committee shall be filed with the Executive Director of the Minnesota Chippewa Tribe. The person filing the petition must declare that it is his/her intent to make an official filing. Upon such declaration, the Executive Director must enter the date of receipt on the first page of the petition and provide a written acknowledgement that contains:
  - the date of receipt;
  - the number of pages attached; and
  - the number of signatures.
- 4.2 Each Band governing body shall designate an official or employee who shall be responsible for receiving petitions. In the absence of a written designation, the Secretary-Treasurer shall be the responsible official.
  - 4.2.1 The Band's designee shall prepare the same acknowledgement as required of the Executive Director in paragraph 4.1, above.
- 4.3 The filing of a petition must include the name, address and phone number of the person who is designated as the spokesperson for the petitioners. That person will be the contact for purposes of all notices under this ordinance.

- 4.4 After official filing, no additional signatures may be added and none may be withdrawn.

### **SECTION 5. Determination of Sufficiency**

Immediately following the official filing of a petition, the governing body with which the petition is filed shall determine whether the petition meets the form and content requirements of Section 2, above. In the event that it does not, it shall be deemed insufficient and returned to the spokesperson for the petitioners with a written explanation of the reason for the determination. No further action shall be required. If the petition meets the requirements of Section 2, the governing body will proceed as provided in Section 6.

### **SECTION 6. Challenges to Signatures**

- 6.1 Not less than three (3) days following written acknowledgment or receipt, the responsible official shall prepare and post at the principal office of the Band or the MCT both a copy of the entire petition and a public notice advising the members that copies of the petition are available for examination upon request for fifteen (15) days following the posting.
- 6.2 During the period during which the petition is available, any adult member of the Band (or the Tribe if it is a petition to the MCT) may challenge a signature on these grounds:
- forgery;
  - lack of proper qualifications of a signer based on residence, age, or membership; and
  - that a signature appears more than once.
- 6.3 A challenge to a signature must be in writing and supported by written documentation unless the challenge is based on multiple signatures of the same person in which case only one shall be counted.

### **SECTION 7. Certification and Sufficiency**

- 7.1 Within ten (10) days of the end of the time allowed for challenges, the designated official shall certify the number of valid signatures on a petition. The certification shall include a description of the documents used for authentication.
- 7.2 The Minnesota Chippewa Tribe determines the sufficiency (20% of resident eligible voters) based on the number of resident eligible voters as of the date of receipt of the petition for referendum.

- 7.3 The Band governing body determines the sufficiency (20% of resident eligible voters of the Reservation) based on the number of resident eligible voters as of the date of receipt of the petition under Article X, Section 3.
- 7.4 The certification and determination of sufficiency shall be served upon the spokesperson for the petitioners, posted in public places and made available to members upon request.

### **SECTION 8. Action on a Sufficient Petition**

- 8.1 Notice and Date: If a Band governing body determines that a petition under Article X, Section 3, is sufficient or receives a notice of censure as provided in Section 8.5 below, it shall within fifteen (15) days of such determination or receipt give written notice of the charges to the accused member and set a date for a hearing. The hearing date shall be at least thirty (30) days, but not more than sixty (60) days after the date of notice.
- 8.2 Posting: The notice of hearing shall be posted at least five (5) days prior to the hearing.

### **SECTION 9. Censure of TEC Members**

- 9.1 Who May Initiate: A request to censure a member of the Tribal Executive Committee must be in the form of a motion by a Tribal Executive Committee member at a regular or special meeting.
- 9.2 Content of Motion: A motion for censure must: (1) identify the cause for removal in Article X, Section 2 that is the basis for the motion; and (2) state with particularity the facts which the Tribal Executive Committee member believes are evidence of the identified cause for removal. If the motion identifies more than one cause, each must be accompanied by a statement of facts.
  - 9.2.1 The Tribal Executive Committee shall not censure a member unless it determines that there are sufficient facts upon which a reasonable person could conclude that a cause for removal enumerated in Article X, Section 2, has occurred.
- 9.3 Documents: When a motion for censure refers to documents, those documents must be provided at the time the motion is made.
- 9.4 Response by Accused: If a motion to censure is made and seconded, the Tribal Executive Committee shall provide an opportunity for the accused member to respond. If the member requests time to prepare a response, the matter shall be tabled and considered at a meeting not more than forty-five (45) days later.

- 9.5 Action by TEC: After considering an accused member's response to the allegations in a motion to censure, the Tribal Executive Committee shall, by official action, either (1) exonerate the member or (2) censure the member and refer the matter to the Band represented by the member for a hearing under Article X, Section 3, by issuing a notice of censure. The notice shall include a copy of all documents considered by the TEC.
- 9.6 Effect of Censure: A notice of censure shall not by itself restrain or limit the obligations or duties of a member.
- 9.7 Action by Band: Upon receipt of a notice of censure, the Band governing body shall proceed as provided in Article X, Section 3 and this ordinance.

## **SECTION 10. Hearings**

All hearings required by a petition certified as sufficient or by receipt of a notice of censure by the TEC shall be conducted in accordance with the procedures in this Section 10.

- 10.1 Notice: Hearings shall be conducted at the time and place set out in a notice of hearing and shall be open to the members of the Band, representatives of the accused member and such other persons as the Band governing body determines are reasonably necessary to maintain order or provide for the efficient conduct of the hearing.
- 10.2 Presiding Official: Within three (3) days of issuing the notice of hearing, the Band governing body shall appoint a presiding official who shall have authority to maintain order and take such action as authorized in this ordinance.
- 10.3 Witnesses / Documents: A presiding official shall be authorized to order the spokesperson for the petitioners and the accused to exchange copies of the documents each intends to offer in support of their positions and written lists of witnesses each intends to call, including a brief statement of the testimony expected from each witness. All such orders shall require compliance at least ten (10) days prior to the hearing.
- 10.3.1 The failure of a party to identify a witness or produce a document shall preclude testimony of the witness or consideration of the document.
- 10.4 Hearing Process: The presiding official shall conduct the hearing in the following order:
- 10.4.1 Presiding official recites the summary of charges as stated in the petition or the notice of censure.
- 10.4.2 Presiding official describes the process, including the rules of decorum for all present, the requirement that evidence be relevant to the stated charge,

and not repetitious of other evidence, and time limits for each presentation.

10.4.3 The spokesperson for the petitioners has an opportunity to be heard on the charges.

10.4.4 The accused has an opportunity to respond. The accused may designate a person as his or her representative at the hearing.

10.5 Deliberation by Band Governing Body: After the parties have been heard on the charges, the Band governing body shall deliberate in executive session and decide whether the accused has answered the charges to its satisfaction.

10.5.1 Participation by the Accused: The accused member may participate in deliberations and cast a vote.

10.5.2 Action by Band Governing Body: If the Band governing body determines that the accused has failed to answer the charge to its satisfaction or fails to appear at the appointed time, it may either:

- By a 2/3 vote, remove the member from office, effective immediately\*; or
- By a majority vote, schedule a recall election within thirty (30) days of the hearing date\*\*.

10.5.3 Announce the Decision: The decision of the Band governing body shall be announced publicly by the presiding official.

10.5.4 Finality: The Band governing body vote to remove or the outcome of the recall election shall be final.

\*Interpretation No. 14-2011

\*\*Interpretation No. 15-2011