

Sisseton-Wahpeton Oyate

LAKE TRAVERSE RESERVATION
P.O. Box 509
100 Veterans Memorial Drive
Agency Village, South Dakota 57262-0509
Phone: (605) 698-3911

TRIBAL COUNCIL RESOLUTION NO. SWO-08-046

Chapter 3 – Election Ordinance

WHEREAS, The Sisseton-Wahpeton Oyate is organized under a Constitution and By-laws adopted by the members of the Tribe on August 1-2, 1966, and approved by the Commissioner of Indian Affairs on August 25, 1966, and last amended effective November 15, 2006; and,

WHEREAS, The Constitution and By-laws ARTICLE VII, Section 1, states that the Tribe shall be governed by the Tribal Council, and that Tribal Council shall have the power to: (a) represent the Tribe in all negotiations with Federal, State and local governments; (d) to make rules governing the relationship of the members of the Tribe, to Tribal property, and to one another as members of the Tribe; (g) to take actions by ordinance, resolution or otherwise which are reasonably necessary through committees, boards, agents, otherwise, to carry into effect the foregoing purposes; (h) to promote public health, education, charity, and other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation; and (i) adopt resolutions regulating the procedures of the Tribal Council, its officials and committees in the conduct of Tribal Affairs; and,

WHEREAS, In 1992, the Tribal Council enacted the Sisseton-Wahpeton Sioux Tribe Election Ordinance as Chapter 3 of the Sisseton-Wahpeton Tribal Codes of Law, which has been amended from time to time; and,

WHEREAS, The Tribal Council has determined it is necessary to amend and revise the Sisseton-Wahpeton Oyate Election Ordinance; and,

WHEREAS, The Tribal Council has established an informal legislative committee, comprised of Tribal Officials, made recommendations pertaining to amendments and other revisions to the Tribal Council in consultation with Sisseton Wahpeton Oyate Legal Counsel; and,

WHEREAS, The informal legislative committee recommends the attached Chapter 3, with the proposed amendments be adopted.

NOW, THEREFORE BE IT RESOLVED, that the Tribal Council of the Sisseton-Wahpeton Oyate hereby authorizes, adopts and enacts the attached Sisseton-Wahpeton Election Ordinance; and,

FINALLY BE IT RESOLVED, This Ordinance shall be in full force and effect on the date of formal approval and adoption by the Tribal Council, on April 9, 2008.

CERTIFICATION

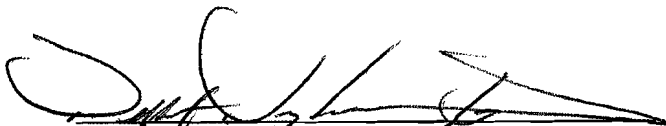
We, the undersigned duly elected Chairman and Secretary of the Sisseton-Wahpeton Oyate Tribal Council, do hereby certify that the above resolution was duly adopted by the Sisseton-Wahpeton Oyate Tribal Council, which is composed of 10 members, (representing a total of 17 Tribal Council weighted votes) of whom 9 constituting a quorum, were present at a Tribal Council meeting, duly noticed, called, convened and held at the TiWakan Tio Tipi, Agency Village, South Dakota, April 10, 2008, by a vote of 16 for, 0 opposed, 2 abstained from vote, 0 absent from vote, 1 not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 15th day of April, 2008.



Michael I. Selvage, Sr., Tribal Chairman
Sisseton-Wahpeton Oyate

ATTEST:



Delbert Hopkins, Jr., Tribal Secretary
Sisseton-Wahpeton Oyate

cc: Council
Tribal Court
Judicial
Planning
Tribal Attorney



SISSETON-WAHPETON OYATE

CHAPTER 3

ELECTION CODE

**PART 1
GENERAL PROVISIONS**

03-01-01 Purpose

This Election Code is intended to establish procedures to ensure fair elections. The provisions of this Code shall apply to the nomination and election of Tribal Officials, registration of voters, and shall establish general rules for the conduct of all tribal elections. All provisions of this Code shall be complied with and no exceptions can be made without the consent of a majority vote of the Council. Frivolous technicalities shall not be used to interfere, delay or block elections, or to cause confusion, or the loss of confidence in the election system.

03-01-02 Severability

If any clause, sentence, paragraph, section, or part of this Code shall, for any reason be adjudicated by the Tribal or Appellate Court, to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof, directly involved in the controversy in which the judgment shall have been rendered.

03-01-03 Construction

This Code shall be interpreted and applied in a manner consistent with all other Codes, Laws, Resolutions, and Regulations of the Sisseton-Wahpeton Oyate.

03-01-04 Amendment

This Code may be amended only upon an affirmative vote of a majority of the Council of the Sisseton-Wahpeton Oyate.

03-01-05 Effect of headings

Headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any portion of this Code.

PART 2
DEFINITIONS

03-02-01 Interpreting Definitions

Words or phrases used in this Code shall be interpreted so as to give them the meaning they have in common usage for the Sisseton-Wahpeton Oyate and to give this Code it's most reasonable application. The words and phrases in this Part are specifically defined and shall control and prevail over any other definition.

03-02-02 Absentee voter means a resident registered voter in one of the seven districts who cannot physically cast a vote at the polling place because of one of the following circumstances: 1) seasonal employment, 2) school attendance, 3) illness/hospitalization, 4) military service or 5) physical disability. A person who establishes an additional residence off the Reservation shall not be deemed an absentee voter, but is considered to be a non-resident voter.

03-02-03 Defective ballot means a ballot that is defective and not counted because: (A) the voter marks more names than there are persons to be elected for a position; (B) it is impossible to determine the voter's choice of candidate. A defective or incomplete mark on any ballot in a proper place shall be counted if no other cross mark appears on the ballot indicating an intention to vote for some other candidate.

03-02-04 Debt means money owed to the Tribe by a Tribal member seeking certification as a candidate for a position on Tribal Council who has not satisfied the debt in full on or before the second Friday of June in an election year. In accordance with Part 5, a debtor shall not be qualified to run for office until proof of satisfaction of the debt is supplied in writing to each of the Tribal Executives no later than the last Friday of June. Debt does not include current monthly tribal bills, specifically and limited to rent and/or utilities.

03-02-05 Immediate family means a brother, sister, mother, father, daughter, son, grandmother, grandfather, granddaughter, grandson, husband or wife for purposes of this Code.

03-02-06 Living within the original boundaries means having a continuous physical presence for twelve consecutive months preceding the deadline for filing a Notice of Intent to run for office as a Tribal Council member or Tribal Executive Committee member on the Lake Traverse Reservation or the two adjoining towns of Browns Valley, Minnesota, and Waubay, South Dakota. Evidence documenting residence on the Reservations shall include, but not be limited to, proof of a mailing address within the Reservation boundaries, a driver's license bearing an address within the Reservation boundaries, and tax returns filed for the preceding year bearing an address within the Reservation boundaries. Evidence documenting a continuous physical presence shall include, but not be limited to, affidavits sworn under oath by persons with direct personal knowledge that the person has had a continuous physical presence on the Reservation for the past twelve months, or an affidavit of the person seeking office attesting under

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oath and on penalty of perjury that the person seeking office has had a continuous physical presence on the Reservation for the past twelve months.

- 03-02-07** **Non-resident voter** means a person whose residence is located off the Reservation. A non-resident voter includes a person who maintains a residence on the Reservation and establishes an additional residence off the Reservation.
- 03-02-08** **Seasonal Employment** means a person who is a member of a trade whose employment and location of employment is dependent upon the seasons of the year.
- 03-02-09** **Spoiled Ballot** means a voter has indicated that a mistake was made and requests a new ballot.
- 03-02-10** **Tribal Election** means elections to vote for tribal officials at a primary, general or special election (such as a run-off, recall, or vacancy by resignation, death or removal. Tribal election may also mean a vote for an initiative, referendum or Constitutional amendment. Tribal election does not include District elections of District officers.
- 03-02-11** **Tribal employee** means any employee working for any tribal program, tribal business, or tribal entity.
- 03-02-12** **Tribal Official** means the Executive Offices - Chairman, Vice-Chairman and Secretary and Tribal Council members.
- 03-02-13** **Tribal Executives** means the Tribal Chairman, Vice-Chairman and Secretary.
- 03-02-14** **Working day** means Monday through Friday where no tribally recognized holiday falls on any such day.

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PART 3 CONSTITUTIONAL PROVISIONS

03-03-01 **Constitutional Authority**

Article III with regard to Organization, Article IV with regard to organization at the District level, and Article V with regard to Nominations and Elections of the Sisseton-Wahpeton Oyate Constitution generally governs the matter of election.

03-03-02 **Term of Office for Tribal Council**

Article III, Section 3 of the Sisseton-Wahpeton Oyate Constitution sets forth the terms of office for members of the Council. Such terms shall run for a period of two (2) years commencing on the date of the first regular meeting in January, 2007, and thereafter in January of odd numbered years and until their successors have been elected and seated.

03-03-03 **Term Limits of office for Council and Executive Committee**

Article III, Section 3 of the Sisseton-Wahpeton Oyate Constitution sets forth term limits of office for members of the Council. Any Council member and Executive Committee member shall serve no more than two (2) consecutive terms for a total of four (4) years in the same office. Any Council member or Executive Committee member may again file for office after a two (2) year time period.

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PART 4

QUALIFICATIONS OF VOTERS

03-04-01 Age Requirements

All enrolled members of the Sisseton-Wahpeton Oyate, eighteen (18) years of age or over on the date of the Tribal Election, and who have registered for voting purposes in a District as described in Article IV, Section 1 of the Sisseton-Wahpeton Oyate Constitution, shall be considered a registered voter of the Tribe and of the District in which he/she is registered. Any enrolled member of the Tribe who will be eighteen (18) years of age on or before the date of any Tribal primary or general election shall be eligible to register to vote in a District, and shall be considered a registered voter if before the date of the primary or general election, he/she has attained the age of eighteen (18) and has registered to vote in accordance with the provisions of this Code.

03-04-02 District Registration

A person classified as a new voter, who has not registered at the District level prior to thirty (30) days before the date of the primary or general election, as the case may be, shall not be allowed to cast a vote for any District candidate for Council or for the Executive Officers of the Tribe. The provisions of this Section shall apply only to those voters classified as new voters and shall have no effect on the status of currently registered voters. A person seeking to become a new voter must request membership in a Tribal District and be approved for such membership prior to sixty (60) days before the date of the primary or general election, as the case may be, in order to be considered a registered voter in such election. Not later than five (5) days after the approval of membership in a District of a person who would be disqualified to vote in any primary or general election, the District shall transmit to the Tribal Enrollment Clerk the minutes of the District containing the approval such membership. Upon receipt of such District minutes approved by the Tribal Council, the Tribal Enrollment Clerk shall immediately add to the voting rosters the names of registered new voters.

03-04-03 Non-Resident Voters

(A) Article V, Section 5 of the Sisseton-Wahpeton Oyate Constitution generally governs non-resident voting.

(B) Non-resident voters shall register at the District of their choice or the District of their former residence.

(C) The registration and qualification of non-resident voters shall be in accordance with the provisions of this Code.

(D) Registered non-resident voters must vote in person in the District of their registration.

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PART 4

QUALIFICATIONS OF VOTERS

03-04-04 Duplicate Registration

Any person whose name appears on two (2) or more voting rosters shall have his/her name stricken from all voting rosters and shall be required to re-register in accordance with the provisions of this Code.

03-04-05 Absentee Ballots

(A) Registered voters who are unable to cast a ballot at the duly authorized and established polling places due to seasonal employment, school attendance, illness, military service, physical disability or other emergencies (to be decided by the Reservation Election Board), shall be entitled to cast their vote by absentee ballot, except in Special Elections and Run-Offs, due to time constraints in filling vacated positions.

(B) In accordance with the provisions of this Section, the procedure for distribution and collection of absentee ballots shall be carried out by the Reservation Election Board as prescribed in the following paragraphs of this Section.

(C) No request for an absentee ballot will be considered less than fifteen (15) days prior to the primary election, and no primary election absentee ballot will be counted if received after the hour of 4:30pm on the date of the primary election.

(D) No request for an absentee ballot will be considered less than fifteen (15) days prior to the general election, and no general election absentee ballot will be counted if received after the hour of 4:30pm on the date of the general election.

(E) Notwithstanding the provisions of the previous two paragraphs, the Reservation Election Board shall accept requests for an absentee ballot submitted after the designated deadlines where the circumstances giving rise to the request occurred after the applicable deadline date.

03-04-06 Certification of Absentee Ballots

(A) The Reservation Election Board shall give or mail ballots for absentee voting to registered voters upon request in sufficient time to permit the voter to execute and return the same on or before the date of the primary or general election, as the case may be. Together with the ballot there shall be an inner envelope bearing on the outside the words "Absentee Ballot", a pre-addressed outer envelope, and a certificate in form as follows:

I, _____, hereby certify that I am a member of the Sisseton-Wahpeton Oyate and the _____ District and meet the following absentee ballot requirements;

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- I am eighteen (18) years of age or over and have registered to vote in accordance with the provisions of the Election Code by the election date.
- I am qualified to vote in the election to be held on the ___ day of _____, 20__.
- I cannot appear at the polling place on the Reservation on the date of the election because of _____ (indicate whether seasonal employment, school attendance, illness, military service, or physical disability).

I further certify that I marked the enclosed ballot in secret.

Voter signature

Subscribed and certified before us this _____ day of _____, 20__, and we hereby certify that

- we are of adult age.
- the voter exhibited the ballot to us unmarked.
- the voter then in our presence and in the presence of no other person, and in such manner that we could not see his/her vote, marked such ballot and enclosed and sealed the same in the envelope marked "Absentee Ballot".

Witness

Witness

Address:

Address:

(B) The voter in the presence of two (2) witnesses of adult age and of no other person, will mark such ballot, but in such a manner that such witness cannot know how the ballot was marked, and the ballot shall then in the presence of the witnesses, be placed in the envelope marked "Absentee Ballot" and the envelope sealed. The voter shall then execute and subscribe the certificate before such witnesses. He or she shall then place the sealed envelope marked "Absentee Ballot" together with the certificate in the outer envelope, and mail it or have it delivered. The pre-addressed outer envelope shall be directed to the Reservation Election Board. Absentee ballots must be received by the Reservation Election Board not later than 4:30pm on the day of the Primary or General Election, as the case may be. The Reservation Election Board shall make and keep a record of ballots mailed, to whom mailed, the date of mailing, the address on the envelope, the date of the return of such votes after all other ballots have been counted and include them in the results of the election.

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PART 5 CANDIDATES FOR OFFICE

03-05-01 Qualification of Candidates

Any enrolled member of the Sisseton-Wahpeton Oyate, twenty-one (21) years of age or older, shall be eligible to seek and hold office, either as an Executive officer of the Tribe or as a member of the Council, provided the member meets the candidate qualifications. The burden of proof lies solely with the member that he or she meets the following qualifications:

(A) That in order to ensure that candidates for the office of Chairman, Vice-Chairman or Secretary have a thorough knowledge of Tribal Affairs, an understanding of the issues confronting Tribal members in the conduct of their daily affairs, and first-hand knowledge of Reservation life, every candidate must have been living within the original boundaries of the reservation or the two adjoining towns of Browns Valley, Minnesota, and Waubay, South Dakota, for the twelve consecutive months immediately preceding the deadline for filing a Notice of Intent to run for the office of Chairman, Vice-Chairman or Secretary.

(B) That in order to ensure that candidates for positions on the Council have a thorough knowledge of Tribal Affairs, an understanding of the issues confronting Tribal members in the conduct of their daily affairs, and a first-hand knowledge of Reservation life, every candidate must have been living within the original boundaries of the Reservation or the two adjoining towns of Browns Valley, Minnesota, and Waubay, South Dakota, for the twelve consecutive months immediately preceding the deadline for filing a Notice of Intent to run for the position of Council member.

(C) That a candidate shall not have been convicted of a felony.

(D) That a candidate shall not have a dishonorable discharge from any branch of the Armed Forces and has provided the Reservation Election Board with a signed release of information form authorizing the Veteran's Service Office to release to the Tribe information as to the candidate's military discharge.

(E) That a candidate for an Executive Office is eligible for coverage under the Tribe's Executive Office position bond.

(F) No tribal employee shall be allowed to sit on Council.

(G) That any candidate for a position on the Council or the Executive Committee who has a debt to the Sisseton-Wahpeton Oyate, as determined by the offices of the Tribal Executives in accordance with the provisions of Part 5 of this Code, shall be ineligible to run for a position on the Council or the Executive Committee.

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PART 5 CANDIDATES FOR OFFICE

03-05-02 Filing the Notice of Intent

(A) Any tribal member meeting the requirements of Section 03-05-01, subsections A through G may become a candidate for any office upon presentation to the Tribal Secretary a notice of intent to be a candidate and the office for which such candidacy is sought and any forms prescribed by the Reservation Election Board. Generally, the filing deadline for a notice of intent will be in the first week of July. However, notice of the described deadline date and time will be provided in the matter prescribed by the Reservation Election Board.

- (1) For Executive positions, the filing fee is two hundred fifty dollars (\$250.00) to be paid at the time of filing the notice of intent.
- (2) For Tribal Council positions, the filing fee is two hundred dollars (\$200.00) to be paid at the time of filing the notice of intent.

03-05-03 Resolution Of Disputes Pertaining To Debts

In regard to the debt qualification requirement, the burden of proof lies solely with the applicant. Each applicant must file with the notice of intent, on a form prescribed by the Reservation Election Board, documented proof that the applicant does not have a debt to the Tribe. The Reservation Election Board shall establish a form indicating the name of the applicant and the name of the Tribal creditor. Failure to file the signed form shall result in the denial of certification from the Reservation Election Board. Disputes arising from whether or not a debt exists must be resolved between the debtor (the applicant) and the creditor (the Tribe or the tribal entity) prior to the second Friday in June of an election year. Should the debtor and creditor be unable to resolve their debt dispute voluntarily, the Tribal Court shall have jurisdiction to entertain and resolve these debt disputes on or before the second Friday in June of an election year.

03-05-04 The Vice-Chairman's Request For Debt Information

No later than the second Friday of April, of an election year, the Vice-Chairman must send notice to all Tribal programs, educational institutions, business entities and Tribal enterprises that each is required to provide a list of all persons or entities with a debt, current through March 31 of the election year. The debt information provided to each of the Tribal Executives must include the name of the debtor and any guarantors, the amount of the debt (inclusive of late payments and penalties, if any), the basis for the debt, whether the debt is known to be disputed by the debtor and any other information relevant to substantiating the debt.

CHAPTER 3: Election Code

PART 5 CANDIDATES FOR OFFICE

03-05-05 The Tribe And Each Tribal Entity Must Provide Debt Information To The Tribal Executives

No later than the first Friday of May, of each election year, each tribal entity must supply each of the Tribal Executives with a list of all persons or entities with a debt, current through March 31 of the election year, which must include the name of the debtor and any guarantors, the amount of the debt (inclusive of late payments and penalties, if any), the basis for the debt, and any other information relevant to substantiating the debt.

03-05-06 The Secretary's Notice Of Debts To Tribal Members

No later than the second Friday of May of an election year, the Tribal Secretary must send written notice of the debt to the debtor (and to any guarantor), which notice shall specify that arrangements must be made to satisfy the debt in full no later than the second Friday of June, if the debtor is planning to run for office. The notice must inform the Tribal member that should the debt be disputed, the Tribal member's sole remedy is to satisfy the dispute prior to the deadline to file the notice of intent. The notice must inform the Tribal member that he or she must first attempt to satisfy the debt in full with the Tribe or Tribal entity. If the Tribal member and the Tribe or tribal entity are unable to resolve the debt, then the Tribal member's sole remedy is to request the Tribal Court to declare that the debt does not exist. The notice must inform the Tribal member that failure to satisfy the debt in full will automatically disqualify the Tribal member under Section 03-05-01. The Notice must also state that proof of satisfaction of the debt in full must be supplied in writing to each of the Tribal Executives no later than the last Friday of June.

03-05-07 Burden Of Proof And Sole Responsibility To Resolve Debts Lies With The Tribal Member Seeking Office And Notice Must Be Provided To The Tribal Executives

A Tribal member having notice of a debt from the Secretary or by any other means, including knowledge of the debt, is obligated to satisfy the debt in full no later than the second Friday of June and provide proof of such satisfaction debt must be supplied in writing to each of the Tribal Executives no later than the last Friday of June. The burden of proof and sole responsibility to resolve the debt, including any associated disputes, prior to these timelines lies solely with the Tribal member. Proof of satisfaction of the debt in full shall be set forth on a Form approved by the Reservation Election Board or in an Order issued by the Tribal Court.

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PART 5 CANDIDATES FOR OFFICE

03-05-08 Debt List Provided To The Reservation Election Board

In each election year, no later than the first Monday in July, the Vice-Chairman must provide the list of all persons or entities with debts to the Reservation Election Board. The Chairman or Secretary may provide an additional list of persons or entities with debts to the Reservation Election Board, no later than the first Monday in July of each election year. The debt list provided by any of the Tribal Executives shall be deemed final and binding on the matter of a Tribal member's debt.

03-05-09 Review Of Qualifications By The Reservation Election Board

All notices of intent to be a candidate shall be subject to review by the Reservation Election Board. It shall be the duty of the Reservation Election Board to determine whether the candidate meets the qualifications described in 03-05-01, subsections A through G of the Ordinance. In making its determination, the Reservation Election Board is authorized to hold a hearing prior to issuing a final decision to not certify an applicant because he or she does not meet the qualification standards in Section 03-05-01. If the Reservation Election Board determines that an applicant does not meet the qualification standards provided in Section 03-05-01, the Board shall issue a preliminary decision stating why the candidate is unqualified and deny certification. In accordance with the Board's hearing procedures, the applicant may request a hearing with the Board solely to dispute the Board's preliminary decision finding the applicant to be unqualified. After the hearing, the Board shall issue a final qualification decision to certify or not certify the candidate.

Any decision of the Reservation Election Board to qualify a candidate may be contested by any other qualified candidate for that position or a registered voter from the District of the challenged candidate within five (5) working days of the Election Board's decision. The opposing candidate or District member must request a hearing with the Board solely to dispute the Board's qualification decision. For purposes of the hearing, the Board's initial certification decision shall be deemed a preliminary decision subject to modification after the hearing. After the hearing, the Board shall issue a final qualification decision to certify or not certify the candidate.

03-05-10 Limited Appeal To The Tribal Court

Any final decision issued by the Reservation Election Board after a hearing finding the candidate unqualified to run for office may be appealed by that candidate to the Tribal Court within five (5) working days of the Election Board's decision. When the Tribal Court is reviewing a challenge to the Election Board's final decision of candidate eligibility, the Election Board's findings of fact shall be unreviewable. The Tribal Court shall therefore make no factual findings, but shall accept the facts as determined by the Election Board, and shall not hear the

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matter anew. The Tribal Court may overturn the Election Board's findings only where the person challenging the Board's decision has shown that the Board committed a clear error of law in either qualifying or disqualifying a candidate. The Tribal Court shall review the record established by the Reservation Election Board and is prohibited from considering any evidence that was not presented to the Board. The Tribal Court shall determine the appeal within ten (10) days of the filing of the appeal. The Tribal Court's determination of the appeal shall be final and no appeal may lie to the Northern Plains Intertribal Court of Appeals or any other appellate court of the Tribe.

03-05-11 Certification Required

Any enrolled member of the Sisseton-Wahpeton Oyate shall be considered a candidate for Tribal Office when the Reservation Election Board presents to the Tribal Secretary a certification that the candidate-applicant meets the qualifications described in Section 03-05-01, subsection A through G of this Ordinance. Certification will be completed by the last Friday of August for both Executive and Council candidates.

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PART 6 PRIMARY ELECTIONS

03-06-01 **Application**

This Section shall apply to all candidates for Executive Office and Council positions.

03-06-02 **Number of Candidates**

(A) Where more than two (2) persons are candidates for an Executive Office, the number of candidates shall be reduced by means of a primary election to a number not to exceed two (2) for any office. The two (2) receiving the most votes for any office at such a primary shall be the candidates for such office. If upon completion of the primary election, there exists a tie among the top three (3) selections, such tie shall be broken by a run-off election.

(B) In any District where there are more than two (2) candidates per Tribal Council position, the number of candidates shall be reduced by means of a primary election to a number not to exceed two (2) candidates per Council position. If upon completion of the primary election, there exists a tie preventing the reduction of the number of candidates to two (2) per Council position, the tie will be broken by a run-off election.

03-06-03 **Notice of Primary Elections**

The Tribal Secretary shall post in the Tribal Office and in each District Center the names of all qualified candidates, the office or offices for which the primary election is being held and the time and place of the primary election within five (5) working days following certification of Candidates as set forth in Section 03-05-11.

03-06-04 **Time and Place of Primary Election**

In the event of a primary election is needed to determine the candidates for Executive Office or for Council, such election shall be held on a Tuesday at least thirty (30) days prior to the general election. The designated polling places shall be opened at 7:00 A.M. and shall close at 7:00 P.M. The location of each polling place shall be the District Center of each District unless another place is designated by the Reservation Election Board.

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PART 6 PRIMARY ELECTIONS

03-06-05 **Run-off Election**

(A) In the event that a run-off election is required, such election shall be held within ten (10) working days following the primary election. The Tribal Secretary shall post in the Tribal Office and each District Center, at least five (5) working days prior to the run-off election, the names of the candidates involved in the run-off and the office or offices for which the run-off election is being held.

(B) No absentee ballots are allowed for run-off elections due to time constraints.

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PART 7 GENERAL ELECTIONS

03-07-01 Time and Place of General Elections

The general election shall be held on the first Tuesday after the first Monday in November. The designated polling place shall be opened at 7:00 A.M. and shall close at 7:00 P.M. The location of each polling place shall be the District Center of each District unless another place is designated by the Reservation Election Board.

03-07-02 Notice of General Election

In addition to such notices as may be given by the Reservation Election Board, under Section 03-07-01 of this Code, the Tribal Secretary shall post in the Tribal Office and in each District Center, at least twenty (20) days prior to the general election, the names of all qualified candidates, the office or offices for which the general election is being held, and the time and place of the general election.

03-07-03 Run-off Election Time

In the event that the general election results in a tie vote for any particular office, a run-off election shall be held within ten (10) working days following the general election to determine the person elected to occupy the office. The Tribal Secretary shall post the names and office of the affected candidates under this section in the tribal offices, and district centers, at least five (5) working days before the run-off election occurs.

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PART 8 SPECIAL ELECTIONS

03-08-01 Procedures for Special Elections

(A) Section 1, Article VI - Vacancies, Removal And Recall From Office, of the Amended Constitution of the Sisseton-Wahpeton Oyate provides: "If a Councilman or Officer shall die, resign or be removed from office for cause, the Tribal Council shall declare the position vacant."

1. The affected District shall fill the vacancy of a Councilman by holding a special election within sixty (60) days of the declared vacancy;
2. If an Executive Officer position becomes vacant, a reservation wide election shall be held to fill the vacancy within sixty (60) days of the declared vacancy; and
3. The Council shall appoint a person to fill the vacancy of either position in the interim, provided the appointment of any councilman shall be made for the appropriate District.

(B) Any Executive Officer or Councilperson removed for cause by Council will not be eligible as a candidate for the resulting Special Election.

(C) The Reservation Election Board shall have the discretion to establish the Special Election times for notice of special election, any required postings, certification of candidates, and any other procedural issues associated with the election process. Further, there will be no requirement for a primary election and absentee ballots will not be allowed. However, all other provisions of the Election Code shall be applied.

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PART 9

GENERAL PROVISIONS FOR ALL ELECTIONS

03-09-01 Reservation Election Board Establishment

(A) For the purpose of supervising Tribal Elections in accordance with this Code, there is hereby established the Reservation Election Board. The Board shall be comprised of four (4) tribal members appointed by the Council and two (2) Alternates. Candidates for an Executive or Council Position shall not be eligible to serve on the Board.

(1) Board members and Alternates shall serve a term of four (4) years from the date of appointment. Board appointments shall occur March 01, 2002, and every four (4) years thereafter.

(2) The Board shall select from among its own members a Chairperson, Vice-Chairperson, and Secretary/Clerk. In the absence of the Chairperson, the Vice-Chairperson shall preside.

03-09-02 District Election Boards

The seven (7) Tribal Districts shall be required to elect three (3) registered voters and one (1) alternate from their respective districts who are not candidates for any Tribal office to serve as District Election Board members. District Election Boards shall be under the general supervision of the Reservation Election Board and shall conduct elections within the respective district in accordance with the Sisseton-Wahpeton Oyate Constitution and this Code.

03-09-03 Withdrawal from District Election Board

No person shall be appointed to or be permitted to continue service on the District Election Boards if he/she or a member of his/her immediate family files a notice of intent for Tribal Executive Office and/or Council position. The term "immediate family" shall mean brother, sister, father, mother, daughter, son, grandfather, grandmother, granddaughter, grandson, husband or wife.

03-09-04 Duties of the Reservation Election Board

It shall be the duty of the Reservation Election Board to:

(A) Determine the eligibility of all persons desiring to vote in the primary and general elections, based on the Board's review of all documents deemed relevant by the Board to the determination of voter eligibility.

(B) Prepare a listing of the registered voters within each District.

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- (C) Assure that the official voting list for each respective District is submitted to the Tribal Secretary for posting within that District no less than thirty (30) days prior to the election.
- (D) Allow only those registered voters whose names appear on the District voting lists to vote in the election.
- (E) Supervise the general conduct of elections.
- (F) Resolve all disputes arising from the tabulation of ballots cast, including absentee ballots.
- (G) Provide necessary election supplies to all polling places.
- (H) Meet with all members of the Reservation Election Board and the District Election Board members for the purpose of clarifying the conduct and procedures of the election.
- (I) Make rules and regulations governing elections, not in conflict with the provisions of this Code.
- (J) Perform any other duties or responsibilities necessary to maintain and enforce this Code.

03-09-05 Conduct of Elections

- (A) Each District Election Board shall appoint from its own membership two (2) judges of election and a clerk of election. It shall be the responsibility of the District Election Boards to make arrangements for voting booths or other facilities which will assure a secret ballot, pick up from the Reservation Election Board all election supplies needed for the District, and to establish such records as are required by the Code.
- (B) It shall be the responsibility of the Judges of the District Election Boards to verify in the presence of the other members of the District Election Board, that the ballot box is empty of all ballots prior to the opening of the polls and that the ballot box is then padlocked.
- (C) The Judges shall count the ballots provided by the Reservation Election Board and record the number of ballots received. The Judges shall open the polls at the prescribed time, shall authorize additional ballots for voters if others have been spoiled, shall keep records of all spoiled ballots, and shall keep all spoiled ballots separated from other ballots and deliver such ballots to the Reservation Election Board along with the ballot box.

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(D) The Clerk of election shall assist the Judges in carrying out the responsibilities of the District Election Board. The Clerk of election shall be assigned all record-keeping duties and shall assist the voter by determining whether they are registered to vote, by providing registered voters with a ballot, by obtaining the signature and current address of each registered voter in a poll book of those persons given ballots, and by assisting any voters indicating a need for help. The Clerk shall assist in the tally of votes cast.

03-09-06 Ballots

The Reservation Election Board shall provide each of the District Election Boards with ballots indicating that it is the official election ballot by the appearance of the names of qualified candidates for District Councilperson in their respective districts and the names of qualified candidates for Chairman, Vice-Chairman, and Secretary. Instructions for the use, protection and tabulation of ballots shall also be provided to the District Election Boards. Candidates running unopposed for an office will have their name placed on the General Election ballot because the Constitution provides that the Executives and the Council members shall be elected.

03-09-07 Conduct of Election Officials

Election officials shall not be absent from the duties of their positions from the opening of the polls until all ballots have been counted and secured in the ballot box and delivered to the Reservation Election Board. In addition, election officials shall not express any preference for any candidates.

03-09-08 Ballots and Method of Casting Votes

Ballots shall be secret and shall be cast by dropping into locked ballot boxes. The use of stickers and write-ins will not be recognized as a legal method of balloting for any Tribal election and the use of stickers and write-ins shall disqualify the ballots.

03-09-09 Spoiled Ballot

A voter who spoils their ballot may receive a new ballot if the voter surrenders the spoiled ballot to a District election board member. The election board member shall mark the name of the voter on the spoiled ballot and place their personal initials on the spoiled ballot. All spoiled ballots shall be accounted for on a separate tally sheet. The election board member shall keep the spoiled ballots in a separate envelope marked "spoiled ballots."

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03-09-10 Defective Ballot

Defective ballots shall not be counted. Ballots not counted because the voter marks more names than there are persons to be elected for a position or because it is impossible to determine the voter's choice of candidate shall be marked "defective" on the back of the ballot and initialed on the back of the ballot by a District election board member. All defective ballots shall be accounted for on a separate tally sheet. The election board member shall keep the defective ballots in a separate envelope marked "defective ballots." A defective or incomplete mark on any ballot in a proper place shall be counted if no other cross mark appears on the ballot indicating an intention to vote for some other candidate.

03-09-11 Candidate Monitors

(A) Each of the candidates shall be entitled to have a monitor at the voting and at the tallying, but such monitors shall in no way interfere with the conduct of the election.

(B) Monitors are required to be certified by the Reservation Election Board one (1) day prior to the Election Day.

(C) Monitors interfering with elections may be removed at the discretion of the Reservation Election Board.

03-09-12 Campaigning

Campaigning within one hundred (100) feet of the polling place is prohibited.

03-09-13 Loitering

No loitering on the premises of the polling place is to be permitted during voting hours.

03-09-14 Notice of Election

(A) The Reservation Election Board shall notify registered voters of the dates, polling places and time of polling. Notification shall be published in at least two (2) local newspapers for at least four (4) consecutive weeks prior to the primary and the general election.

(B) The Notice of election shall also invite qualified candidates to file a notice of intent of their candidacy for Council at least one-hundred twenty (120) days prior to the general election, and for Executive Office at least one-hundred twenty (120) days prior to the general election.

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03-09-15 Certification of Election Results

(A) The Council shall certify all election results.

(B) Any recount challenge to the election results shall be made by the candidate immediately prior to the Council certifying the election results.

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PART 10 ELECTION CONTESTS

03-10-01 Jurisdiction

The Sisseton-Wahpeton Oyate Tribal Court shall have jurisdiction to hear and determine all challenges to election procedures and to the outcome of any primary or general election.

03-10-02 Contest of Primary Election

(A) Any challenge to the procedures used in or the outcome of any primary election must be filed as a civil action in the Tribal Court within five (5) working days following the primary election.

(B) The Tribal Court shall hear and determine any action involving the validity of any primary election or the procedure used therein within ten (10) working days following the filing of the action.

(C) No primary election shall be voided where the procedures were basically fair and the challenge, if sustained, would not alter the outcome.

(D) Any decision of the Tribal Court of an action challenging the procedures used in or the outcome of a primary election shall not be subject to appeal.

03-10-03 Contest of General Election

(A) Any challenge of the procedures used in or the outcome of the general election must be filed as a civil action in the Tribal Court within ten (10) working days following the general election. The contestee shall file an answer to the complaint within five (5) days following service of the same.

(B) The Tribal Court shall hear and determine any action challenging the validity of the general election or the procedures used therein within thirty (30) working days following the filing of the action.

(C) No general election shall be voided where the procedures were basically fair and the challenge, if sustained, would not alter the outcome.

(D) Any decision of the Tribal Court of an action challenging the procedures used in or the outcome of a general election shall not be subject to appeal.

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PART 10 ELECTION CONTESTS

03-10-04 **Grounds for an Election Contest**

An election contest shall be limited to challenging the involvement of illegal votes, erroneous voting, the erroneous denial of the right to vote, fraudulent voting, or the erroneous or fraudulent count, canvass or recount of votes.

03-10-05 **Judgment in and Election Contest Action**

(A) The Tribal Court shall pronounce judgment on which candidate was elected or on which candidate won the primary election.

(B) The person declared elected by the Tribal Court shall take possession and discharge the duties of the office. In the case of the primary election, the persons who have been declared by the Tribal Court as the winners of the primary election shall be the candidates in the general election.

(C) If the Court declares that the election resulted in a tie, the election shall be determined by a run-off election to be held within ten (10) working days following the decision of the Court.

(D) If the Court sets aside a general election, the office shall be deemed vacant and any Council certification of election previously issued shall be deemed annulled. The vacancy shall be filled through a new general election. If a new election has not been completed at the expiration of the incumbent's term of office, the vacancy shall be temporarily filled by the Council in accordance with Article VI, Section 1 of the Sisseton-Wahpeton Oyate Constitution.

(E) If the judgment of the Court does not result in confirming the election of a candidate and no candidate elected has been confirmed by the expiration of the incumbent's term of office or the election contest, if decided, has not resulted in the completion of procedures to fill the office, the office shall be filled in accordance with this Section. The office shall be temporarily filled by the Council in accordance with Article VI, Section 1 of the Sisseton-Wahpeton Oyate Constitution.

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PART 11 RECALL ELECTION PROCEDURE

03-11-01 Constitutional Provisions

Article VI, Section 3 of the Sisseton-Wahpeton Oyate Constitution provides for recall elections.

03-11-02 Conduct of Recall Elections

The following rules shall apply to the conduct of recall petitions.

- (A) Registered voters may voluntarily sign a petition.
- (B) No member shall be harassed or coerced into signing a petition.
- (C) No fraudulent representation shall be made to potential signers as to the merits of the petition.
- (D) No signatures shall be obtained from a member who is intoxicated.
- (E) No signatures shall be obtained in bars or drinking establishments.
- (F) No person shall sign for another person.
- (G) Tribal employees must comply with the Sisseton-Wahpeton Oyate Personnel Policies regarding recall petitions.
- (H) Tribal employees or members may not use Tribal vehicles, facilities, equipment or phones for the purposes of recall election procedures.
- (I) No person, while circulating a recall petition, shall interfere with the performance of duties of any Tribal employee.
- (J) Each person who is asked to sign a petition shall be allowed to inspect the Election Code and the Petition.
- (K) The person or persons who initiate a recall shall present the petition to the Council.

03-11-03 Petition Form

The only applicable form for a recall petition is in this Code with the following data:

- (A) Petition is identified as a "Recall Petition".

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- (B) Petition identifies the individual who is subject to the recall.
- (C) Petition cites Constitutional authority.
- (D) Each page of the Recall Petition shall clearly state the alleged conduct in violation of ARTICLE VI, Section 5.
- (E) Each page of the Recall Petition contains identifying information and notary of the individual circulating the recall petition.
- (F) Petition has the following language at the top of each page:

THE UNDERSIGNED TRIBAL MEMBERS HEREBY REQUEST A RECALL ELECTION FOR _____, BASED ON THE FOLLOWING CONDUCT IN VIOLATION OF ARTICLE VI, VACANCIES, REMOVAL AND RECALL FROM OFFICE, SECTION 5:

Date _____

_____ (Insert name)

03-11-04 Verification of Signatures

The following rules shall apply to the conduct of recall petitions:

- (A) The petition shall be presented to the Reservation Election Board by the person or persons who initiated the petition, at least two (2) weeks prior to the Council meeting at which it is to be presented.
- (B) The Reservation Election Board shall check each signed name against the respective voting roster(s) kept by the Enrollment Department.
- (C) The Reservation Election Board shall post a copy of the petition in the applicable district(s) at least five (5) working days before presentation to Tribal Council.
- (D) Any person disputing his or her own signature must notify the Reservation Election Board within five (5) working days, or the signature will be considered valid.
- (E) Once the petition is presented to the Reservation Election Board, no signatures except as provided for herein, shall be added to or deleted from the petition.

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(F) After verification of the signed names with the voting rosters, the Reservation Election Board shall return the petition to the person or persons who initiated it for presentation to the Council. The Council shall make a determination as to whether the petition is valid. The petition shall be declared valid by motion of the Council and a recall election shall be called.

03-11-05 Limitation on Recall Elections

Only one recall election will be allowed against any Council member or Executive for any one term of office.

03-11-06 Applicability of Election Code and Notice

Upon validation of the petition, the Tribal Chairman shall notify the Reservation Election Board and call for a recall election. The Reservation Election Board shall immediately give at least thirty (30) days notice of the date, time and polling place(s) of the recall election to respective district members in case of a recall of a Councilperson or to Tribal members-at-large in case of a recall of a Tribal Executive. Recall elections shall be conducted in accordance with the general provisions of the Election Code where applicable and not in conflict with this Section.

03-11-07 Vacancies

The filling of any vacancy of office resulting from a recall election shall be governed by Article VI, Section 1 of the Sisseton-Wahpeton Oyate Constitution. If a Council member or Officer is removed from office for cause or is recalled, he or she shall not be eligible to run for the vacated or any elected position for the remainder of the term from which he/she was removed.

03-11-08 Recall Petition

-SAMPLE- RECALL PETITION

Pursuant to Article VI of the Sisseton-Wahpeton Oyate Constitution - Vacancies, Removal and Recall from Office, Section 3. "The voters of any District, by petition signed by twenty percent (20%) of the registered voters in the District, may request the recall of a District Councilman for improper conduct. The recall of members of the Executive Committee may be requested by a petition signed by twenty percent (20%) of the registered voters from the reservation at large. The Council shall hold a special election on all such recall petitions. Any resulting vacancies shall be filled under Section 1 of this Article. No more than one recall election for each Councilman or Officer shall be held for each term of office."

THE UNDERSIGNED TRIBAL MEMBERS HEREBY REQUEST A RECALL ELECTION FOR

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_____, BASED ON THE FOLLOWING CONDUCT IN VIOLATION OF
ARTICLE VI, VACANCIES, REMOVAL AND RECALL FROM OFFICE, SECTION 5:

Date _____
_____ (Insert name)

PRINT NAME SIGNATURE DISTRICT DATE

1. _____
2. _____
3. _____
4. _____

Insert at the end of the petition, the following certification:

I, _____ as petition carrier, certify that the signatures above are from registered voters of the _____ District/Reservation at large and listed on the voting roster. I also certify that the signatures were obtained in strict compliance with the requirements of the Election Code and tribal members signing this Petition were allowed to inspect the Election Code and the Petition.

Signature

Notary Public

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PART 12 VIOLATIONS

03-12-01 Civil Penalty - Intentional Violations of Election Code

(A) In a civil action brought in the Tribal Court, any person or entity found by clear and convincing evidence to have intentionally violated any section of this Code in an effort to unlawfully alter the outcome of an election shall be subject to a civil penalty in an amount not to exceed \$5,000.00.

(B) In any action brought pursuant to this Section, if the Court finds that an intentional violation has occurred, the Court shall, in addition to imposing the penalty prescribed by paragraph (A), require the violating party to pay the costs and attorney fees sustained by the Tribe in bringing the action.

03-12-02 Costs and Attorney Fees

In any action against the Tribe or the Reservation Election Board alleging a violation of this Code or any other Tribal law applicable to elections, the Tribal Court shall require the person bringing the action to pay attorneys fees and costs sustained by the Tribe if (1) the Tribe or the Reservation Election Board is the prevailing party, and (2) the person does not conduct due diligence prior to bringing the action, the action is frivolous, or the action is not brought in good faith.