

# OMAHA TRIBAL CODE (2013)

## TITLE 23. OMAHA TRIBAL ELECTION COMMISSION

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## TITLE 23. OMAHA TRIBAL ELECTION COMMISSION

Source: Omaha Tribal Council Resolution No. 05-148 (6-23-05) and as revised on September 26, 2022 and approved at General Assembly

### CHAPTER 1. GENERAL PROVISIONS

#### SECTION 23-1-1. Establishment of Tribal Election Commission.

(a) Pursuant to the authority vested in the Omaha Tribe by its Constitution, and particularly by Article IV, Sections m, o & q thereof, and its authority to provide for the health, safety, morals and welfare of the Tribe, the Tribal Council of the Omaha Tribe (hereinafter referred to as the Council) hereby establishes a public body known as the Omaha Tribal Election Commission (hereinafter referred to as the Commission), and enacts this Title which shall establish the purposes, powers and duties of the Commission.

(b) In any suit, action or proceeding involving the validity or enforcement of or relating to any of its contracts, the Commission shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of this Title. A copy of the Title duly certified by the Secretary of the Council shall be admissible in evidence in any suit, action or proceeding. In any suit, action, or proceeding the Tribes' attorney generals office shall represent the commission as a whole but not individual.

### CHAPTER 2. PURPOSES

#### SECTION 23-2-1. Purposes of Tribal Election Commission.

(a) The Commission shall be organized for the Purposes of:

(1) The administration of all elections held under the provisions of the Omaha Tribal Stated Election Procedures. By this Title, the Omaha Tribal Council establishes the Omaha Tribal Election Commission as an independent body charged with running fair and impartial elections in the best interest of the Omaha people.

(2) The regulations and procedures contained in the Omaha Tribal Stated Election Procedures shall be administered by the Election Commission. In cases of disputes as to the compliance with the stated Election Procedures regulations, substantial compliance, rather than complete compliance with these regulations shall be deemed adequate.

### CHAPTER 3. DEFINITIONS

#### SECTION 23-3-1. Definitions.

(a) The following terms, wherever used or referred to in this Title, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Ballot" means a paper document printed or a verified electronic document with a list of certified candidates for elected office. Ballots shall contain a number or other identifying code so that the number of votes cast can be monitored and to prevent voters from casting more than one ballot.

(2) "Campaigning" means active participation in regular, organized efforts to solicit support for the election of, or in opposition to, specific candidates for office. Campaign activities include: making contributions in support of, or opposition to, candidates, disbursement of campaign literature or signs, canvassing (in person or by telephone) in support of, or opposition to, certain candidates, and organizing/holding meetings or gatherings. Campaigning does not include actions by which one merely expresses his/her support for a candidate(s) verbally.

(3) "Candidate" means a person who has filed any necessary documents to declare such person's candidacy for an election position on the Omaha Tribal Council.

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(4) "Constitution" means the Constitution of the Omaha Tribe of Nebraska, established June 18, 1934, and as later amended.

(5) "Contribution" means the donation of money or in-kind donation of a person's efforts or services (personal or professional) in support of a particular candidate or candidates for an elected position on the Omaha Tribal Council.

(6) "Election Commission" means the five member board responsible for conducting primary, general, run-off, and secretarial elections of the Omaha Tribe of Nebraska.

(7) "Election Coordinator" an independent contractor of the Election Commission who is hired to manage the day to day duties associated with conducting a fair and organized tribal election.

(8) "Election Process" means the steps necessary to conduct a primary, general, run-off, or secretarial elections of the Omaha Tribe of Nebraska and shall include such measures as election notices, registration of voters, verification of nominating petitions, certification of candidates, investigation of candidates, preparation of ballots, and tabulation of ballots.

(9) "Immediate Family Member" or "nuclear") means father, mother, spouse, significant other, son, daughter, sister or brother.

(10) "Member" means a person who is duly enrolled in the Omaha Tribe of Nebraska in accordance with applicable tribal enrollment policies.

(11) "Poll" or "Polling Place" means any place designated by the Omaha Tribal Election Commission for voting to take place.

(12) "Tribal Council" means the seven (7) person governing body of the Omaha Tribe of Nebraska.

### CHAPTER 4. TRIBAL ELECTION COMMISSION

#### SECTION 23-4-1. Appointment and Composition.

(a) The affairs of the Commission shall be managed by an Election Commission composed of three commissioners and two alternate commissioners who are all 21 years of age or older.

(b) The Commissioners shall be appointed, and may be reappointed, by the Council. A certificate of the Secretary of the Council as to the appointment or reappointment of any commissioner shall be conclusive evidence of the due and proper appointment of the commissioner.

(c) The Commission shall elect from among its members a Chariman, Secretary, and a Treasurer.

#### SECTION 23-4-2. Alternates to the Commission.

(a) The Tribal Council shall appoint a minimum two alternates who shall attend all meetings of the Commission and be able to function as regular members as the need arises during conflict of interest situations or other absences. The Commission shall have the authority to designate the procedure for calling upon an alternate to assume the responsibilities of a regular commissioner.

(b) The alternate election commission members shall have no power, authority or vote unless they are sitting as an alternate in the place of an elected member in the case of a conflict of interest situation, disqualification, removal, resignation, or death of commission member. In the event a conflict of interest situation or disqualification issue has been resolved, or is no longer apparent, the appointed commissioner

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shall resume their duties as a commissioner and the alternate shall resume their role as an alternate commissioner. Written minutes of a commission meeting shall indicate the conflict of interest and or disqualification issue was resolved or is no longer apparent.

### SECTION 23-4-3. Qualifications.

(a) No candidate for office is eligible for appointment to the Election Commission. No existing member of the Election Commission may run for tribal office without prior written resignation from the Election Commission.

(b) A commissioner may be a member or non-member of the Omaha Tribe, however a commissioner may not be a member of the current tribal council, employee of the court, or judge of the Omaha tribal court.

(c) A commissioner must be at least twenty-one (21) years of age.

(d) A commissioner must not have been convicted of a felony in the last 15 years.

### SECTION 23-4-4. Ethical Standards.

(a) Serving on the tribal election commission involves a substantial commitment; members of the Election Commission must be able to dedicate the time and effort necessary to fulfill this substantial commitment.

(b) Election Commission members shall uphold the integrity, fairness, and independence of the Election Commission and the election process in the performance of their duties in that an independent and honorable Election Commission is indispensable to assure the respect for the election process of the Omaha Tribe. In furtherance of this requirement, the following ethical standards shall apply to Election Commission members during their term of service and to the Election Coordinator:

(1) Election Commission members and the Election Coordinator shall not be actively or publicly involved in the campaign of any person for the Tribal Council or other elective Omaha Tribal office.

(2) Election Commission members and the Election Coordinator should refrain from all Tribal political activities or actions, which could be interpreted in the Tribal community as supporting any political position or candidate. This prohibition does not mean that an Election Commission member cannot engage in electoral politics at the local (village, county), state, or national level.

(3) Election Commission members and the Election Coordinator should refrain from announcing their views on disputed legal or political issues related to Tribal elections or candidates for elected office.

(4) Election Commission members and the Election Coordinator shall not solicit funds or contribute to a Tribal political organization, candidate, or political event.

(5) Election Commission members and the Election Coordinator shall refrain from making any public comments regarding the election rules and procedures unless in a public forum setting where such comments are geared at educating tribal members on the election process.

(6) Election Commission members and the Election Coordinator should encourage members of their immediately family to conform to the same standards of political conduct that apply to them.

### SECTION 23-4-5. Term of Office.

(a) The term of office shall be three years for all regular commission members and alternates. All

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appointments shall be for three years, except that in the case of a prior vacancy, an appointment shall be only for the length of the unexpired term. Each member of the Commission shall hold office until their successor has been appointed and has qualified.

### SECTION 23-4-6. Vacancies.

(a) Commission members or the Election Coordinator shall notify the Tribal Council if a vacancy has occurred. All vacancies shall be filled by appointment by the Omaha Tribal Council at the next regular Council meeting after the vacancy occurs. Such appointee shall serve only the remaining term of the Commissioner being replaced.

### SECTION 23-4-7. Meetings.

(a) Meetings of the Board shall be held at regular intervals or on an emergency basis as provided by Commission resolution. The Commission shall establish their own rules, procedures and criteria for the conduct of meetings, voting, and hearing appeals and challenges.

### SECTION 23-4-8. Compensation.

(a) The Commissioners shall receive compensation in the form of a per called meeting and per election stipend for their services, but shall not be entitled to compensation for expenses, including travel expenses, incurred in the discharge of their duties. A reasonable stipend amount for both the Commission meetings and election stipend is to be determined annually by the Tribal Council in consultation with the commissioners.

## CHAPTER 5. CONFLICT OF INTEREST AND DISQUALIFICATION

### SECTION 23-5-1. Conflict of interest, removal, resignation.

(a) The members of the Election Commission shall disqualify themselves and withdraw from any and all functions of their positions during an election or process in which a conflict of interest exists. Such members shall resume their duties only when there is no longer a conflict of interest.

(b) The Election Commission shall have the authority, by majority vote, to disqualify any of its members in the event they continue to function in a conflict of interest situation.

### SECTION 23-5-2. Removal of Commissioner.

(a) An individual member of the Commission may be removed by the appointing power for serious inefficiency or neglect of duty or for misconduct in office, but only after a hearing before the appointing power, and only after the member has been given a written notice of the specific charges against them at least 5 days prior to the hearing. At any such hearing, the member shall have the opportunity to be heard in person or by counsel, not the Tribal Attorney General, and to present witnesses on their behalf. In the event of removal of any Commission member, a record of the proceedings, together with the charges and findings thereon, shall be filed with the appointing power a copy thereof sent to the Commission Office.

### SECTION 23-5-3. Resignation of Commissioner.

(a) An Election Commission may resign their office at any time. Resignation is immediate upon submitting written notice to the Council, the other members of the Commission and the Election Coordinator.

## CHAPTER 6. POWERS

### SECTION 23-6-1. Perpetual Succession.

(a) The Commission shall have perpetual succession in its corporate name.

### SECTION 23-6-2. Powers of the Election Commission.

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(a) The Commission shall have the following powers which it may exercise consistent with the purposes for which it is established:

- (1) To follow and interpret the Omaha Tribal Election Procedures.
- (2) To determine the eligibility of prospective candidates for tribal political office.
- (3) To appoint all election officials necessary for the proper supervision of tribal elections as set forth in the Omaha Tribal Election Procedures.
- (4) To generate an eligible voters list to be used as a voting ledger at tribal elections. This list shall be promulgated from the official Enrolled members list. The Commission shall have access to Enrolled members list, members addresses, birth date, and any documentation necessary to establish residency or age.
- (5) To prepare the official ballots which are to be used in tribal elections and to furnish such official ballots to the election officials on the morning of the election.
- (6) To certify each applicant as eligible or ineligible; notifying each applicant of the decision.
- (7) To accept filings and collect filing fees for all candidates for tribal office.
- (8) To prepare all necessary applications, forms and notices regarding the election process.
- (9) To conduct elections, general assemblies, and public education forums.
- (10) To secure all necessary supplies and equipment for tribal elections.
- (11) To investigate irregularities and nonperformance of duty and violation of tribal election rules and regulations by election officials, candidates, or other persons.
- (12) To recommend to the Council through the AG office any supplemental rules or changes in this Title which the committee believes are necessary to achieve the purpose of this Title.
- (13) To certify the results of an election in writing to the Tribal Council and Bureau of Indian Affairs.
- (14) To count and validate ballots and record, through electronic means or otherwise, the number of votes cast for each candidate or for each option on the ballot.
- (15) To supervise activity at the polls.
- (16) To publish and post notice of all general assemblies, elections, eligible voter list, and educational forums held.
- (17) To prepare and present in a public assembly yearly the Omaha Tribal Stated Election Procedures, and to hear all challenges and appeals associated with the Omaha Tribal Stated Election Procedures and this Title.
- (18) To instruct the appropriate department to conduct background checks on all candidates and, if necessary, staff.

### SECTION 23-6-3. Duties of the Election Commission.

- (a) The Secretary or designee shall keep complete and accurate records of all meetings and actions taken by the Commission. Such records shall include minutes, agendas, and any action taken. The records shall be stored at the tribal building in a three ring binder (or electronically) in the same location as Tribal Council meeting minutes and agendas.
- The Treasurer shall keep full and accurate financial records, make periodic reports to the Commission, and submit a complete annual report, in written form, to the Council.
- (b) The Treasurer shall submit to Tribal Council an invoice for the Commissioner's stipend on no less than a yearly basis.
- (c) The Commission shall have an annual audit of its finances conducted by the Omaha Tribal Office of Management and Budget.

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(d) The Commission shall complete and present an annual report, including the information concerning the annual audit, to the Omaha Tribal Council within sixty (60) days after the General Election, or if no election is held that year on or Before January 15th of each year. Copies of such report shall be provided to the Tribal Council and upon request to any tribal member.

(e) The Election Commission shall establish their own rules, policy & procedures, and criteria for the conduct of meetings, and voting in officers. These rules shall be established and revised, if needed, yearly no later than January of each year. These rules shall also be stored in a three ring binder (or electronically) at the tribal building. The Election commission shall follow the procedures established in Code 23A chapter 5 for election challenges.

(f) The Election Commission in conjunction with the Office of Management and Budget shall establish safe handling procedures of all funds in the possession or control of the Commission and its staff.

### CHAPTER 7. ELECTION COORDINATOR SECTION 23-7-1. Policy.

(a) It is the policy of the Omaha Tribal Council that elections should be managed and conducted on a day to day basis by an outside, objective, and independent person or entity in order to ensure fair and honest elections and to avoid the appearance of impropriety or bias. In the best interests of the members of the Omaha Tribe, it is the Council's recommendation that tribal elections should be conducted by a person or entity that holds no bias or prior relationships with candidates or potential candidates. As a result, Omaha tribal preference is not mandatory in the selection of the Election Coordinator, but general Indian preference shall remain in effect.

### SECTION 23-7-2. Selection.

(a) For the initial hiring of the Election Coordinator, the Tribal Council shall draft a contract for the selection of an Election Coordinator. This initial contract shall remain in effect for up to six months. After the expiration of the initial contract, the Election Commission shall draft a contract proposal for the selection of the Election Coordinator on an annual basis. Such proposal shall include the minimum qualifications contained in 23-4-3. Such proposal, upon approval by the Tribal Council, shall be publicized by appropriate means on a local and regional basis. The Election Commission shall receive submitted proposals, will rank the proposals which meet the minimum qualifications. The Election Commission may also conduct interviews, if necessary.

The Election Commission shall present a recommended Election Coordinator to the Council for approval, along with the rankings of all qualified applicants, and an explanatory statement as to why the Election Commission selected the recommended applicant. The names of all applicants shall be published in the Council meeting minutes at the meeting the Election Coordinator is appointed. Only Council members not up for reelection in any given year shall participate in the selection of the Election Coordinator.

### SECTION 23-7-3. Duties of Election Coordinator

(a) The Election Coordinator shall be responsible for the day to day conduct and management of tribal elections under this Title, the Omaha Tribal Stated Election Procedures, and under the Tribal Constitution. The Election Coordinator shall act under the supervision of the Election Commission, but shall have full authority and responsibility for decision making as associated with the election process.

(1) day to day conduct includes assembling documents, copying documents, gathering data, meeting with tribal leaders and governance, enrollment and Realty office if necessary, and communicating with individual tribal members about challenges.

(b) The Election Commission may recommend termination of the Election Coordinator's contract to the Tribal Council. The Tribal Council shall have sole authority to terminate the contract of the Election Director.

However only Council members not up for reelection may vote on termination of the Election Director.

### SECTION 23-7-4. Status.

(a) For purposes of this Title, the term "Election Coordinator" shall include the Election Coordinator and/or appropriate staff. Where this title calls for action by two or more person at the same time, the term Election Coordinator shall include the appropriate number of persons, and such persons may be make up of any combination of the Election Coordinator and staff as appropriate and reasonable.

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## SECTION 23-8-1. Oath of office.

(a) Before taking office, the Tribal Council Chairman shall administer an oath to each member of the Commission. The Election Commission members, and Election Coordinator shall swear or affirm that they will uphold the Constitution of the Omaha Tribe, that they will carry out their duties faithfully and diligently, that they will make every effort to prevent fraud or abuse of the election process, and that they will not engage in, sanction, or permit to go unchallenged conduct which could prevent a fair election.

## CHAPTER 9. APPEALS

### SECTION 23-9-1. Appeals.

(a) A final decision of the Election Coordinator or the Election Commission may be appealed to the Tribal Court under the rules of the Omaha Tribal Court. Any individual seeking to appeal decisions of the Election Coordinator, the Election Commission, provisions of this Title, or the Omaha Tribal Stated Election Procedures must first exhaust all remedies before the Election Commission, including the appeals process and attempts to mediate any dispute.

## CHAPTER 10. CRIMINAL VIOLATIONS

### SECTION 23-10-1 Complaints and Commission Authority

(a) Any eligible voter may file a complaint concerning an alleged voting violation. All violation complaints must:

(1) Be filed on or before the second calendar day after the certification of an election; and

(2) Be filed with the Court in writing under oath on a complaint form provided by the Election Commission, which

must be substantially similar to Appendix C to Chapter 23A.

(b) The Election Commission may, at its discretion, file charges against any person for violations of this Title.

(c) The Commission may not under any circumstance impose criminal liability on any person.

(d) In any complaint to which the Commission is a named party or to which the Commission determines that it is an interested party, the Tribe's legal department must represent the Commission.

### SECTION 23-10-02 VOTING VIOLATIONS

(a) A person is guilty of violation of this Code who:

1. Knowingly votes more than once or attempts to vote more than once at any one election;

2. Not being entitled to vote, knowingly votes or attempts to vote;

3. Hinders the voting of others;

4. Threatens unlawful harm to any person with the purpose to influence a person's vote;

5. Offers, confers, agrees to confer upon another, or solicits, accepts or agrees to accept from another any benefit including any pecuniary benefit as consideration for the recipient's vote;

6. After having received a ballot as a voter, knowingly fails to cast the ballot or return the ballot to an Election Commissioner before leaving the polling place or going outside the voting area;

7. Knowingly adds a ballot to those legally cast at any election by fraudulently introducing the ballot into the ballot box or mixing the ballot with other ballots lawfully cast while they are being canvassed or counted;

8. Knowingly detains, destroys, alters, or mutilates a ballot or election return;

9. Intentionally disables or removes from the polling place or custody of an election official, a voting machine, ballot box, or voting record; or

10. While at a voting location, refuses to obey a lawful order of a member of the Election Commission.

(b) Any person who violates the provisions of this Section is guilty of a criminal offense, and upon conviction, shall be subject to a fine not to exceed \$1,000.00, or a term of imprisonment not to exceed 180 days, or both. If the person is not subject to the criminal jurisdiction of the Tribal Court, the Tribal Council must exclude the person from the Reservation.

## Chapter 11. QUALIFICATION AND REGISTRATION OF VOTERS.

### SECTION 23-11-01 voter Eligibility.



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- (a) In accordance with Article V, Section I of the Constitution, every person who meets all of the following criteria is qualified to vote in an Election:
- (1) Is an enrolled member of the Omaha Tribe of Nebraska & Iowa;
  - (2) Is 18 years old or will turn 18 years old before the date of the election; and
  - (3) Meets the residency requirement of the Constitution because that person either:
    - (A) Has maintained physical presence within the Reservation for the six months immediately preceding the date of the election; or
    - (B) If a person was temporarily absent from the Reservation during the six-month period immediately preceding the date of the election, the person must nevertheless be deemed to "Reside" within the Reservation for the duration of the temporary absence if the absence is for the purpose of:
      - (i) Temporary employment outside the Reservation for a period of six months or less;
      - (ii) Military service;
      - (iii) Treatment of an illness or disability; or
      - (iv) To attend school, college, or a university.
- (b) All qualified voters must be permitted to vote in all elections.

### SECTION 23-11-2. Eligible Voters List and Voter Registration.

- (a) The Commission must maintain and update the Eligible Voter List, and must post the list and hear and decide challenges to the list in accordance with Section 23-12-1 of this Title.
- (b) On the day of the election, the Commission must permit any person whose name appears on the Eligible Voter List to register at the polls by signing the Voting Register Ledger.

## CHAPTER 12. CONDUCT OF ELECTIONS

### SECTION 23-12-1. Pre-Election Timeline.

- (a) Notice of Election.
- (1) The Election Commission must prepare and post a notice of election at least 28 calendar days before the election will be held.
  - (2) The notice of election must include the date, time, and polling place(s) for the election, and the full text of any Proposed Amendment to be considered at the election.
  - (3) To meet the posting requirement of this section, the Commission must make the notice available as appropriate to inform the eligible voters of the notice, including but not limited to physically posting the notice in the Tribal Office, the local U.S. Post Office, and other public places throughout the reservation. If a newspaper, newsletter, or social media page of the Omaha Tribal Government is available, the Commission must also publish the notice in that publication or on that electronic platform.
- (b) Eligible Voters List.
- (1) In every election year, on the first Tuesday of May, the Commission shall post a DRAFT Eligible voters list.
  - (2) 14 or more calendar days before any election, the Commission must approve a current Eligible Voter List.
  - (3) 10 or more calendar days before any election, the Commission must post the Eligible Voter List.
  - (4) 5 or more calendar days before any election, any Enrolled Member may petition the Commission to challenge the inclusion or omission of any person on the Eligible Voter List. Challenges must be filed in writing under oath on a complaint form provided by the Election Commission, which must be substantially similar to Appendix A of Chapter 23A. The burden to prove voting eligibility is on the petitioning person.
  - (5) 2 or more calendar days before any election, the Commission must make the final decision on all voting list challenges and update the Eligible Voter List accordingly.

### SECTION 23-12-2. Election Procedures.

- (a) Polling Places, Polling Hours Equipment, and Election Record.
- (1) The Election Commission must make arrangement for the polling place(s), obtain all materials necessary to conduct a proper election, and ensure voting secrecy (including but not limited to ballots, voting booths, automated voting devices, or other facilities).
  - (2) The Election Commission must compile the necessary information to provide a record of the election.
  - (3) One Polling place(s) must be in Macy, NE unless the General Assembly identifies a different polling place(s).
  - (4) On the date of an election, the Commission must open the polls at 8:00 a.m. central time at the prescribed location(s) and close the polls at 8:00 p.m. central time unless the General Assembly identifies different polling hours.
  - (5) On the date of an election, the Commission must physically mark off an area of 100 feet around each polling place.

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- (b) Official Ballots and Absentee Voting.
- (1) The Commission shall provide official printed ballots. The full text of any Proposed Amendment to be considered at the election must be printed on the ballot.
  - (2) Each official ballot must be initiated by at least two Election Commissioners before it may be cast. The Commission is responsible for ensuring that this requirement is met as to every cast ballot.
  - (3) Absentee voting is prohibited. The Commission may not accept or count any absentee ballot.
- (c) Voting Register Ledger.
- (1) The Election commission must maintain a print or electronic voting register ledger with the full name of every eligible voter.
  - (2) On voting day, a voter must register by signing their name next to their name on the Voting Register Ledger.
  - (3) When a voter registers, an Election Commissioner must give that voter one official ballot to cast in the election and must mark on the Voting Register Ledger or otherwise indicate electronically that the voter received an official ballot.
- (d) Spoiled Ballots.
- (1) A ballot is spoiled if:
    - (A) It does not bear the initials of at least two Election Commissioners;
    - (B) In a manually conducted election, the ballot contains erasures; or,
    - (C) The ballot contains voting check marks next to more than one option as to a single Proposed Amendment.
  - (2) An Election Commissioner may only authorize an additional ballot for a voter only if the voter's original ballot has been spoiled.
  - (3) The Commission must:
    - (A) Keep a record of all spoiled ballots; and
    - (B) Keep all spoiled balloted separated from other ballots.
- (e) Confidentiality of Voting.
- (1) All voting must be conducted by secret ballot.
  - (2) No procedure prescribed or authorized by this Title may be interpreted or enforced in a way that would compromise the confidentiality of a voter's ballot.
  - (3) Voting records may not be used for any purpose outside the scope of this Title, except:
    - (A) As needed to compile a list of persons eligible for jury duty;
    - (B) Subject to Tribal Council approval, for voter registration in a federal, state, or other public election; or
    - (C) For a purpose authorized or directed by court order.
- (f) Voter Assistance.
- (1) If a voter indicates that they need help casting their ballot, then the elder interpreter must assist that individual with reading and/or marking that ballot
  - (2) On election day, tribal interpreters must be available at the polling place(s) to assist Election Commissioners in carrying out administrative responsibilities by translating the Omaha language into English and visa-versa.
- (g) Procedures in a Manual Election. For each manual election:
- (1) At least two Election Commissioners must verify that the ballot box(es) is empty of all ballots and that the ballot box is properly locked before polls open.
  - (2) Each voter must cast a ballot by dropping that ballot into a locked ballot box.
  - (3) If a voter makes a mistake in marking his or her ballot, or requests an exchange of a spoiled or mutilated ballot, then:
    - (A) The voter must fold the spoiled ballot in half so that the voter's choices remain confidential;
    - (B) The voter must return the spoiled ballot to an Election Commissioner; and
    - (C) An Election Commissioner must print the word "SPOILED" across the outside of the ballot and insert it into a spoiled-ballot envelope;
    - (D) The spoiled-ballot envelope must be signed by two Election Commissioners and placed in a spoiled-ballot box;
    - (E) An Election Commissioner must write the word "SPOILED" next to the voter's name on the Voting Register Ledger; and
    - (F) An Election Commissioner must issue a new ballot to the voter.
  - (4) The Election Commission must
    - (A) Assure that no ballot other than official election ballots are deposited into the election box;
    - (B) Assure that all ballots cast bear the initials of two Election Commissioners;
    - (C) Record the number of ballots cast in accordance with Section 23A-4-3 of this code; and
    - (D) Prepare and deliver to a fireproof safe in the locked ballot box all properly cast ballots, all spoiled or mutilated ballots, and all records pertaining to the election.
    - (E) Six months after the election is held, the Commission shall dispose of all properly cast ballots, all spoiled or mutilated ballots, and all records pertaining to the election in a manner that reasonably maintains the confidentiality of the records.

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- (h) Procedures in an Automated Election. For each automated election:
- (1) The Election Commission must verify through a logic and accuracy test that is open to the public that all automated voting equipment is in proper working order.
  - (2) At least two election Commissioners, along with an automated voting technician, must verify that the automated voting machine is set at zero before the first ballot is cast.
  - (3) In an automated election, each voter must cast a ballot by feeding that ballot through an automated voting machine. If the voting machine will not accept a ballot or prints a message indicating a problem with the ballot, then:
    - (A) An automated voting monitor will instruct the voter to remove the ballot from the machine and reinsert the ballot in a different orientation; and
    - (B) If the ballot is returned again, then the voter must request a new ballot, and:
      - (i) The voter must fold the spoiled ballot in half so that the voter's choices remain confidential;
      - (ii) The voter must return the spoiled ballot to an Election Commissioner; and
      - (iii) The voter must insert it into a spoiled-ballot envelope;
      - (iv) The spoiled-ballot envelope must be signed by two Election Commissioners and placed in a spoiled-ballot box; and,
    - (v) An Election Commissioner must issue a new ballot to the voter.
  - (4) The Election Commission must:
    - (C) Assure that no ballot other than official election ballots are fed through the electronic voting machine;
    - (D) Assure that all ballots cast bear the initials of two Election Commissioners;
    - (E) Record the number of ballots cast in accordance with Section 23a-4-3 of this Title;
    - (F) Prepare and deliver to a fireproof safe in the locked ballot box all properly cast ballots, all spoiled or mutilated ballots, and all records pertaining to the election.
    - (E) Six months after the election is held, dispose of all properly cast ballots, all spoiled or mutilated ballots, and all records pertaining to the election in a manner that reasonably maintains the confidentiality of the records.

### SECTION 23-12-3. Count and Return of Votes.

- (a) The Commission must assure the proper tally of all votes cast in the election. For each election, the Commission may decide whether to tabulate ballots by either a manual hand count or by automated means, but the Commission may only use that decided-upon method throughout the entire election, and that decided-upon method will be the only means to tabulate ballots in that election.
- (b) If conducting a manual election, during the counting of ballots, the Commission must read out the vote cast on each ballot.
- (c) If conducting an automated election, after automated tabulation of votes, the Commission must announce the number of votes cast for and against each Proposal and candidate.
- (d) After all votes are tallied, the Commission must prepare and deliver in the locked ballot box all properly cast ballots, all spoiled or mutilated ballots, and all records pertaining to the election. Automated Election Services, or a similar vendor, will label and secure all automated ballot boxes with their security locks and the boxes must be stored at the Omaha Tribal Administration Building basement.
- (e) Upon completion of an election, the Commission must certify the number of unused ballots, the number of votes cast, the number of spoiled ballots, and the result of the election. The Election Commission must immediately notify the Chairman and Secretary of the Council of the election results.
- (f) The Election Commission must resolve all disputes arising from the tabulation of ballots cast in the polling place.

### SECTION 23-12-4. Recounts.

- (a) If the tabulated vote count shows that the number of votes cast for a candidate is within .5 percent of the votes cast for another candidate the Election Commission must conduct an automated automatic recount.
- (b) No person may request a recount of an Election if the difference between the votes cast for candidates is equal to or greater than .5 percent.

### SECTION 23-12-5. Election Commission and Commissioner Duties.

- (a) In addition to the other duties described in this Title:
  - (1) All Election Commissioners must remain at their assigned polling place from the opening of that polling place until all ballots have been counted and secured in the ballot box and secured in the fire proof safe, except that the Election Commission Chair may leave the polling site to open and dose other polls and to address any matters in reference to the election process and procedures.
  - (2) On the date of each election, the Commission must provide breakfast, lunch, dinner, and snacks for each of the Election Commissioners at the Commissioners' assigned polling places.
  - (3) Election Commissioners may answer questions about procedure, but must not express any preference for any particular election outcome, whether before, during, or after an election. Election Commissioners are neutral officials of the Tribe and must at all times avoid even any appearance of impropriety or bias.

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SECTION 23-12-6. Prohibited Activities.

- (a) Electioneering.
  - (1) No person may campaign within 100 feet of a polling place on election day.
- (b) Election Tampering.
  - (1) It shall be a violation, known as Election Tampering, for:
    - (A) Any voter to knowingly cast or attempt to cast more than one valid ballot at an election;
    - (B) Any person to place more than one ballot in the ballot box for the same Proposed Amendment or candidate;
    - (C) Any person to campaign within 100 feet of a polling place on election day; or
    - (D) Any person to, for the purpose of influencing votes in or the outcome of the election, give or offer to give to a voter or Commissioner a bribe or reward.
  - (2) Any person who observes a person feeding an unauthorized ballot through an automated voting machine or depositing an unauthorized ballot into a ballot box must reported the behavior to an Election Commissioner.
- (c) Loitering.
  - (1) No person may loiter within 100 feet of a polling place on election day. Loitering is remaining in an area for no obvious reason.
- (d) The Election Commission may, at its discretion, call the Tribal Law Enforcement concerning activities prohibited under this Title

CHAPTER 13. CHALLENGES TO ELECTION RESULTS

- SECTION 23-13-1. Who May Challenge an Election Result; Timing.
- (a) Any eligible voter may challenge the announced result of an Election on or before the second business day after that election.
  - (b) The Election Commission or any Election Commissioner may challenge the announced result of an Election on or before the second business day after that election.
  - (c) No other person or entity may challenge the announced result of an election.
  - (d) Neither the Court nor the Commission may consider an election challenge raised on or after the third business day after that election.
  - (e) In any challenge to an election result, the Tribe's legal department must represent the Commission.
- SECTION 23-13-2 Procedures for Election Challenges.
- (a) the provision outlined in 23A-5-3 shall be followed for all election challenges.