

## **Title 2 – Tribal Government**

### **Chapter 1 - Elections**

**Sec.**

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**Legislative History**

Enacted:

- Ordinance 407 Amending STC Title 2, Chapter 1 Tribal Government – Elections (9/15/20).
- Ordinance 395 Amending STC Title 2, Chapter 1 Tribal Government – Elections (10/1/19).
- Ordinance 391 Amending STC Title 2, Chapter 1 Tribal Government – Elections (6/19/19).
- Ordinance 385 Amending STC Title 2, Chapter 1 Tribal Government – Elections (9/11/18).
- Ordinance 361 Amending STC Title 2, Chapter 1 Tribal Government – Elections (8/9/16).
- Ordinance 352 Amending STC Title 2, Chapter 1 Tribal Government – Elections (9/1/15).
- Ordinance 339 Amending STC Title 2, Chapter 1 Tribal Government – Elections (7/8/14).

Repealed or Superseded:

- Ordinance 321 Amending STC Title 2, Chapter 1 Tribal Government – Elections and Ordinance No. 299 (12/6/12).

Ordinance 318 Amending STC Title 2, Chapter 1 Tribal Government – Elections and Ordinances 264 and 299 (9/11/12).

Ordinance 301 Amending STC Title 2, Chapter 1 Tribal Government – Elections and Ordinance 187 (11/5/2011).

Ordinance 299 Amending Ordinance 253, 261, 264, 265, 267 and 275 and Repealing Ordinance No. 215 (10/4/2011).

Ordinance 285 Amending Ordinance 187 and 275 STC 2-01.080(A), STC 2-01.080(B), (02/08/2011).

Ordinance 282 Amending Ordinance 187, STC 2-01.170(C)(1), (12/07/10).

Ordinance 280 Amending Ordinance 267, STC 2-01.120(G)(1) (09/08/10).

Ordinance 275 Amending Ordinances 261, 264 and 265, STC 2-01.020, 2-01.050(F), 2-01.080(E)(13), 2-01.080(H), 2-01.080(G), 2-01.100(A), 2-01.100(B), 2-01.100(C), 2-01.110(A), 2-01.110(C), 2-01.120(A), 2-01.120(C), 2-01.120(I), 2-01.140, 2-01.150(A), 2-01.150(D), 2-01.200(A), 2-01.200(B), 2-01.200(C), 2-01.350 and the addition of STC 2-01.145 and 2-01.500 (08/03/10).

Ordinance 267 Amending Ordinance 253, STC 2-01.090; Ordinance 261, STC 2-01.120(F)(4), 2-01.130(C), 2-01.230(A); Ordinance 265, STC 2-01.150(B)(1), 2-01.150(B)(4), 2-01.150(B)(5), 2-01.150(B)(6), 2-01.150(B)(7), 2-01.150(C)(1), 2-01.150(C)(2) and adding STC 2-01.355 (10/08/09).

Ordinance 265 Amending Ordinances 261 and 264, STC 2-01.150 (11/05/08).

Ordinance 264 Amending Ordinance 261, STC 2-01.050(B), .120(B), .150(A)(2), .240 and the addition of .245 (10/07/08).

Ordinance 261 Amending Ordinance 253, STC 2-01.130.

Ordinance 253 Amending STC 2-01.070, 2-01.080, 2-01.100, 2-01.130, 2-01.180, 2-01.200; adding Sections 2-01.340-2-01.460 and Repealing Ordinances 243 and 244(10/12/06).

Ordinance 187 Regulating the Tribal Government and Repealing and Superseding Ordinance 100, 161(and all previous Ordinances) (09/30/03).

Ordinance 215 Amending Ordinance 187, STC 2-01.090 (01/27/04) (repealed by Ordinance 299 (10/4/2011)).

Ordinance 244 Amending Ordinance 187, STC 2-01.100(B) and adding STC 2-01.130(B)(6) (12/06/05) (repealed by Ord. 253 (10/12/06)).

Ordinance 243 Amending Ordinance 187, and adding STC 2-01.260-.300 (09/14/05) (repealed by Ord. 253 (10/12/06)).

Ordinance 161 Establishing Election Rules and Regulations and Repealing Ordinance 138 (09/10/02) (repealed by Ord. 187 (9/30/03)).

Ordinance 159 Amending Ordinance 138 (08/06/02) (repealed by Ord. 187 (9/30/03)).

Ordinance 134 Amending Ordinance 125 (02/11/99) (repealed by Ord. 187 (9/30/03)).

Ordinance 100 Amending Ordinance No. 60 (02/02/93) (repealed by Ord. 187 (9/30/03)).

Ordinance 60 Establishing Election Rules and Regulations (01/10/89) repealed by Ord. 187 (9/30/03)).

Ordinance 138 Establishing Election Rules and Regulations and Repealing Ordinance 125 (02/11/00) (repealed by Ord. 161(9/10/02)).

Ordinance 125 Establishing Election Rules and Regulations (01/10/98) (repealed by Ord. 138 (02/11/00)).

[Ed. Note. Secretarial approval is not required for Election Ordinances because there is no approval requirement set forth in Article IV, Section 5 of the Swinomish Constitution.]

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### ***Subchapter I – General Provisions***

#### **2-01.010 Title.**

These rules and regulations shall be known as the “Swinomish Election Code.”

[History] Ord. 339 (7/8/14); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

#### **2-01.020 Purpose and Scope.**

The purpose of this Chapter is to regulate the conduct of the annual Senate elections and election of potential adoptive members of the Tribe.

[History] Ord. 339 (7/8/14); Ord. 275 (8/3/10); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

#### **2-01.030 Authority.**

This Chapter is enacted pursuant to the authority provided by Article III, Section 3, Article IV, Sections 1-5, Article V, Section 1 and Article VI, Section 1(s) of the Swinomish Constitution.

[History] Ord. 339 (7/8/14); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

#### **2-01.040 Construction.**

These rules and regulations are exempted from the rule of strict construction and shall be liberally construed to give full effect to the objectives and purposes for which they were enacted.

[History] Ord. 339 (7/8/14); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

#### **2-01.050 Definitions.**

(A) For the purposes of this Chapter, the following words and phrases have the following meanings, unless explicitly stated otherwise:

(1) **"Board"** means the Election Board of the Swinomish Indian Tribal Community.

- (2) **“Campaign”** means the use of words or actions intended to persuade a potential voter for or against a particular candidate.
- (3) **“Certified Candidate”** means a Tribal Member who has met the qualifications outlined in this chapter and whose name is certified for placement on the ballot by the Senate Secretary after successfully petitioning;
- (4) **"Closing Date"** means the third Wednesday in November.
- (5) **"Day"** means calendar, not business day, unless otherwise stated.
- (6) **“Enrollment Officer”** means the person designated by the Senate with administrative responsibility for maintaining the membership rolls relating to Swinomish Tribal membership.
- (7) **“Gross misconduct”** means a flagrant or significant violation of assigned duties, whether by affirmative action or neglect, conducted with an unlawful or depraved motive.
- (8) **“Immediate Family”** shall include spouses, parents, grandparents, children, grandchildren and siblings of an individual. Immediate Family shall include members related by adoption as well as members in a step-parent or step-child relationship.
- (9) **"Incumbent"** means a candidate who is a member of the Senate at the time he or she files for re-election – regardless of whether he or she files for his or her present Senate position.
- (10) **“Neglect of duties”** means the omission of proper attention to duties; the failure to take some proper step at the proper time.
- (11) **“Neutral”** means not engaged on either side; not taking part with or assisting either of two or more contending parties.
- (12) **“Potential Candidate”** means a Tribal member who has filed with the Election Officer a Petition for Nomination and all required documents in support thereof on or before the Closing Date.
- (13) **"Reservation"** means all the lands and waters within the exterior boundaries of the Swinomish Indian Reservation of the Swinomish Indian Tribal Community.
- (14) **"Resident"** The term “Resident” shall have two distinct meanings within this Chapter, as follows:
  - (a) When used for the purposes of eligibility for Senate Candidacy or Election Board membership, “Resident” means:

A member of the Tribe who is physically present and lives in and maintains his or her one and only true home within Skagit County West of Interstate-5 (I-5) freeway for a period of one (1) year preceding the election. No member gains or loses residency for absences lasting three (3) months or less in duration that are due to one of the following specific circumstances, provided that member attests to the intention to remain a resident while serving in the elected or appointed position:

- (1) Employment in the military services of the United States;
  - (2) Physical matriculation (i.e. enrollment) in a degree program in an accredited education, technical or vocational institution; or
  - (3) Treatment in a hospital or other in-patient medical, treatment or care facility or temporarily assisting a close family member who has been admitted to a hospital or other in-patient medical, treatment or care facility.
- (b) When used for purposes of determining eligibility to vote, “Resident” means a member of the Tribe who:
- (1) Meets the requirements of subsection (14)(a) above; or
  - (2) Has exhibited continued and regular contact with the people and activities on the Swinomish Reservation for a period of one (1) year immediately prior to any election. Continued and regular contact shall include, but not be limited to, attending Senate, committee or General Council meetings, participating in social organizations, functions or activities on the Reservation, or owning and maintaining land on the Reservation.
- (15) **"Secretary"** means the duly elected officer of the Swinomish Indian Senate holding the position of Secretary; provided that on any year that the Secretary has a conflict of interest as defined in this Chapter, the duties or responsibilities for conducting elections under this Chapter and under Article IV, Section 4 of the Swinomish Constitution shall be delegated to an officer of the Senate without a conflict.
- (16) **“Spoiled Ballot”** is any ballot that is torn, damaged, mismarked, unreadable, invalid, electronically rejected or that is otherwise deemed to not comply with the ballot instructions or Tribal law.
- (17) **"Swinomish Constitution and By-Laws"** means the constitution and bylaws originally ratified by the Swinomish Indian Tribal Community on November 16, 1935, and approved by the Secretary of the Interior on January 27, 1936, and as

most recently amended and ratified by the Tribe on May 23, 2017, and approved by the Secretary of the Interior on July 7, 2017.

- (18) **"Swinomish Indian Tribal Community" or "Tribe"** means the federally recognized Indian Tribe reorganized pursuant to Section 16 of the Indian Reorganization Act of 1934, which is a successor-in-interest to the signators of the Treaty of Point Elliott, 12 Stat. 927. It is composed of members tracing their ancestry to the aboriginal Swinomish, Samish, Kikiallus and Lower Skagit bands of Indians. It includes all enrolled members of the Tribe.

(B) All other words and phrases shall have their ordinary and customary meanings.

[History] Ord. 407 (9/15/20); Ord. 361 (8/9/16); Ord. 339 (7/8/14); Ord. 321 (12/6/12); Ord. 318 (9/11/12); Ord. 299 (10/4/11); Ord. 275 (8/3/10); Ord. 264 (10/7/08); Ord. 187 (9/30/03); Ord. 100 (2/3/93).

#### **2-01.060 Time and Finality.**

(A) Unless otherwise stated, the date of notice of any decision or action shall be:

- (1) The date on which the decision is mailed or emailed by the body making the decision to the last known address of the applicant; or
- (2) The date on which the notice of action is posted.

The date of notice shall be stated in the decision. The date of action taken by posting shall be stated on the public notice.

(B) If a decision of the Secretary, Election Board, Senate, or Tribal Court is not appealed within the time period set forth in this Chapter, then that decision is final and conclusive, and is not subject to further review.

(C) When this ordinance allows or requires a party to act within a period of time stated in days or a longer unit of time and the last day of the period is a Saturday, Sunday, legal holiday, or day that tribal offices are closed, the time period continues to run until the following day that is not a Saturday, Sunday, legal holiday or day that tribal offices are closed.

\*Previously codified as STC 2-01.280.

[History] Ord. 407 (9/15/20); Ord. 361 (8/9/16); Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 253 (10/12/06); Ord. 243 (11/14/05).

**2-01.070 Sovereign Immunity.**

The sovereign immunity of the Tribe is not in any way waived or limited by this Chapter, or by any appeal commenced pursuant to this Chapter, and nothing in this Chapter shall constitute or be construed as a waiver of the sovereign immunity of the Tribe. Such sovereign immunity shall extend to the Tribe, the Senate, the Election Board, Election Officer, the Tribal Police, all tribal officials, employees, staff, and agents, as to all actions taken in, or concerning, the administration or enforcement of this Chapter, and as to all actions taken pursuant to any authority of any action, decision or order authorized by this Chapter.

\*Previously codified as STC 2-01.300.

[History] Ord. 339 (7/8/14); Ord. 253 (10/12/06); Ord. 243 (11/14/05).

*Subchapter II – Administration*

**2-01.080 Election Board.**

- (A) **Members.** The Election Board shall consist of a minimum of seven (7) members. The members shall be appointed by the Senate and shall serve until replaced by the Senate. Should an Election Board member file a candidate's petition for any Senate Position, the member shall resign immediately from the Board and shall take no further action on any matter(s) pending before the Board. The Senate shall promptly appoint a replacement.
- (B) **Quorum.** A quorum of the Election Board shall be four (4) members.
- (C) **Qualifications.** Members of the Election Board shall be:
  - (1) Twenty-one (21) years of age or older;
  - (2) An enrolled member of the Swinomish Indian Tribal Community;
  - (3) Not a current member of the Swinomish Senate; and
  - (4) A Resident of the Reservation as defined by this Chapter or an employee of the Tribe or its enterprises;
- (D) **Officers.** The Election Board shall select a Chair and a Vice-Chair at its first scheduled meeting of the year according to seniority on the Board. The Election Officer shall serve as the Secretary to the Election Board and shall take minutes of all Board meetings.
- (E) **Duties.** The Election Board shall administer and conduct elections in a manner that will ensure fair and honest elections. In performing this duty, the Election Board shall, among other things:



- (1) Prepare informative election material in a manner that informs the electorate without recommending any particular candidate;
- (2) Publish and post notice of all elections;
- (3) Determine whether a Primary election is to be held;
- (4) Prepare official and sample ballots, or in the event of electronic elections, provide ballot information to an electronic election service company for preparation of official and sample ballots;
- (5) Verify the eligibility of every person who wishes to vote and to distribute one ballot to each eligible voter in attendance at the polls;
- (6) Maintain a voter sign-in sheet and record the number of ballots distributed and cast at an election;
- (7) Resolve any disputes which may arise at the polls regarding a person's eligibility to vote or balloting procedure;
- (8) Count and validate ballots and record the number of votes cast for each candidate or for each option on the ballot, or in the event of electronic elections, arrange for an electronic election service company to do so;
- (9) Administer any recount of votes;
- (10) Administer any tie break in a Primary election;
- (11) Certify the results of the election in writing to the Senate;
- (12) Recommend to the Senate any supplemental rules or changes in the Election Code which the Board believes are necessary to achieve the purposes of this Code.

(F) **Removal and Replacement.**

- (1) **Removal.** The Senate may remove a member of the Election Board for any reason. The Election Board may recommend to the Senate that a member of the Board be removed for any reason. Removal by the Senate shall be by motion and shall take effect immediately.
- (2) **Replacement.** The Senate shall promptly appoint a replacement for any Board member removed pursuant to this Section.

- (G) **Remuneration.** Each member of the Election Board shall receive three hundred dollars (\$300.00) in remuneration for each election and special hearing or meeting at which he or she is required to supervise an election by secret ballot, whether the election is manual or electronic.
- (H) **Neutrality.** Each member of the Election Board shall refrain from public displays of preference between the dates of the Notice of Availability of Petitions and the completion of any protest of the General Election. Members of the Election Board shall not post political signs in their homes, yards, cars or places of work. Nor shall members of the Election Board endorse a candidate by signing a petition for nomination. No Board member shall initiate or respond to any electronic or social media message pertaining to tribal elections during this time period. For purposes of this Section, social media includes but is not limited to Facebook, Twitter, LinkedIn, and Instagram. If the message received relates to election procedures, the Board member shall refer the individual to the Election Officer.
- (I) **Confidentiality.** Each member of the Election Board
  - (1) shall not disclose the results of any Primary or General Election prior to the official posting of results; and
  - (2) shall keep confidential all discussions occurring during executive sessions of the Board, including all deliberations pertaining to an individual's candidacy or eligibility to vote.

\*Previously codified as STC 2-01.070.

[History] Ord. 407 (9/15/20); Ord. 339 (7/8/14); Ord. 321 (12/6/12); Ord. 318 (9/11/12); Ord. 299 (10/4/11); Ord. 285 (02/08/11); Ord. 275 (8/3/10); Ord. 261 (10/2/07); Ord. 253 (10/13/06); Ord. 243 (11/14/05); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 159 (8/6/02); Ord. 138 (2/22/00); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

**2-01.085 Conflict of Interest.**

(A) **Election Board Members.**

- (1) **Presumption of Conflict.** A member of the Election Board shall be presumed to have a Conflict of Interest when a member of his or her Immediate Family becomes a candidate in the annual election for the Swinomish Senate.
- (2) **When Arises.**
  - (a) A conflict shall arise as soon as a person from a Board member's Immediate Family becomes a candidate by filing a petition for nomination and continues until (i) the person has exhausted all rights of appeal to a denial of certification by the Senate Secretary; (ii) the person ceases to be a candidate as a result of an electoral loss at the Primary

election; (iii) the person withdraws his or her candidacy; or (iv) the results of the General election are certified by the Senate and any appeal from such certification is final.

- (b) In the instance where a Primary election is required and a Board member's Immediate Family is not a candidate in the Primary election, a conflict will not exist and the Board member may assist the Board in the conduction of the Primary.
- (3) **Recusal.** An Election Board member who has a conflict of interest shall recuse him or herself from, and not participate in, any Election Board meetings pertaining to the upcoming election(s) as a member of the Board, and shall not perform any functions or duties as a member of the Board or as a representative of the Tribe related to the conduct of the upcoming Senate elections. A Board member who has a conflict of interest shall remain eligible, at the Tribe's discretion, for Primary and General election remuneration.

(B) **Senate Officials.**

- (1) **Presumption.** The Secretary or other Senate officer shall be presumed to have a conflict of interest when a member of his or her Immediate Family files a Petition for Nomination in the annual election for the Swinomish Senate.
- (2) **Recusal.** In the event that the Secretary or other Senate Officer has a conflict of interest, he or she shall recuse him or herself from, and shall not perform any functions or duties related to the conduct of the upcoming Senate elections.

\*Previously codified as STC 2-01.080(I).

[History] Ord. 407 (9/15/20); Ord. 339 (7/8/14); Ord. 321 (12/6/12).

**2-01.090 Election Officer.**

The Tribe's Election Officer may assist the Secretary of the Senate and the Election Board in the performance of their respective duties as directed. Unless otherwise designated by the Senate, the Election Officer shall be a legal assistant/secretary in the Tribe's legal department. For purposes of this Chapter, the duties of the Election Officer are separate and distinct from the duties and responsibilities of the "Secretary."

\*Previously codified as STC 2-01.080.

[History] Ord. 339 (7/8/14); Ord. 267 (10/8/09); Ord. 253 (10/12/06); Ord. 243 (11/14/05); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 159 (8/6/02); Ord. 138 (2/22/00); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

### *Subchapter III – Election Procedure*

#### **2-01.100 Time and Place of Elections.**

- (A) **Primary Election.** In any year in which more than two (2) candidates run for the same Senate position, a Primary election shall be held on the third Saturday in January or at such other time that the Senate determines.
- (B) **General Election.** The Senate General Election shall be held on the second Saturday of February of each year, or at such time that the Senate determines.
- (C) **Polling Place and Time.** All elections shall be held between the hours of 8:00 a.m. and 1:00 p.m. in a room on the Swinomish Reservation designated by the Senate for that purpose.

\*Previously codified as STC 2-01.060.

[History] Ord. 407 (9/15/20); Ord. 385 (9/11/18); Ord. 361 (8/9/16); Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 275 (8/3/10); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 134 (2/11/99); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

#### **2-01.110 Notice of Election.**

No later than three (3) days after certification is final, the Election Board shall post a Notice of General Election, if there is no Primary, or a Notice of Primary Election, if a Primary is required. The Notices shall contain (a) the type of election; (b) the date, location and hours of the election; and (c) the positions to be filled and the candidates running for those positions. Notice of General Election, if there is a Primary shall occur on the date of Primary certification. Candidates for each Senate Position shall be listed in the following order: incumbent first, if any, followed by other candidates in the order of the filing of their Petitions for Nomination.

A copy of this Chapter shall accompany the Notice of Election and shall be posted in two (2) or more places frequented by tribal members as selected by the Election Board, one of which shall be the lobby of the Tribal Administration Building. The Board may also post the Notices required by this Section on the Tribe's website and in its newspaper.

\*Previously codified as STC 2-01.080 and STC 2-01.100.

[History] Ord. 407 (9/15/20); Ord. 361 (8/9/16); Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 275 (8/3/10); Ord. 261 (10/2/07); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 134 (2/11/99); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

**2-01.120 Candidates.**

**(A) Petitions.**

- (1) **Identification of Senate Position.** Persons interested in being a candidate, including incumbents, shall obtain a Petition for Nomination from the Election Officer for the Senate Position for which he or she intends to run. A person may obtain a petition and run for only one (1) Senate Position in the same election. Each person shall specify on his or her Petition for Nomination their name as it appears on the Tribal Enrollment list.
- (2) **Resign to Run.** A Senator must resign from his/her current Senate Position in order to be certified as an eligible candidate for another Senate Position, if the term of the Senate Position sought begins before the end of the term of the Senate Position currently held.

Additionally, no member of the Election Board shall be certified as a candidate unless he or she resigns from the Board.

- (3) **Signatures.** Nomination of all candidates for the Senate, including incumbents, shall be by petition signed by not less than fifteen (15) individuals eligible to vote in the General election. An eligible voter may sign only one (1) petition for each Senate Position. If an eligible voter signs more than one (1) petition for the same Senate Position, his or her name shall be disqualified from both petitions.
  - (4) **Notice of Availability of Petitions.** No later than the third Monday in October, the Election Board shall post a Notice of Availability of Petitions in two (2) or more places frequented by tribal members as selected by the Election Board, one of which shall be the lobby of the Tribal Administration Building. The Board may also post the Notice on the Tribe's website and may provide the Notice to the Tribe's newspaper for publication in the next issue.
- (B) Closing Date.** Petitions for nomination and documents in support thereof as required by this Section shall be filed with the Election Officer on or before the Closing Date. However, any individual who has previously provided sufficient documentary proof of high school completion shall not be required to resubmit the documentation.
- (C) Qualifications.** To qualify for eligibility, the person seeking to be a candidate must:
- (1) Possess a high school diploma or GED unless he or she was born prior to 1945;
  - (2) Not have been found guilty of a felony, or misdemeanor involving dishonesty in any tribal, state or federal court within the ten years preceding the year in which the person is seeking to be a candidate;

- (3) Be eligible to vote in the election pursuant to Section 2-01.150(A), provided that, the person is twenty-one (21) years of age on the Closing Date;
- (4) Submit a résumé with his or her petition that includes a description of his or her education, work experience and a brief paragraph about why he or she is seeking a seat on the Senate;
- (5) Submit a letter with his or her petition stating his or her goals and objectives if elected to the Senate. The goals and objectives letter shall be no longer than 500 words, in Times New Roman 12 point font, single spaced with standard one (1) inch margins;
- (6) Be and intend to remain a Resident as defined in this Chapter. Potential Candidates must be a resident in order to be sufficiently familiar with the current issues and events facing the Tribe and its members, and to allow Tribal members sufficient time to become familiar with the candidate and be able to interact with the candidate in the year preceding the election. Documents that may be considered by the Election Board and Senate Secretary to establish residency include, but are not limited to: current tax assessments, utility bills, school records of dependent children, current Washington State Driver's License, current Tribal Identification, W-2; and
- (7) Submit to a drug and alcohol test performed by the independent testing service contracting with the Tribe for Senate candidate testing pursuant to the procedures of Appendix A no later than nine days prior to the Closing Date. A potential candidate must provide a negative test result pursuant to the procedures in Appendix A no later than the Closing Date; and
- (8) Sign a form obtained from the Election Officer stating that he or she is willing to uphold the Swinomish Constitution and By-Laws and the Swinomish Tribal Code.

The burden of proof that a candidate for Senate meets all requirements set forth in this Section lies with the candidate.

- (D) **Fee.** Each person seeking to be a candidate shall submit a \$200.00 non-refundable, candidate fee, provided, that the \$200.00 fee shall include the cost of one drug test and one alcohol test submitted pursuant to Section 2-01.120(C)(7). This fee shall be paid at the time the Petition for Nomination is obtained.
- (E) **Petition Review.** The Election Board shall meet to:
  - (1) Determine the legality of the petitions and the eligibility of persons filing a Petition for Nomination using any source of information available, including non-Tribal records and requests for information from Potential Candidates; and

- (2) Request the Swinomish Police Department to conduct criminal background checks of all Potential Candidates; and
- (3) Investigate the residency status of all Potential Candidates.

This meeting may be in executive session.

- (F) **Certification Recommendation.** The Election Board shall meet to consider the Petitions for Nomination and all submitted documents, and evidence otherwise available to the Board. This meeting may be in executive session. The Election Board shall provide a written recommendation and accompanying reasoning to the Secretary to either:

- (1) Certify the eligibility of any Potential Candidate; or
- (2) Deny certification of any Potential Candidate.

In instances in which the residency status or satisfaction of other eligibility criteria of a Potential Candidate are uncertain, the Board shall recommend the certification of the candidate in order to refer the question of qualifications or suitability for office to the voters.

- (G) **Certification Review.** No later than two (2) weeks after the Closing Date, the Secretary of the Senate shall consider the recommendation of the Election Board for each Potential Candidate, and shall either:

- (1) Certify the eligibility of a Potential Candidate; or
- (2) Deny certification of a Potential Candidate.

In instances in which the residency status or satisfaction of other eligibility criteria of a Potential Candidate are uncertain, the Secretary shall certify the candidate in order to refer the question of qualifications or suitability for office to the voters.

- (H) **Notice.**

- (1) **Candidate Notice.** Potential Candidates shall be notified of their certification or denial of certification on the day of decision. Any persons denied certification by the Secretary of the Senate shall be notified by the Secretary in writing on the date of certification of candidates via United States First Class mail, postage prepaid, certified and return receipt requested and via email to the email address given to the Election Officer upon submittal of Petition for Nomination. The Notice shall advise the person denied certification of the reason for denial of certification and of his or her right to appeal the denial to the Senate.

- (2) **Public Notice.** The Election Board shall, no later than three (3) days after certification is final, post the list of certified candidates in two (2) or more public places frequented by Swinomish Tribal members, one (1) of which shall be the lobby of the Tribal Administration Building. The Board may also post the list on the Tribe's website and in its newspaper.
- (I) **Appeal of Certification and Timing.** The decision certifying or denying certification to a candidate by the Secretary may be appealed to the Senate.
- (1) **Persons Denied Certification as Candidate.** Any person denied certification by the Secretary shall have five (5) days from Candidate Notice pursuant to this Section to appeal to the Senate.
- (2) **Voters.** Any voter who believes that a person was certified in violation of law shall have five (5) days from date of Public Notice pursuant to this Section to appeal to the Senate.
- (J) **Senate Hearing.** The appeal by the Senate shall be heard pursuant to Section 2-01.310, except that the Senate shall issue a decision and notify the appellant of that decision no later than seven (7) days after receipt of the notice of appeal. The decision of the Senate shall be final.
- (K) **Publication.** The Election Board shall, no later than three (3) days after certification is final, forward to qyuqs for publication the Candidate Goals and Objectives Letters submitted by the candidates. The Election Board may also post the Goals and Objectives Letters on the Tribe's website.
- (L) **Deceased Candidates.** If a person who has been certified as a candidate by the Secretary of the Senate pursuant to Section 2-01.120(E) dies before the Primary election and/or General election and the deceased candidate places first or second in the Primary election, the deceased candidate's name shall be placed on the General election ballot. If the deceased candidate wins the General election, the Senate shall appoint a replacement, who is qualified to be a candidate as set out in Section 2-01.120(C), to fill the Senate Position for which the deceased candidate had run, in the same manner as that provided in Article V, Section 1 of the Swinomish Constitution.
- (M) **Withdrawal of Candidacy.** If a person who has been certified as a candidate by the Secretary or the Senate pursuant to Section 2-01.120(E) wishes subsequently to withdraw his or her candidacy, the candidate shall notify the Election Board in writing of the withdrawal. The candidate fee shall not be reimbursed.

\*Previously codified as STC 2-01.090, STC 2-01.100 and STC 2-01.110.

[History] Ord. 407 (9/15/20); Ord. 395 (10/1/19); Ord. 391 (6/19/19); Ord. 385 (9/11/18); Ord. 361 (8/9/16); Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 280 (9/8/10); Ord. 275 (8/3/10); Ord. 267 (10/08/09); Ord. 264 (10/7/08); Ord. 261 (10/2/07). Ord. 253 (10/12/06); Ord. 244 (12/06/05); Ord. 243 (11/14/05); Ord. 215 (1/27/04); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 125 (1/10/98); Ord. 60 (1/10/89).



**2-01.130 Determination on Primary.**

The Election Board shall determine whether a Primary Election needs to be held because more than two (2) candidates have been certified for the same Senate Position at the time of certification.

\*Previously codified as STC 2-01.110 and STC 2-01.120.

[History] Ord. 361 (8/9/16); Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 261 (10/2/07); Ord. 253 (10/12/06); Ord. 243 (11/14/05).

**2-01.140 Senate Election Ballots.**

(A) **Preparation.** After determining that a Primary is to be held, the Election Board shall prepare an official election ballot for use in the Primary election. After certification of the results of the Primary or the conclusion of any appeal of the Primary election results or if no Primary election is held, the Election Board shall prepare an official ballot for use in the General election. The Election Board may contract with an electronic election service company to conduct a Primary and/or General election. In the event that an election is electronic, the Election Board shall provide ballot information to an electronic election service company for preparation of the official ballot.

(B) **Ballot Contents.**

(1) **Primary Election.** The Primary election ballot shall list all certified candidates for each Senate Position for which more than two (2) candidates have been certified. The incumbent, if any, shall be listed first; all other candidates shall be listed in the order in which they filed their Petitions for Nomination.

(2) **General Election.**

(a) **Where a Primary Election Has Been Held.** For each Senate Position for which a Primary election has been held, the General election ballot shall list as candidates the individuals certified as winners of the Primary election. The incumbent, if any, shall be listed first; otherwise candidate listings shall be in the order of finish in the Primary.

(b) **Where No Primary Election Has Been Held.** For each Senate Position for which no Primary election has been held, the General election ballot shall list the candidates as follows: The incumbent, if any, shall be listed first; all other candidates shall be in the order in which the candidates filed their Petitions for Nomination.

(C) **Ballots to be Numbered.** The same number of official ballots shall be prepared as the number of eligible voters contained on the most recent Eligible Voter List prepared for that Primary or General election, plus a minimum of an additional twenty-five (25)

ballots for use as replacement ballots. If prepared by the Election Board rather than an electronic election service company, all ballots shall be sequentially marked in blue ink with a number placed on each ballot in such a way that the ballot can be cut along a marked line while still folded by a member of the Election Board when the vote is cast at the polls. If prepared by an electronic election service company, all ballots shall be sequentially numbered. No ballot shall be marked, formed, or cut as to allow identification of the voter after the vote has been cast.

- (D) **Sample Ballots.** The Election Board may prepare sample ballots using fictitious names (e.g., John and Jane Doe) for purposes of demonstrating the proper way of voting in a Primary and General election. In the event of an electronic election, the electronic election service company will prepare sample ballots. All sample ballots shall be marked as such.

\*Previously codified as STC 2-01.100, STC 2-01.120 and STC 2-01.130.

[History] Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 275 (8/3/10); Ord. 261 (10/2/07); Ord. 253 (10/12/06); Ord. 243 (11/14/05); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

#### **2-01.145 Ballots Concerning Adoption of Members.**

- (A) **Preparation.** The Election Board shall prepare an official election ballot for use in the election of potential adoptive members by the Tribe. The Election Board may contract with an electronic election service company to conduct the election. In the event that the election is electronic, the Election Board shall provide ballot information to an electronic election service company for preparation of the official ballot.
- (B) **Ballot Contents.** The ballot shall list the full name of each potential adoptive member along with the name of the potential member's father, mother and grandparents. The names of the potential adoptive members shall be in alphabetical order.
- (C) **Ballots To Be Numbered.** The same number of official ballots shall be prepared as the number of eligible voters contained on the Eligible Voter List prepared for the General election, plus a minimum of an additional twenty-five (25) ballots for use as replacement ballots. If prepared by the Election Board rather than an electronic election service company, all ballots shall be sequentially marked in blue ink with a number placed on each ballot in such a way that the ballot can be cut along a marked line while still folded by a member of the Election Board when the vote is cast at the polls. If prepared by an electronic election service company, all ballots shall be sequentially numbered. No ballot shall be marked, formed, or cut as to allow identification of the voter after the vote has been cast.
- (D) **Sample Ballots.** The Election Board may prepare sample ballots using fictitious names (e.g., John and Jane Doe) for purposes of demonstrating the proper way of voting for or against the adoption of a member by the Tribe. In the event of an electronic election,

the electronic election service company will prepare sample ballots. All sample ballots shall be marked as such.

[History] Ord. 339 (7/8/14), Ord. 299 (10/4/11); Ord. 275 (8/3/10).

**2-01.150 Voters.**

(A) **Eligibility to Vote.** All enrolled tribal members, as defined in Articles II & IV of the Swinomish Constitution, that are at least twenty-one (21) years of age on the day of the election shall be eligible to vote, provided that:

- (1) Any person who has been disenrolled by the Tribe before the date of the election on the ground that he or she is enrolled in another Indian tribe, band or nation shall not be eligible to vote; or
- (2) Any person who has relinquished his or her membership in the Tribe between the preparation of the Eligible Voter List and the date of the election, whether Primary or General, shall not be eligible to vote in that election. Upon request of the Election Board, the Enrollment Officer shall provide proof of relinquishment from the Swinomish Indian Tribal Community of the individual whose membership is disputed.

(B) **Eligible Voter Lists.**

- (1) **Preparation of Lists.** Based upon the Tribe's membership roll, the Enrollment Officer shall prepare and provide to the Election Board by the 1<sup>st</sup> of November of each year two (2) copies of the Eligible Voter Lists. The lists shall identify those members who would be eligible to vote at
  - (a) A Primary election scheduled for the third Saturday in January; and
  - (b) The General election scheduled for the second Saturday of February.
- (2) **Content of List.** The Eligible Voter List shall contain the names of all eligible voters, their enrollment numbers, and dates of birth.
- (3) **Review by Election Board.** The Election Board shall review the Eligible Voter Lists prepared by the Enrollment Officer. The Election Board may request that the Enrollment Officer provide it with documents pertinent to the eligibility or ineligibility of a member to vote pursuant to this Chapter and Article IV, Section 1 of the Constitution. If so requested, the Enrollment Officer shall provide such documents to the Election Board no later than two (2) days after the request.
- (4) **Correction of Lists.** If the Election Board discovers an error in the Eligible Voter Lists on the basis that a person is not a member of the Tribe or does not satisfy the eligibility requirements, it shall advise the Enrollment Officer of the

error. The Enrollment Officer shall prepare corrected voter list(s) and provide them to the Election Board by the 1<sup>st</sup> of December of each year.

\*Previously codified as STC 2-01.110, STC 2-01.130 and STC 2-01.140.

[History] Ord. 407 (9/15/20); Ord. 385 (9/11/18); Ord. 361 (8/9/16); Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 275 (8/3/10); Ord. 267 (10/08/09); Ord. 265 (11/05/08); Ord. 264 (10/07/08); Ord. 261 (10/2/07); Ord. 253 (10/12/06); Ord. 244 (12/6/2005); Ord. 243 (11/14/05); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

### **2-01.155 Voter Sign-in Sheet.**

Upon finalizing the Eligible Voter List, the Enrollment Officer or his designee shall prepare the Voter Sign-in Sheet(s) for use in the Primary and/or General Election and shall provide the sheet(s) to the Election Board the week prior to the scheduled election.

[History] Ord. 339 (7/8/14).

### **2-01.160 Senate Positions and Terms.**

- (A) **One Seat per Candidate.** Each candidate for the Senate shall run for only one Senate Position.
- (B) **Number of Seats Open Per Year.** There shall be an election for two (2) Senate Positions each year except that in Election year 2001 and every five (5) years thereafter, there shall be an election for three (3) Senate Positions. Beginning with the election in the year 2000, an election shall be held for the following Senate Positions:

Election Year 2000: Senate Seat One and Senate Seat Two.

Election Year 2001: Senate Seat Three, Senate Seat Four and Senate Seat Five.

Election Year 2002: Senate Seat Six and Senate Seat Seven.

Election Year 2003: Senate Seat Eight and Senate Seat Nine.

Election Year 2004: Senate Seat Ten and Senate Seat Eleven.

For the years following 2004, the election cycle shall repeat the same pattern established for election years 2000-2004. For example, in election year 2005, Senate Seat One and Senate Seat Two shall be up for election.

- (C) **Term.** Duly elected Senators shall serve terms of five (5) years.

\*Previously codified as STC 2-01.120, STC 2-01.040 and STC 2-01.150.

[History] Ord. 339 (7/8/14); Ord. 253 (10/12/06); Ord. 243 (11/14/05); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

**2-01.170 Voting.**

- (A) **Secrecy In Voting.** All voting for Senate Positions shall be by secret ballot.
- (B) **Official Ballot.** Only official ballots shall be used in voting. An official ballot is a ballot prepared by the Election Board pursuant to Section 2-01.140.
- (C) **Voting Procedures.** Eligible voters desiring to vote in a Primary or General election must:
  - (1) **Polls.** Appear at the polling place designated by Section 2-01.100(C) between 8:00 a.m. and 1:00 p.m. on election day, or at such other time as the Senate determines;
  - (2) **Identification.** Announce his or her name to a member of the Election Board and produce satisfactory identification if the voter is unknown to the Election Board. A Tribal Identification Card shall be the preferred form of identification;
  - (3) **Voter Sign-in Sheet.** Sign or mark the Voter Sign-in Sheet opposite his or her name and address;
  - (4) **Ballot.** Obtain a ballot from an Election Board member and take the ballot into a private area within the polling place as designated by the Election Board;
  - (5) **Ballot Box.** The Election Board shall verify that the ballot box is empty of all ballots and other material prior to the opening of the polls. The ballot box shall then be locked and shall not be reopened until the counting of the votes;
  - (6) **Senate Vote.** Vote for no more than one (1) candidate for each vacant Senate Position;
  - (7) **Provisional Member by Adoption Vote.** Vote whether to accept or reject the application of individuals for provisional membership by adoption;
  - (8) **Voting Process in Manual Election.**
    - a. **Fold Ballot.** Fold the ballot to conceal its contents and give the ballot to an Election Board member;
    - b. **Remove Number.** Allow an Election Board member to remove the number from the ballot; and
    - c. **Ballot Box.** Place the ballot in the sealed, secure ballot box provided by the Election Board;

- (9) **Voting Process in Electronic Elections.** In the event of an electronic election, simply cast votes and insert the ballot into the electronic counting machine.

\*Previously codified as STC 2-01.130, STC 2-01.150 and STC 2-01.160.

[History] Ord. 407 (9/15/20); Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 282 (12/07/10), Ord. 261 (10/2/07); Ord. 253 (10/12/06); Ord. 243 (11/14/05); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 134 (2/11/99); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

#### **2-01.180 Absentee Ballots.**

There shall be no absentee voting.

\*Previously codified as STC 2-01.140, STC 2-01.160 and STC 2-01.170.

[History] Ord. 339 (7/8/14); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 134 (2/11/99); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

#### **2-01.190 Supervision of Elections.**

No fewer than three (3) members of the Election Board shall be present at the polling place at all times. The Election Board may, if necessary, request the presence of tribal police to ensure the orderly conduct of the election. The Board may also request the presence of the Election Officer and Tribal Attorney to assist it during the election. The Election Board members shall be clearly identified at the polling place. In the event of an electronic election, representatives of the electronic election service company may also be present to assist the Election Board during the election.

\*Previously codified as STC 2-01.150, STC 2-01.170 and STC 2-01.80.

[History] Ord. 361 (8/9/16); Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 261 (10/2/07); Ord. 253 (10/12/06); Ord. 243 (11/14/05); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 60 (1/10/89).

#### **2-01.200 Electioneering and Campaign Conduct.**

- (A) **Prior to Election Day.** Notwithstanding STC 20-3.470, a person may place political advertising, including yard signs, if related to tribal elections,

- (1) On private property after obtaining permission from the landowner; and
- (2) Within public right of ways on the Reservation,

Provided that no such advertising may be placed in, on, or within 150 feet of, the Swinomish Indian Tribal Community's administrative, accounting, planning, fisheries, human resources, medical, dental, social services, senior center, public works, transitional housing, and youth center buildings; Community bulletin boards; places of

worship on the reservation; or Tribal enterprises; provided further that this limitation does not apply to private residences. Additionally, cars parked adjacent to these places shall not contain political advertising while parked thereon.

**(B) Election Day.**

- (1) No person shall solicit, secure or influence voters, by any means, at the polling place during voting hours, or be allowed to congregate or solicit votes for a particular candidate in the building, or within one-hundred and fifty (150) feet of the building, in which the election is being held.
- (2) No person, voters and Election Board members alike, shall make a telephone call, send a text or an email, or receive a telephone call, text or email within the polling place during voting hours.
- (3) A person violating this Section shall be guilty of a Class C Offense punishable to the same extent as a Class C Offense that is punishable under STC 4-12.020(C).

- (C) Within fourteen (14) days after the General election, all candidates shall be responsible for removing all political advertising, including yard signs, shall be removed from lands within the exterior boundaries of the Reservation and La Conner apartments.

\*Previously codified as STC 2-01.190.

[History] Ord. 385 (9/11/18); Ord. 339 (7/8/14); Ord. 318 (9/11/12); Ord. 299 (10/4/11); Ord. 275 (8/3/10); Ord. 261 (10/2/07). Ord. 253 (10/12/06); Ord. 243 (11/14/05); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 60 (1/10/89).

**2-01.210 Assistance to Voters.**

- (A) In cases where a voter is unable to complete his or her ballot and/or has been provided a replacement ballot, the Election Officer, Tribal Attorney and/or a representative of the electronic election service company may assist or, in appropriate cases, authorize another to assist the voter in casting his or her vote, provided, that the Election Officer, Tribal Attorney or the representative of the electronic election service company takes every precaution to assure that the voter exercises full freedom of choice; and provided further that the secrecy of the ballot is strictly observed. Any person assisting the voter must maintain complete confidentiality of the voter's ballot, both the original and replacement ballots.
- (B) The Election Board may post sample ballots at the polling place.

\*Previously codified as STC 2-01.170, STC 2-01.190 and STC 2-01.200.

[History] Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 261 (10/2/07). Ord. 253; Ord. 243 (11/14/05); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 60 (1/10/89).

**2-01.220 Vote Counting.**

- (A) **Official Ballot.** Only official ballots properly marked by the voter shall be counted. All ballots with a vote that has been either nullified by the Election Board or rejected by the electronic counting machine as provided below shall be separately retained and accounted for by the Election Board. The Election Board shall ensure the confidentiality of nullified and rejected ballots.
- (1) **Manual Elections.** If on any ballot in any election, any names are written in or tampered with, or more than one (1) vote is cast for a Senate Position pursuant to Section 2-01.170(C) (5), then the vote for that position shall be nullified by the Election Board, provided that nullification of a vote for one (1) Senate Position shall not affect the vote by that voter for any other Senate Position.
  - (2) **Electronic Elections.** In the event of electronic voting, if any names are written in or tampered with, or more than one (1) vote is cast for a Senate Position pursuant to Section 2-01.170(C)(5), the counting machine will reject the entire ballot and the voter will be given a replacement ballot by the Election Board. The Election Board shall place all rejected ballots in a secure receptacle sealed and signed by the Election Board.
- (B) **Unused Ballots.** All unused official ballots shall be retained and separately accounted for by the Election Board.
- (C) **Counting Official Ballots.**
- (1) **Manual Election.** At the close of the polls, the Election Board shall remove the ballot box and sequester itself in a private area for purposes of counting the ballots in a manual election. The tribal police and/or the Election Officer may be present during the counting of the ballots. The Election Board shall open all regular ballots and record the vote with the utmost care. Every precaution shall be taken and every method used within reason that will ensure an accurate count. After ascertaining that all ballots have been received and counted, the Election Board shall certify the winners in writing to the Chair of the Senate.
  - (2) **Electronic Election.** In an electronic election, votes will be counted automatically by the counting machine at the time that the votes are cast. At the close of the polls, the Election Board shall remove the cast ballots from the machine and retain the ballots pursuant to STC 2-01.240. The Election Board shall certify in writing the winners, as reflected in the electronic results provided by the counting machine, to the Chair of the Senate.
- (D) **Recording the Vote.** The Election Board shall separately record:



- (1) The total number of unused official ballots;
- (2) The total number of spoiled ballots;
- (3) The total number of replacement ballots used;
- (4) The total number of official ballots cast.

\*Previously codified as STC 2-01.180, STC 2-01.200 and STC 2-01.210.

[History] Ord. 407 (9/15/20); Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 261 (10/2/07). Ord. 253 (10/12/06); Ord. 243 (11/14/05); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 60 (1/10/89).

### **2-01.230 Certification of Election Results.**

The name of each candidate and the number of votes received by that candidate shall be written down on an official certification form provided for that purpose by the Election Officer.

- (A) **Primary Election.** In a Primary election, the first and second place finishers for each Senate Position subject to the Primary shall be certified by the Election Board as candidates for the General election promptly after the polls have closed, provided that if two (2) or more candidates tie for first place in the Primary, each of those candidates shall be promptly certified as the candidates in the General election. The results shall be posted in two (2) or more places frequented by tribal members as selected by the Election Board, one of which shall be the lobby of the Tribal Administration Building. The Board may also post the results on the Tribe's website.
- (B) **General Election.** In a General election, the candidate for each Senate Position who receives the most votes shall be certified initially by the Election Board as the winning candidate for that Senate Position. The Senate shall review the certification form and formally certify the results of the General election promptly thereafter. The results shall be announced at General Council. The certificate shall be signed by the members of the Senate and retained pursuant to STC 2-01.245.

\*Previously codified as STC 2-01.190, STC 2-01.210 and STC 2-01.220.

[History] Ord. 385 (9/11/18); Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 267 (10/08/09); Ord. 261 (10/2/07); Ord. 253 (10/12/06); Ord. 243 (11/14/05); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

### **2-01.240 Disposition of Ballots.**

- (A) **Securing Ballots.** As soon as possible after closing of the polls on the election day, all ballots, including cast ballots, unused ballots, spoiled ballots, and replacement ballots, shall be placed in a secure receptacle sealed and signed by the members of the Election Board supervising the election pursuant to Section 2-01.190 to prevent tampering.

- (B) **Retention.** After the vote count has been recorded and the winners certified by the Election Board and Senate on the official certification form, the Swinomish Police Department shall take possession of the ballots and retain them in a locked and secure location for two (2) years following the date of the election.
- (C) **Destruction.** No ballot shall be destroyed at any time prior to the election or for two (2) years following the date of the election. Upon expiration of two (2) years following the date of an election, all ballots, including cast, unused, mutilated, mismarked or electronically rejected during the course of that election, shall be unsealed, archived and labeled or destroyed in accordance with the Tribal Records Code.

\*Previously codified as STC 2-01.200, STC 2-01.220 and STC 2-01.230.

[History] Ord. 407 (9/15/20); Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 264 (10/7/08); Ord. 261 (10/2/07); Ord. 253 (10/12/06); Ord. 243 (11/14/05); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

#### **2-01.245 Election Records Other than Ballots.**

- (A) **Retention of Records.** The Swinomish Police Department shall take possession of the following records, and retain them in a locked and secure location for two (2) years following the date of election:
- (1) Petitions for Nomination;
  - (2) Candidate Certifications;
  - (3) Eligible Voters' List;
  - (4) All Sample ballots;
  - (5) Voter Sign-In Sheets; and
  - (6) Election Certification.
- (B) **Transfer of Records.** Upon expiration of two (2) years following the date of an election, all of the above-described Election Records from that election shall be transferred to the Election Officer who shall label and index them in accordance with Tribal Records Policy. Thereafter, the Election Officer shall transfer all Petitions for Nomination, Candidate Certifications, Election Certification, Voter Sign-In Sheets, Eligible Voters' List and Sample Ballots from that election to the Tribal Archives. The Tribal Records Manager shall ensure that any personal information contained on the Voter Sign-In Sheets shall remain confidential. Such records may be disposed of and destroyed by the Tribal Records Manager pursuant to the Tribal Records Code.

[History] Ord. 339 (7/8/14); Ord. 318 (9/11/12); Ord. 299 (10/4/11); Ord. 264 (10/7/08).

**2-01.250      Recounts in Manual Elections.**

If the vote margin between the candidates in a manual election is less than ten (10) votes, the Election Board shall recount the votes immediately after the close of the polls.

\*Previously codified as STC 2-01.210, STC 2-01.230 and STC 2-01.240.

[History] Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 261 (10/2/07); Ord. 253 (10/12/06); Ord. 243 (11/14/05); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

**2-01.260      Ties.**

- (A) **Primary Election.** If two (2) or more candidates tie for first place in the Primary, each of those candidates shall be certified as the candidates in the General election.
- (B) **General Election.** In the General election, the candidate that receives the most votes for a Senate Position shall be declared to be the winner. In the event of a tie, unless one (1) candidate withdraws, a run-off election between the candidates whose votes are tied will be scheduled no later than thirty (30) days after the General election. The fact that the General election was conducted electronically does not give rise to a right to an electronic run-off election. The Senate, in consultation with the Election Board, shall determine if the run-off election shall be conducted manually or electronically.

\*Previously codified as STC 2-01.220, STC 2-01.240 and STC 2-01.250.

[History] Ord. 385 (9/11/18); Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 261 (10/2/07); Ord. 253 (10/12/06); Ord. 243 (11/14/05); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

**2-01.270      Protests.**

- (A) **Protests of Primary Elections to Tribal Court.**

No later than three (3) days following certification of a Primary Election by the Election Board, any person may protest such election in writing to the Tribal Court. The writing shall briefly state the grounds for the protest and shall state the reasons why the protesting party believes the action of the Election Board is in violation of the law, arbitrary and capricious, or is not supported by substantial evidence. The Election Board shall produce the administrative record, pursuant to STC 2-01.320(C), to the Tribal Court no later than two (2) days after the filing of the protest.

The protest shall be governed by Section 2-01.320, except that the Tribal Court shall hear such protest on an emergency basis, and shall render a decision no later than seven (7) days following the date the Election Board has filed the administrative record.

**(B) Protests of General Elections to Tribal Court.**

Any person, within a period of five (5) days following certification of the General Election by the Senate, may protest the results of a General election in writing to the Tribal Court. The writing shall briefly state the grounds for the protest and shall state the reasons why the protesting party believes the action of the Election Board or Senate is in violation of the law, arbitrary and capricious, or is not supported by substantial evidence. The Election Board shall produce the administrative record, pursuant to STC 2-01.320(C), to the Tribal Court no later than four (4) days after the filing of the protest.

The protest shall be governed by Section 2-01.320, except that the Tribal Court shall hear such protest, and shall issue a decision within fourteen (14) days following the date the protest is filed.

\*Previously codified as STC 2-01.230, STC 2-01.250 and STC 2-01.260.

[History] Ord. 407 (9/15/20); Ord. 385 (9/11/18); Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 261 (10/2/07); Ord. 253 (10/12/06); Ord. 243 (11/14/05); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

**2-01.280 Transfer of Property.**

The outgoing Senate Members shall be responsible for delivering an accounting for all tribal documents and equipment in their possession to the Chair of the Senate within seven (7) days following the General election.

\*Previously codified as STC 2-01.240, STC 2-01.270 and STC 2-01.310.

[History] Ord. 339 (7/8/14); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

**2-01.290 Selection of Officers.**

The Senate shall, at its next regular meeting following the General election, elect from its own number: a Chair and a Vice-Chair. The Senate shall select a Secretary and a Treasurer to perform duties set out in the By-Laws and other tribal documents. The Secretary and the Treasurer are not required to be members of the Senate. The Offices of Secretary and Treasurer may be combined.

\*Previously codified as STC 2-01.250, STC 2-01.280 and STC 2-01.320.

[History] Ord. 339 (7/8/14); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

## **2-01.300 Installation of Senate Members.**

Newly elected Senate Members, who have been duly certified pursuant to Section 2-01.230(A), shall be installed at the next regular meeting of the Senate. Each newly elected Senate Member shall subscribe to the following oath administered by the Tribal Court Judge or his/her designee:

I, \_\_\_\_\_, do hereby solemnly swear or affirm that I shall preserve, support, and protect the Constitution of the United States and the Constitution and By-Laws of the Swinomish Indian Tribal Community to the best of my ability, so help me God.

\*Previously codified as STC 2-01.260, STC 2-01.290 and STC 2-01.330.

[History] Ord. 385 (9/11/18); Ord. 352 (9/1/15); Ord. 339 (7/8/14); Ord. 261 (10/2/07); Ord. 253 (10/12/06); Ord. 243 (11/14/05); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

## **2-01.305 Senate Members – Vacancies and Removal from Office.**

- (A) **Replacement.** If a duly elected Senate Member shall die while in office, resign his seat for any reason, cease to live on the reservation or within fifteen (15) miles of the Reservation boundary (that is, west of I-5), or be found guilty of a felony, or a misdemeanor involving dishonesty in any court, the Senate shall declare the position vacant. The entire Senate shall elect a replacement within forty-five (45) days of the event requiring replacement or discovery of the event, whichever is later, to fill the unexpired term by a two-thirds vote, except that the Chairman shall only vote in case of a tie.
- (B) **Candidate Requirements.** Individuals considered for replacement and elected pursuant to this Section must qualify as a candidate pursuant to Art. II of the By-Laws and Section 2-01.120(C).
- (C) **Removal for Neglect of Duty.** Should any Senate member neglect his duties or engage in gross misconduct, the Senate may expel such member upon a two-thirds vote. Before any vote is taken on expulsion, the accused member shall be given an opportunity to answer any and all charges before the Senate.
- (1) The Secretary of the Senate, or another officer in the event that the Secretary has a conflict of interest or is the accused, shall provide written notice to the accused Senate member of the charges of neglect or gross misconduct. Such notice shall advise the accused Senate member of the opportunity to respond to such charges and the date and time of the meeting.
  - (2) The decision of the Senate shall be final.

[History] Ord. 339 (7/8/14).

*Subchapter IV – Appeals and Protests*

**2-01.310 Appeals to Senate.**

- (A) **Right of Appeal.** The right to appeal a decision of the Secretary to the Senate shall lie with the individuals granted the right to appeal in Section 2-01.120(I)(1) or (2). The appeal shall be filed by the date specified in this Chapter for appeal of that particular decision.
- (B) **Notice of Appeal.** The notice of appeal shall be in writing and filed with the Election Officer or his/her designee. The appeal shall briefly state the grounds for appeal and shall state the reasons why the appellant believes the action of the Secretary is in violation of the law, arbitrary and capricious, or is not supported by substantial evidence.
- (C) **Record on Appeal.** The Senate shall make a decision on an appeal based on the administrative record filed with the Secretary, including the administrative record of proceedings before the Election Board. The Senate shall not receive or consider evidence not contained in the administrative record filed with the Secretary or in the administrative record of proceedings before the Election Board except as authorized in subsection (D) of this Section, and shall not consider any issue that was not raised by the appealing party in the administrative record before the Secretary or administrative record of proceedings before the Election Board.
- (D) **Extra-Record Evidence.** The Senate may in its discretion receive or consider additional evidence not contained in the administrative record of the proceedings where:
  - (1) Such additional evidence is necessary to promote the interests of fair and just elections; and
  - (2) Such evidence is material, newly discovered, that with reasonable diligence could not have been discovered and produced at the proceedings before the Election Board or Secretary.
- (E) **Limitation of Issues.** The Senate shall not consider any issue that was not raised by the appealing party in the proceedings before the Secretary, unless the issue is material and with reasonable diligence could not have been discovered and raised in the proceedings before the Secretary.
- (F) **Hearing.**
  - (1) The Senate shall schedule a hearing on the appeal, and shall provide individual notice of the hearing to the appealing party as soon as the hearing date and time are set, and shall post the notice of the hearing in the Administration Building. The notice of hearing may be posted on the Tribe's website.

- (2) The hearing shall be open to the public. The Senate may enter into an executive session to deliberate on the issues in the appeal.
- (3) The Senate shall cause a true and correct record to be made of all hearing proceedings except those conducted in executive session.

(G) **Right to Appear.**

- (1) The appealing party shall have the right to attend the hearing held by the Senate on the appeal.
- (2) The appealing party shall have the right to present written and oral statements or argument to the Senate on the legal and factual issues in the appeal. The Senate may establish reasonable procedures, including time limits, for the hearing on the appeal.

(H) **Basis of Decision.** The Senate shall affirm the decision of the Secretary unless the appealing party demonstrates to the Senate that the decision of the Secretary is:

- (1) Contrary to Swinomish or Federal law; or
- (2) Arbitrary or capricious; or
- (3) Not supported by substantial evidence

(I) **Decision.** The Senate shall determine whether the appealing party has met the burden set forth in Subsection (H) of this Section. The decision of the Senate shall be final and not subject to judicial review or to protest in the Swinomish Tribal Court.

\*Previously codified as STC 2-01.260 and STC 2-01.300.

[History] Ord. 407 (9/15/20); Ord. 385 (9/11/18); Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 253 (10/12/06); Ord. 243 (11/14/05).

**2-01.320 Protests to Tribal Court.**

- (A) **Right to Protest.** The right to protest a decision of the Election Board or Senate shall lie with the individuals identified as aggrieved by the terms of this Chapter. The protest shall be filed with the Tribal Court by the date specified in this Chapter for protest of that particular decision.
- (B) **Notice of Protest.** The protest shall identify the name of the individual protesting, the decision being protested, and their interest in the decision protested. The Chair of the Election Board in his or her official capacity, shall be named as the respondent.
- (C) **Record on Appeal.** The review by the Tribal Court shall be limited to the evidentiary record made in the original administrative proceedings before the Election Board or

Senate. The administrative record shall include, but is not limited to all documentation provided to the Election Board for certification of candidates, the Certification of Candidates, the eligible voters list and Voter Sign In Sheet as provided to the Election Board by the Tribe's Enrollment Officer for purposes outlined in this Chapter, all sample ballots, ballots used in the election being protested, ballot stubs, mismatched or ruined ballots, Election Certifications, and any other evidence considered by the Senate in certifying the results of the General Election.

- (D) **Extra-Record Evidence.** The Tribal Court may receive or consider additional evidence not contained in the administrative record of the proceedings where:
  - (1) Such additional evidence is necessary to promote the interests of fair and just elections; and
  - (2) Such evidence is material, newly discovered, that with reasonable diligence could not have been discovered and produced at the proceedings before the Election Board or Senate.
- (E) **Limitation of Issues.** The Tribal Court shall not consider any issue that was not raised by the protesting party in the proceedings before the Election Board or Senate, unless the issue is material and with reasonable diligence could not have been discovered and raised in the proceedings before the Election Board or Senate.
- (F) **Review by Court.** Tribal Court review shall be conducted by the Court, without a jury. The review shall be in accordance with those provisions of the Swinomish Rules of Civil Procedure that are determined to be applicable by the Tribal Court.
- (G) **Basis of Decision.** The Tribal Court shall affirm the decision of the Election Board or Senate upon review and uphold the Election results for the Senate position(s) at issue in the protest unless the protesting party demonstrates to the Court that the decision of the Election Board or Senate is:
  - (1) Contrary to Swinomish or Federal law; or
  - (2) Arbitrary or capricious; or
  - (3) Not supported by substantial evidence.
- (H) **Decision.**
  - (1) **Protest of Primary Election.** If the Tribal Court determines that the protesting party has met the burden set forth in Subsection (G) of this Section, then the Court shall reverse the protested decision, declare the Primary Election invalid for the disputed position(s) and order the Senate to schedule a second Primary for the disputed position(s), and in such case the Court may also order that the



General Election be rescheduled to allow sufficient time for a second Primary to be held.

- (2) **Protest of General Election.** If the Tribal Court determines that the protesting party has met the burden set forth in Subsection (G) of this Section, then the Court shall reverse the protested decision, declare the General Election invalid for the disputed position(s) and order the Senate to schedule a second election for the disputed position(s).

(I) **Tolling.** Any appeal to the Tribal Court shall not toll the time limits set by this Chapter.

(J) **Final Decision.** The decision of the Tribal Court shall be final, and is not subject to further review.

\*Previously codified as STC 2-01.270 and STC 2-01.310.

[History] Ord. 407 (9/15/20); Ord. 385 (9/11/18); Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 261 (10/2/07); Ord. 253 (10/12/06); Ord. 243 (11/14/05).

### **2-01.330 Tribal Remedies and Tribal Court.**

All disputes arising under the terms and provisions of this Chapter shall be heard and resolved only as provided in Section 2-01.120(I)(1) and (2), 2-01.120(J), 2-01.270 and this Subchapter.

\*Previously codified as STC 2-01.290 and STC 2-01.320.

[History] Ord. 407 (9/15/20); Ord. 339 (7/8/14); Ord. 253 (10/12/06); Ord. 243 (11/14/05).

## ***Subchapter V – Criminal Offenses***

### **2-01.340 Violations Under the Criminal Code.**

Any person committing an act of forgery (STC 4-04.030), bribery (STC 4-09.020), false reports (STC 4-09.050), perjury (STC 4-09.080), Intimidation of Witnesses and Public Officials (STC 4-09.060), or obstruction of public officials (STC 4-09.070) in connection with a Tribal election shall be prosecuted to the fullest extent of the law. Jail and/or fines may be imposed upon any person committing such offense(s) to the same extent as that offense(s) is/are punishable under STC 4-12.020. The Election Board shall constitute a “tribal agency” under the above identified offenses.

\*Previously codified as STC 2-01.330.

[History] Ord. 339 (7/8/14); Ord. 253 (10/12/06).

**2-01.350 Removing or Defacing Political Advertising.**

A person who removes or defaces lawfully placed political advertising related to tribal elections including yard signs without authorization of the candidate, leaseholder or landowner is guilty of a Class C Offense punishable to the same extent as a Class C Offense under STC 4-12.020(C). The defacement or removal of each item constitutes a separate violation.

\*Previously codified as STC 2-01.290.

[History] Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 275 (8/3/10); Ord. 261 (10/2/07); Ord. 253 (10/12/06).

**2-01.360 Violations by Officials.**

- (A) A tribal official, employee, agent or representative is guilty of a Class B Offense punishable to the same extent as a Class B Offense under STC 4-12.020(B) if he or she:
  - (1) Willfully neglects or refuses to perform any duty required by law in connection with voter eligibility; or
  - (2) Willfully neglects or refuses to perform such duty in the manner required by this Chapter; or
  - (3) Destroys, mutilates, conceals, changes, or alters any Eligible Voter List(s) in connection therewith except as authorized by this Chapter; or
  - (4) Records the vote of any voter in a manner other than as designated by the voter.
  
- (B) If any tribal official, employee, agent or representative authorized by law to be present during the counting of ballots shall divulge results of the count of vote prior to certification of the vote by the Board or Senate as described in STC 2-01.230, he or she is guilty of a Class C Offense punishable under STC 4-12.020(C).

[History] Ord. 407 (9/15/20); Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 261 (10/2/07). Ord. 253 (10/12/06).

**2-01.370 Unlawful Acts by Voters.**

- (A) It is unlawful for a voter to
  - (1) Receive a ballot from any person other than a member of the Election Board having charge of the ballots;
  - (2) Vote or offer to vote any ballot except one that he or she has received from the member of the Election Board having charge of the ballots;

- (3) Place any mark upon his or her ballot by which it may afterward be identified as the one voted by him or her; or
- (4) Fail to return to the Election Board any ballot he or she received from an Election Board member in a manual election.

(B) A violation of this Section is punishable as a Class C Offense under STC 4-12.020(C).

[History] Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 261 (10/2/07). Ord. 253 (10/12/06).

**2-01.380 False Statements.**

- (A) Every person who signs any candidate or General council petition with any other name than his or her true name is guilty of a Class C Offense punishable under STC 4-12.020(C).
- (B) Every person who knowingly signs more than one petition for the same Senate position or who signs such a petition knowing that he or she is not a legal voter or who makes a false statement as to his or her residence on any such petition, is guilty of a Class C Offense punishable under STC 4-12.020(C).
- (C) Every person who knowingly provides false information on his or her application for candidacy or Petition of Nomination is guilty of a Class B Offense punishable under STC 4-12.020(B).
- (D) Every person who knowingly provides, or causes to be provided, false or fraudulent information in a declaration, form or notice pertaining to his or her eligibility to vote shall be guilty of a Class B Offense punishable under STC 4-12.020(B).

[History] Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 261 (10/2/07). Ord. 253 (10/12/06).

**2-01.390 Unauthorized Examination of Ballots, Election Materials -- Revealing Information.**

- (A) It is a Class C Offense for a person to examine or assist another to examine any ballot if the person, without lawful authority, conducts the examination
  - (1) for the purpose of determining how a voter, whose name is known to the person, voted; or
  - (2) for the purpose of identifying the name of the voter who voted in a manner known to the person.

- (B) Any person who reveals to another person information which the person ascertained in violation of Subsection (A) of this Section is guilty of a Class C Offense punishable under STC 4-12.020(C).

\*Previously codified as STC 2-01.390 and STC 2-01.400.

[History] Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 253 (10/12/06).

**2-01.400 Influencing the Vote.**

A person is guilty of a Class C Offense punishable under STC 4-12.020(C) who, directly or indirectly:

- (A) by menace, force, threat, or any other unlawful means hinders or deters or attempts to hinder or deter any voter from voting;
- (B) offers any bribe, reward, or any thing of value to a voter in exchange for the voter's vote for or against any person or ballot measure; or
- (C) solicits, requests, or demands any reward or thing of value or the promise thereof in exchange for, or in an attempt to influence, his or her vote or in exchange for, or in an attempt to influence, the vote of any other person for or against any person or for or against any ballot measure to be voted upon at a primary or general election.

\*Previously codified as STC 2-01.410.

[History] Ord. 385 (9/11/18); Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 253 (10/12/06).

***Subchapter VI – Amendment, Repealer, Severability and Effective Date***

**2-01.410 Amendment.**

The Senate reserves the right to amend these rules and regulations as needed.

\*Previously codified as STC 2-01.280, STC 2-01.340 and STC 2-01.470.

[History] Ord. 339 (7/8/14);, Ord. 299 (10/4/11); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

**2-01.420 Repealer.**

The rules and regulations in Ordinance No. 339 replace and supersede the rules and regulations contained in all prior ordinances.

\*Previously codified as STC 2-01.290, STC 2-01.350 and STC 2-01.480.

[History] Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 253 (10/12/06); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 125 (1/10/98).

**2-01.430 Severability.**

If any provision of these rules and regulations or their application to any person or legal entity or circumstance, is held invalid, the remainder of these rules and regulations shall remain in effect.

\*Previously codified as STC 2-01.300, STC 2-01.360 and STC 2-01.490.

[History] Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 187 (9/30/03); Ord. 161 (9/10/02); Ord. 138 (2/22/00); Ord. 125 (1/10/98); Ord. 60 (1/10/89).

**2-01.440 Effective Date.**

These rules and regulations shall be effective immediately upon enactment by the Senate.

\*Previously codified as STC 2-01.500.

[History] Ord. 339 (7/8/14); Ord. 299 (10/4/11); Ord. 285 (02/08/11); Ord. 282 (12/07/10); Ord. 280 (09/08/10); Ord. 275 (8/3/10).

## **Appendix A**

### **Drug Testing Procedures**

#### **I. DEFINITIONS.**

- A. "Alcohol" means any substance containing any form of alcohol, including but not limited to ethanol, methanol, propanol, and isopropanol.
- B. "Cannabis" means any form of cannabinoids or marijuana containing tetrahydrocannabinol (THC).
- C. "Controlled Substance" means:
  - 1. Any substance that contains any quantity of a chemical that falls within the following categories:
    - a. Opiates including but not limited to substances commonly known as opium, heroin, morphine, suboxone, methadone and codeine;
    - b. Hallucinogenic substances including but not limited to substances commonly known as DMA, LSD, PCP, mescaline, peyote, and psilocybin;
    - c. Cocaine in any form including but not limited to the powder and the rock or "crack" form;
    - d. Depressants including but not limited to methaqualone, diazepam (Valium), secobarbital and pentobarbital; and
    - e. Stimulants including but not limited to any form of amphetamine.
  - 2. Any chemical not listed above that is identified as a controlled substance in STC 4-10.020. If there is any doubt as to whether a substance is a controlled substance subject to this Appendix, the provisions of RCW 69.50, Schedule I through V, as attached to Swinomish Tribal Code 4-10.020, shall serve as a guide, and any doubt shall be resolved by determining that this Appendix applies to the substance.
- D. "Drug Test" is a test for Controlled Substances, Cannabis and Alcohol administered pursuant to this Appendix, the result of which indicates whether there is present in the body of the Petitioner any substance, or a metabolite of a substance, listed in, and at a level above the applicable limit in, Section IV.

- E. “Confirmed Positive Drug Test Result” means:
1. any result from a test administered pursuant to this Appendix that has been determined by the Medical Review Officer to demonstrate the presence of any substance, or a metabolite of a substance, at a level that is above the applicable limit that is listed in Section IV of this Appendix, subject to Section V of this Appendix;
  2. any result from a test administered pursuant to this Appendix that has been determined by a Medical Review Officer to be a diluted specimen; or
  3. any specimen that a Medical Review Officer determines to be altered, substituted, or compromised.
- F. “Medical Review Officer” or “MRO” means a licensed physician knowledgeable about drug testing and drug testing results, substance abuse disorders, the medical use of prescription drugs and the pharmacology and toxicology of prescription drugs, illegal drugs and alcohol, and is certified by either the American Association of Medical Review Officers or the Medical Review Officer Certification Council.
- G. “Petitioner” means a person who has filed a Petition for Nomination as a candidate for the Senate.

## **II. DRUG TEST TIMING.**

Petitioner must submit to a drug test at an independent testing facility utilized by the Tribe for employee drug testing no later than two weeks prior to the Closing Date.

## **III. COST OF DRUG TESTING**

The cost of administering one drug test and one alcohol test shall be paid by the Tribe. Any and all costs associated with a retest, if requested by the Petitioner for any reason, shall be paid by the Petitioner.

## **IV. SUBSTANCES TESTED.**

Each Petitioner shall submit to a drug test administered pursuant to this Appendix that tests for the presence of the following substances, and the results of which test demonstrates whether any substance tested for is at or above the applicable limit below:

<b><u>Substance Tested</u></b>	<b><u>Limit</u></b>
AMPHETAMINES	1,000 ng/mL
BENZODIAZEPINES	200 ng/mL
BUPRENORPHINE	20 ng/mL
COCAINE METABOLITE	300 ng/mL
METHADONE METABOLITE (EDDP)	300 ng/mL
ETHANOL	20 mg/dL
OPIATES (not including a result showing Morphine <i>only</i> )	300 ng/mL
MORPHINE <b><i>ONLY</i></b> (without any other positive test result)	2,000 ng/ml
OXYCODONE	100 ng/mL
CANNABIS METABOLITE	50 ng/mL

**V. MEDICAL EXCEPTION.**

A medical exception shall be granted to a Petitioner that receives a Confirmed Positive Drug Test Result that is **solely** due to the presence of a Controlled Substance taken in compliance with a valid medical prescription. Compliance means that the medication is: (1) lawfully obtained; (2) being used as prescribed; (3) being used by the person for whom the medication is prescribed; and (4) the prescription is not expired. A medical exception granted to a Petitioner shall satisfy the application requirement in Section 2-01.120(C)(7). Cannabis shall not qualify for a medical exception, even if administered pursuant to a valid medical patient recognition card.

**VI. TEST REQUIREMENTS.**

A Petitioner shall bring any prescribed medications to the testing site on the day of the drug test and provide any medical information necessary for the Medical Review Officer to determine if a medical exception exists for a Confirmed Positive Drug Test Result.

**VII. TEST RESULTS.**

**Negative Test Result.** A drug test that does not reveal the presence of a substance listed in Section IV of this Appendix beyond acceptable limits shall be considered a negative test result. A Petitioner who receives a negative drug test result shall be deemed to satisfy the application requirement in Section 2-01.120(C)(7).

**Confirmed Positive Drug Test Result.** A Petitioner who receives a Confirmed Positive Drug Test Result has the right to request that the original sample be retested at the Petitioner's expense. The Petitioner must request to have the original sample retested within five (5) calendar days of notification of the Confirmed Positive Drug Test Result. The retest shall be administered by the same testing agency and subject to the same requirements as the initial drug test. If a Petitioner chooses not to retest following a Confirmed Positive Drug Test



Result, then the Confirmed Positive Drug Test Result shall be deemed a Final Confirmed Positive Drug Test Result.

A Confirmed Positive Drug Test Result indicating that a Petitioner's urine sample was altered, compromised or substituted is considered to be a Confirmed Positive Drug Test Result for purposes of this Appendix; provided, however, that a result indicating a sample was a "Dilute Specimen" will not be considered a Confirmed Positive Drug Test Result if:

- a. the sample was not otherwise altered, compromised or substituted, and
- b. the Confirmed Drug Test Result for the sample is otherwise negative,

When the collection facility determines at the time of collection that a sample is a "Dilute Specimen" or when a Confirmed Positive Drug Test Result indicates that a sample was a "Dilute Specimen," but the sample was not otherwise altered, compromised or substituted and the Confirmed Positive Drug Test Result for the sample is otherwise negative, the Petitioner will be immediately notified and will be offered an opportunity to provide an undiluted sample as soon as possible. If the Petitioner does timely provide a sample that is not a "Dilute Specimen", and if that sample is not otherwise altered, compromised or substituted, then the replacement sample will be treated as the original sample for testing for purposes of this Appendix.

Contesting a Confirmed Positive Drug Test Result. A Petitioner may request a single retest within five (5) calendar days of receiving the Confirmed Positive Drug Test Result in order to confirm or overrule a Confirmed Positive Drug Test Result. The results of the retest shall be considered final. If the result is a negative test result, the Petitioner shall be deemed to satisfy the application requirement in Section 2-01.120(C)(7). Otherwise, the test result shall be deemed a Final Confirmed Positive Drug Test Result.

## **VIII. DISCLOSURE OF TEST RESULT.**

The results of a drug test submitted pursuant to the application requirements of Section 2-01.120(C)(7) shall be reported to the Petitioner that submitted the test, the Senate, the Office of Tribal Attorney, and the Election Officer.

## **IX. FINAL CONFIRMED POSITIVE DRUG TEST RESULT.**

A Final Confirmed Positive Drug Test Result shall not meet the application requirement of Section 2-01.120(C)(7) and shall disqualify the Petitioner as a candidate for Senate.