

SOUTHERN UTE INDIAN TRIBAL CODE

TITLE 11

ELECTION CODE

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TITLE 11

SOUTHERN UTE INDIAN TRIBAL CODE

ELECTION CODE

Article 1. GENERAL PROVISIONS

- 11-1-101. Applicability.** This Code shall govern all elections of the Southern Ute Indian Tribe.
- 11-1-102. Gender.** Words used in this Code in the masculine gender shall, whenever appropriate, be construed to read in the feminine gender.
- 11-1-103. Qualifications to Vote.** Any enrolled member of the Southern Ute Indian Tribe, who is 18 years of age or over, is duly registered to vote, and who meets the requirements specified in the Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, is entitled to vote at any tribal election.
- 11-1-104. Registration.**
- (1) Any enrolled tribal member wishing to register to vote shall apply to the Election Board on forms provided by the Election Board no less than 7 business days before the next tribal election. The Board shall review the registration application and determine whether the applicant is qualified to vote no less than 2 business days before the next tribal election.
 - (2) If the Election Board determines that the applicant is qualified to vote, the Election Board shall enter the applicant's name upon the registration records.
- 11-1-105. Types and Dates of Elections.**
- (1) Election dates and types of elections shall be as prescribed in the Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation. Election dates, as specified in the Constitution, shall be as follows unless different requirements are adopted through amendment of the Constitution:
 - (a) There shall be annual elections on the first Friday in November to fill the 2 Tribal Council vacancies occurring each year.
 - (b) Every third year there shall also be an election for Tribal Council Chairman.
 - (2) Candidates for Southern Ute Indian Tribal Council and Tribal Council Chairman shall be voted on at general or special elections.

11-1-106. Terms of Office. Terms of office shall be 3 years as prescribed in the Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation unless different requirements are adopted through amendment of the Constitution.

11-1-107. Qualifications for Tribal Office.

- (1) To be qualified as a candidate for tribal office, a tribal member shall meet all requirements specified in the Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation. These requirements, as specified in the Constitution, shall be as follows unless different requirements are adopted through amendment of the Constitution:
 - (a) At least 25 years of age at the time of election or appointment.
 - (b) Actual physical residence within the exterior boundaries of the Southern Ute Indian Reservation for at least 90 days immediately preceding the time of election or appointment.
 - (c) No felony conviction.
 - (d) No person shall hold the office of Tribal Council Chairman consecutively for more than 3 terms.
- (2) A tribal member shall be qualified as a candidate for the Southern Ute Indian Tribal Council even if employed by the Southern Ute Indian Tribe; however, a successful candidate must resign from such tribal employment after certification of the election results and expiration of the right to, or termination of, any challenge or appeal of those results and prior to being sworn-in to serve on the Southern Ute Indian Tribal Council.
- (3) A tribal member may not file simultaneously as a candidate for both the position of Southern Ute Indian Tribal Council Chairman and Tribal Council member.
- (4) No Southern Ute Indian Tribal Council member is eligible to file as a candidate for the office of Tribal Chairman unless that Council member first resigns from the Council.

Article 2. ELECTION BOARD

11-2-101. Membership.

- (1) The Southern Ute Indian Tribal Council shall appoint 5 registered tribal electors to serve on the Election Board, 3 as regular members and 2 as alternate

members. The Council may request and receive from the Election Board recommendations regarding these appointments.

- (2) The terms of the regular members shall be for 3 years; the terms shall be staggered, so that the term of one regular member shall expire each year, provided that a member's term shall continue until that member is reappointed or a replacement is appointed. The alternates shall also be appointed for 3-year terms to coincide with the term of the Board Chairman.
- (3) All Election Board vacancies due to resignation or expiration of terms shall be advertised in a newspaper of general circulation on the Reservation.
- (4) Each member of the Election Board shall make an oral affirmation or oath, which shall also be reduced to writing and signed before the Southern Ute Indian Tribal Council, affirming that he will uphold the Constitution of the Southern Ute Indian Tribe and carry out his duties in accordance with tribal law.
- (5) Only a regular member of the Election Board or an alternate member serving in an Election Board member's place may vote on Election Board matters.

11-2-102. Qualifications.

- (1) To be eligible for appointment and to serve on the Election Board, an individual must be an enrolled member of the Southern Ute Indian Tribe who is registered to vote and who resides within the exterior boundaries of the Southern Ute Indian Reservation.
- (2) No member of the Election Board shall be a member of the Southern Ute Indian Tribal Council or a candidate for tribal office.
- (3) No member of the Election Board shall have been convicted of a felony. No member of the Election Board shall have been convicted of a misdemeanor involving dishonesty or fraud within the 5 years immediately preceding appointment to the Election Board. Any member who is convicted of any felony or a misdemeanor involving dishonesty or fraud after appointment to the Election Board shall automatically forfeit such appointment.

11-2-103. Conflict of Interest and Appearance of Impropriety.

- (1) If a member of the immediate family of an Election Board member:
 - (a) is placed on the ballot as a candidate for tribal office pursuant to 11-3-102;

- (b) is the subject of a determination of qualifications pursuant to 11-3-102;
- (c) is the subject of a recall petition presented to the Election Board pursuant to 11-8-102;
- (d) is the subject of a recall election pursuant to 11-8-103;
- (e) requests a recount in a recall election or referendum pursuant to 11-6-102;
- (f) circulates a petition for recall pursuant to 11-8-101(3);
- (g) circulates a petition for a referendum pursuant to 11-9-101(3); or
- (h) files a complaint of irregularity pursuant to 11-11-101(1)

that Election Board member shall be ineligible to participate in any Election Board matter which is the source of a conflict defined in this provision. An alternate shall serve in the ineligible Election Board member's place for determination of such matter.

- (2) The term "Immediate Family" as used in this Code shall mean father, mother, brother, sister, son, daughter or spouse.

11-2-104. Removal and Vacancies.

- (1) Any member of the Election Board may be removed by the Tribal Chairman with the concurrence of the Southern Ute Indian Tribal Council for failure to perform the duties outlined in this Code, for failure to maintain eligibility, or for improper exercise of authority.
- (2) The Southern Ute Indian Tribal Council shall fill any vacancy in the Election Board as soon as practicable.

11-2-105. Officers. The Election Board shall choose its own chairman and vice chairman from within its membership.

11-2-106. Duties. The Election Board shall administer and supervise all tribal elections. Pursuant to this authority, Election Board duties include, but are not limited to, the following:

- (1) Determine eligibility for voting and candidacy.
- (2) Prepare and maintain a list of registered voters.
- (3) Verify all petitions for referenda and recall elections.

- (4) Select the polling place.
- (5) Determine the method of voting.
- (6) Publish notices of elections.
- (7) Educate tribal members on election laws, procedures and deadlines.
- (8) Maintain all tribal voting records, including but not limited to a poll book for use at tribal elections.
- (9) Certify election results to the Southern Ute Indian Tribal Council.
- (10) Conduct hearings on election complaints and render decisions thereon.
- (11) Perform such other duties necessary to the administration and supervision of elections.

11-2-107. Political Activities Prohibited.

- (1) No Election Board member shall actively or publicly participate in any tribal political activities while serving as a member of the Election Board or openly support or oppose any candidate or any matter which is the subject of a tribal election.
- (2) For the purposes of this section, the term “political activities” shall include, but not be limited to, signing any Statement of Intention and signing or circulating a recall or referendum petition.
- (3) Any Election Board member who violates the provisions of this section shall not be eligible to participate in any Election Board matter or proceeding relating to the tribal political activity, candidate, or matter which is the subject of that tribal election.

Article 3. FILING AS A CANDIDATE

11-3-101. Statements of Intention and Releases.

- (1) Any tribal member who desires to place his name on the ballot for election to tribal office shall file with the Election Board a written Statement of Intention on a form provided by the Election Board, stating the office to which he seeks election.
- (2) A Statement of Intention must be signed by no fewer than 15 registered tribal voters.

- (3) A Statement of Intention shall be filed with the Election Board not less than 60 days preceding the date of the general election in which the candidate seeks office or as set forth by the resolution of the Southern Ute Indian Tribal Council establishing the date for a special election.
- (4) To be eligible as a candidate for tribal office, the tribal member shall file with the Election Board, together with his Statement of Intention, a signed release of information form authorizing the Election Board to obtain the tribal member's state, federal and tribal criminal record.

11-3-102. Determination of Election Board.

- (1) If the tribal member filing a Statement of Intention is found by the Election Board to meet the qualifications for the tribal office sought, the Election Board shall place that person's name on the ballot.
- (2) Any decision of the Election Board regarding eligibility or ineligibility for tribal office shall be made, and written notice given to the affected party by personal service, first-class mail, or any other means reasonably calculated to give actual notice at least 45 days before the election. In cases of ineligibility, the written notice shall contain the specific reasons for the determination. Decisions regarding eligibility or ineligibility are final decisions for purposes of judicial review.
- (3) Any person found by the Election Board to be ineligible for tribal office may file a petition for judicial review in the Southern Ute Tribal Court within 5 working days of the Election Board's decision.
- (4) Judicial review of candidate eligibility decisions shall be conducted on an expedited basis. Such matters shall take precedence over other civil matters on the court's docket, so that the issue is decided within 7 days of the filing of the petition. Any decision of the Southern Ute Tribal Court shall constitute a final and binding determination of eligibility and shall not be appealable.

Article 4. ELECTION PROCEDURES

11-4-101. Selection of Polling Place. The Election Board shall select the polling place at least 30 days prior to the election.

11-4-102. Notice of Election.

- (1) The Election Board shall post notice of all tribal elections at the polling place and at 3 additional public places within the Southern Ute Indian Reservation at least 30 days before each election. The Election Board shall also publish notice

of the election, at least once a week, in a newspaper of general circulation on the reservation for the 30-day period immediately preceding the election, and shall arrange for announcements concerning the election on the radio, as public service announcement time is available.

- (2) The posted, published and announced notice of election shall include information regarding the polling place, a list of all candidates whose names are to appear on the ballot, and the positions they seek. In the case of a referendum, a recall or a constitutional amendment election, the notice of election shall also present the issue as it will be stated on the ballot.

11-4-103. Ballots.

- (1) The Election Board shall prepare an adequate supply of ballots plainly marked "SAMPLE BALLOT" and printed on paper of a color different from that of the official ballot.
- (2) The Election Board shall post sample ballots with the notices of election to acquaint voters with the ballot and with voting procedures.
- (3) Candidates for each office shall be listed on the ballot in the order in which they requested and received their Statement of Intention from the Election Board.
- (4) Ballots may be numbered in order to prevent voter fraud and provide accurate record keeping; however, ballot numbers shall be removed before each ballot is deposited in the ballot box.

11-4-104. Voting Procedures.

- (1) All voting shall be by secret ballot.
- (2) Voting by proxy shall not be allowed.
- (3) The polls shall be open between the hours of 7:00 A.M. and 7:00 P.M. Any person waiting in line to vote at 7:00 P.M. shall be permitted to vote. Any person presenting himself to vote after 7:00 P.M. shall not be permitted to vote.
- (4) The Election Board, including both alternate members, if not ineligible or unavailable because of illness or other personal emergency, shall be present at the designated polling place on election day in time to permit voting to begin at 7:00 AM and shall remain at the polling place until the polls close.
- (5) At least one member of the Southern Ute Indian Tribal Police Department shall be present at the polling place during voting hours to maintain order and for security purposes.

- (6) The tribal police at the Election Board's request shall transport the locked box containing absentee ballots to the polling place.
- (7) If paper ballots are used, the Election Board in the presence of a tribal police officer shall open and inspect the ballot box before the balloting begins to determine that the ballot box is empty. The tribal police officer shall certify, in writing, to the Southern Ute Indian Tribal Council that the ballot box was empty at the opening of the polls. The ballot box shall then be locked and remain locked until the counting of the ballots.
- (8) If a voting machine is used, the Election Board shall inspect the machine and provide the Southern Ute Indian Tribal Council with a written certification that no votes were recorded on the machine prior to the opening of the polls.
- (9) The Election Board shall place voting instructions in each voting booth and post a large sample ballot in each voting booth.

11-4-105. Voter Conduct at the Election.

- (1) Each voter, upon presenting himself to vote, shall announce to the Election Board his name. The Election Board shall determine whether the voter's name appears on the official voter registration list. If the voter's name so appears, the Election Board shall issue a ballot to the voter. If a voter's name does not appear on the official voter registration list, the Election Board shall determine whether that person is, in fact, duly registered to vote. Should the Election Board determine he is registered to vote, he shall be permitted to cast a ballot. If the Election Board determines that he is not registered to vote, he shall not be permitted to cast a ballot.
- (2) Each voter shall sign his name in the poll book in order to receive a ballot.
- (3) Any voter who signs his name in the poll book with an "X" shall have his mark witnessed by 2 members of the Election Board.
- (4) Upon receipt of a ballot, the voter shall retire to a private voting booth and mark his ballot in secrecy.
- (5) Only one voter may occupy a voting booth at one time except as provided elsewhere in this Code.
- (6) If paper ballots are used, the voter shall mark the ballot provided by the Election Board in ink in the appropriate place(s) on the ballot.
- (7) If a voter is unable to mark or read his ballot, the Election Board may provide the voter with assistance upon the voter's request. An Election Board member

or a member of the voter's immediate family, may provide such assistance. All persons, other than the person assisting the voter, shall be kept sufficiently distant so that they cannot hear how the voter is voting. The voter shall state to the person he has chosen to assist him how he wishes to vote. That person shall assist the voter in voting the ballot accordingly and shall not attempt to influence the voter's decision.

- (8) The Election Board shall furnish an interpreter to any voter who needs an interpreter. The interpreter shall not attempt to influence the voter's decision.
- (9) After marking his ballot, the voter shall fold the ballot so that his vote cannot be seen. He shall then hand the ballot to an Election Board member, who shall remove the ballot number, and the voter shall deposit the folded ballot in the ballot box.
- (10) If a voter spoils his ballot, he shall immediately return his ballot to the Election Board. The Board shall mark the ballot "spoiled" and place the spoiled ballot in a spoiled ballot envelope. The poll book shall also be marked to indicate that that ballot is void. The Election Board shall then issue a new ballot to the voter.

11-4-106. Prohibition Against Campaign Activity. There shall be no campaigning on election day within 100 feet of the polling place. Campaigning includes, but is not limited to, distributing candidate information buttons and bumper stickers; giving election speeches; and otherwise soliciting votes for a candidate. A candidate shall not appear at the polling place except to vote.

Article 5. ABSENTEE VOTING

11-5-101. Eligibility for Absentee Ballot. Any registered tribal voter who expects to be absent on the day of the election, or who, because of serious illness, physical disability, or advanced age is unable to vote in person at the polling place, is eligible to vote by absentee ballot.

11-5-102. Application for Absentee Ballot.

- (1) An absentee ballot must be requested by the voter himself on the application form provided by the Election Board by letter or by telephone call, stating the applicant's name and address, and the reason he will be unable to vote in person.
- (2) The application, letter or telephone call requesting an absentee ballot must be received by the Election Board no later than the close of business at least 7 business days before the election.

11-5-103. Absentee Ballot Return Envelope.

- (1) The return envelope for the absentee ballot shall have printed on its face the following form:

I, _____, state under penalty of perjury that I am a registered tribal voter; that I have not and will not cast any vote in this election except by the enclosed ballot; that (check one)

I did not receive assistance in making my ballot

I did receive assistance in marking my ballot from _____ (name of person giving assistance), who resides at

_____, because of (check one)

my physical disability

my inability to read or write

my difficulty with the English language;

Date

Signature of voter

- (2) The signing of the return envelope for the absentee ballot shall constitute an affirmation by the voter, under penalty of perjury, that the facts stated are true.

11-5-104. Absentee Voter Records.

- (1) The Election Board shall maintain a current record concerning absentee voting, including the following:

(a) The name and address of the absentee voter.

(b) The date the request was received by the Election Board and whether the request was in person, by letter or by telephone.

(c) The address to which it was requested the absentee ballot be mailed.

(d) The date the ballot was mailed or delivered to the voter.

(e) If the absentee ballot request is denied, the date and reason for such denial.

- (2) Upon receipt of an absentee ballot, the Election Board shall place the envelope containing the absentee ballot in a locked box provided for that purpose, and it shall remain in the custody of the Election Board. If the ballot is delivered in

person, the name and address of the person delivering it shall be noted in the absentee voting record.

- (3) If an absentee ballot is not returned or if it is rejected and not counted, such facts and the reason shall be noted on the record.

11-5-105. Election Board Absentee Ballot Procedures.

- (1) Upon timely receipt of an application, letter or telephone call requesting an absentee ballot, the Election Board shall determine whether the applicant is eligible to vote by absentee ballot. If found to be eligible, the Election Board shall deliver to the applicant personally in the Election Board's office or by certified mail, restricted delivery, to the address given in the ballot request, an official absentee ballot and a return envelope, together with absentee voting instructions.
- (2) The absentee ballot, the return envelope and voting instructions shall be delivered or mailed to the absentee voter within 72 hours after the receipt of the request, if the official ballots have been printed by that time, or, if not yet printed, within 72 hours after the printed ballots are received by the Election Board.
- (3) No campaign materials may be mailed with the absentee ballot.
- (4) Upon a request by a registered tribal voter stating a medical need, the Election Board may authorize an Election Board member or staff member to deliver the absentee ballot, acknowledge the ballot after it has been voted and sealed, and return the ballot to the office of the Election Board.
- (5) The Election Board may issue a replacement absentee ballot, if a voter applied for an absentee ballot but did not receive it or spoiled the absentee ballot, in conformity with the following procedures.
 - (a) A request by the voter shall be submitted to the Election Board giving the reason for requesting a replacement absentee ballot and shall state that the original absentee ballot was not received or was spoiled, the individual has not already voted by absentee ballot, and the individual will be unable to vote in person at the time of election according to the standards established in 11-5-101. If the reason for requesting a replacement absentee ballot is a spoiled ballot, the spoiled ballot must be returned to the Election Board at the time the request is submitted.
 - (b) The request for a replacement absentee ballot shall be entered in the absentee voter record.

- (c) The Election Board shall indicate opposite the voter's name on the absentee voter record that the original absentee ballot was not received or was spoiled.
- (d) If the original absentee ballot is returned to the Election Board, the original ballot shall be marked "spoiled" and shall not be counted.

11-5-106. Absentee Voting Procedures.

- (1) Assistance to absentee voters may be given by any person selected by the absentee voter. No person who assists an absentee voter shall seek to influence such voter to vote in a particular manner.
- (2) Any voter casting an absentee ballot shall sign the statement on the return envelope. The absentee voter shall, in the presence of the witness, fold the ballot and insert the ballot in the special envelope provided, so as to conceal the marking; deposit it in the return envelope; and seal the envelope securely. The envelope shall be delivered or mailed by the absentee voter to the Election Board.
- (3) All envelopes containing absentee ballots shall be in the hands of the Election Board not later than the hour of 7 P.M. on the day of the election. Absentee voters' envelopes received by the Election Board after 7 P.M. on the day of the election even if postmarked on or before the day of the election will remain sealed and uncounted.

11-5-107. Emergency Absentee Voting Procedures.

- (1) A voter may make a written request that the Election Board provide him an emergency absentee ballot if:
 - (a) He will be confined in a hospital or at his place of residence on election day because of events arising after the deadline for absentee ballot requests; or
 - (b) He must be absent from the reservation on election day and the reason for such absence arose after the deadline for absentee ballot requests.
- (2) The written request shall contain the following:
 - (a) The voter's name and address;
 - (b) The nature of the emergency causing confinement or absence from the reservation; and
 - (c) The voter's signature.

- (3) An emergency ballot may be requested any day after the day of the absentee ballot deadline but prior to the day of the election. The Election Board shall review emergency requests on a case-by-case basis. If the Election Board determines not to grant the request, the voter shall be promptly notified of the denial and the reason. If the Election Board determines that the request should be granted, the Election Board shall deliver the emergency absentee ballot at its office during regular business hours or, in the case of a medical emergency, at the place where the voter is confined.

Article 6. DETERMINATION OF ELECTION OUTCOME

11-6-101. Count of Ballots.

- (1) The Election Board shall count the votes as soon as the polls close. One member of the Election Board shall keep an official tally, while another member of the Election Board reads aloud the votes marked on each ballot. A third Election Board member shall keep a separate tally to verify the official count.
- (2) At least one member of the Southern Ute Indian Tribal Police Department shall be present at all times during the counting of the ballots. A police officer shall remove ballots from the ballot box and hand them to an Election Board member to be counted.
- (3) Votes for write-in candidates shall not be counted as valid.
- (4) Any improperly marked ballots shall be preserved and marked “spoiled.” Spoiled ballots shall not be counted as valid ballots.
- (5) After counting all other ballots, the Election Board shall count the absentee ballots as follows:
 - (a) If the statement on the envelope containing an absentee ballot is properly signed by the voter, a tribal police officer shall open the return envelope and, without destroying the statement, hand the ballot to an Election Board member.
 - (b) Another Election Board member shall remove the ballot number and deposit the folded ballot in the ballot box.
 - (c) Once all absentee ballots are in the ballot box, they shall be counted in the same manner as the regular ballots.

- (6) Upon completion of the ballot count, the Election Board shall immediately post a tally which shows a record of all votes cast in the election.
- (7) In a general election for Tribal Chairman, the candidate receiving a majority of the votes cast for that office shall be elected. If no candidate receives a majority, the Election Board shall certify to the Southern Ute Indian Tribal Council the need for a special election pursuant to Article 10.
- (8) To be elected as a member of the Southern Ute Indian Tribal Council in a general election, a candidate must receive a majority of the votes cast for that position. Where 2 or more positions are vacant, the total number of votes cast shall be divided by the number of vacant positions and a candidate who receives votes greater than one-half of the resulting number is elected. If there are more candidates who receive a majority of the votes cast than there are vacant positions, the candidates receiving the highest number of votes greater than a majority shall be elected. If no Southern Ute Indian Tribal Council candidate receives a majority of the votes cast for a Southern Ute Indian Tribal Council position, the Election Board shall certify to the Southern Ute Indian Tribal Council 2 candidates for each vacant Southern Ute Indian Tribal Council position who received the highest number of votes and the need for a special election pursuant to Article 10.
- (9) In the event there is a tie vote in an election to fill a Tribal Council position or the Tribal Council Chairman position; or in the event the official Election Board tally and the unofficial Election Board tally differ, the Election Board shall recount all the ballots. At the completion of the recount, if a tie vote is verified to exist, the Election Board will certify to the Southern Ute Indian Tribal Council the need for a special election, limited to the tied candidates, pursuant to Article 10.
- (10) Upon the completion of the count, all ballots will be locked in the ballot box and delivered to the Southern Ute Indian Police Department, which will hold the ballots for safekeeping until the protest period expires or until there is a final decision by the court regarding any protest filed.
- (11) After certification of the election results and expiration of the right to, or termination of, any challenge or appeal of those results, the Election Board shall destroy the ballots.

11-6-102. Request for Recount.

- (1) Any candidate may, within 24 hours of the certification of the results to the Southern Ute Indian Tribal Council, file with the Election Board a request for a recount of the ballots. In a recall election or referendum, any person having

voted in the election may request a recount within 24 hours after certification of the results to the Tribal Council.

- (2) No request for recount shall be considered unless it is made within the time provided for that purpose.
- (3) In a recall election or referendum, any person having voted in the election may request a recount.
- (4) The request for recount must be in writing, signed by the candidate or voter, and must be accompanied by a \$100 administrative fee. If the candidate or voter requesting the recount is successful as a result of the recount, the administrative fee shall be returned. If the candidate or voter requesting the recount is not successful, the \$100 administrative fee is forfeited to the Southern Ute Indian Tribe.
- (5) Upon receipt of the request for recount and payment of the administrative fee, the Election Board shall recount the votes in the challenged election and certify the results in accordance with this Code.
- (6) The Election Board may, in its sole discretion and on its own initiative, recount votes without a request for recount.

Article 7. CERTIFICATION OF ELECTION RESULTS

- 11-7-101. Action by Election Board.** The Election Board shall certify the election results to the Southern Ute Indian Tribal Council within 72 hours of the closing of the polls.
- 11-7-102. Action by Tribal Council.** The Southern Ute Indian Tribal Council shall review the certification of the Election Board at the first meeting of the Tribal Council following the election and shall take formal action accepting the Election Board's certification.
- 11-7-103. Right to Contest.** Acceptance of the results by the Southern Ute Indian Tribal Council does not affect the right of any tribal member who voted in the election to contest the election.

Article 8. RECALL ELECTIONS

11-8-101. Petition.

- (1) To seek to obtain the recall of a Southern Ute Indian Tribal Council member or the Chairman of the Southern Ute Indian Tribal Council, the percentage of registered tribal voters required by the Constitution of the Southern Ute Indian

Tribe must sign a petition for a recall election. The required percentage, as specified in the Constitution, shall be at least 30% of the registered voters of the Southern Ute Indian Tribe, unless a different percentage is adopted through amendment of the Constitution.

- (2) The recall petition may be in multiple parts, but each page of the petition shall name the one Southern Ute Indian Tribal Council member or the Tribal Council Chairman sought to be recalled and, if the petition states a reason for recall, the reason for recall. Each page of a recall petition which is in multiple parts shall be identical.
- (3) Each tribal member circulating a petition must sign a notarized statement at the end of the petition, stating that he personally circulated the petition and that the signatures on the petition are the signatures of the persons whose names they purport to be.
- (4) The recall petition shall be submitted to the Election Board.

11-8-102. Election Board Verification of the Recall Petition.

- (1) The Election Board shall verify that the petition for recall is signed by the required number of registered tribal voters.
- (2) Where examination creates doubt as to whether a signature on the petition is that of a registered voter, the Election Board shall then determine whether in fact the signature is that of the registered voter. In the event the name is determined not to be that of a registered voter, the name shall be deleted from the petition.
- (3) In the event that the Election Board's investigation indicates there has been fraud in the obtaining of any signature on the petition, it shall promptly report such matter to the Chief of Police of the Southern Ute Indian Tribe for further investigation.
- (4) The Election Board shall complete the verification process and certify the result to the Southern Ute Indian Tribal Council within 10 working days of the receipt of the petition. The Election Board shall then deliver the verified and certified petition to the Tribal Council within 24 hours after certification.

11-8-103. Recall Election.

- (1) Upon receipt of the verified and certified recall petition, the Southern Ute Indian Tribal Council shall set a date for the recall election pursuant to the Constitution of the Southern Ute Indian Tribe. This date, as specified in the Constitution, shall be within 30 days following receipt of a valid recall petition

by the Tribal Council unless a different date is adopted through amendment of the Constitution.

- (2) In conducting a recall election, the Election Board shall follow all voting, recount and certification procedures set forth in this Code for the conduct of general elections.
- (3) Unless the percentage of tribal voters required by the Constitution votes and unless a majority of those voters vote in favor of the recall of the Tribal Council member or Chairman, the recall fails. As specified in the Constitution, a majority of the registered voters of the Southern Ute Indian Tribe shall vote in a recall election for that election to be valid unless a different requirement is adopted through amendment of the Constitution.
- (4) If a member of the Southern Ute Indian Tribal Council or the Tribal Council Chairman is recalled, that position shall be considered vacant upon certification of the election results.

Article 9. REFERENDA

11-9-101. Petition.

- (1) To seek a referendum on a particular issue, the percentage of registered tribal voters required by the Constitution of the Southern Ute Indian Tribe must sign a petition for a referendum or the Southern Ute Indian Tribal Council must vote to authorize the referendum pursuant to the Constitution. As specified in the Constitution, at least 20% of the registered voters of the Southern Ute Indian Tribe shall sign the referendum petition unless a different percentage is adopted through amendment of the Constitution. Any resolution of the Southern Ute Indian Tribal Council authorizing a referendum shall, as specified in the Constitution, be supported by no less than 4 members of the Council, unless a different requirement is adopted through amendment of the Constitution.
- (2) The petition may be in multiple parts; however, each page of the petition shall clearly state the issue to be put to a vote.
- (3) Each tribal member circulating a petition for a referendum must sign a notarized statement at the end of the petition, stating that he personally circulated the petition and that the signatures on the petition are in fact the signatures of the persons whose names they purport to be.
- (4) The referendum petition shall be submitted to the Election Board or the Southern Ute Indian Tribal Council.

11-9-102. Election Board Verification of the Referendum Petition.

- (1) The Election Board shall verify that the petition for referendum is signed by the required number of registered tribal voters.
- (2) Where examination of a signature creates doubt as to whether a signature on the petition is that of a registered voter, then the Election Board shall determine whether in fact the signature is that of the registered voter. In the event the name is determined not to be that of a registered voter, the name shall be deleted from the petition.
- (3) In the event the Election Board's investigation indicates that there has been fraud in obtaining any signature on the petition, it shall promptly report such matter to the Chief of Police of the Southern Ute Indian Tribe for further investigation.
- (4) The Election Board shall complete the verification process and certify the results to the Southern Ute Indian Tribal Council within 10 working days of the receipt of the petition. The Election Board shall then deliver the verified and certified petition to the Tribal Council within 24 hours.

11-9-103. Referendum.

- (1) Upon receipt of the verified and certified referendum petition, the Southern Ute Indian Tribal Council shall set a date for the referendum pursuant to the Constitution. This date, as specified in the Constitution, shall be within 30 days following receipt of a valid referendum petition by the Tribal Council or adoption of a Tribal Council resolution authorizing the referendum unless a different date is adopted through amendment of the Constitution.
- (2) In conducting a referendum, the Election Board shall follow all voting, recount and certification procedures set forth in this Code for the conduct of a general election.
- (3) Unless the percentage of tribal voters required by the Constitution vote on the referendum and unless a majority of the voters support the referendum, the referendum fails. As specified in the Constitution, not less than 50% of the registered voters of the Southern Ute Indian Tribe shall vote in a referendum election for that election to be valid unless a different requirement is adopted through amendment of the Constitution.

Article 10. SPECIAL ELECTIONS

11-10-101. Rules Applicable. Special elections shall be held in accordance with this Election Code and the Tribal Constitution.

11-10-102. Run-off Election.

- (1) If at any general election a candidate does not receive a majority of the votes cast, a run-off election for that position shall be held within 45 days. Only the 2 candidates receiving the highest number of votes for each vacant position shall be candidates in the run-off election.
- (2) No Statement of Intention is required to be filed by a candidate in a run-off election.
- (3) The candidate for each office in the run-off election who receives the highest number of votes shall be deemed elected. In the case of a tie in any run-off election, a further run-off election among the tied candidates shall be held.
- (4) The Election Board shall publish notice and conduct the special election in the same manner as for a general election.

11-10-103. Special Election to Fill a Vacancy in the Position of a Southern Ute Indian Tribal Council Member or Tribal Chairman.

- (1) If a vacancy occurs in the position of a Southern Ute Indian Tribal Council member or the Tribal Council Chairman and the Constitution dictates that an election be held for the remainder of that term, Statements of Intention shall be filed by candidates in accordance with the filing dates set forth in the resolution of the Southern Ute Indian Tribal Council calling the special election. As specified in the Constitution, such election shall be held if the term of the vacant office has more than 6 months to run unless a different requirement is adopted through amendment of the Constitution.
- (2) The Election Board shall publish notice and conduct the special election in the same manner as for a general election except as provided in paragraph (1) above.
- (3) In a special election to fill a vacancy, the candidate receiving the highest number of votes shall be elected, regardless of whether the candidate has received a majority of the votes.
- (4) If there is a tie among the candidates receiving the highest number of votes, in a special election to fill a vacancy, a run-off election among only the tied candidates shall be held.

Article 11. ELECTION DISPUTES

11-11-101. Filing Complaint of Irregularity.

- (1) Any registered tribal voter who voted in an election may file a notarized statement with the Election Board, setting forth a complaint of irregularity in the conduct of that election. Any registered tribal voter who signed a petition for recall or for a referendum may file a notarized statement with the Election Board, setting forth a complaint of irregularity in the verification of the petition.
- (2) A complaint of irregularity concerning the conduct of the election shall be submitted to the Election Board office in writing within 3 working days after the certification of the election results to the Southern Ute Indian Tribal Council. A complaint of irregularity in the verification of a recall or referendum petition shall be submitted to the Election Board office within 3 working days after the certification or determination by the Election Board.

11-11-102. Complaints of Election Irregularity.

- (1) In any disputed election, the chairman of the Election Board, on his own volition, may order a recount of the ballots.
- (2) Within 3 working days of the filing of a complaint, the Election Board shall hold a hearing and take evidence concerning any timely and properly filed complaint of election or petition verification irregularity. A record shall be made of the proceedings.
- (3) At the hearing the complainant may be represented by an attorney or a person admitted to practice before the Southern Ute Indian Tribal Court and shall be given an opportunity to present evidence in support of his complaint.
- (4) The Election Board may request and consider such additional evidence as it deems necessary, provided the complainant is made aware of such additional evidence and is given an opportunity to address it.
- (5) Following the hearing held in response to a properly executed complaint, the Election Board shall issue written findings and an order:
 - (a) To dismiss the complaint as unfounded, or
 - (b) To acknowledge the merit of the complaint but to reaffirm the election in question on the grounds that the irregularity was not of sufficient importance to void the election, or

- (c) To acknowledge the merit of the complaint and to void the election in question.
 - (d) In a complaint concerning irregularity of a recall or referendum petition verification, to acknowledge the merit of the complaint but to reaffirm the determination or certification of the Election Board on the grounds that the irregularity was not of sufficient importance to void the certification, or
 - (e) To acknowledge the merit of the complaint and to order that a date be set for the election or that a scheduled election be cancelled.
- (6) The Election Board shall render a decision in writing within 3 working days of the hearing.
- (7) In the event that the Election Board voids a tribal election so provided under 11-11-102(5)(c) above, the Election Board shall certify to the Southern Ute Indian Tribal Council the need to call a special election to fill the positions affected by the voiding of the election in question.

Article 12. JUDICIAL REVIEW OF ELECTION BOARD ORDER ON COMPLAINT OF ELECTION IRREGULARITY

- 11-12-101. Jurisdiction.** The Southern Ute Indian Tribal Court shall have exclusive jurisdiction to review final decisions of the Election Board. Any decision of the Southern Ute Tribal Court concerning tribal elections shall constitute a final and binding determination and shall not be appealable.
- 11-12-102. Procedure.** Any registered tribal voter who filed a Complaint of Irregularity pursuant to 11-11-101 and who has been adversely affected by any final decision of the Election Board following a hearing on that complaint under this Code may commence an action for judicial review in the Tribal Court within 15 days of the date of the final decision of the Election Board.
- 11-12-103. Notice.** Upon filing the action, the person seeking judicial review shall notify each party to the proceeding by certified mail, return receipt requested. Thereafter, service of process, responsive pleadings and other matters of procedure shall be controlled by the Tribal Civil Procedure Code.
- 11-12-104. Standard and Scope.** Judicial review shall be conducted on an expedited basis. Such matters shall take precedence over other civil matters on the court's docket. Judicial review shall be limited to a review of the record made by the Election Board. The Southern Ute Tribal Court shall give deference to the administrative expertise of the Election Board. The court shall not set aside, modify or remand any

final decision or order made under this Code unless it finds that the decision was arbitrary or capricious, unsupported by substantial evidence or otherwise contrary to law.

- 11-12-105. Costs and Attorneys Fees.** The court may award costs and attorneys fees to the prevailing party in an action for judicial review; however, attorneys fees may be awarded against a voter only if the court determines and makes a finding that the claims raised by the voter had no objective, good faith basis in law or fact.
- 11-12-106. Waiver of Officer and Employee Immunity.** The sovereign immunity granted to officials and employees of the Southern Ute Indian Tribe, pursuant to 1-1-115 of the Southern Ute Indian Tribal Code, is waived to the extent that an official or employee acts outside the scope of his authority by taking an action which is expressly prohibited by the Election Code or refraining from taking an action which the official or employee has an express duty to perform under the Election Code.

Article 13. ELECTION OFFENSES

- 11-13-101. Offenses Defined.** The commission of any of the following is an election offenses which violates this Code:
- (1) A notary public or any officer authorized by this Code to administer oaths who knowingly makes a false certificate regarding any tribal election matter.
 - (2) Any person who falsely makes, alters, or forges any ballot before or after it has been cast, or who forges any name of a person as a signer or witness to a petition or statement of intention, or who forges the name of a registered voter to an absentee ballot.
 - (3) Any person who knowingly makes, publishes or circulates or causes to be made, published or circulated in writing any false statements calculated to affect the vote on any issue submitted to the voters at any election or relating to any candidate for election.
 - (4) Any person who intentionally interferes with the registration of voters, or who knowingly encourages another to do so.
 - (5) Any person who causes his own name, or the name of any other person, to be registered in the tribal voter registration records when such person is not, at the time of such registration, entitled to be registered or any person who causes any fictitious name to be registered in the tribal voter registration records.

- (6) Any person who offers or, with knowledge of the same, permits any person to offer for his benefit, any bribe or promise of gain to a voter to induce him to sign any petition or to vote in a specified manner or any person who accepts any bribe or promise of gain of any kind in the nature of a bribe as consideration for signing or voting the same.
- (7) Any person who, at any election, interferes in any manner with any election official in the discharge of his duty or who induces any election official to violate or refuse to comply with his duty.
- (8) Any person who falsely impersonates any voter and votes at any election under the name of such voter.
- (9) Any voter who votes more than once or, having voted once, offers to vote again or offers to deposit in the ballot box more than one ballot.
- (10) Except as provided in Article 4, any voter who shows his completed and marked ballot to any person in such a way as to reveal its contents, marks upon his ballot so that it can be identified as the one voted by him, or endeavors to induce any voter to show how he marked his ballot.
- (11) Any election official who reveals to any other person the name of any candidate for whom a voter has voted or communicates to another his opinion, belief, or impression as to how or for whom a voter has voted. (See also, section 19-2-110, Code of Ethics).

11-13-102. Penalties. Any person who is convicted of an offense under 11-13-101 shall be subject to punishment not to exceed that authorized by the Indian Civil Rights Act.

Article 14. ACCESS TO ELECTION BOARD RECORDS

11-14-101. Inspection of Records. Election Board records, except those designated as confidential by this section, shall be open to inspection by enrolled members of the Southern Ute Indian Tribe during normal office hours in the presence of an Election Board member.

11-14-102. Confidential Records. The following documents are confidential and shall not be open to inspection:

- (1) Any document which contains the address, telephone number, tribal census number, or Social Security number of a voter.
- (2) Any document which contains any other personal identifying information concerning a voter, such as the reasons for requesting an absentee ballot.

- (3) The provisions of this section shall not apply to a voter who has filed a complaint of irregularity, who shall be allowed access to such records as are reasonably necessary for the voter to pursue his complaint. Access under this exception shall be confined to documents relevant to the complaint of irregularity.
- (4) The provisions of this section shall not limit access to records concerning or filed by any person who is a candidate for elective office.

TITLE 11

ELECTION CODE

History and Amendments¹

Tribal Code adopted by Tribal Resolution No. 80-120, approved by the Bureau of Indian Affairs and effective on February 20, 1981.

Title 11 revised and amended by Tribal Resolution No. 92-120 on August 5, 1992.

Title 11 revised and amended by Resolution No. 2002-121 on July 23, 2002.

Resolution No. 2021-151 repealed and replaced the Election Code with a reformatted Election Code for online publication. The 2021-151 reformatted version contained only minor technical corrections, no substantive revisions.

Resolution No. 2023-079 authorized on-line publication of the 2021-151 reformatted Election Code and provided an effective date of May 25, 2023.

¹ This page does not constitute an official part of any code. Information contained on this page is solely for informational and historical purposes and is from sources deemed reliable.