

**LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS
ELECTION ORDINANCE
Special Circumstances Provision**

SC Section 1 General Provisions and Definitions.

SC1.1 Statement of Purpose. The purpose of the Lac Vieux Desert Band of Lake Superior Chippewa Indians Election Ordinance (“Ordinance”) Special Circumstances Provision (“Provision”) is to facilitate full participation by the Lac Vieux Desert Band of Lake Superior Chippewa Indians (“Tribe”) Tribal community in the electoral process regardless of Special Circumstances that may arise and could impede or interfere with election notice, candidate petitions or evaluations, absentee voting, polling locations, or in any other way disrupt the election process. This provision enacts standards and procedures necessary to conduct fair, legal, and impartial elections under Special Circumstances that are consistent with the requirements the Constitution of the Lac Vieux Desert Band of Lake Superior Chippewa Indians under Special Circumstances. This Provision shall be liberally interpreted and construed to fulfill the purposes expressly stated herein.

SC1.2 Authority. This Provision has been promulgated pursuant to the duties and powers of the Tribal Council (“Tribal Council”), under Article IV, Section 1(a) of the Constitution, “[t]o promote the health, safety, education, and general welfare of the Band and its members”, and Article IV, Section 1(b) of the Tribal Constitution, “[t]o promulgate ordinance, and adopt resolutions not inconsistent with [the Constitution], and to enforce the same.”

SC1.3 Scope. This Provision shall govern the conduct of all elections prescribed by Article VII of the Constitution that must be conducted under Special Circumstances. This section aligns with the requirements of the Constitution, specifically Art. VII § 3(b)-(c)¹ and § 5(f)-(i).² To the greatest extent possible, this Provision is to be construed to be compatible with and to supplement the Ordinance. In the event of direct conflict between the specific terms of this Provision and the terms of the Ordinance, however, the terms of this Provision supersede the Ordinance and shall control.

SC 1.4 Definitions. Unless otherwise modified within this Provision, the defined terms in the Ordinance have the same meaning in this Provision. In addition, the following terms are defined as follows:

¹ Art. VII § 3(b) Voting in tribal elections shall be by secret ballot cast at polls established by the Election Board; (c) Absentee voting shall be permitted in accordance with such rules and procedures as shall be established by the Election Board.

² Art VII § 5(f) The Election Board may be authorized in accordance with election ordinances adopted by the Tribal Council to issue such rules and procedures as may be necessary to carry out the election of officers pursuant to this Constitution and the directives of the Tribal Council regarding tribal election business; (g) Any candidate for tribal office may choose a representative to be present when the election ballots are counted by the Election Board; (h) A Band member shall have five (5) business days from the date of the election to file an election challenge with the Election Board; (i) The Election Board shall render its conclusions regarding election disputes within ten (10) days of the date of any election challenge.

- a. “Cast” means an Absentee Ballot or Ballot marked by an Eligible Voter and delivered to the Election Board in a manner authorized by the Election Board, the Ordinance, or this Provision.
- b. Polling Site: A location within the Tribe’s reservation designated by the Election Board where Eligible Voters cast Ballots in an election. When Special Circumstance exist, and when voter safety is a concern, a Polling Site shall be a dropbox designated by the Election Board for the physical delivery of absentee ballots.

SC1.7 Special Circumstances.

- a. Defined: An unexpected and disruptive event that cannot be anticipated or controlled and prevents or makes impossible the normal election cycle such as an act of God, *force majeure*, *vis major*, inevitable accident, unavoidable casualty, or other a natural and unavoidable catastrophe that interrupts the expected course of events. Special Circumstances include, but are not limited to: pandemic, famine, war, terrorism, riot or civil unrest, fire, flood, hurricane, typhoon, earthquake, lightning, explosion, prolonged shortage of energy supplies, extreme cold and/or snow, and acts of state or governmental actors.
- b. The Tribal Council shall declare when Special Circumstances exist. Should the Special Circumstances prevent the Tribal Council from declaring when Special Circumstances exist, the Election Board may declare that Special Circumstances exist by unanimous vote.
- c. Upon a declaration of a Special Circumstance, the Election Board notify Eligible Voters and, if any, Candidates of the application of this Provision to the upcoming election by any and all means allowed in SC5.1 and most likely to reach the greatest number of Eligible Voters and Candidates.

SC Section 2 Election Board

SC2.1 Upon a declaration of Special Circumstances is made pursuant to SC 1.4, the Election Board may hire vendors, consultants, advisors, or other service providers, or designate official designees, to aid or carry out any of the Election Board’s duties and responsibilities under the Ordinance and this Provision. The Election Board’s communications with any entity and designee retained to assist the Election Board shall be deemed confidential and all records, documents, drafts, materials, communications, and other work product or calculations shall be privileged from disclosure. The Election Board may redact confidential information before submitting any invoices to the Tribal Council.

SC Section 5 Notice of Election; Other Notice.

SC5.1 When a declaration of Special Circumstances is made pursuant to SC 1.4, and unless otherwise set forth in this Provision for all instances where the Election Board is required to provide notice under the Constitution, Ordinance, or this Provision, when notice is required, the Election Board shall notify all Eligible Voters via U.S. Mail at the address supplied pursuant to Ordinance 4.1, and any other alternate means reasonably likely to convey the required information to Eligible Voters, including electronic mail, social media, publication, in person, or via telephone or other communication device.

- a. Each notice, if applicable, shall include the date, time, voting method, the Polling Site location for the election, the offices or issues to appear on the Ballot, the Election Event Timetable, and an explanation of the Special Circumstances that require use of the procedures in this Provision. Notices may also include any other information necessary to inform Eligible Voters about the election.
- b. When practicable under the Special Circumstances, the Election Board shall designate the election Polling Site provided that it is located on the Reservation. If a location on the Reservation is not available because of the Special Circumstances, or the use of a physical polling location poses a risk to voters or to the operation of the Election, the Election Board may designate a polling location or select another voting method that is reasonably calculated to allow the greatest number of Eligible Voters to safely participate in the Election.
- c. The notice shall include information outlining the procedures for Absentee voting, specifically including, but not limited to, the procedure to receive an Absentee Ballot.

SC5.2 As soon as practicable after a declaration of Special Circumstances is made pursuant to Sec. 1.4 of this Provision, , the Election Board shall post notice at the Tribal Administrative Offices, Election Board Office, on the Tribe's and Election Board's websites, on any Tribal social media, by publication, by mail or electronic mail to all Eligible Voters, and any other Tribal Council approved method of communication, electronic or otherwise.

SC Section 12 Compilation and Publication of Final Ballot.

SC12.4 Absentee Ballot and Ballot Criteria. All Ballots shall meet the following criteria:

- a. All Absentee Ballots and Ballots shall not to identify the voter (i.e. no names, no identifying number corresponding to any voter, etc.). However, materials used to transmit, mail, or otherwise deliver any Ballot to any Eligible Voter may contain identifying information necessary to ensure each Eligible Voter only receives one Ballot and for Ballot counting and auditing purposes.
- b. When Special Circumstances exist, Absentee Ballots and Ballots shall be prepared in a format necessary to ensure that the Absentee Ballots and Ballots are

readable, understandable, may be marked to indicate a vote, and may be Cast in such a way as the Eligible Voter's votes are not revealed.

- c. When Special Circumstances exist, Absentee Ballots and Ballots do not need to be produced in any particular format, shape, color, font size, etc., or, on any particular medium, e.g., printed, electronic, so long as an Eligible Voter may read, understand, mark, and cast the Absentee Ballot or Ballot.
- d. All Ballots shall be marked either "Ballot" or "Absentee Ballot" accordingly. However, when Special Circumstances exist, the Election Board may determine that only Absentee Ballots will be used and may be Cast as described in this Provision.
- e. All Ballots shall include the date of the election for which it is valid.
- f. All Ballots shall include instructions stating the number of candidates for each office for which a voter may lawfully vote.

SC12.5 When Special Circumstances exist, the order in which names appear on the Absentee Ballots and Ballot shall be determined by any method ensured to randomize the names. When possible, the Election Board Chair shall determine the order at an open meeting. If an open meeting is not possible, and there is no other means to broadcast, livestream, or otherwise allow the meeting to be observed, the method used to determine the order of the names shall be detailed by notice.

SC12.6 After preparation and until issued, Ballots and Absentee Ballots shall be locked or otherwise secure from access by any person other than an Election Board Member or an Election Board designee.

SC12.7 Any Candidate may voluntarily terminate her candidacy before the Election Day. Upon receiving a timely written request to terminate from the Candidate, to the greatest extent possible, the Election Board shall remove or strike out the Candidate's name from the Absentee Ballots and Ballots.

SC12.8 In the event any Candidate appearing on the Absentee Ballot or Ballot dies or withdraws his or her name from consideration for office, or is otherwise is determined ineligible before the Election Day, and their name cannot be removed from the Absentee Ballot or Ballot, the Election Board shall notify the Eligible Voters in a manner allowed by SC5.1. Unless otherwise provided by Tribal law, votes cast for a Candidate that has been removed from the Absentee Ballot or Ballot shall be considered a Spoiled Choice as provided in Section 20.3(a).

SC Section 15 Special Circumstances Absentee Voting

SC15.1 When Special Circumstances exist, all Eligible Voters wishing to cast votes in the election shall be required to vote exclusively by Absentee Ballot in the manner and under

the terms described in [this Provision][the Ordinance pertaining to Special Circumstances].

SC15.2 Absentee Ballot Distribution. When Special Circumstances exist, the Election Board shall deliver absentee ballots to every voter on the Eligible Voter List.

- a. Absentee Ballots shall be distributed far enough in advance of an Election Day to allow a reasonable period of time for Absentee Ballots to be completed and returned.
- b. It is the responsibility of the eligible Absentee Voter to ensure that Absentee Ballots are Cast via mail or other described method by the deadline set forth in this Ordinance.

SC Section 16 Special Circumstances Absentee Voting Procedure.

SC16.2 The Election Board shall maintain an official list of Eligible Voters who have been provided Absentee Ballots packets.

SC16.3 Absentee Ballots. The Election Board shall transmit Absentee Ballots along with instructions and items necessary to allow each Eligible Voter to return the marked Absentee Ballot in a manner that keeps the voter choices confidential. Absentee Ballot transmissions may include:

- a. Envelopes or postal packaging to return an Absentee Ballot;
- d. Instructions for completing and returning the Absentee Ballot that may include:
 - i. A statement that falsification of any Absentee Ballot constitutes a Voting Violation under this Ordinance.
 - ii. The timeframe to submit the Absentee Ballot.
 - iii. The office and issues on the Ballot.
 - iv. The number of votes the voter may make on the Ballot.
 - vi. A explanation of how to Cast the Absentee Ballot. by the predetermined deadline.
- e. An absentee certification statement as follows:

I hereby certify that I am a Member of the Lac Vieux Desert Band of Lake Superior Chippewa Indians; that I will be eighteen (18) years of age or older at the election date and am entitled to vote in the

election to be held on [date of election] and that I will not be voting in person at the Polling Site. I further certify that I marked the enclosed ballot so that no other person could see my vote.

SC16.4 Replacement Absentee Ballots Prior to Election Day. Before the submission deadline, if an Absentee Voter demonstrates that an Absentee Ballot has been lost, spoiled, or mutilated, the Election Board shall issue another Absentee Ballot. To obtain a replacement Absentee Ballot, the Absentee Voter shall be required to sign an affidavit indicating that he or she has lost the previously issued Absentee Ballot.

SC16.5 Casting Absentee Ballots; Processing of Absentee Ballots.

- a. If, despite the existence of Special Circumstances, the Election Board is able to receive Absentee Ballots at its physical location, then before any Absentee Ballots are issued, the Election Board shall ensure the Absentee Ballot Box is empty, then lock the Absentee Ballot Box and secure the Absentee Ballot Box at the Tribal Police Department.
- b. If the Special Circumstances render it impossible, in the Election Board's judgment, to comply with the process set forth in Section 16.5(a), a post office box or other secure method, including a vendor or other designee, may be used to hold returned Absentee Ballots.
- c. Absentee Ballots may be Cast as follows:
 - i. Voters may deliver an Absentee Ballot to the Election Board before Election Day by mail or by any other manner described or permitted by the Election Board in light of the Special Circumstances. Upon receipt of an Absentee Ballot from any voter before Election Day, the Election Board shall immediately secure the such Absentee Ballot until the polls have closed and the time for the counting of Absentee Ballots occurs.
 - ii. Voters may deposit Absentee Ballots in the Election Day Ballot Box at the Polling Site on Election Day, as described in this Provision.
- b. The Election Board shall explain in detail all security measures taken to ensure the Absentee Ballots are not compromised. The explanation shall be posted in the same manner as notices are posted.
- c. The Absentee Ballots shall be processed and counted as follows:
 - i. Each Absentee Ballot must be certified in accordance with Section 16.3(e) and that certification must be confirmed against the Eligible Voter List.
 - iv. Any uncertified or non-compliant Absentee Ballot, or Absentee Ballot not properly Cast shall be labeled "VOID" or otherwise voided and shall be considered a Spoiled Ballot.

- vi. All certifications, Absentee Ballots, and Spoiled Ballots shall be preserved and tallied as described in this Provision.
- d. Procedure for Untimely Absentee Ballots. If an Absentee Ballot is received after the deadline, the date and time it is received shall be recorded and the Absentee Ballot shall be voided and treated as a Spoiled Ballot. Untimely Absentee Ballots shall be preserved according to this Provision.

SC16.6 Absentee Ballot Record. When an Election is conducted during Special Circumstances, the Election Board shall keep record of all Absentee Ballots issued for that Election and retain all Absentee Ballots returned according to the Tribe's record retention policy.

SC Section 17 Primary Election Procedure.

SC17.1 When Special Circumstances exist, any Primary Election may be held on any day so long as: (i) there is a reasonable time for Eligible Voters to receive notice of the Primary Election, (ii) there is adequate time for Candidate Petitions to be received and processed, (iii) there is adequate time for Eligible Voters to receive Absentee Ballots for the primary, (iv) there is adequate time to process the results, (v) there is adequate time for any challenges to the Primary Election, (vi) there is adequate time to notify Eligible Voters of the candidates for the subsequent General Election, and (vii) there is adequate time to prepare and, if necessary, distribute Absentee Ballots and Ballots for the General Election.

SC Section 18 Polling Site Procedure.

SC18.1 Election Board Member Onsite. When there is a polling location, at least two (2) Election Board members, or one (1) Election Board member and one (1) Election Board Designee, shall be present at the Polling Site on Election Day at all times.

SC18.2 If an Election Board Member or designee must leave the Polling Site, he or she is prohibited from discussing any election matters with anyone.

SC18.3 When Special Circumstances exist, the Election Board shall notify the Eligible Voters of the times the Polls shall open and close by any manner that the Election Board determines appropriate to provide such notice.

SC18.6 When possible, and only if Tribal Police resources are available, the Tribal Police will be present to maintain peace while votes are being cast at the Polling Site.

SC18.9 The Election Board is to close and lock the Polling Site at the noticed closing time. Those Eligible Voters who are in line at closing time will be permitted to Cast their Absentee Ballots or Ballots. The Polling Site will be deemed closed when the last Absentee Ballot and Ballot is Cast.

SC18.10 The Election Board must ensure the Polling Site is prepared before Absentee Ballots or Ballots may be cast.

SC18.11 When possible under the Special Circumstance, the Election Board shall clearly post any rules or procedures at the Polling Site on the Election Day.

SC Section 19 Voter List; Voting on Election Day.

19.1 When Special Circumstances exist, Ordinance Sections 19.2 to 19.4 shall not apply, and in order to be counted as a valid vote each Absentee Ballots shall be returned to the Election Board by Election Day or Cast in the Election Ballot Box on Election Day. Untimely Absentee Ballots shall be deemed spoiled.

SC Section 20 Ballot Count.

SC20.1 Upon closing the Polling Site the Election Board shall immediately secure the Election Day Ballot Box until the votes can be counted.

SC20.2 The votes shall be counted as soon as practicable. The Vote Count shall be physically conducted by at least one Election Board Member and in view of at least one other person who may be (a) another Election Board Member; (b) a member of the Tribal Police; and/or (c) an Election Board designee. When Special Circumstances require, the vote count may be observed in real time remotely by broadcast or other means that allows for real time observation. If the Election Board has retained a vendor or entity to assist with the Election, that entity may make a preliminary Vote Count, to be confirmed as described in this section.

SC20.3 Ordinance Sections 20.3 and 20.4 do not apply when Special Circumstances are present.

SC20.5 Candidate Representatives. Each Candidate may choose one (1) representative to observe the vote count. (Ref. Const. Art. VII § 5(g)). When Special Circumstances require, the Election Board shall enable the Candidate Representatives to observe the vote count in real time by broadcast or other means that allows for real time observation.

- a. Each Candidate Representative must abide by the Candidate Representative Rules of Conduct prescribed by the Election Board.
- b. A violation of the Candidate Representative Rules will result in the Candidate Representative being expelled from the Polling Site during the vote count and may result in criminal penalties.
- c. A Candidate must notify the Election Board at least five (5) days before Election Day that a representative will observe the Vote Count.

SC20.6 Counting Ballots. Unless otherwise provided for by electronic balloting, each Election Board member shall be responsible to ensure that the Vote Count is accurate and to confirm that the vote count is accurate. Each Election Board Member shall be responsible to confirm that all Absentee Ballots, Ballots, Spoiled Ballots, and Absentee Ballots not received accounted for. When Special Circumstances exist and prohibit all Election Board Members to participate in the vote count, Election Board Members may perform separate vote counts according to SC20.2. All Absentee Ballots and Ballots cast according to this Provision shall be kept by the Election Board in a secure location for a duration according to the Tribe's record retention policy.

SC20.7 The number of executed Absentee Ballots and Ballots per elected position shall not exceed the number of voters who have received Absentee Ballots or Ballots.

- a. If the number of Cast Absentee Ballots and Ballots exceeds the number of Eligible Voters or the number of Absentee Ballots and Ballots distributed, the Election Board shall recount the Absentee Ballots and Ballots as described in this Provision.
- b. If the recount still reflects that the number of Cast Absentee Ballots and Ballots exceeds the number of Eligible Voters or the number of Absentee Ballots and Ballots distributed, the Election Board must conduct a new Election.

SC20.8 Completion of the Vote Count. The vote count is complete when all Election Board Members confirm the accuracy of the Vote Count, as counted according to this Provision.

SC20.9 Posting of Vote Count. When Special Circumstances Exist, as soon as practicable following the completion of the vote count, the Election Board shall post notice of the Uncertified Election Results in a manner that has the greatest likelihood of informing the Candidates and the Tribal Membership.

SC Section 23 Tie Vote; General and Primary.

23.3 Run-Off Election Procedure. When Special Circumstances exist, the Election Board shall schedule any Run-Off Election as soon as practicable and to be conducted as described in this Provision, SC Sections 5, 12, 15-20.

Section 35 Miscellaneous

SC35.1 Hearings. When Special Circumstances exist, the Election Board may conduct any hearings remotely and by telephone, live stream, or other broadcast method.

Lac Vieux Desert Band Of Lake Superior Chippewa Tribal Government

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Executive Officers:

James Williams Jr., Tribal Chairman
Henry Smith, Tribal Vice-Chairman
Andrea Russell, Tribal Treasurer
Alice Brunk, Tribal Secretary



Council Members:

Tina Caron
Roberta Ivey
Jeffery McGeshick
Mitchell McGeshick
June Saad

RESOLUTION NO. T2020-059

ADOPTING SPECIAL CIRCUMSTANCE AMENDMENTS TO THE ELECTION ORDINANCE

- WHEREAS,** The Lac Vieux Desert Band of Lake Superior Chippewa Indians (“Tribe”), is a federally recognized Indian tribe pursuant Pub. L. 100-420 (Sept. 8, 1988) with a Constitution approved and adopted pursuant to the Indian Reorganization Act of June 18, 1934, 48 Stat. 984, 25 U.S.C. §476; and
- WHEREAS,** The Lac Vieux Desert Tribal Council is the governing body of the Band pursuant to the Tribal Constitution of the Lac Vieux Desert Band of Lake Superior Chippewa Indians; and
- WHEREAS,** The Council acknowledges and affirms that the Constitution is the supreme law of the tribe subordinate to no other ordinance, resolution, regulations, rule or other enactment of the Council, boards or organizations, or other branches of government of the Tribe; and
- WHEREAS,** The Council is empowered, pursuant to Article IV, Section 1(m), of the Constitution “[t]o take action, not inconsistent with [the] Constitution, which shall be necessary and proper to carry out the sovereign powers of the [Tribe];” and,
- WHEREAS,** Pursuant to the Article IV, Section 1(a) of the Constitution, the Council is authorized to promulgate ordinances, and adopt resolutions not inconsistent with [the] Constitution, and to enforce the same; and
- WHEREAS,** The Election Board proposed for review and adoption of the Tribal Council certain amendments to the current Election Ordinance to modify election procedures when special circumstances exist; and
- WHEREAS,** The Tribal Council recognized that the current Election Ordinance does not address the conduct of an election during the time of an unexpected and disruptive event such as a public health emergency or natural disaster; and

- WHEREAS,** Pursuant to Tribal Council Resolution T2020-050 the Tribal Council directed that the Tribe post the proposed amendments to the Election Ordinance for public review and comment for a period of twenty-one (21) days beginning May 6, 2020, pursuant to Section 4.1 of the Legislative Procedures Code; and
- WHEREAS,** The Council recognized that due to the COVID-19 pandemic the altered business hours and limited access to the Tribal Administration building, to by-appointment only, made it difficult for tribal members to review the proposed changes and to submit comments; and
- WHEREAS,** The Council determined that it was in the best interest of the members and the Tribe to direct the Election Board to provide each voting member with a copy of the proposed Ordinance amendments by mail; and
- WHEREAS,** The Council having considered any and all public comments as prescribed by the posting and finding that it is in the best interest of the Tribe to adopt the proposed Special Circumstance amendments to the Election Ordinance attached hereto.

THEREFORE BE IT RESOLVED,

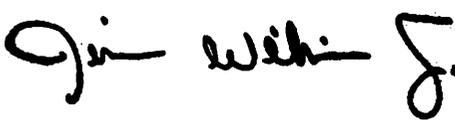
that the Council hereby adopts the proposed Special Circumstance provisions to the Election until otherwise amended.

CERTIFICATION

I, the undersigned, as Chairman of the Lac Vieux Desert Band of Lake Superior Chippewa Indians, a tribal government operating under a Constitution adopted pursuant to Section 16 of the Indian Reorganization Act 25 U.S.C. 476 and, more specifically, 25 U.S.C. 1300(h), do hereby certify that the Tribal Council of the Band is composed of nine (9) members, of whom (), constituting a quorum, were present at a meeting duly called, noticed, convened and held on the 9th day of June, 2020 and that the foregoing resolution was duly adopted at said meeting by an affirmative vote of (8) members, (0) against, and (0) abstaining, and that the said resolution has not been rescinded or amended in any way.



Alice Brunk – Tribal Secretary



James Williams, Jr. – Tribal Chairman