

ARTICLE XIII. RECALL, REMOVAL, AND VACANCIES

A. Recall

1. The Chairperson, Vice-Chairperson or Tribal Council Members may be subject to recall at any time under the following procedure:

a. A recall petition signed by a number of registered voters equaling twenty percent (20%) of the registered voters who voted in the last general election is presented to the Election Board. All petitions must be on forms that are approved by the Election Board.

b. Within ten (10) business days of receipt of the petition, the Election Board shall either certify the validity of the petition and signatures or return it to the member who submitted it with a written explanation of the defect.

c. A recall election shall be scheduled by the Election Board within ninety (90) days upon verification of the petition and its signatures.

d. The elected official shall be recalled upon a majority vote if at least thirty percent (30%) of the registered voters vote in the recall election.

e. To provide for continuity of governance no more than four (4) Tribal Council members shall be subject to a recall election at any one time.

2. Each elected official may be subject to no more than one (1) recall election per calendar year.

B. Removal of a Tribal Court Judge

1. A Tribal Judge or Justice may only be removed by the Tribal Judiciary itself. The Tribal Judiciary may remove any Judge or Justice by an affirmative vote of a majority of a panel consisting of all other members of the Judiciary, consisting of both the Appellate and Tribal Court Judges, only for one or more of the following reasons:

a. Unethical conduct, as defined by the Little Traverse Bay Bands of Odawa

Indians Code of Conduct adopted by the Tribal Council or by the Tribal Court;

- b.** Physical or mental disability which prevents the performance of judicial duties;
- c.** Persistent failure to perform duties in a timely manner;
- d.** Gross misconduct that is clearly prejudicial to the administration of justice;
- e.** Ineligibility, under Article IX, to serve as a member of the Tribal Judiciary; or
- f.** Conviction of a felony while serving as Judge or Justice by any court of competent jurisdiction.

2. Procedures for Removal. The Tribal Judiciary shall develop rules and procedures for removal of judges. These procedures shall at a minimum include the following:

- a.** If a Judge or Justice believes that grounds exist for removal of another Judge or Justice, they shall state the charges in writing, and distribute copies of the written charges to all members of the Tribal Judiciary, including the accused. As soon as practicable, but no more than sixty (60) days after receipt of the written charges, the Judiciary shall hold a hearing with all members present at which the accused shall have the opportunity to call and cross examine witnesses. The member shall have the right to subpoena witnesses and be represented by an attorney.
- b.** If a Little Traverse Bay Bands of Odawa Indians member believes that grounds exist for removal of a Judge or Justice, they shall state the charges in writing to the Court Administrator who shall distribute copies to each member of the Tribal Judiciary. After reviewing the written charges, the Tribal Judiciary shall by majority vote decide whether sufficient grounds exist to hold a removal hearing as described in this Article. This hearing shall be held as soon as practicable, but shall not be held more than sixty (60) days following the receipt of written charges.

C. Removal of Prosecutor

A prosecutor or assistant prosecutor may only be removed by a vote of six (6) of the nine (9) members of the Tribal Council, only for one or more of the following reasons:

- a.** Unethical conduct, as defined by the Little Traverse Bay Bands of Odawa Indians' Code of Conduct adopted by the Tribal Council or by the Tribal Court;
- b.** Physical or mental disability which prevents the performance of prosecutorial duties;
- c.** Persistent failure to perform duties in a timely manner;
- d.** Gross misconduct that is clearly prejudicial to the administration of justice;
- e.** Ineligibility under Article X, to serve as a Tribal Prosecutor, including the revocation of his/her license to practice law;
- f.** Conviction of a felony while serving as Prosecutor by any court of competent jurisdiction.

D. Removal of Members of the Election Board

Upon presentation of a petition signed by at least one hundred (100) members alleging neglect of duties or intentional wrongdoing, and a hearing where the accused is afforded proper due process, the Judiciary may remove Election Board members for good cause.

E. Other Elected or Appointed Officials

Any future elected or appointed officials not listed in this Constitution shall be subject to removal for neglect of duties or intentional wrongdoing in accordance with a Tribal Statute passed for that purpose.

F. Vacancies in the Tribal Council

When a vacancy occurs in the Tribal Council, the Tribal Council shall appoint a Tribal member who meets all of the qualifications in Article VII (H) to fill the balance of the unexpired term.

G. Vacancies in the Executive

1. If the Chairperson's seat is vacant, the Vice-chairperson shall assume the position of Chairperson. When there is a vacancy in the Vice-chairperson position, the Chairperson will appoint a new Vice-chairperson subject to ratification by a majority vote of the full Tribal Council.

2. In the event of a simultaneous vacancy in both the Chairperson and Vice-chairperson seats, the Legislative Leader shall serve as Chairperson until a special election can be conducted to fill the remaining terms. While acting as Chairperson, the Legislative Leader will not be considered a Tribal Council member. After a Chairperson is elected and sworn in, the Legislative Leader will resume his/her position as a Tribal Council member for the remainder of his/her term.

H. Vacancies in the Judiciary

Any vacancy in the Tribal Judiciary shall be filled by appointment by the Tribal Council for the balance of the unexpired term.

I. Vacancies in the Election Board

Any vacancy in the Election Board shall be filled by appointment by the Tribal Council for the balance of the unexpired term.

J. Terms for Replacements

Persons elected or appointed to fill a vacancy shall serve out the term of the person whom they are replacing unless otherwise specified in this Article.

K. Vacancies for Other Elected or Appointed Positions

Vacancies for future elected or appointed officials not enumerated in this Constitution shall be filled in accordance with applicable Tribal statutes.