

CHAPTER 49

STOCKBRIDGE-MUNSEE TRIBAL LAW ELECTION ORDINANCE

In pursuit of impartial and equitable elections, the Stockbridge Munsee Community, pursuant to Article IV of its constitution and by-laws, hereby establishes through this ordinance the policies and procedures by which tribal elections shall be conducted.

Section 49.1 Election Board

(A) The Stockbridge-Munsee Tribal Council shall appoint an Election Board at least forty-five (45) days prior to the scheduled election.

(1) The Election Board shall be made up of tribal members who are at least voting age.

(2) No person who is a current tribal elected official, candidate for office, Council-supervised employee or is a Council-appointed position can serve on the Election Board.

(B) The Election Board shall be composed of one (1) election judge, two (2) election clerks and two (2) election tellers.

(C) In addition, the Stockbridge-Munsee Tribal Council shall appoint two (2) alternates to serve should the need arise. Alternates can be present for Board meetings and at the polling place so that they are ready to serve if needed.

(D) The Election Board shall maintain minutes from meetings and proceedings conducted by the Election Board. Copies of such minutes, correspondence, notices and/or any decisions issued by the Election Board shall be posted at the posting site in the Tribal Offices.

(E) The Election Board shall adopt additional processes necessary to conduct an impartial election to the extent that such processes are consistent with this Ordinance.

Section 49.2 Duty of Election Board

It shall be the duty of the Election Board to conduct the election, including the caucus. All disputes arising out of the election process, including the caucus, shall be resolved by the Election Board consistent with this Ordinance and the Tribe's goal of having impartial and equitable elections. The Election Board has authority over all proceedings it administers and oversees.

Section 49.3 Scheduling of the Caucus

On the third Saturday of September at 2:00 P.M., a caucus shall be held at one of the recognized and established meeting places for the community. A notice of the caucus shall be

posted by the council secretary at least ten (10) days prior to the caucus. Copies of the notice shall be posted prominently within the community and the council secretary shall otherwise provide for its publication in the tribal newspaper, and other newspapers as may be necessary.

Section 49.4 Nomination at the Caucus

The caucus shall be conducted by the Election Board as follows:

(A) After calling the caucus to order, the Election Board judge shall identify each office that is up for election during that election cycle. The Election Board will then identify each office and accept nominations from the floor for that office.

(B) Individuals may be nominated for more than one (1) office, but may not run for more than one (1) office.

(C) After each nomination, the name of each individual shall be read aloud and each individual so named shall require that at least one (1) additional support affirmation be heard from the caucus. At the completion of the nomination process, the Election Board judge shall declare the caucus closed.

(D) The Election Board shall contact via the U.S. Mail, certified, each candidate so nominated to determine whether that individual accepts or declines such nomination. Acceptance/Declination letters must be received by the Tribal Secretary, in a sealed envelope identified as being for Election Acceptance/Declination on the outside, at least one week prior to the scheduled election. The Tribal Secretary shall maintain the sealed envelopes in a secure fashion until they are delivered to the Election Board.

(E) The names of all those so nominated shall then be recorded by the Election Board, which shall certify the results and post said results in conspicuous places within the community including the tribal website, tribal headquarters, the clinic, housing, the elderly center, the tribal newspaper and other newspapers as may be necessary.

(F) Only tribal members eligible to vote are allowed to participate in the caucus.

Section 49.5 Nomination Outside of the Caucus

Any eligible tribal member shall have the privilege of running for tribal council if not nominated during the caucus provided that he/she presents to the Election Board a petition form bearing the name, enrollment number and signature of at least fifteen (15) qualified tribal voters at least one (1) week prior to the scheduled election.

Section 49.6 Certified Candidate List

(A) One (1) week prior to the scheduled election the Election Board shall meet to review and verify all acceptance/declination letters and petitions to prepare a certified list of all candidates for each office.

(B) This certified candidate list shall list the candidates alphabetically by office. The list will be delivered to the Tribal Council secretary who then shall have the official ballots prepared and return said ballots to the Election Board prior to election day. The Tribal Council secretary will also have sample ballots prepared, which will be clearly marked as being sample ballots and which will be posted for public review.

Section 49.7 Scheduling of the Election

The annual election shall take place on the second Saturday of October, and shall be held at the headquarters of the Stockbridge-Munsee Community. The voting shall take place between the hours of 8:00 A.M. and 8:00 P.M., and voting shall be by secret ballot in booths provided for that purpose.

Section 49.8 Procedures for Conducting the Election

The Election Board having sole authority to conduct the election shall follow these procedures:

(A) The Election Board members are to report to the polling place at least one hour prior to the opening of the polls.

(B) It shall be the duty of the Election Board to insure that all campaign material is removed from the polling area and that all persons in the polling area refrain from any activities intended to influence the vote on the day of the election.

(C) It shall be the duty of the Election Board to insure that no ballots nor other official election material is removed from the voting area until after the election process has been completed.

(D) Each Election Board member must verify that the ballot box is empty, the electronic voting machine is set at zero via the zero report, and then the ballot box is secured by means of a lock.

(E) Each Election Board member will initial each ballot on the back in one corner prior to the opening of the polls.

(F) Both Election Clerks shall independently verify the enrollment and date of birth of each voter and then record the same. The Election Clerks can require that proper identification be presented by each voter.

(G) Enrollment will be verified by the Election Clerk by consulting the certified tribal roll of tribal members who are voting age provided by the Stockbridge-Munsee enrollment office.

(H) An Election Clerk shall then assign a number and a place in line to each voter.

(I) One Election Clerk shall record the name of each person that casts a ballot. Each person may only cast one (1) ballot per election, not including ballots destroyed per subsection (M) herein.

(J) The Election Teller(s) shall then give a ballot to the voter holding the number, just prior to the voter entering the voting booth.

(K) After the voter has voted in the voting booth, the Election Board Judge shall instruct the voter to place the ballot sheet into the vote counting machine.

(L) The Election Board Judge shall ensure that the ballot is received into the vote counting machine.

(M) If the vote counting machine rejects the ballot, the Election Board Judge shall instruct the voter to check the machine for notice of over-votes and the ballot for over-votes.

(1) An over-vote occurs when the voter places more votes in a category than the ballot allows for. For example, if the ballot states to vote for one candidate and the voter places two marks, for two different candidates, an over-vote has occurred.

(2) If the voter determines that there has been an over-vote, the voter may request a new ballot.

(a) If a new ballot is requested, the Election Board Judge shall destroy the over-vote ballot, and the voter shall be issued a new ballot and the voter shall complete steps (K), (L), and (M).

(b) The Election Clerks shall keep track of the number of destroyed ballots during the election.

(3) If the voter determines that there has not been an over-vote or there has been an over-vote and the voter still desires that the ballot be counted, the Election Board Judge shall override the vote counting machine, so the ballot can be accepted.

(a) If the vote counting machine is instructed to override by the Election Board Judge, the vote counting machine will record and tally the portion(s) of the ballot that do not contain an over-vote(s).

(N) The Election Board shall cause the doors to the polling place to be locked exactly at 8:00 P.M.; but, shall allow all those eligible voters inside the polling place to cast their ballots.

(O) In no instance shall a member of the Election Board leave the polling area until the final vote count is completed, unless an alternate arrives to take his/her place.

(P) An individual with a disability or needed assistance may request assistance from the Election Board or a specific accommodation, such as not entering a voting booth, from the Election Judge provided that it will facilitate his or her voting.

(Q) Other than persons actively voting, only the Election Board, Election Board alternates, election observers and authorized law enforcement are permitted to remain in the polling place, in the polling place building or parking lot while the polls are open.

(R) Up to four (4) election observers, other than candidates, may remain in the polling place while the polls are open and during the vote tally.

(1) Election observers shall not interact with voters or the Board about the election or any candidates or engage in actions that disrupt or interfere with the election process.

(2) The Election Board may determine a specific location within the polling area, which is in view of the Board and polls, for use by the elections observers.

(3) Tribal members who wish to serve as election observers shall submit their names to Tribal Council. If more than 4 individuals submit their name, the Tribal Council will select the election observers by lot at the last regularly-scheduled Council meeting before the election.

(S) No campaign materials or campaigning are permitted within 100 feet of building where the polling place is located on the day of the election.

(T) Absentee voting is not permitted.

Section 49.9 Vote Tally

(A) Immediately after all voters have exited the polls after closing, the Election Board Judge shall insert the Ender Card into the vote counting machine, and retrieve the paper Election Zero Report and the Election Results Report in full view of the Election Board.

(B) The Election Board Judge shall then unlock the vote counting machine and retrieve the ballots.

(C) If there are write-in votes, the Election Board Judge shall then read each write-in ballot, with the Tellers viewing.

(D) Each Election Board Clerk will list the candidates and vote tallies by office. All of the Clerks' results must tally. If the results don't tally, they will be recounted until they agree. In cases of mechanical and/or power failure, the Election Board shall have discretion to count the votes manually or electronically.

(E) The ballot shall be counted as part of the vote tally if the Election Board determines a voter's intent is clear.

Section 49.10 Spoiled and/or Uncounted Ballots

(A) In cases where individual write-in ballots contain more votes than are required, or are marked in such a way as to make determination of how the vote was cast, then such ballots shall not be counted, but recorded as a spoiled ballot.

(B) In any instance where the ballot has not been marked in the voting booth, other than individuals who physically are not able to enter the voting booth, or not properly placed in the electronic voting machine, then same shall not be counted.

Section 49.11 Certification of Election Results

(A) Upon the completion of the final vote count, the Election Board shall fill out the certification forms, showing the number of votes cast for each candidate, the total number of votes cast and the number of spoiled ballots.

(B) The certification results shall then be posted at the polling place so that they may be viewed. The Election Board shall also have the certification posted on the Tribal website.

(C) One additional certified form shall be placed, along with all ballots whether used, unused or spoiled and with the tribal roll and tally sheets into the electronic voting machine which shall then be locked and placed in a secure place within the headquarters building. The Election Board shall retain control over the locked ballot box until any and all disputes that may arise from the election are settled.

(D) Once any and all disputes that may arise from the election are resolved, the Election Board shall meet and destroy all ballots, the tribal roll, the tally sheets and clear the memory card for the voting machine. The certification form(s) with the election results will be saved as part of tribal archives.

Section 49.11.5 Vote Recount

(A) Candidates may request a recount of the election results in relation to the office for which they had run, if a written request is submitted to the Election Board judge within three (3) working days of the election.

(1) The Election Board, following receipt of a request, will hold a recount when the margin of difference between the vote tally of the winner of the race and the candidate submitting the request is 10 votes or less.

(2) When the margin of difference is greater than 10 votes, the request for a recount shall require approval by the majority of the Election Board.

(B) The Election Board will schedule a date for the recount that is within five (5) days of the recount request. The Election Board will notify all affected candidates and publicly post notice of the recount.

(C) The Election Board will recount the votes manually. Only the contested race will be recounted.

(D) Once each ballot is counted, the votes will be tallied and the results certified consistent with this Ordinance.

(E) The candidate for the affected office and his/her witness may observe the recount and may ask questions about ballots and the process, but shall not participate in the recount process or be disruptive to that process.

(F) Tribal members and authorized law enforcement may be present in the room where the recount is occurring, so long as they are quiet, conduct themselves in an orderly fashion and do not disrupt the process. The Election Board may designate where such observers can be seated.

Section 49.11.7 Tied Vote and Run-off Election

(A) The Election Board shall hold a run-off election when there is a tied vote for a seat on Tribal Council when the winner of the run-off election will be seated and the other candidate will not take office.

(B) Run-off elections will be scheduled for a Saturday that is at least 4 weeks, but not more than 8 weeks, after the completion of any recount or properly filed dispute resolution process.

(C) The Election Board shall conduct the run-off election consistent with the standards outlined in this Ordinance.

Section 49.12 Election Board Authority

(A) The Election Board shall have the sole authority to resolve disputes arising out of the election, except where the tribal court may have the authority to hear appeals in accordance with Section 49.12.5.

(1) A candidate with a dispute arising out of the election must provide written notice of the dispute to the Election Board judge within three (3) working days after the later of the certification of the election or the recount results. Such notice must identify the alleged Ordinance violation or prohibited acts committed during the election.

(2) The Election Board shall provide notice of the dispute to other affected candidates on the ballot.

(3) Hearings conducted before the Election Board shall use a quasi-judicial format.

(a) The Election Board may appoint an individual to act as the hearing examiner for conducting the hearing.

- (b) All affected candidates shall have an opportunity to be present at the hearing and present their position on the dispute either on their own behalf or through a representative.
- (c) Candidates will be allowed to present witnesses, who may be cross-examined by the other affected candidates, to support their position.
- (d) Hearings shall be recorded.

(4) The Election Board shall issue a written decision within five (5) working days.

(B) The Election Board shall:

- (1) Have the authority to recount the ballots.
- (2) Have the authority to hold a run-off election in case of ties.
- (3) Have the authority to consider and hear all challenges to the election in accordance with subsection 49.12 (A).
- (4) Have the authority and shall destroy all election ballots only after all challenges, recounts, and run-off elections have been resolved.
- (5) Have the authority and shall clear the memory card only after all challenges, recounts, and run-off elections have been resolved.
- (6) Have the authority to obtain legal advice in relation to disputes before the Election Board.
- (7) Have the authority to investigate disputes before the Election Board.

Section 49.12.5 Tribal Court Authority to Hear Appeals

(A) The Stockbridge-Munsee Tribal Court shall have authority to function as an appellate court in relation to decisions by the Election Board when the candidate has asserted the Election Board made an error of law or fact or has abused its discretion.

(B) Appeals to the Tribal Court must be filed within five (5) working days of the date that the affected candidates are notified of the Election Board decision on a dispute. The candidate filing the appeal shall also serve timely notice of the appeal on the Election Board judge and on all other affected candidates on the ballot in accordance with tribal rules of procedure.

(C) Such notice must identify with specificity the alleged Ordinance violation or prohibited act committed during the election.

(D) Promptly following the filing of an appeal, the court shall hold a scheduling conference for the purpose of adopting procedures that will permit the court to issue a final decision in the matter as expeditiously as possible.

(E) Other than the claims meeting the requirements under Section 49.12.5 (A), all decisions of the Election Board are final. For claims heard by the Tribal Court under this section, decisions of the Tribal Court may be appealed to the Stockbridge-Munsee Court of Appeals in accordance with tribal law.

Section 49.13 Compensation for Election Board

The Election Board shall have the right to receive proper compensation for the performance of its duties. The amount of which shall be determined by the Tribal Council which shall cause the same to be paid in a timely manner.

Section 49.14 Tribal Council Obligation to Election Board

The Stockbridge-Munsee Tribal Council shall provide to the Election Board all materials that it deems necessary to conduct such election and shall provide for adequate security to protect both the people and the premises where the election is held.

Section 49.15 Effective Date and Previous Ordinances Superseded

Amendments to this Election Ordinance shall be effective upon Bureau of Indian Affairs approval. This Election Ordinance, as amended, shall supersede any and all previous election ordinances governing the conduct of holding elections.

Section 49.16 Elected Office

(A) Persons newly-elected to office will be required to swear or affirm an oath of office and will not be sworn into office until at least four (4) working days after the election to allow for the filing of any disputes.

(B) All undisputed office holders will be sworn into office in a timely manner.

(C) When an office is in dispute, that office will remain vacant until the dispute is resolved and the newly-elected candidate is sworn into office. However, when such vacancies would prevent the Tribal Council from being able to meet due to there not being a quorum or neither the President nor Vice-President is sworn into office, then the incumbents shall continue to serve in their offices until the dispute is resolved and the newly elected candidate is sworn into office.

Section 49.17 Prohibited Acts

No person shall engage in acts or omissions in an attempt to impede or influence the voting or election. Persons who disrupt the voting process or who are not authorized to be present at the polling place will be removed from the premises. Violations of law may be forwarded for prosecution as appropriate.

Section 48.18 Severability

In the event that any provision of this Ordinance is ruled illegal by a court of competent jurisdiction, the remaining provisions of this Ordinance shall remain unaffected.

LEGISLATIVE HISTORY

1. Ordinance No. 2 Elections was approved May 16, 1939.
2. Section 2 was amended 1949 by deleting a provision to allow for a polling place in Red Springs.
3. A new Elections Ordinance was approved by Tribal Council August 16, 1995, by Resolution No. 1526-95.
4. Amendments to the Election Ordinance approved by Tribal Council, August 17, 1999 by Resolution No. 054-99. BIA approval November 1, 1999.
5. Sections 49.8(K), (L), (M), (N), (O), 49.9, 49.10, 49.11, 49.12(A), (E) amended to allow electronic vote tallying by Tribal Council on September 12, 2000, Resolution No. 00-056. BIA approval September 21, 2000.
6. On August 21, 2012, the Tribal Council adopted Resolution No. 049-12, which repealed the existing Chapter 49 and adopted a new version of Chapter 49 that included whole-scale changes clarifying and updating the election process, as well as added new sections on vote recounts, tied votes, run-off elections, the Election Board hearing process and Tribal Court authority to hear appeals. The BIA, Great Lakes Agency, approved these amendments on September 5, 2012. As part of this approval, ministerial corrections were made to correct a citation under Section 49.12 (B)(3) and to correct typos in Sections 49.6 (B) and 49.8 (H).