

**TITLE 13
ELECTIONS**

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TITLE 13 ELECTIONS

13.01 PURPOSE & DEFINITIONS

13.01.01 Purpose

- (a) On October 28, 1994, Nisqually Constitutional amendments were approved which govern elections of officers. Article IV, Sections 1 and 5 of the amended Nisqually Constitution authorized the Nisqually Tribal Council to adopt rules and an Election Ordinance to govern the election of Tribal Council officers. Section 13.02 of the Nisqually Tribal Code implements those Sections of the amended Nisqually Constitution.

- (b) The 1994 Nisqually Constitutional amendments delegated authority to the Nisqually Tribal Council to adopt ordinances under Article VI, Section 1. Any election of Nisqually Tribal Council members shall be governed by this Ordinance, as required by Article IV, Section 5 of the amended Nisqually Constitution. The Tribal Council has determined that Community participation in Tribal elections is essential to the democratic process, and Section 13.02 of the Nisqually Tribal Code, as amended, is intended to ensure that Nisqually Tribal elections are conducted in a manner that is consistent, fair, efficient and reflects the needs of the Nisqually People. Section 13.02 is intended to establish rules for the election of the Tribal Council and any electable Committee.

- (c) By General Council Resolution No. 1-1991, the General Council delegated to the Nisqually Tribal Council the authority to establish a procedure for the election of Fish Commissioners. Section 13.02 of the Nisqually Tribal Code implements Resolution No. 1-1991 and is also intended to establish rules for Fish Commission elections.

- (d) Although Article IV, Section 2 of the Nisqually Constitution makes absentee voting discretionary, the Tribal Council, in consultation with the Nisqually People, has determined that the Nisqually tribal member right to vote guaranteed in Article VII, Section 1 of the Nisqually Constitution is sacred; and, whether cast in person or via absentee ballot, that right shall be carried out in good faith.

- (e) On August 9, 2014 at a General Council meeting, the Governing Body motioned and passed the "Motion to have a Third Party Auditor perform Tribal Council elections and remove the Tribal Council appointed committee from TC elections." Motion passed 163 approve, 61 opposed, 21 abstained.

- (f) This Election Ordinance is intended to accomplish fair and efficient democratic elections and voting processes for the Nisqually People and their government.

HISTORICAL AND STATUTORY NOTES

ANNOTATIONS

This Title was originally enacted by Tribal Council Resolution 124-1994, amended by Tribal Council Resolution 14-2007 dated February 13, 2007, and since amended by Tribal Council

Resolution 01-2016 dated January 7, 2016 and Tribal Council Resolution 111-2017 dated December 14, 2017.

13.01.02 Definitions

- (a) "Absentee Voter" shall mean an Eligible Voter who desires to vote by absentee ballot for the Primary or General Election.
- (b) "Candidate" shall mean an enrolled member seeking election to any open Tribal Council, Fish Commission, or "Electable Committee" position, who meets all of the qualifications for candidacy set forth in this Ordinance.
- (c) "Community" or "Tribe" shall mean the Nisqually Indian Tribe, a federally recognized Indian tribal government.
- (d) "Business Days" shall mean Monday through Friday and shall exclude all Holidays recognized by the Nisqually Tribe.
- (e) "Days" shall mean calendar days unless "business days" is specified. The number of "days" shall be computed by (i) excluding the day of the event that triggers the period; (ii) counting every day, including intermediate Saturdays, Sundays, and legal holidays; and (iii) including the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the next day that is not a Saturday, Sunday, or holiday recognized by the Nisqually Tribe. The number of "business days" shall be computed by (i) excluding the day of the event that triggers the period; (ii) counting every day, excluding intermediate Saturdays, Sundays, and legal holidays; and (iii) including the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run next day that is not a Saturday, Sunday, or legal holiday. The last day of any period ends at 5:00 p.m.
- (f) "Electable Committee" or "Elected" shall be any Committee that the General Council creates and dictates shall be filled through the election process.
- (g) "Election Date" or "Election Day" shall mean the defined date of the Primary Election or General Election.
- (h) "Election Process" shall mean that process comprised of a Nominations Meeting, Primary Election, and General Election, as set forth in Section 13.02 below, and in accordance with Article IV, Section 1 of the Nisqually Constitution.
- (i) "Eligible Voter" or "Qualified Voter" shall mean any tribal member who is or will be at least eighteen (18) years old on or before an election date, which definitions shall be construed in keeping with Section 13.02.02(a).

- (j) "Employment" means professional services and other services rendered, whether for monetary or other pecuniary gain, and whether as an employee of the Tribe, consultant or other independent contractor. Except that it should be understood that for purposes of being excluded as the prospective election attorney, an attorney may have previously served the Tribe in the capacity as the election attorney.
- (k) "Enrolled Member," "Tribal Member" or "Member" shall mean an enrolled member of the Nisqually Indian Tribe. "Nisqually People" shall mean all such enrolled members.
- (l) "General Election" shall mean the election for the two candidates for any open Tribal Council or Electable Committee position, who received the most votes during the Primary Election, which shall occur on the first Saturday of May, except in the event of a rescheduled vote.
- (m) "General Council Nominations Meeting" shall occur on the first Saturday of February at which nominations for any open Tribal Council, Fish Commission, or Electable Committee position are made.
- (n) "Ordinance" or "Title" shall mean this Title 13 of the Nisqually Tribal Code.
- (o) "Person" shall mean a tribal member who is at least eighteen (18) years old.
- (p) "Primary Election" shall mean the election for any candidates for any open Tribal Council, Fish Commission, or Electable Committee positions, which shall occur on the second Saturday of March.
- (q) "Majority" shall mean the highest number of votes for any one candidate. It should be noted however that a majority is not required for the election of Fish Commission Members.
- (r) "Third-party auditor" or "Third-Party Election auditor" shall mean a private company or outside entity that shall administer and oversee the election process, particularly balloting, voting and vote counting, as required by General Council Motion No. 7 (August 9, 2014).
- (s) "Tribal Center" shall mean the Nisqually Indian Tribal Office on the Nisqually Indian Reservation, located at 4820 Nisqually Dr. SE, Olympia, Washington.
- (t) "Tribal Council Designee" shall mean a Tribal Council member whose position is not up for election during the Election Process at issue who has been duly appointed by Tribal Council Resolution to represent that body's interests in the Election Process in the event that the Tribal Council Secretary is precluded from serving that role because his or her seat is up for election.
- (u) "Tribal Court" shall mean the Nisqually Tribal Court.

13.02 ELECTION OF TRIBAL COUNCIL, FISH COMMISSION, AND ELECTED COMMITTEE

13.02.01 Scope

This Title 13 shall exclusively govern the election of Tribal Council officers after the General Council meeting of January 1995, in accordance with Article IV, Sections 1 and 5 of the Nisqually Constitution. Title 13 also shall exclusively govern the election of Fish Commission and Electable Committee offices in accordance herewith.

13.02.02 Eligible Voters

- (a) All Tribal Members who are or will be at least eighteen (18) years old on or before the General Council Nominations Meeting date shall be eligible to make a nomination or second a nomination in accordance with the Nomination Procedures set out in Section 13.02.06. All Tribal Members who are or will be at least eighteen (18) years old on or before the Primary Election date shall be eligible to vote in the Primary Election. All Tribal Members who are or will be at least eighteen (18) years old on or before the General Election date shall be eligible to vote in the General Election.
- (b) The Enrollment Department shall prepare a confidential list of Eligible Voters and make that list available to the Tribal Council Secretary, or Tribal Council Designee in the case of a conflict under Section 13.03.01(a), by no later than the General Council Nominations Meeting date or otherwise within five (5) business days of the Tribal Council Secretary/Council Designee's written request. The Enrollment Department and Tribal Council Secretary, or Tribal Council Designee in the case of a conflict under Section 13.03.01(a), shall maintain the list of Eligible Voters in strict confidence. The list of Eligible Voters shall be shared with the Third-Party Election Auditor. As of the Primary Election date, the list of Eligible Voters shall include all Tribal Members who are or will be at least eighteen (18) years old on or before the Primary Election. As of the General Election date, the list of Eligible Voters shall include all Tribal Members who are or will be at least eighteen (18) years old on or before the General Election. The Enrollment Department shall at all times keep the list of Eligible Voters current. The Enrollment Department shall be open while the polls are open and otherwise as necessary on the days of the Primary and General Elections in order to assist with the identification or confirmation of Eligible Voters. These obligations are mandatory upon the Enrollment Department.

13.02.02 Third-Party Election Auditor

- (a) At least forty-five (45) days before the General Council Nominations Meeting, the Tribal Council shall engage a Third-Party Auditor to administer and oversee the election process, pursuant to a contract that is consistent with the provisions of this Title and the Nisqually Tribal Constitution. The Third-Party Auditor's contract must be accompanied by a written confirmation by the Nisqually Legal Department or the Tribal Election Attorney that the

contract is consistent with both this Title and the Nisqually Constitution.

- (b) The Third-Party Auditor shall at all times maintain and keep secure the Elections Post Office Box. The third-party auditor shall post the Elections Post Office Box address at the Tribal Center throughout the duration of the election process. The Third-Party Auditor shall also maintain and keep secure a locked mailbox at the Tribal Center throughout the duration of the election process. The keys to the Elections Post Office Box and locked mailbox shall be entrusted only to representatives of the Third-Party Auditor.
- (c) Prior to the General Council Nominations Meeting, the Tribal Council, in consultation with the Third-Party Auditor, shall hire an outside Election Attorney to assist the Third-Party Auditor with any election contests or legal matter arising from the Primary Election or General Election. No attorney presently or previously employed within the Nisqually Legal Department may serve as Tribal Election Attorney.
- (d) At least ten (10) business days before both the Primary Election and the General Election, the Third-Party Auditor and the Tribal Election Attorney shall meet to review Third-Party Auditor compliance with this Title and the Nisqually Constitution and provide a brief memorandum to the Tribal Council Secretary or the Tribal Designee confirming compliance no later than the date of the Election.

13.02.04 Third-Party Election Auditor Authority and Responsibility

- (a) To promptly publish and post notice of all elections governed by this Ordinance;
- (b) To prepare ballots for all elections governed by this Ordinance;
- (c) To obtain the list of Eligible Voters before the polls open and maintain that list in confidence while the polls are open and otherwise as needed to implement this Ordinance;
- (d) To receive and respond to Tribal Member questions and concerns regarding the Election Process in consultation with the Tribal Election Attorney.
- (e) To supervise activity at the polls;
- (f) To verify the eligibility of every member who wishes to vote and to distribute one ballot to each Eligible Voter at the polls;
- (g) To keep a record of persons who received ballots and of the number of ballots distributed and cast at an election;
- (h) To resolve in good faith any voting, balloting, or election dispute that may arise

under this Ordinance;

- (i) To count and validate ballots and record the number of votes cast for each Candidate after the polls are closed;
- (j) To certify the results of the election in writing and to notify the General Council on the first business day after the election by immediately posting the certified results at the Tribal Center and at other public places on the Nisqually Indian Reservation, and sending written notice to the Tribal Council; and
- (k) To recommend to the Tribal Council any supplemental rules or changes in this Ordinance that the Third-Party Auditor believes are necessary to achieve the purposes of this Ordinance.

13.02.05 Third-Party Election Auditor Oath

Before taking office, at least two (2) representatives of the Third-Party Auditor shall stand before the Tribal Council and swear an oath that they will carry out their duties faithfully; that they will not let their preferences in an election influence their actions as Third-Party Auditor; and that they will not engage in, sanction, or permit to go unchallenged, conduct which could prevent a fair election.

13.02.06 Nomination Procedures

- (a) Nominations for open Tribal Council positions pursuant to Article IV, Section 4 of the Nisqually Constitution shall be made at the General Council Nominations Meeting on the first Saturday of February. Nominations for open Fish Commission and electable Committee positions shall also be made at that General Council Nominations Meeting. The Tribal Council interprets the Nisqually Constitution to not require any quorum of General Council for purpose of the Nominations Meeting.
- (b) Per Article IV, Section 1 of the Nisqually Constitution, any Tribal Member who has or will have reached the age of twenty-one (21) years old on or before the General Council Nominations Meeting date shall be eligible for nomination to the offices of Chairman, Vice-Chairman, Secretary, Treasurer, and Fifth Tribal Council Member; and any Tribal Member who has or will have reached the age of eighteen (18) years old on or before the General Council Nominations Meeting date shall be eligible for nomination to the offices of Sixth and Seventh Council Member. Any Tribal Member who has or will have reached the age of eighteen (18) years old on or before the General Council Nominations Meeting date shall also be eligible for nomination to any open Fish Commission and Electable Committee position, provided, no Tribal Member can accept a nomination for more than one (1) open Tribal Council, Fish Commission, or Electable Committee position.

- (c) No person may be nominated unless that person is present in person to accept a nomination for an open Tribal Council, Fish Commission, or Electable Committee position at the General Council Nominations Meeting. No person shall nominate himself or herself for any open Tribal Council, Fish Commission, or Electable Committee position.
- (d) All nominations must be made by an Eligible Voter and seconded by another Eligible Voter, both of which shall be made via microphone from the General Council's podium at the General Council Nominations Meeting. No person nominated for any open Tribal Council, Fish Commission, or Electable Committee position shall second his or her own nomination. Any person who is nominated in accordance with this Section shall either accept or decline the nomination from the General Council's podium during the General Council Nominations Meeting in order to become a candidate for an open Tribal Council, Fish Commission, or Electable Committee position. All nominations shall be documented by the Third-Party Auditor, whose representatives shall be present throughout the Nominations Meeting.
- (e) Within five (5) business days of the General Council Nominations Meeting, the Third-Party Auditor shall (1) certify in writing that all nominees are eligible for nomination in accordance with Article IV, Section 1 of the Nisqually Constitution and Sections 13.02.06(b) and 13.02.06(c), and (2) post a resulting slate of eligible candidates at the Tribal Center and at other public places on the Nisqually Indian Reservation.
- (f) Any candidate may withdraw his or her candidacy for any open Tribal Council, Fish Commission, or Electable Committee position by filing a written and notarized notice of withdrawal with the Third-Party Auditor via certified mail to the Elections Post Office Box, at any time prior to an Election Date.

13.02.07 Primary Election

- (a) A Primary Election involving all candidates for any open Tribal Council, Fish Commission, or Electable Committee position shall occur on the second Saturday of March. The Tribal Council interprets the Nisqually Constitution to require a quorum of the General Council for the General Council business meeting on the second Saturday of March, but to not require such quorum for purpose of the Primary Election that day.
- (b) Polls for the Primary Election shall be open for 8 (eight) hours.
- (c) Balloting in the Primary Election shall take place at the Billy Frank Jr. Gymnasium, unless the Tribal Council has approved by Resolution, no less than ten (10) days prior to the election, an alternative polling place elsewhere on the Nisqually Reservation. The Primary Election shall be monitored at all times by the Third-Party Auditor under the supervision of the Tribal Election Attorney, meaning representatives of the Third-Party Auditor shall always be in the immediate vicinity of polls while polling is open.

- (d) For each open Tribal Council or Electable Committee position, each of the two (2) candidates who receive the most votes in the Primary Election will advance to the General Election.
- (e) If there is only one candidate for an open Tribal Council or Electable Committee position at the time of the Primary Election, that candidate will be declared the winner upon the completion of the Primary Election and shall be entitled to fill that position upon completion of the General Election in keeping with Section 13.02.15.
- (f) If there are only two candidates for an open Tribal Council or Electable Committee position at the time of the Primary Election, each of those candidates will not be subject to voting in the Primary Election and will instead advance to the General Election.
- (g) To accomplish a slate of five (5) open Fish Commission positions, the five (5) candidates who receive the most votes in the Primary Election shall be declared the winners and shall be entitled to fill those positions in keeping with Section 13.02.15. **There shall be no General Election for any Fish Commission positions.**

13.02.08 General Election

- (a) A General Election involving the two candidates for any open Tribal Council or Electable Committee position who received the most votes during the Primary Election shall occur on the first Saturday of May unless the Primary Election has been rescheduled after a successful challenge pursuant to this Elections Code. The Tribal Council interprets the Nisqually Constitution to not require any quorum of General Council for purpose of the General Election.
- (b) Polls for the General Election shall be open for eight (8) hours.
- (c) Balloting in the General Election shall take place at the Billy Frank Jr. Gymnasium, unless the Tribal Council has approved by Resolution, no less than ten (10) days prior to the election, an alternative polling place elsewhere on the Nisqually Reservation. The General Election shall be monitored at all times by the third-party auditor, meaning representatives of the third-party auditor shall always be in the immediate vicinity of polls.
- (d) For each open Tribal Council or Electable Committee position, the Candidate who receives a majority of the votes during the General Election shall be declared the winner and shall be entitled to fill that position in keeping with Section 13.02.15.
- (e) No person may be elected to more than one (1) open Tribal Council, Fish Commission, or Electable Committee position. Any person who, upon computation of the votes for the General Election, has been elected to more than one (1) such position shall, within two (2) days after the certified General Election results being posted in accordance with

Section 13.02.15 below, notify the Tribal Council Secretary, or Tribal Council designee in the case of a conflict under Section 13.03.01(a), and the Third-Party Auditor which position they accept and which position(s) they decline, in writing. Any failure to do so will cause that person to forfeit any or all positions to which they were elected in the General Election.

- (f) For any Tribal Council, Fish Commission or Electable Committee position that such person declines, or in the event of such forfeiture for failure to comply with this Section 13.02.08(e), the General Council shall appoint somebody to fill that vacant position, at a duly called General Council meeting; as to a Tribal Council position, that shall be in accordance with Article V, Section 1 of the Nisqually Constitution. The Tribal Council interprets the Nisqually Constitution to require a quorum of the General Council in order to fill any such Tribal Council position vacancy.
- (g) For purpose of filling any vacancy the Tribal Chairman, or in his/her absence, the Vice Chairman, shall call a General Council meeting to be held within thirty (30) days of the General Election date.

13.02.09 Notice of Elections

- (a) A Notice of Election shall be printed and issued by the Third-Party Auditor for every election.
- (b) The Notice of Election shall be mailed to the last known address of each Eligible Voter, posted at the Tribal Center, and posted at other public places on the Nisqually Indian Reservation. This shall include, newsletter, Tribe's website and social media outlets starting 1st week of January and not less than fourteen (14) days prior to the nominations meeting date.
- (c) The Notice of Election for the Primary Election shall specify (1) Tribal Council, Fish Commission, or Electable Committee position to be filled and for each such position, any candidate who is eligible to fill that position pursuant to Section 13.02.06, and (2) the date, hours, and place of the Primary Election.
- (d) The Notice of Election for the General Election shall specify (1) each Tribal Council or Electable Committee position to be filled and for each such position, the candidate or candidates who received the most votes in the Primary Election pursuant to Section 13.02.07, and (2) the date, hours, and place of the General Election.
- (e) Any Notice of Election shall include the name of the Third-Party Auditor; the name of the Third-Party Auditor's primary contact person, phone number, and email address; the Elections Post Office Box address; the location of the locked mailbox at the Tribal Center; and a Nisqually website address for election process information.
- (f) Informational reminders and updates shall continue to go out to voters

throughout the election process. All notifications shall be clearly marked "ELECTIONS".

13.02.10 Scheduling and Places

- (a) In case emergency circumstances require that the General Council Nominations Meeting, Primary Election, or General Election be postponed, the Third-Party Auditor, in consultation with the Tribal Council, shall reschedule the postponed meeting or election, as expeditiously as practically possible and in accordance with this Ordinance. The rescheduled election shall comply with the normal election procedures to the extent practically possible.
- (b) Balloting in all elections shall take place at the Billy Frank Jr. Gym unless the Tribal Council has approved by Resolution, no less than ten (10) days prior to an election, an alternative polling place elsewhere on the Nisqually Reservation.

13.02.11 Regulations

- (a) Voting in all elections governed by this Ordinance shall be by secret, written ballot. Eligible Voters shall (1) present photo identification upon any request of the Third-Party Auditor; (2) sign their name next to their enrollment number signifying that they have received one (1) ballot; (3) enter their vote on the ballot in secret; (4) fold the ballot in half; and (5) deposit the ballot in a locked ballot box, the keys to which shall be entrusted only to the Third-Party Auditor.
- (b) The Third-Party Auditor shall maintain a Voting List that identifies each and every ballot issued to an in-person voter, including at least: (1) each voter's name and roll number; and (2) confirmation of that person's photo identification, if requested.
- (c) No person shall campaign or otherwise attempt to influence or interfere with voters or shall loiter within three hundred (300) feet of the polling place during hours when the polls are open.
- (d) Voters who are unable to mark a ballot without assistance because of special circumstances such as physical disability or illiteracy may be assisted in voting, in the manner outlined in Section 13.02.11(a) above, by a person of the voter's choice.
- (e) Consumption of alcoholic beverages, drugs, or other intoxicants at the polls is prohibited.
- (f) A Nisqually Tribal police officer shall be present at all times during voting, when the locked ballot box is open, during the counting of ballots, and when the preliminary election results are posted.

13.02.12 Ballots

- (a) Ballots shall contain the list of the Candidates with a space next to each name for the voter to place a checkmark. The voter shall place a checkmark by no more than one (1) candidate for each open position. Ballots containing more than one (1) checkmark for each open position shall be void only as to that portion of the ballot. Write-in votes for any open position are not valid and will not be counted. The voter shall place his or her own ballot in the locked ballot box.
- (b) At the close of the polls, all unused official ballots shall be somehow marked to indicate they were unused and kept for documentation, by the Third-Party Auditor. The Third-Party Auditor shall open the locked ballot box and in turn collect all ballots, and compute the vote. Ballots shall be counted a minimum of three (3) times. The totals must agree at least twice to be valid. After the final count, ballots shall be secured in a locked container and may be destroyed after one (1) year. Tribal Members may be present during the opening of the locked ballot box and counting of the ballots, provided they do not interfere. It is up to the Third-Party Auditor's discretion to determine if a Tribal Member is interfering with the ballot counting process. The Third-Party Auditor may seek the assistance of a Nisqually Tribal police officer to exclude a Tribal Member who is interfering.

13.02.13 Absentee Ballots

- (a) Absentee voting is allowed for all elections governed by this Ordinance, as contemplated by Article IV, Section 2 of the Nisqually Constitution. An Eligible Voter may cast an absentee ballot for the Primary Election and/or General Election.
- (b) An absentee ballot request form shall be posted to a Nisqually website for the election process, made available next to the locked mailbox at the Tribal Center, and made available at the Nominations Meeting. An Absentee Voter must submit an originally signed absentee ballot request form to the Third-Party Auditor in person via the locked mailbox at the Tribal Center, by mail via the Elections Post Office Box, by fax to the Third-Party Auditor, or by email to the Third-Party Auditor no later than twenty (20) days before an election date. Only one absentee ballot will be sent to a requesting Absentee Voter, in which case that voter shall no longer be eligible to vote in person per Section 13.02.12(a). Any person who properly and timely requests an absentee ballot for the Primary Election will also be provided an absentee ballot for the General Election without that person needing to take any further action.
- (c) The Third-Party Auditor shall maintain an Absentee Ballot List that identifies each and every absentee ballot issued to an Absentee Voter, including: (1) each Absentee Voter's name, address, and roll number; (2) the identification number for the single absentee ballot issued to the Absentee Voter; (3) the date that absentee ballot was issued to the Absentee Voter; (4) the date the outer envelope containing that absentee ballot was postmarked by the U.S. Mail, if applicable; and (5) the date and time that absentee ballot was received from that Absentee Voter via the Elections Post Office Box, the locked

mailbox, or the locked ballot box. The Absentee Ballot List shall be maintained along with each and every written and originally signed absentee ballot request form, as contemplated by Section 13.02.13(b).

- (d) The Third-Party Auditor shall print each and every absentee ballot on some form of paper that prevents unauthorized duplication and shall contain an identification number.
- (e) The Third-Party auditor shall mail an original absentee ballot to the Absentee Voter at his or her address identified on the absentee ballot request form, via a method that enables tracking, verification, and delivery within two-days or faster, along with an unmarked, smaller envelope; a pre-addressed, pre-stamped, larger, outer envelope; and a set of printed absentee voting instructions. Printed instructions shall indicate to the Absentee Voter in the following or otherwise understandable terms that:
 - (i) The Absentee Voter shall be provided only one absentee ballot;
 - (ii) The Absentee Voter must vote for no more than one (I) candidate for each position;
 - (iii) The Absentee Voter must place the folded original absentee ballot in the provided unmarked, smaller envelope, seal and sign that envelope, and insert that ballot and smaller envelope, along with a copy of some form of photo identification, into the pre-addressed, pre-stamped, larger, outer envelope; and
 - (iv) The Absentee Voter must mark the outside of the outer envelope with the Absentee Voter's name and address, and send it via U.S. Mail to the Post Office Box address specified in those printed instructions for receipt no later than the Election Date, deposit the envelope in the locked elections mailbox at the Tribal Center no later than closing of the polls on the Election Date, or deposit the envelope in the locked ballot box at the polls on the Election Date.
- (f) The absentee voting requirements set forth in this Section 13.02.13 shall be strictly enforced by the Third-Party Auditor.
- (g) A voter who has requested an absentee ballot, but who either did not receive the absentee ballot or has lost their ballot may cast a provisional in-person ballot after signing a declaration under penalty of perjury stating that they did not already submit the requested absentee ballot. Signing of that declaration will be supervised by the Tribal Election Attorney. The Third-Party Auditor will then provide the voter with an in-person ballot and an envelope. The voter must sign the Voter List and present identification if requested. After the voter has filled out their ballot, the voter must seal their folded ballot in the envelope provided, print their name and tribal enrollment

number on the outside of the envelope, and sign their name. Before the Third-Party Auditor may count any absentee ballots, the Third Party Auditor shall review all absentee ballots and ensure that the provisional voter has not already submitted an absentee ballot. If the Third-Party Auditor verifies that the provisional voter has not already cast an absentee ballot, then the Third-Party Auditor must so note on the in-person Voter List as well as the Absentee Voter list. The Third-Party Auditor then may include the provisional ballot in its count. If the Third-Party Auditor determines that the provisional voter has already cast an absentee ballot, then the Third-Party Auditor may not count that ballot.

- (h) If an Absentee Voter does not submit their absentee ballot in person, then the Absentee Voter must cause his or her original ballot to be **received** by the third-party auditor at the Elections Post Office Box, as specified in those printed instructions, by no later than the election date, or that person's outer envelope shall not be opened and that person's ballot shall not be counted by the Third-Party Auditor. Any such unopened outer envelope shall be kept for documentation by the Third-Party Auditor.
- (i) Upon the timely receipt of any absentee ballot, the third-party auditor shall:
 - (1) observe the name of the sender on the outer envelope; (2) mark the original ballot received on the Absentee Ballot List; (3) remove the copied photo identification from the outer envelope to confirm the Absentee Voter's identification; (4) remove the inner envelope from the outer envelope and verify the Absentee Voter's original signature thereon by comparing it to the original signature on the absentee ballot request form contemplated by Section 13.02.13(b); and
 - (5) if and only if those signatures match and the absentee ballot otherwise conforms to the requirements set forth on this Section 13.02.13(e), place the absentee ballot into the ballot box. Any absentee ballot that does not satisfy the strict requirements set forth in Section 13.02.13(e) shall not be placed into the ballot box or counted by the third-party auditor. Any such disqualified absentee ballot shall be kept for documentation by the third-party auditor.

13.02.14 Runoff and Rescheduled Elections

- (a) If voting results in a tie, the Third-Party Auditor shall schedule a runoff election to take place within fourteen (14) days after the General Election date. In the case of a tie, a runoff election shall be held only for those candidates whose votes were tied.
- (b) If the Third-Party Auditor determines that a challenge under Section 13.03.01 is valid, the Third-Party Auditor shall schedule a new election to take place within thirty (30) days after that determination. If the rescheduled election is a rescheduled Primary Election, the General Election must be rescheduled to a date no less than thirty (30) days after the rescheduled Primary Election and no more than forty-five (45) days. A rescheduled election shall comply with the normal election procedures to the extent practically possible.

13.02.15 Certification of Elections and Inauguration

The certified results of the Primary and General Elections shall be posted by the Third- Party Auditor at the Tribal Center and at other public places on the Nisqually Indian Reservation and given to the Tribal Council on the first business day following the election. If after the General Election, a candidate received a majority of votes as certified by the Third-Party Auditor, and the Third-Party Auditor has not received a protest as provided in Section 13.03.01, the Tribal Council shall inaugurate the newly elected Tribal Council, Fish Commission, or Electable Committee members at the beginning of the first regular Tribal Council meeting or by no later than thirty (30) days following the General Election.

HISTORICAL AND STATUTORY
NOTES ANNOTATIONS

In *Iyall v. Sanchez*, Ci 06-05-009 (2006), the Nisqually appellate court stated that three Tribal Council members could constitute a quorum for the purposes of inaugurating new council members. It did not address the issue of whether less than three members could constitute a quorum for this purpose.

13.03 ELECTION PROTESTS

13.03.01 Election Protests

- (a) Any Tribal Council member whose position may be directly affected by any election protest shall abstain from any and all involvement in the decision making process related to said protest, or any activity that could reasonably be construed to be a conflict of interest. This section shall not prohibit a Tribal Council member either signing or submitting a protest.
- (b) For a recount of the ballots in a Primary or General Election, at least ten (10) percent of all Eligible Voters must sign a petition requesting the recount and submit the original petition to the Third-Party Auditor and serve a copy upon the Tribal Council Secretary, or Tribal Council Designee in the case of a conflict under Section 13.03.01(a), within three (3) days after the certified election results are posted in accordance with Section 13.02.15. The Third-Party Auditor shall, upon verifying the existence of that requisite number of signatures, conduct a recount within two (2) business days of that verification.
- (c) For any protest that a violation of this Ordinance materially affected the outcome of the election for any particular Tribal Council, Fish Commission, or electable Committee office, at least ten (10) percent of all Eligible Voters sign and submit the original petition to the Third-Party Auditor and serve a copy upon the Tribal Council Secretary, or Tribal Council Designee in the case of a conflict under Section 13.03.01(a), within three (3) business days after the certified results of a Primary Election or General Election are posted in accordance with Section 13.02.15. The petition shall describe the violation(s) of this Ordinance that materially affected the outcome of the election, specify the particular Tribal Council, Fish Commission, or Electable Committee position at issue, and include

supporting evidence. Upon verifying the existence of that requisite number of signatures, the Third-Party Auditor shall immediately appoint the Election Attorney to investigate the charges made in the petition and to render written findings of fact and conclusions of law to the Third-Party Auditor and the Tribal Council Secretary or Tribal Council Designee within seven (7) business days of his or her appointment. If, in rendering his or her findings of fact and if the Election Attorney determines that a violation of this Ordinance materially affected the results of a Primary Election or General Election, the Election Attorney shall recommend that the Third-Party Auditor schedule a second Primary Election or General Election vote for only that particular office that has been challenged. The Third-Party Auditor shall decide in writing whether to accept or deny any recommendation from the Election Attorney within two (2) business days of the Third-Party auditor's receipt of the Election Attorney's written findings of fact and conclusions of law. The Third-Party Auditor shall immediately post its decision at the Tribal Center, provide a copy to Tribal Council Chairperson and Secretary, and make a copy of the Tribal Election Attorney's findings of fact and conclusions of law available on the Tribal website. The third-party auditor's decision shall be reviewable de novo by the Nisqually Tribal Court, as outlined in Section 13.03.02.

- (d) Only an Eligible Voter may gather signatures or submit a petition under this section. Nothing however, prohibits a person that is not an Eligible Voter from either providing advice about or drafting a petition.
- (e) All of the time periods established for filing any petition pursuant this Section 13.03.01 are jurisdictional and cannot be waived. Any protest or petition filings pursuant to Section 13.03.01 shall be filed with and served upon the third-party auditor via (1) certified U.S. mail to the Elections Post Office Box or (2) email to the email address listed on the current Notice of Election.

13.03.02 Tribal Court Jurisdiction

The Nisqually Tribal Court shall have exclusive jurisdiction over appeals arising from Section 13.03.01(b-d), only. Any appeal shall be:

- (a) filed with the Tribal Court;
- (b) served upon the Third-Party Auditor either via (i) certified U.S. mail to the Elections Post Office Box, or (ii) email to the email address listed on the current Notice of Election; and
- (c) served upon the Tribal Council Secretary, or Tribal Council Designee in the case of a conflict under Section 13.03.01(a), either via (i) certified mail to 4820 Nisqually Dr. SE, Olympia, Washington, 98513 or (ii) email, all within ten (10) business days of the entry of the Third-Party Auditor's decision pursuant to that Section 13.03.01(b). The Tribal Court shall conduct a de novo review of the Third-Party Auditor's decision. The appellant shall have the burden of proof. The Tribal Court shall either

affirm the Third-Party Auditor's decision, or reverse its decision with appropriate prospective instructions to the Third-Party Auditor. With the exception of an action in equity to prospectively enforce this Ordinance (including on an emergency injunctive basis), Tribal Council offices or officers shall otherwise stand immune from any Tribal Court action.

13.03.03 Time Periods and Filing Requirements

All of the time periods established herein for filing any petition pursuant to Section 13.03.01 and Section 13.03.02 are jurisdictional and cannot be waived. Any protest or petition filings with the Third-Party Auditor must be filed and served, within the time periods and in the manner set forth in those Sections. Those requirements shall be strictly enforced.


13.04 SEVERABILITY

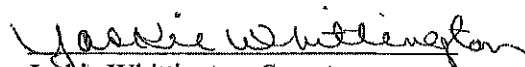
If any provision in this Ordinance is determined by the Nisqually Tribal Court to be invalid or illegal, such a provision shall be severed from this Ordinance and the remainder of this Ordinance shall remain in full force and effect.

Certification

I certify that the above Elections Ordinance was adopted at a regular meeting of the Nisqually Tribal Council held on the 16 day of January, 2019, at the Nisqually Tribal Center, at which time a quorum was present and voting 2 FOR AGAINST 0 0 ABSTENTIONS.

ATTEST:


Ellery K. Choke, Chairman
Nisqually Indian Tribe


Jackie Whittington, Secretary
Nisqually Indian Tribe