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STATEMENT OF AUTHORITY

This Election Ordinance is promulgated pursuant to authority expressed within the Constitution of the Smith River Rancheria, adopted June 27, 1987 by the General Membership: ARTICLE IX, Sections 1 through 5, Elections.

STATEMENT OF PURPOSE

This Ordinance is intended to define fair and uniform procedures for voter registration, qualification, and participation in the electoral and petition processes in accordance with the Constitution of the Smith River Rancheria.

SHORT TITLE

This Ordinance may be cited as the Smith River Rancheria Election Ordinance.

ARTICLE I - DEFINITION OF TERMS

- (A) Election Board will consist of four (4) enrolled tribal members and one (1) alternate enrolled tribal member appointed by the Tribal Council.
- (B) Enrolled Member means a person who meets the membership requirements as defined by the Constitution of the Smith River Rancheria, who has satisfied the procedural requirements for enrollment as outlined within the Enrollment Ordinance.
- (C) Petition means a formal written request signed by the registered voters of the General Membership, seeking action to be taken in accordance with the Election Ordinance and Constitution of the Smith River Rancheria.
- (D) Qualified Candidate for Tribal Council shall be any enrolled member that is twenty-one (21) years of age or older at the time of nomination, who has never been convicted of a felony or a crime of moral turpitude in any jurisdiction, and has continuously resided within Del Norte, Humboldt, Curry, Josephine or Coos counties for a period of one (1) year immediately prior to being nominated as a candidate for the Council.
- (E) Rancheria Employee means a person who is employed by the tribal government on a full-time or part-time basis.
- (F) Referendum means the process by which the registered voters of the General Membership may have a proposed or adopted Tribal Council resolution, ordinance or code, or a constitutional amendment, presented for a vote of the General Membership in accordance with the Election Ordinance and Constitution of the Smith River Rancheria.

- (G) Registered Voter means any enrolled member eighteen years (18) of age or older who has executed a Registration form and been placed on the Voter Registration List.
- (H) Registrar of Voters shall be the Enrollment Clerk and/or a member of the Election Board.
- (I) Tribal Council means the elected governing body of the Smith River Rancheria.

ARTICLE II – ESTABLISHMENT OF ORGANIZATIONAL RESPONSIBILITY AND AUTHORITY

Section 1 – Election Board

All elections shall be administered by the Election Board. The Election Board shall be appointed by Resolution of the Tribal Council no later than October 1 of each year, and shall consist of four (4) enrolled tribal members and one (1) alternate enrolled tribal member. Election Board members shall each serve for one (1) year from the date of appointment and may be removed by the Tribal Council for violating their obligations under this Ordinance, or violation of any other applicable Tribal Ordinance, Code, standard or policy.

Election Board members shall be compensated at a rate and under such terms and conditions as the Tribal Council shall, from time to time, establish for their services, and be reimbursed for any reasonable expenses incurred in connection with their official duties. Upon accepting the appointment, each member shall sign an oath which shall become part of the election records stating they will serve according to the best of their ability, shall make every effort to prevent fraud or abuse of the election process, and shall adhere to all applicable Tribal Ordinances, Codes, standards or policies.

Any Election Board member who is nominated for Tribal Council, and accepts the nomination, or who wishes to sponsor a petition, shall abstain from Election Board participation until the conclusion of the election where the Board Member is either a candidate, or a sponsor of the petition that is the subject of an upcoming or potential election.

In the event of a vacancy or an abstention of participation by a member of the Election Board, the alternate member shall fill the vacancy, and the Tribal Council shall appoint a qualified replacement for the alternate member for the remainder of the term of service. The Election Board shall perform all duties set forth by this Ordinance. Failure of the members of the Board to perform their duties pursuant to this Ordinance, or any other misconduct, shall be grounds for immediate removal by the Tribal Council.

Section 2 – Polling Place

The polling place shall be determined by the Tribal Council at least thirty (30) days prior to the election. In the event of an emergency, the location of the polling place may be changed, and the Registrar of Voters shall use its best efforts to notify the General Membership of the new location.

Section 3 – Notice of Elections

All elections shall be announced by special notice posted by the Registrar of Voters at least thirty (30) days before the election at the polling place and other public places. All reasonable efforts will be made by the Registrar of Voters to contact all Rancheria members, including those who are living off the Rancheria.

ARTICLE III – QUALIFICATION OF VOTERS AND TRIBAL COUNCIL

Section 1 – Eligibility to Vote

All enrolled members of the Smith River Rancheria, who are eighteen (18) years of age or older and registered in accordance with Article IV of this Ordinance shall be eligible to sign petitions and vote in all elections as provided for in this Ordinance and the Constitution of the Smith River Rancheria.

Section 2 – Eligibility to Hold Tribal Council Office

Any enrolled member that is twenty-one (21) years of age or older at the time of nomination, who has never been convicted of a felony or a crime of moral turpitude in any jurisdiction, and has continuously resided within Del Norte, Humboldt, Curry, Josephine or Coos counties for a period of one (1) year immediately prior to being nominated as a candidate for the Council that has been nominated in accordance with the Constitution and this Ordinance shall be eligible to seek and hold Tribal Council office.

ARTICLE IV – REGISTRAR OF VOTERS AND ELIGIBILITY TO REGISTER

Section 1 – Registrar of Voters

The Enrollment Clerk and/or a member from the Election Board shall serve as the Registrar of Voters for the Tolowa Indians of the Smith River Rancheria.

Section 2 – Registration Required

An enrolled member must be registered with the Registrar of Voters in order to sign petitions and vote in the elections of the Smith River Rancheria. An enrolled member must be registered prior to signing a petition, and must be registered no later than fifteen (15) days prior to the date of an election.

Section 3 – Registration Form

Any enrolled member eighteen (18) years of age or older who wishes to sign a petition or vote in an election shall register by executing a Registration Form, providing their name, address, date of birth, and signature. The name and mailing address of such members shall, upon verification of enrollment, be entered on the Smith River Rancheria Voter Registration List by the Registrar of Voters. Members shall be responsible for maintaining their current mailing address with the Registrar of Voters.

Section 4 – Voter Registration List

Ten (10) business days before an election, the Registrar of Voters shall provide a certified copy of the current Voter Registration List to the Election Board, and shall cause a copy of the Voter Registration List to be available for review by Tribal Council candidates during regular business hours at the Smith River Rancheria office. For the purposes of this subsection, certification of the Voter Registration List shall consist of a statement by the Registrar of Voters that, to the best of their knowledge, the Voter Registration List is a true and correct list of all persons who have registered, and who meet the qualifications to vote and sign petitions, pursuant to the Constitution of the Smith River Rancheria and this Ordinance.

Section 5 – Use of Voter Registration List

The Voter Registration List shall be available for review with the Registrar of Voters during regular business hours at the Smith River Rancheria Office. Tribal Council Candidates and petition sponsors (once a petition has been certified) shall be provided with a copy of the Voter Registration List, which shall only be used for campaign purposes, and to seek signatures for a certified petition.

ARTICLE V – NOMINATIONS OF CANDIDATES

Section 1 – Qualifications

Any enrolled member who is eighteen (18) years of age or older is qualified to nominate a candidate for election to Tribal Council.

Section 2 – Nominations

Nominations for the Tribal Council will be made during the General Membership meeting in accordance with the Constitution of the Smith River Rancheria. Nominations will be accepted from the General Membership present. Written nominations received at the Tribal Office by the close of business on the last business day prior to the General Membership meeting will also be accepted and

presented to the General Membership. Nominees shall decline or confirm their acceptance for candidacy in writing to the Tribal Office within seven (7) business days after the General Council meeting. Nominees shall declare, under penalty of perjury, that they meet the qualifications to be a candidate for Tribal Council. At the time of nomination acceptance, candidates will be issued and Election Packet that will include the Voter Registration List. Candidates shall agree to use the Voter Registration List only for legitimate campaign purposes.

ARTICLE VI – CONDUCT OF THE ELECTION

Section 1 – Notice

The date of the election shall be published by the Registrar of Voter in the Tribal Newsletter and announced at a regular Tribal Council meeting no later than thirty (30) days in advance of the election.

Section 2 – Ballot

The Election Board shall prescribe the form of the ballots to be used in each election. The names of the certified candidates shall be listed in alphabetical order.

Section 3 – Voting Procedures

Voting shall be held from 8:00 am – 3:00 pm on the day of the General Election, which is the third Saturday in May, in accordance with Article IX, Section 1 of the Constitution of the Smith River Rancheria.

The voter shall first sign his or her name on the Certified Voter Registration List. The voter shall then be given a ballot. The voter shall deposit the completed ballot in the locked ballot box.

Should the voter make a mistake on, or destroy, his or her ballot, a new ballot may be issued to the voter. The spoiled ballot shall be voided immediately by the Election Board.

Section 4 – Returns

Immediately after the poll is closed, the Election Board shall clear the area and shall count the votes. Should any ballot contain votes for more than the specified amount, either listed candidates or write-ins, it shall be voided. The Election Board shall then certify and post the results of the election on the Tribal Election Results Form.

Section 5 – Write-In Candidates

Spaces for write-in candidates will be provided for on the election ballots.

ARTICLE VII – ABSENTEE VOTING

Section 1 – Requirements

A provision for absentee voting is required for all elections. Absentee ballots must be mailed or hand delivered to the Election Board before the close of the polls. Any ballots received after the close of the polls shall not be counted. Two or more members of the Election Board shall be present when retrieving absentee ballots from the post office. The Election Board may retrieve absentee ballots from the post office weekly in order to compare signatures and correct any possible errors in voter processing. The last attempt to retrieve absentee ballots from the post office will be made prior to the closing of the polls on the day of the election. All keys necessary to access the post office and absentee ballot box shall be located at the tribal office and be only accessible by the Election Board. .

Section 2 – Applications

Each person applying for an absentee ballot must fill out and sign an Application for an absentee ballot. Registered voters that intend to vote by mail must prepare and submit their Application for an absentee ballot to the Registrar of Voters at least fifteen (15) days prior to the election; however, Applications for absentee ballots may be submitted to the Registrar of Voters at the Tribal Office during regular business hours until the close of business on the day prior to the election.

Section 3 – Absentee Ballots

The absentee ballot shall consist of a paper ballot, which meets the requirement of this Ordinance. The Election Board shall compare the signature on the return envelope to the signature on file with the Registrar of Voters. If the signatures match, the return envelope shall be deposited into the locked ballot box, unopened. The locked ballot box shall be kept secured at all times and accessible only by the Election Board. In the event the ballot is rejected because of an improper signature, the ballot shall be kept in a separate secure location until it can be reviewed by the entire Election Board.

Section 4 – Rejected Absentee Ballots

At the closing of the polls, the Election Board shall review all rejected absentee ballots, and allow any member of the Election Board to challenge the rejection of any absentee ballot. The decision to reject, or not reject, an absentee ballot shall

be decided by a majority vote of the Election Board. All decisions shall be final. If an absentee ballot is accepted, the return envelope shall be opened and the inner envelope deposited in the ballot box in the same manner as other absentee ballots. Unchallenged, rejected ballots shall be destroyed, unopened, after the election has been certified, and the challenge period has expired.

ARTICLE VIII – ELECTION CHALLENGES, RECOUNTS, AND TIES

Section 1 – Challenges/Recounts

Any candidate may request a recount of the ballots by submitting a written request to the Registrar of Voters at the Tribal Office, addressed to the Election Board no later than close of business two (2) days after the election. Upon receipt by the Election Board, the request must be acted upon within two (2) business days. A recount will be granted if, by a majority vote of the Election Board, a vote is so close as to justify a recount, or if there is some evidence of irregularity sufficient to justify a recount. The decision of the Election Board as to whether to recount the ballots shall be final.

Section 2 – New Elections

In the event of extreme irregularity, the Election Board may order a new election. The new election shall be conducted generally in accordance with the provisions of this Ordinance, except that no new candidates may file, and sufficient time shall be granted for notice of the new election to be given to tribal members and for absentee voting. The decision of the Election Board on whether to hold a new election shall be final.

Section 3 – Ties

In the event that two (2) or more candidates receive an equal number of votes for an elected position that changes the outcome of an election, and after a recount has been conducted and the results are the same, a run-off election shall be conducted within thirty (30) days for only the candidates that are tied. The runoff election will be conducted in the same manner as a regular election.

ARTICLE IX – CERTIFICATION OF ELECTIONS

The Election Board shall certify the results of the election as provided in Article VI, Section 4 of this Ordinance. When the period for challenges has lapsed, and any challenges have been resolved by the Election Board, the Election Board shall deliver its signed certification of the Tribal Election Results form to the Tribal Chair and/or the Tribal Council.

The results of the election shall be recorded by the Registrar of Voters on the Bureau of Indian Affairs Form, entitled Report of Tribal Election, and shall be

submitted to the Northern California Agency office, with a copy to the Tribal Chair and/or the Tribal Council.

ARTICLE X – OATH OF OFFICE

The Tribal Council shall meet on the next regularly scheduled Tribal Council meeting after the election. At that time, the newly elected Tribal Council members shall take office and shall take an oath administered by the Chairperson, Vice-Chairperson, Secretary, or Treasurer of the Council, which shall be as follows:

“I, _____ do solemnly swear (of affirm) that I will support and defend the Constitution, laws and policies of the Smith River Rancheria, that I will carry out faithfully and impartially, the duties of my office to the best of my ability, that I will cooperate, promote, and protect the best interests of my Rancheria in accordance with this Constitution”.

ARTICLE XI – PETITIONS

Section 1 – Types of Actions

(A) Referendum by the General Membership –General Members may petition to have a proposed or adopted Tribal Council resolution ordinance or code, or a constitutional amendment, presented for a vote of the General Membership by filing a petition pursuant to the requirements of the Constitution and this Ordinance.

(B) Recall Petition – General Membership may petition to recall a member of the Tribal Council pursuant to the Constitution and this Ordinance, if a member of the Tribal Council has failed in the performance of their duties through gross neglect of duty, misconduct reflecting on the dignity of the Rancheria or the Council, or repeated unexcused absences from official functions.

Section 2 – Petition Requirements

(A) Sponsor – Each petition must have at least one sponsor, with whom all correspondence and communication with the Election Board shall take place. The sponsors must be tribal members eligible to vote, and his or her name must appear on each petition signature page along with the sponsor’s mailing address and phone number.

(B) Purpose of the Petition – Each petition signature page must contain a statement that clearly identifies the purpose of the petition.

In the case of a referendum petition, the petition shall identify the resolution, ordinance, code, or portion of the Constitution to be voted upon. This shall include specific details, such as a resolution number, the title of the ordinance, code, or the Article and Section of the Constitution to be voted on,

or other forms of identification, and, if adopted by Tribal Council, the date the resolution, ordinance or code was adopted.

In the case of a recall petition, the petition shall provide specific details of how the Tribal Council member subject to recall has failed in the performance of their duties, either through gross neglect of duty, misconduct reflecting on the dignity of the Rancheria or the Council, or repeated unexcused absences from official functions.

(C) Proof of Certification - Each signature page on every petition must include the date the petition was certified by the Election Board, and attach a copy of the letter the sponsor received from the Election Board certifying the petition.

(D) Forms – The Election Board may issue a suggested form of petition for use by tribal members, but any petition which meets the requirements of this Section shall be sufficient for filing with the Election Board.

Section 3 – Filing of Petitions

Original petitions shall first be filed by the sponsors with the Tribal Council Secretary during a regular Tribal Council meeting, who will initial and date stamp the date the original petition was received. Within five (5) business days of receipt, the Tribal Council Secretary shall file the original petition with the Election Board Chairperson, with a copy of the petition filed with the Tribal Council. The Tribal Council shall review the petition to ensure that it is valid pursuant to this Ordinance and the Constitution of the Smith River Rancheria. Within ten (10) business days after the petition is received from Tribal Council, the Tribal Council issue a written decision as to the validity of the petition. If the Tribal Council determines the petition does not comply with this Ordinance or the Constitution, the written opinion shall include the reasons why the petition is invalid.

Section 4 – Certification of Petitions

Within ten (10) business days after Tribal Council issues its decision, the Election Board shall review all petitions for compliance with all the requirements set forth in this Ordinance. If the Tribal Council determines the petition is valid, and the other requirements of this Ordinance are met, the Election Board shall certify the petition. Should the Tribal Council determine the petition is invalid, the Election Board will return the uncertified petition to the sponsor.

Once a petition is certified, the Election Board will retain the original petition, and provide a copy to the sponsor, along with a cover letter certifying the petition. Any petition that is circulated without the Election Board certification letter shall be invalid. Petition sponsors shall be provided with a copy of the Voter Registration List, which shall only be used to seek signatures for a certified petition.

Section 5 – Presentation of the Certified Petition to Tribal Council

- (A) Upon certification of the petition, the Election Board shall present a copy of the petition to the Tribal Council at its next regular meeting. With the exception of a constitutional amendment, the Tribal Council may, at its discretion, consider the measure contained in the petition, and may adopt it.
- (B) With respect to a recall petition, upon receipt, the Council also may consider removal of the elected official named in a recall petition under the provisions of Article XII of this Ordinance and Article V, Section 5 and Article VII, Section 3 of the Constitution of the Smith River Rancheria. However, should the Tribal Council commence removal proceedings against the named elected official, but the required number of Tribal Council votes are not received, the Tribal Council shall notify the sponsor of the recall petition in writing of the outcome of those proceedings, and, at the discretion of the sponsors, they shall be permitted to commence the gathering of signatures for the recall petition, and shall be permitted the same period of time to gather signatures from the date of the Tribal Council's written notification.

Section 6 – Circulation of Petitions

Certified petitions may be circulated only by Smith River Rancheria members who are registered voters. Only registered voters can sign the petition, and they must be given sufficient opportunity to read the summary of the petition, the attached complete copy of the description of the petition, the certification letter, and they must be advised that they must be a registered voter before they can sign a petition.

Section 7 – Validation of Petitions

Sponsors of a petition shall file completed petitions, with original signatures, to the Registrar of Voters at any time within ninety (90) days of certification. The Election Board must verify the number and genuineness of the signatures, that at least thirty percent (30%) of all registered voters have signed, and that the petition has been filed within (90) days of certification. If the requirements of this Ordinance are met, the petition shall be validated.

- (A) Signatures – The name of each signer must be printed and the signature must be in ink. The date the petition was signed must be included. Signers must be registered to vote prior to signing a petition. The signature of anyone not registered to vote at the time they signed the petition shall be invalid.

(B) Verification – On the back of each signature page shall be a statement, signed by the tribal member who circulated that page, stating they are a tribal member registered to vote, that they circulated the signature page with a complete copy of the measure attached along with the certification letter, and that the signatures are true and authentic, to the best of their knowledge.

Section 8 – Elections

Upon validation of the petition by the Election Board, the measure shall be presented to the Tribal Council, and shall be placed on the ballot for the next regularly scheduled General Membership election, or within ninety (90) days, whichever comes first. Any special election shall be held in the same manner as regular elections as provided in this Ordinance and the Constitution of the Smith River Rancheria. The matter on the ballot shall be limited to the petition (or petitions, if more than one petition has been validated), as well as any measure or measures referred to a vote of the General Membership by the Tribal Council.

Upon receipt of a validated petition, with the exception of a constitutional amendment, the Tribal Council may, in its discretion, consider the measure contained in the petition, and may adopt it, in accordance with the procedure outlined in Article XI, Section 5 of this Ordinance.

As for recall petitions, within ten (10) days after receipt of the valid recall petition, the Council shall notify the accused Council person by registered mail, return receipt requested, and request in writing her/his presence at a meeting with the Council. The accused shall be advised of the charges against her/him and shall further be advised of her/his right to present her/his defense at a general meeting of the Rancheria. The Council shall hold an election on all recall petitions within ten (10) days of notifying the accused. Voting shall be by secret ballot, with at least thirty percent (30%) of the registered voters voting in the election. A simple majority shall prevail. If the vote is against recall, or if the requisite amount of voters is not satisfied, the council person shall reassume her/his office in good standing. If a vote is for recall, her/his office shall be considered vacant

Section 9 – Adoption of Measure

With the exception of recall petitions and constitutional amendments, at least fifty-one percent (51%) of the registered voters shall vote in an election on all other petitions, and two-thirds (2/3) majority shall be required for the adoption of a measure by the General Membership.

For the recall of any elected official, at least thirty percent (30%) of the registered voters must vote in such an election, and a simple majority shall prevail.

For constitutional amendments, a majority vote of the registered voters of the Rancheria voters voting in an election is required in order for the amendment to be adopted.

In the event that there are conflicting measures placed upon the ballot, the ballot shall state that the voter may vote for as many measures as they choose. In the event of conflicting measures, the measure receiving the greatest number of votes shall be adopted, and no further election shall be held without full compliance with the requirements of this Ordinance.

Section 10 – Effective Date of Measure

Unless a petition submitted to the General Membership specifies a later effective date, any petition passed by the General Membership shall become effective upon certification of the election by the Election Board.

ARTICLE XII – REMOVAL

Section 1 – Removal by Tribal Council

The Tribal Council may remove a Tribal Council Member from office if that member is found by the Tribal Council to have failed in the performance of their duties for gross neglect of duty, misconduct reflecting on the dignity of the Rancheria or Council, or repeated unexcused absences from official functions. Further, if it is determined that a Council Member does not meet the eligibility criteria to hold office pursuant to the Constitution, they will be subject to removal. Removal shall take place in accordance with this Ordinance and the applicable provisions of the Constitution of the Smith River Rancheria.

Section 2 – Notice of Intent to Remove

Prior to removal, the Tribal Council shall provide the Tribal Council Member subject to removal notice of the Tribal Council's intent to remove them from office. The notice shall provide the Tribal Council Member subject to removal the date of the meeting scheduled, and that the Member will have the opportunity to answer any and all charges leveled against them at this Tribal Council meeting. The Tribal Council has the discretion to hold this meeting during an open General Membership meeting.

Section 3 – Opportunity to be heard

The Tribal Council member subject to removal shall have the opportunity and right to present a defense at the special Tribal Council or General Membership meeting set in accordance with this Section. There shall be full and complete discussion of all the aspects of the charges prior to the Tribal Council taking formal action.

Section 4 – Decision and Effective Date

After the matter has been heard, upon a vote by two-thirds (2/3) vote of all of the Tribal Council in favor of removal, the Tribal Council member subject to recall shall be immediately removed from office. Tribal Council also has the discretion to schedule a vote of the General Membership to recall a member of Tribal Council, pursuant to the terms of this Ordinance and the Constitution of the Smith River Rancheria.

Upon removal, the vacant position shall be filled, by a majority vote of Tribal Council, by a Rancheria member qualified to hold office, who will fill the vacancy until the next general election. In the event the removed Council member was an Officer of the Tribal Council, the Tribal Council shall choose who among the remaining Council members should be placed into the Officer position, and the appointed Council member shall not serve in the capacity of an Officer of the Tribal Council. The appointed Council member shall fulfill only the remainder of the term of office of the removed/recalled Tribal Council member.

ARTICLE XIII – APPEALS

Any final decision of the Election Board or the Tribal Council under this Ordinance can only be overturned by a vote of the General Membership, pursuant to the petition process outlined in this Ordinance.

LEGISLATIVE HISTORY

This Chapter was originally adopted as the Smith River Rancheria Election Ordinance on March 9, 1993 (Ordinance No. 93-01). The Election Ordinance was amended by Resolution 06-30 on November 14, 2006, and again amended by Resolution # 14-15 on July 8 2014.