

**LUMBEE TRIBE OF NORTH CAROLINA**

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ORDINANCE NO. 2005-000<sup>2</sup>

DATE: May <sup>4</sup>, 2005

**WHEREAS**, The Lumbee Tribe of North Carolina, a recognized Indian Tribe of the State of North Carolina, subject to the Constitution of the Lumbee Tribe of North Carolina and its inherent powers of self-government; and

**WHEREAS**, Article VII, Section 1 of the Constitution of the Lumbee Tribe of North Carolina delegates all legislative authority to the Tribal Council; and

**WHEREAS**, Article X of the Constitution of the Lumbee Tribe of North Carolina establishes an independent Tribal Elections Board and the method in which the Elections Board shall be seated, and

**WHEREAS**, Article X authorizes the Tribal Council to adopt ordinance (s), which shall govern voter registration and the conduct of all regular and special tribal elections and any other matters, specified herein.

**THEREFORE**, Be it enacted by the Tribal Council of the Lumbee Tribe of North Carolina the following ordinance that shall be cited as "ELECTION ORDINANCE."

**SECTION 1: QUALIFICATIONS OF ELECTIONS BOARD AND ALTERNATES**

1. No person who is elected, appointed, or employed with the Lumbee tribal government shall serve as a member or alternate on the Elections Board (hereafter referred to as "Board").
2. The Board members and alternates shall be an enrolled member of the Tribe and at least 18 years of age at the time of their appointment to the Board or when selected as an alternate.
3. Members and alternates shall be appointed according to Article X, Section 2 of the Constitution of the Lumbee Tribe of North Carolina (hereafter referred to as "Lumbee Constitution").
4. When appointing a member to the Board, each appointing committee shall also select an alternate that shall be appointed to the Board if his or her district seat becomes available due to disqualification or resignation of the district Board member.

5. Each appointing committee, shall, to the extent possible, appoint Board members and alternates with experience in tribal and/or state elections.

## **SECTION 2: DISQUALIFICATION AND REPLACEMENT OF BOARD AND ALTERNATES**

1. The members of the Board shall disqualify themselves and withdraw from all functions of their positions during any election or process in which a conflict of interest exists as defined by the ordinance on Ethics and Conflict of Interest. Such members shall resume their duties only when there is no longer a conflict of interest.
2. If a member of the immediate family of a Board member files as a candidate for a position in the tribal government, the Board member shall be disqualified from serving in that election and a Board alternate shall serve in his or her place.
3. If a Board member files as a candidate for a position in the tribal government, the Board member's appointment shall be deemed automatically withdrawn.
4. A Board member may resign his or her office at any time. Resignation is immediate upon submitting written notice to the Tribal Council of his or her resignation.
5. If an alternate named pursuant to Section 1 of this Ordinance is not available or willing to serve on the Board for the appointing committee seat that is available, the Tribal Council shall appoint a person to fill such vacancy according to Article X, Section 2 of the Lumbee Constitution.

## **SECTION 3: OATH AND DUTIES OF ELECTION BOARD**

Upon accepting appointment to the Board, each member shall sign the Lumbee Tribe of North Carolina's Oath of Office, which shall become part of the Board's records.

The Election Board's authority to promulgate rules and regulations shall include, but not be limited to:

1. Verifying that a person meets the qualifications for candidacy under Article II of the Lumbee Constitution and any adopted Ordinances;
2. Certifying candidate/s;
3. Examining and verifying petitions for measures;
4. Supervising elections for candidates and measures;
5. Distributing to candidates a copy of the Lumbee Constitution, ordinance on Election Regulations, and any other election materials;
6. Designating polling sites and election dates and hours. The Board shall cause to be published all polling sites, election dates and hours and other information deemed necessary at least fifteen (15) days before the election in newspapers of wide distribution and other forms of media outlay;

7. Distributing a list of voter addresses and any other contact information approved by the tribal membership to candidates in a format to be determined by the Board;
8. Publishing and posting sample ballots;
9. Completing an alphabetical ordering of candidates for ballot arrangement;
10. Preparing ballots;
11. Mailing absentee ballots;
12. Designating a post office box where absentee ballots shall be returned;
13. Retrieving absentee ballots from the designated post office box;
14. Accepting or rejecting absentee ballots by a verification process;
15. Counting or supervising the counting of ballots cast in an election, excluding rejected absentee ballots;
16. Posting election results;
17. Supervising recounts of election results;
18. Certifying election results;
19. Conducting election appeals and awarding a new election, if necessary;
20. Reporting election results to the tribal membership;
21. Maintaining accurate election records, including the poll book;
22. Storing ballots in such a manner that will ensure the safekeeping and security of said ballots for a period of one (1) year from the date of the election or until any contested election is resolved, whichever is later.

#### **SECTION 4: CONDUCT OF ELECTIONS**

##### **1. Ballots**

- a. The Board shall prepare all ballots. The ballot shall be printed on white paper with black ink. Tribal Council election ballots shall include the number of candidates to be elected and detailed instructions regarding the number of vote(s) a voter can cast.
- b. Not later than the five (5) business days following the certification of candidates, the Board shall complete an alphabetical ordering of the candidates. The names of the candidates shall be arranged on the ballot according to said random ordering. If the Board determines that a candidate has died or withdrawn, the name of the candidate shall not be printed on the ballot or, if the ballots have already been printed, shall be erased or canceled before the ballots are distributed.

##### **2. Voting Procedure**

- a. Except as otherwise provided, any eligible voter may vote by appearing at the voter's prescribed polling site, announcing to the Election Precinct Committee his or her name, address, and signing the ballot sign out sheet. If the voter is unable to sign the ballot sign out sheet, the elections worker shall write "unable to sign" by that name.

- b. The Election Precinct Committee will verify that the prospective voter is the voter whose name he or she is seeking to vote under by his or her tribal enrollment card, driver's license, or other state issued identification card with picture before permitting the eligible voter to vote. Any eligible voter unable to vote in person may vote by absentee ballot as prescribed in this ordinance. If the poll book indicates the voter has already submitted an absentee ballot, the voter will not be permitted to vote again.
- c. Once a voter's identity has been verified, the elections worker shall note such verification in the poll book by signing his or her initials by the voter's name. The voter will then be issued a ballot.
- d. The voter shall then mark the ballot in a private area to be designated by the Board. The voter may receive assistance with voting from an Elections Precinct Committee member if requested by the voter. The voter shall deposit the ballot in the locked ballot receptacle when completed.
- e. If the voter accidentally makes a mistake or mutilates his or her ballot, a new ballot shall be issued to the voter with the correction noted in the poll book. The spoiled ballot shall be sealed in an envelope by the voter and stored in the locked ballot receptacle or machine.
- f. If a voter presents his or herself and states that he or she, because of a physical disability is unable to mark the ballot, assistance shall be provided by at least two members of the Election Precinct Committee, whenever possible.
- g. Immediately after the polls are closed, the Board shall count or cause to be counted the ballots cast. Election winners shall be chosen by plurality according to the rank order of votes received.
- h. Upon completion of the ballot counting at each polling site, the Elections Precinct Committee shall announce the election results for that site.

### 3. Electioneering at Polling Sites

- a. No person shall be allowed to electioneer within fifty (50) feet of the entrance to any polling site while an election is in progress. Nor shall any person, except election officials and other persons authorized by law, be allowed to approach the ballot box while an election is in progress or remain within fifty (50) feet of the polling site except while actually voting.
- b. No written or printed material other than that provided by the Board shall be publicly placed or exposed on public or private property within fifty feet

(50) of the entrance to any polling site while an election is in progress. The Board may establish additional procedures on electioneering.

- c. Candidates may submit two names to serve as their respective designated watchers for each polling place, one of which shall be an alternate. Poll watchers:
  - i. Must be an eligible voter;
  - ii. Must be clearly identified by a badge, armband or other appropriate identification to be issued by the Board;
  - iii. Are prohibited from conversing with voters and Election Precinct Committee members. Any disruption by watchers will be cause for their removal from the polling site; and
  - iv. Are to remain only in areas designated by the Board.
- d. In an election for a measure, one voter advocating and one voter opposing the measure shall be used as observers at polling sites when such advocates are available.
  - i. Prior to an election involving a measure, the Board shall run a notice in newspapers of wide distribution and other forms of media outlay requesting that voters volunteer for pools supporting and opposing the measure, from which these observers shall be selected.
  - ii. In the event that an advocate is not available for a polling site, the Board shall have in place procedures to uphold the integrity of the voting results at that polling site.

#### 4. Use of Voting Machines

- a. No voting machine shall be used in any election unless it:
  - i. Secures to the voter secrecy in casting his or her ballot
  - ii. Permits the voter to vote for any candidate and as many candidates for which the voter has a right to vote; and, where marked ballots are used;
  - iii. Is capable of correctly counting ballots on which the proper number of votes have been marked for any candidates or measures that have been voted; and,
  - iv. Is capable of totaling votes by candidate and totaling votes for and against each measure on the ballot.
- b. If a voting machine becomes inoperative, the Board shall repair the voting machine at once or substitute another voting machine. If no other voting

machine can be procured and the inoperative voting machine cannot be repaired in time for further use in the election, or when in the discretion of the majority of the Board it is impracticable to use the voting machine, the Board shall resort to the use of paper ballots, and to the counting of same by the Board.

## **SECTION 5: ABSENTEE VOTING**

### **1. Provisions for Absentee Voting**

- a. The Board shall determine a period prior to all elections to provide voters with "No Excuse" absentee voting.
- b. The Board shall designate a post office box rented by the Board or a box belonging to the Board as the place where absentee ballots shall be returned.
- c. The Board shall send by U.S. Mail an absentee ballot to each voter who has requested an absentee ballot according to procedures.
- d. Absentee ballots shall be returned by U.S. mail, and must be received at the location designated by the Board no later than 5:00 p.m. of the business day prior to the election.
- e. The absentee ballot shall consist of a ballot which otherwise meets the requirements of this ordinance, an outer envelope, instruction sheet, ballot secrecy envelope, and return envelope.

### **2. Voting Procedure for Absentee Ballots**

- a. An immediate family member of a voter can request an absentee ballot for the voter. The Board shall have in place the procedures for verification of returned absentee ballots when the ballot is requested by an immediate family member.
- b. Voters who live outside the territory of the Lumbee Tribe of North Carolina may, in a one time only declaration, select a district within the tribal territory that shall be used for the purpose of identifying the voting district in which the voter votes.
- c. When voting by absentee ballot, the voter shall mark the ballot, place it in the ballot secrecy envelope, and seal it. The voter shall then place the ballot secrecy envelope inside the return envelope and seal it. The return envelope shall be signed by the voter as it appears on the return envelope and returned by U.S. Mail to the location designated by the Board.

- d. The Board shall compare the signature on the return envelope with the signature on the voter's signature form. If the signature is absent or does not match, the absentee ballot shall be rejected. The entire rejected absentee ballot shall be deposited unopened in a separate, secure box for invalid ballots. If the signatures match, the ballot shall be deposited in the locked ballot box.
- e. For ballots placed in the locked ballot box, the Board shall record the return of the voter's absentee ballot by and through a process that will identify the voter as having voted by absentee ballot. The process shall provide information to be used on the day of election, to identify those voters who have already cast a vote and to prohibit the voter from casting a second vote.

### 3. Security of Ballots

- a. Returned absentee ballots shall remain in the designated post office box until retrieved by the Board.
- b. The Board may retrieve returned absentee ballots during the timeframe of:
  - i. Not more than two (2) days before the election, and
  - ii. After the deadline for absentee ballots to be returned, but before the beginning of the election.
- c. In the event the post office box is no longer adequate or workable, the Board shall secure a comparable means for assuring the security of ballots.
- d. Following the counting of ballots, The Board shall store all ballots, upon approval of the Tribal Council, in such a manner that will insure the safekeeping and security of said ballots for a period of one (1) year from the date of the election or until any contested election is resolved, whichever is later.

## SECTION 6: ELECTION RESULTS

- 1. During the canvassing of election results, the Board shall:
  - a. Judge the applicability of absentee and questioned ballots, shall open and tally those accepted, and shall compile the total votes cast in the election.
  - b. Review the tallies of the recorded vote to check for mathematical error by comparing totals with other tallies such as the number of ballots issued, signatures, and other data.
  - c. Correct all obvious errors found during the canvassing.

2. **Automatic Recount:** There shall be an automatic recount of election results if there is a difference of one (1) percent or less in the number of votes cast for a candidate or measure.
  - a. The automatic recount shall not be subject to the other sections of this ordinance. The automatic recount shall be held within three (3) business days after the first counting of ballots.
  - b. Upon completion of the automatic recount, the Board shall announce the results of the recount pursuant to this ordinance. The results of the recount shall be the unofficial results of the election, contingent to any appeal or a request for a recount by
    - i. A written request to the Board, and
    - ii. Within three (3) business days after the Board has announced the election results.
3. **Request for Recount:** If a request for a recount is filed and granted, the recount shall be provided within three (3) business days following the granting of a recount.
  - a. **Opening the Ballot Box:** The ballot box shall be opened by the chairperson of the Board or his or her designee only in the presence of the Board and other persons referred to in this section who has a vested interest. The Board shall conduct the recount and permit any candidate or voter, authorized in writing by a candidate to be present as his or her representative, to watch the recount.
  - b. In an election for a measure, one voter advocating and one voter opposing the measure may be present to watch the recount. (Prior to an election involving a measure, the Board shall run a notice in the local media requesting that voters volunteer for pools supporting and opposing the measure, from which these observers shall be selected.)
  - c. If voting machines were used in the election, voting machines may also be used for the recount.
  - d. The results from the recount shall be the unofficial results of the election.
4. **Contested Election:** A candidate may contest the results of an election for Tribal Chairperson or Tribal Council, while a voter may contest the results of any measure.
  - a. Any contest must be based on a violation of tribal law or applicable common federal law.

- b. The candidate, or any person authorized to act for such candidate, whose right to the office is contested, has given to a voter, election judge or election clerk a bribe or reward, or has offered such bribe or reward for the purpose of procuring his or her election.
  - c. The complaint must identify the specific act constituting such alleged fraud and the names of the alleged perpetrators of such fraud.
  - d. If fraud is proven on the part of a candidate, such candidate shall be declared ineligible for the office for which he or she was a candidate. However, if the allegations are not proven by clear and convincing evidence, the candidate shall be declared eligible for the office.
5. An election result may be challenged on the basis of an allegation of irregularities other than fraud only if such challenge alleges material and substantial irregularities and of such a nature that:
- a. The outcome of the election would have been contrary to the reported result;  
or
  - b. Proves it is impossible to determine with mathematical certainty which candidate is entitled to be certified as elected, or in an election concerning a referendum, that the outcome of the election is impossible to determine with mathematical certainty.
  - c. The board may order a new election upon agreement of at least 3 members of the election board.

## **SECTION 7: ELECTION CERTIFICATION**

1. After counting, all ballots shall be placed in ballot boxes, locked, and marked by the Election Precinct Committee with the name, voting site and the date of the election.
2. All unused, spoiled or rejected ballots shall be labeled and placed in the ballot box.
3. The Precinct Judge and at least one other precinct committee member shall immediately return the locked ballot boxes containing all election ballots to the place designated by the Board.
4. The Board shall certify all elected candidates to the seat or office in which they were a candidate and/or certify the results of a vote on a measure(s):
  - a. Provided that a challenge to election results or request for recount or automatic recount has not been filed with the Board by 5:00 pm at the end of five (5) business days after the Board has announced the unofficial results of the election.

5. Certification of a candidate or measure in question will be made by the Board following the determination of the challenge or recount, as the case may be.
  - a. Upon certification of an election, a candidate or voter may within five (5) business days, appeal to any lower court with jurisdiction.
  - b. If the decision of any lower court is not satisfactory or if no lower court exists, the candidate or voter may appeal to the Supreme Court, or to any Supreme Court designee, or any lower court given jurisdiction by the Supreme Court, according to Article IX, Section 1 of the Lumbee Constitution.

## **SECTION 8: VIOLATIONS OF ORDINANCE**

A. A person is guilty of violation of this ordinance who:

1. Knowingly votes more than once in any election;
2. Not being entitled to vote, knowingly votes;
3. Hinders the voting of others;
4. After having received a ballot as a voter, knowingly fails to cast the ballot or return the ballot to the Election Precinct Judge before leaving the polling site or going outside the voting area;
5. Knowingly adds a ballot to those legally cast at any election by fraudulently introducing the ballot into the ballot box or mixing the ballot with other ballots lawfully cast while they are being canvassed or counted;
6. Knowingly detains, destroys, alters, or mutilates a ballot or election returns; or
7. Intentionally disables or removes from the polling site or custody of an election official, a voting machine, ballot box, or voting record; or
8. While at a polling site, refuses to obey a lawful order of a member of the Board or Precinct Committee.
9. Willfully contributes to the fraud and/or irregularity of an election.

B. Any person found in violation of this ordinance shall be subject to the following:

1. If a candidate, shall be subject to Section 6 of this ordinance;
2. Shall be ineligible to vote and be present at any tribal polling sites during tribal elections for a period of four (4) years.

### **Definitions:**

Elections Precinct Committee- poll workers designated by the Board of Elections

Voter(s) - those members of the Lumbee Tribe who meet the requirements as set forth in Article II of the Lumbee Constitution.

Challenge - a duly notarized statement setting forth a challenge: to the right of any person to be listed as an eligible voter, or as to the authenticity of any signature upon a nominating petition.

Contest of Election – to protest the election results

Immediate Family Members - shall mean son, daughter, husband or wife, brother, sister, mother, father, aunt, uncle, grandmother, grandfather, step and/or half brother and sister, stepmother, stepfather, nephew, niece, and cousin of the first degree and a person in which there is a spousal relationship.

Board - the Election Board of the Lumbee Tribe as created by the Lumbee Constitution.

Measure - any election submitted to the Elections Board or Tribal Council for the approval or rejection by the tribe at an election, except the election of the Tribal Chairperson and Tribal Council. Examples of election measures are: initiative or referendum petition, recall, and amendment to the Lumbee Constitution.

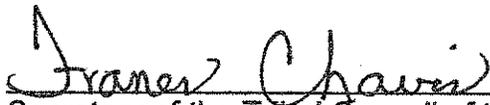
Voter Verification Form - a form as prescribed by the Elections Board to be used in the issuance of absentee ballots.

Voting Machine - any piece of equipment, which will examine and tally marked ballots or which will record every vote cast for candidates or measures and will total all votes cast on that equipment.

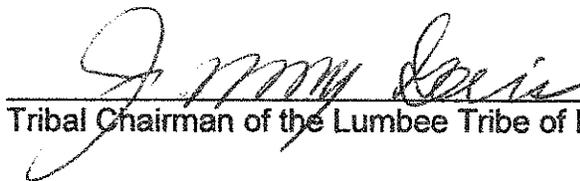
“No Excuse” Absentee Voting - allows the voter to vote for a period prior to all elections according to the provisions of this ordinance. The voter is not required to list an excuse for voting absentee.

#### CERTIFICATION

THIS ORDINANCE ADOPTED THIS THE 21 DAY OF May, 2005  
AT A MEETING OF TRIBAL COUNCIL OF THE LUMBEE TRIBE OF NORTH  
CAROLINA BY A VOTE OF 17 FOR, 2 AGAINST.



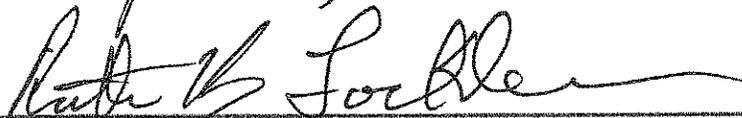
Secretary of the Tribal Council of the Lumbee Tribe of North Carolina



Tribal Chairman of the Lumbee Tribe of North Carolina

#### POSTING

This Ordinance duly posted in the Office of the Lumbee Tribe of North Carolina on this the 22 day of June, 2005.

A handwritten signature in cursive script, appearing to read "Ruth B. Locklear", written over a horizontal line.

Ruth B. Locklear, Tribal Clerk