

**Habematolel
Pomo of Upper Lake**

Election Ordinance

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HABEMATOLEL POMO OF UPPER LAKE

ELECTION ORDINANCE

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ELECTION ORDINANCE

ARTICLE I – PURPOSE

The purpose of this ordinance is to provide an ordinance for all elections as required by Article VI, Nomination and Elections of the Constitution of the Habematolel Pomo of Upper Lake.

ARTICLE II – AUTHORITY

This Election Ordinance is authorized by the Constitution of the HABEMATOLEL Pomo of Upper Lake upon approval by the Secretary of the Interior in accordance with the terms of the Indian Reorganization Act (48 Stat. 984) as amended.

ARTICLE III – VOTER REGISTRATION

Section 1 – Registration

Eligible voters shall be those tribal members who are **duly registered**, regardless of residence, to vote pursuant to ARTICLE III, Section 2 of this Ordinance.

Section 2 – Eligibility to vote

- A. Be an enrolled member of the Habematolel Pomo of Upper Lake
- B. Be at least eighteen (18) years of age on the date of the election
- C. Be duly and properly registered to vote as per CFR 25 Ch. 1 (04-01-03) Edition §81.6
- D. Absentee voting shall be permitted only for duly registered members of the Habematolel Pomo of Upper Lake.
- E. It is the responsibility of all members to keep the Tribal office informed of their current address.

ARTICLE IV – ELECTED OFFICES/QUALIFICATIONS FOR OFFICE

Section 1 – Executive Council - Governing Body

In accordance with Article IV – Governing Body of the Constitution of Habematolel Pomo of Upper Lake, the Governing Body shall be known as the Executive Council and shall consist of seven (7) members elected at large from the eligible and duly registered voters of the Tribe.

- A. The Executive Council shall consist of a Chairperson, Vice-Chairperson, Secretary, Treasurer and three (3) Members-at-Large, **each elected by a majority vote of the voters participating in any such election provided at least 51% of those eligible and registered to vote have voted.**

- B. The Chairperson, Vice-Chairperson, Treasurer and Secretary shall be known as the **Administrative Officers of the Executive Council**.
- C. Except for the first election as provided for in Article VI, Section 5.B. of the Tribal Constitution, all members of the Executive Council shall be elected for four-year terms.

Section 2 – Qualifications of the Executive Council

The qualifications of an Executive Council member shall be as follows:

- A. Candidate must be an enrolled member of the Tribe.
- B. Candidate must have Tribal governing experience, including a minimum of 12 months experience and/or observation at Tribal Council meetings. Experience may include committee membership, an internship, and employment by the tribe and or employment by a Tribal program.
- C. Candidate must be twenty-five (25) years of age.
- D. Candidate must reside physically in the State of California for a least 1 year immediately prior to either (a) the election in which the candidate seeks nomination and election to office, or (b) the prospective appointee’s appointment to office.
- E. Candidate must not have been convicted of a felony crime for at least 5 years immediately prior to either (a) the election in which the candidate seeks nomination and election to office, or (b) the prospective appointee’s appointment to office.
- F. Candidate must not have been incarcerated at any time during the three (3) years immediately prior to either (a) the election in which the candidate seeks nomination and election to office, or (b) the prospective appointee’s appointment to office.
- G. Candidate must not be currently on probation or parole.
- H. Candidate must submit to drug testing immediately prior to either (a) the election in which the candidate seeks nomination and election to office, or (b) the candidate’s appointment to office.
- I. Candidate cannot serve on the Executive Council if related to more than one other Executive Council member *of the same household* in the following manner: mother, father, sister, brother, wife, husband, daughter or son.
- J. Candidate must read and sign “Tribal Council Ethics Ordinance”.

Section 3 – Election Ordinance Committee

The Executive Council shall nominate and elect by majority vote an authorized committee representatives to be known as the *Election Ordinance Committee*, which shall consist of at least four (4) members to a two (2) year term to preside over all elections during their term.

A. Qualifications of Election Ordinance Committee – No person shall be appointed who:

- a. is currently holding elective office, or
- b. is planning to be a candidate for the Executive Council during his/her term of service

ARTICLE V – ELECTION ORDINANCE COMMITTEE’S AUTHORITY

The Election Ordinance Committee shall meet and appoint a Chairperson and Secretary. The Election Ordinance Committee, upon receipt of authorization to conduct an election, shall notify by regular mail all adult members of the tribe, who to its knowledge are eligible to vote pursuant to **25 CFR CH. 1 §81.6** of the need to register if they intend to vote. The Election Ordinance Committee’s authority, responsibilities and procedures are as follows:

Section 1 – Election Ordinance Committee’s Responsibilities (Secretarial Election)

In preparation for the Secretarial Election, the Secretary of the Interior’s authorized representative will conduct and control the Secretarial Election and together with the Chairperson of the Election Ordinance Committee appoints at least three (3) representatives of the Election Ordinance Committee to assist with the Secretarial Election. This group will be known as the *Election Board*. The Authorizing Officer in charge of the Election Board shall be the Secretary of the Interior’s official representative having authority to authorize the calling of a Secretarial Election. The following duties will be performed by the *Election Board* under the direction of the Authorizing Officer of BIA who will take responsibility for the following:

- A. Upon receipt of authorization to conduct an election, notification shall be sent to all adult members of the Tribe, who to its knowledge are eligible to vote pursuant to **25 CFR CH. 1 §81.6** of the need to register if they intend to vote;
- B. The voting member’s signature on the registration form shall be known as the Signature Verification Form;
- C. The Authorizing Officer will request from the Election Ordinance Committee an official list of eligible members eighteen (18) years and up;
- D. To see that the name of each person offering to vote is on the Tribe’s official list of registered voters;
- E. To keep the ballot boxes locked at all times except when ballots are being Counted;
- F. To see that ballots are cast only by registered voters and that the voting list is checked to indicate this;
- G. To begin to count the regularly cast ballots immediately after the close of the polls and then the absentee ballots, pursuant to **25 CFR CH. 1 §81.21**;
- H. To post and certify the election returns;
- I. To return the following to the officer in charge:
 - i. The ballots (in marked and locked boxes)
 - ii. All unused ballots; and
 - iii. The completed Certificate of Results of Election. The officer in charge shall retain the ballots and other material among official records for at least one year. At the end of one year, the officer in charge shall forward the contents of the boxes and other related material to the appropriate Federal Records Center.

Section 2 – Election Board’s Responsibilities (Tribal Election)

Once the Secretarial Election is over with, all future elections will be Tribal Elections. At this point, the Election Ordinance Committee will be known as the **Election Board**.

The Election Board will determine the date and notify the membership when, where and time the meeting for Nominations for the Executive Council will occur.

The Election Board will perform the same basic duties, as that of the Secretarial Election except the Chairperson of the former Election Ordinance Committee will be in charge of the Election Board. The Chairperson of the Election Board will request from the Enrollment Committee an official list of eligible tribal members for each Tribal Election. **In addition to the above duties**, the Election Board shall be responsible for the following tasks:

- A. Posting notices of the time and place of nominations;
- B. Presiding over nominations for Executive Council elections;
- C. Verify that candidates meet the qualifications for candidacy under Article IV, Section 2 of the Constitution of Habematolel Pomo of Upper Lake and of this Ordinance;
- D. Publish Election dates and prepare all Election documents;
- E. Verifying signatures on ballots against Signature Verification Forms;
- F. Counting the votes cast on both ballots and absentee ballots for Candidates and supervises any election recounts that may be necessary;
- G. Posting of election results and **certifying** election results;
- H. Reporting election results to the Executive Council and General Membership;
- I. Maintain the original Signature Verification Forms and all Election records in a safe and secure place;
- J. Preserving and maintaining all ballots in a sealed container under lock and key for thirty (30) calendar days from the date of the Election;

ARTICLE VI – NOMINATIONS

Section 1– Nominations for Executive Council

The Election Board will call for a Nominations meeting to occur at a special meeting called for that purpose. All nominees shall either **accept** or **decline** a nomination. All nominees must be present and shall give an oral presentation as to their desire, ability and qualifications regarding the position for which they have been nominated.

Section 2– Executive Council Requirements

Any enrolled member of the Tribe shall be eligible to be a candidate for election to the Executive Council if she/he will attain the age of twenty-five (25) by Election Day, and meets the requirements and qualifications as established by Article IV Section 2 of this ordinance.

ARTICLE VII – ELECTION PROCEDURES

Section 1 – Voter Eligibility

Any enrolled member of the Tribe who will be eighteen (18) by or on the Election Day shall be eligible to vote pursuant to ARTICLE III – Voter Registration of this ordinance. Following are important procedures that are applicable to all elections.

- A. The date, time and location for elections shall be posted in the Tribal Office and members shall be notified at least thirty-days prior to an election meeting.
- B. The Election Board shall verify the eligibility of the nominees and conduct all elections according to ARTICLE V Section 2 of this ordinance.
- D. All eligible voters must be properly registered and have a completed Signature Verification Form on file.
- E. All elections shall be done by secret ballot; there shall be **no** voting by proxy.
- F. Absentee voting shall be permitted only for duly registered members that cannot appear and vote in person.
- G. Voting may occur by absentee ballot as set forth in Article X, Section 3 and below:
 - i. Registered Voters wishing to vote by absentee ballot must complete a Request for Absentee Ballot Form, and must further submit that request form to the Election Board by the deadline noticed by the Election Board. Once a Registered Voter timely and properly submits a Request for Absentee Ballot Form, that Registered Voter shall be eligible to vote by absentee ballot for all future elections, without resubmitting any additional Request for Absentee Ballot Forms, until and unless he or she revokes that request by stating the same in a writing delivered to the Election Board.
 - ii. Prior to each election, the Election Board shall make available the then-current Request for Absentee Ballot Form to all Registered Voters, and it shall clearly identify both: (1) the deadline for the Registered Voter to submit his or her completed Request for Absentee Ballot Form (if one is not already on file); and (2) applicable return information (e.g., address, etc.), typically via the official Notice of Election.
 - iii. The Election Board will issue an absentee ballot to each Registered Voter who timely submits a completed (and signed) Request for Absentee Ballot Form.
 - iv. The absentee ballot must be completed and signed by the Registered Voter, and he or she must arrange for its return, in one of the manners set forth below, **before the close of ballot voting on the Election Day (as identified on the applicable Notice of Election)**.
 - v. Absentee ballots may be returned by U.S. Mail, Federal Express, UPS, or any other established carrier. Ballots may also be hand delivered, **either by the Registered Voter personally or by any other person on behalf of the Registered Voter**. No special or separate form is required to establish that one person has authority to deliver another Registered Voters absentee ballot. Instead, the absentee ballots shall be designed in a

manner that establishes and maintains the authenticity of that absentee ballot as submitted by that individual Registered Voter, regardless of who actually delivers it to the Election Board.

- vi. Neither the Tribe nor the Election Board accepts any responsibility for delivery delays, spoliation, or other mishandling of any absentee ballot to the extent such delay, spoliation or mishandling occurs while the absentee ballot is in the possession of any entity other than the Election Board or its designee. It is the responsibility of the Registered Voter casting an absentee ballot and submitting it via one of the approved methods to ensure such ballot is received, in acceptable and unspoiled form, by the Election Board by the close of ballot voting on Election Day.
 - vii. All absentee ballots returned to the Election Board, as set forth above and by the close of ballot voting as identified on the applicable Notice of Election, shall be considered a duly cast ballot to be counted in accordance with this Election Ordinance and subject to the same standards for other ballots (e.g. spoliation, intent clarity, etc.).
 - viii. Absentee ballots may never be returned via fax, e-mail, text message or other such electronic means. Any absentee ballot returned in this manner will not be counted in the applicable election.
 - ix. Any Registered Voter who requested an absentee ballot but did not ultimately submit it may participate by standard ballot voting on the date of the election, as identified on the applicable Notice of Election.
- H. Any voter who changes his or her name shall submit a new Signature Verification Form to the Election Committee.

Section 2 – Quorum

The quorum requirements for an election shall be a majority vote of the voters participating in any such election provided at least 51% of those eligible to vote have voted.

Section 3 – Election of the first Executive Council

The Election Board may issue rules and regulations as may be necessary and consistent with this Ordinance to properly conduct elections.

- A. A Nomination’s meeting for the Executive Council shall occur at a special meeting called by the Election Committee for that purpose. All nominees shall either accept or decline a nomination. All nominees must be present and shall speak as to their desire, ability or qualification regarding the position for which they have been nominated.
- B. The first election of the Executive Council members shall be held thirty (30) days after the effective date of the Constitution. Election shall be every two years thereafter.
- C. The official polling place for the first Executive Council shall be held at room #4 of the Tribal Office in Upper Lake, California, unless it is predetermined that a larger area is necessary. In either case, the Election Board will notify members at least 30 calendar days in advance of the date and location.

- D. At the first election, the Chairperson, Secretary and two (2) Members-at-Large shall be elected to four (4) year terms. The Vice-Chairperson, Treasurer, and one (1) Member-at-Large shall be elected for two (2) year terms. Of the candidates for the three offices of Members-at-Large, the two candidates receiving the highest and second highest number of votes, respectively, shall be elected to the two offices of Members-at-Large having the four-year term. The candidate receiving the third highest number of votes shall be elected to the office of Member-at-Large, having the two-year term. Thereafter, all terms of office shall be for four-year term on a staggered basis.

Section 4– Tribal Elections

- A. All other elections shall be held in accordance with the Election Board’s responsibilities for Election Procedures. Refer to Article V Section 2 – Tribal Election of this Ordinance.

Section 5– Election Board

- A. The Executive Council shall appoint an Election Board of no less than (4) persons to a two (2) year term to preside over all elections during their term as per Article IV Section 3 of this ordinance. Their authority, responsibilities, procedures and appeals is prescribed in this Election Ordinance enacted by the General Membership. Should a vacancy occur and a Replacement be appointed, the appointment will be for the remainder of the term.

Section 6– Election Notification

- A. All elections shall be announced in writing at least 30 calendar days before the election pursuant to the election ordinance. Ballot voting is required for all elections to be valid.

ARTICLE VIII – POLLING PLACES/VOTING LIST

Section 1 – Polling Place

- A. The official polling place for elections will be held at the Tribal Office, Room #4 at Upper Lake, California. If the location of the polling place is changed, members will always be notified. The General Membership meetings, whether quarterly or special called for meetings of the Tribe, shall be at a location called for that purpose. Members will always be notified of date, time and location, at least 30 (thirty) calendar days in advance.
- B. Poll hours on the date of the called election: 10:00 a.m. to 2:00 p.m. **unless otherwise noted.** The Election Board can change these hours at any time as long as the eligible members are informed in the election notice.

Section 2 – Registered Voter List

- A. The Election Board shall compile in alphabetical order an official list of registered voters. This list shall also designate those who have requested an absentee ballot and the members of the tribe who are or will have attained the age of 18 years on Election Day.

ARTICLE IX– ELIGIBILITY DISPUTES

Section 1 – Registration List

- A. The Election Board shall determine the eligibility of any written claim to vote presented to it by one whose name **does not** appear on the official list of registered voters as well as any written challenge of whose name **is on** the list. Its decision shall be final. It shall rule on all claims no later than ten days before the election. Any claim not presented at least ten days before the election shall be **disallowed**. Omission of names from the voters list due to late registration, if notification has been timely mailed, shall not be considered grounds for a challenge.

ARTICLE X– ELECTION NOTICES/VOTING

Section 1 – Secretarial Election

Once the Secretary of the Interior gives authorization to call for a Secretarial Election, the Tribe has ninety (90) days to have the Secretarial Election in accordance with 25CFR 81.5(f). If the Tribe adopts the Constitution, the Constitution will not be effective until the Secretary’s authorized representative (Pacific Regional Office) approves it.

Section 2 -Tribal Election

Once the Secretarial Election is held, all future elections will be Tribal Elections.

Section 3 –Absentee Voting

A Registered Voter who is not able to appear in person at the polls to vote on the Election Day may request from the Election Board an absentee ballot, as set forth above in Article VII, Section 1(G) and the applicable Notice of Election. The Election Board shall give or mail the absentee ballot to the Registered Voter who has requested it by submitting the appropriate form(s) within the applicable timelines, as designated by the Election Board. Appropriate records shall be kept of those from whom requests are received and to whom absentee ballots are issued. After all other ballots have been counted; the absentee ballots shall be counted immediately and included in the results of the election in conformity with the standards set forth in this Ordinance.

Section 4 – Ballots

Ballots are to be prepared clearly and simply so that it is easy for the voters to indicate a choice. Should any voter spoil or mutilate a ballot in the course of voting at a poll, the voter shall destroy it in the presence of the election officials and the election officials shall then make note of the destroyed ballot and furnish the voter with another ballot.

Any spoiled or mutilated **absentee ballot** may be exchanged for a new one by returning it to the election official with a request for another. The election official shall honor the request promptly and make note of the dates. No extension of time will be granted.

Section 5 – Counting of Ballots

All duly cast ballots are to be counted, including ballots that are spoiled and the intent is unclear, for purposes of determining whether the required percentage of voters have cast their ballots in the election. **Invalid** ballots shall not be counted for purposes of determining the required percentage of votes cast.

Section 6 – Write-in votes

Write-in votes will **not** be allowed in any election. Any ballots containing write-in names will be disqualified and not counted as a vote.

Section 7– Tie Votes

In the event of a tie, at the completion of the canvas of the election results, the Election Committee shall conduct a recount of the ballots cast. Should a tie still exist, the Election Board will conduct a special “run off” election limited to the tied candidates. The run-off election will be held not more than 30 calendar days (thirty) from the date of the election in which the tie vote occurred. The election will be conducted in accordance with the election process. Refer to Article VII – Election Procedures of this ordinance.

ARTICLE XI – ELECTION RESULTS

Section 1 – Candidates Elected

The candidate receiving the highest number of votes for his/her position shall be declared elected. For the length of terms for the Council’s three Members-at-Large, refer to ARTICLE VII – Section 3-C of this Ordinance.

Section 2 – Posting and Certifying Election Results

The Election Board shall within two weeks following the election, prepare, post and certify the results of the Election. The results shall be posted at the Central Agency of BIA when necessary, Tribal Office and at other appropriate public places determined by the Election Board. The Committee shall certify the results of the election on the Certificate of Results of Election form and transmit them to the BIA.

Section 3 – Contesting of Election Results

Any eligible voter may contest the results of an election. To contest an election, the voter must challenge the election results by filing with the officer in charge of the Secretary of the Interior within three (3) days after the election. The grounds for the challenge must be supported with

substantiating evidence. If in the opinion of the Secretary of the Interior, the objections are valid and warrant a recount or new election, the Secretary of the Interior shall order a recount or a new election. The results of the recount or new election shall be final.

Section 4 – Secure Location for Election Materials (Tribal Elections)

The Chairperson of the Election Board shall be responsible to ensure that all election materials are kept in a secure and locked location within the Tribal Office for at least 90 days (ninety) after each election in the event of a protest or order of recount.

ARTICLE XII – INSTALLATION

Section 1 – Notification and Installation

- A. Elected candidates shall be immediately notified that they will be installed at the Executive Council Business Meeting following the certification of the election results. The candidates will be notified of the time, date and location of the installation. Installation of any candidate for a particular position may be postponed if a dispute occurs over the election for that position.

Section 2 – Oath of Office – Administered by the Election Board Chairperson

- A. The Oath of Office of each elected member of the Executive Council is to be administered by the Chairperson of the Election Committee.
- B. Each elected official shall take the following Oath of Office prior to assuming his/her duties, which is effective immediately. The Oath of Office shall be as follows: “I, (your name), do solemnly swear that I will carry out faithfully and impartially the duties of my office, that I will do the best of my ability to achieve and maintain a respect for the traditions of our Pomo culture, and for the people that I represent and that I will uphold, promote, and protect this Constitution of Habematolel Pomo of Upper Lake”.

ARTICLE XIII – VACANCIES, RECALL, REMOVAL, APPEAL AND FORFEITURE

This Article shall be effective and apply to all elected Tribal Officials. Until such time as a full working Tribal Court system is established, the Executive Council may sit as a Tribal Court, or appoint from the voting General Membership a Tribal Court and/or a Tribal Court of Appeals consistent with ARTICLE XII of our Constitution.

Section 1 – Vacancies

- A. Any Executive Council seat that has been vacated, whether it is by removal, recall, or forfeiture, shall be filled by appointment at the same Executive Council meeting. The appointee shall only be seated until the next quarterly meeting in which an election to fill the seat is conducted by the General Membership. The

election shall be for the unexpired term of office. No more than two Executive Council members shall be removed or recalled at the same time. No more than one Executive Council member shall be removed or recalled if a seat has been forfeited, and the vacancy has not been filled.

- B. An official is not eligible for nomination or seating in a capacity of the Tribe for a period of two (2) years when found guilty of the following:
 - 1. convicted of a felon or crime
 - 2. misconduct by the Executive Council or Tribal Courts
 - 3. is recalled
 - 4. fails a drug test

Section 2 – Recall

- A. A recall of an elected official is evident when the Election Board and Secretary of the Executive Council receive a petition signed by at least 51% of the eligible voters of the General Membership. The Election Board shall call and conduct within thirty (30) days an election to consider the recall of any Tribal Official.
- B. The election shall be conducted pursuant to the election Articles of this Constitution and the Election Ordinance.

Section 3 – Removal

- A. Any member of the Executive Council or other official of the Tribe who, during the term for which he/she is elected or appointed, is convicted of a felony in any Tribal, Federal or State Court shall automatically be removed from office effective on the date of his/her initial conviction in court.
- B. Any Tribal official formally accused of behavior involving misconduct reflecting on the dignity and integrity of the Tribal government, malfeasance in office or gross neglect of duty shall be suspended by the Executive Council, until such time that a hearing is conducted by the Tribal Court (Chief Judge and three (3) Associate Judges) or the highest ranking official of the Executive Council if no court has been established or appointed, of such charges shall be removed by the Executive Council.
- C. Before any decision for removal, such member or official shall be given a written statement of the charges against him/her within 24 hours after suspension. A hearing shall be set before the Tribal Court within ten days after said suspension. He/she is to appear in person, and he/she shall be given an opportunity to answer any and all charges at the designated hearing.
- D. Should the person choose not to appear, the Tribal Court shall request by motion for removal by default. This decision shall be final; no further remedy shall be available.

Section 4 – Appeal

- A. Any Tribal Official removed by operation of Section 1, A., B., or C of this Article shall have the right of appeal. Appeals must be filed with the Secretary of the Executive Council or the established Tribal Court of Appeals within three (3) working days after a decision. A decision shall be made within 30 days after date of receipt of filing. If the Executive Council sat as the Tribal Court in the removal action under appeal, the Executive Council shall appoint a Tribal Court of Appeals from the voting General Membership, consistent with Article XII.
- B. Upon receipt of a petition signed by at least 51% of the eligible voters of the General Membership, the Election Board shall call a meeting within thirty (30) calendar days to vote on the appeal of the Tribal Official.
- C. The election shall be conducted pursuant to the election Articles of our Constitution and the Election Ordinance. The decision of the General Membership is final.

Section 5 – Forfeiture

- A. After due notice, it shall be the duty of the Executive Council to immediately declare vacant any position and to promptly fill such vacancy in the manner provided in Article VI of our Constitution when it is determined that the incumbent:
 - 1. has resigned
 - 2. has been convicted of a crime involving dishonesty while in office
 - 3. has been convicted of a felony while in office
 - 4. has falsified or omitted information concerning any qualification or conviction of a felony or any crime involving dishonesty when elected for office.
 - 5. has been absent for two (2) consecutive meetings without being excused by the applicable body, in which case, he/she shall forfeit that position at the third meeting; this loss of office shall not deny a person from becoming a candidate for office in subsequent elections, or
 - 6. has ceased to reside physically in the State of California

ARTICLE XIV – INITIATIVE AND REFERENDUM

Section 1 – Initiative

The General Membership may enact laws through the initiative process. Upon presentation to the Election Committee of a petition of at least thirty percent (30%) of the eligible voters of the General Membership, any initiative shall be submitted to that body for a vote. The Election Board shall, upon receipt of such petition, forward a copy to the Executive Council. The Election Board shall meet and set a time, place and date for the initiative election in accordance with the Election Board's procedures. At least fifty-one percent (51%) of the qualified voters must vote in such an initiative election, and a two-thirds (2/3) majority of those voting shall be required for

the initiative to become law. The Executive Council shall adopt an ordinance setting out the procedures governing the initiative process.

Section 2 – Referendum

The Executive Council may propose legislation to the General Membership for adoption by referendum. The Executive Council Secretary shall submit any issue proposed for a referendum vote by the General Membership to the Election Committee. The Election Committee shall meet and set a time, place and date for the referendum election in accordance with Election Committee procedures. A two-thirds (2/3) majority of those voting shall be required for the referendum to become law. The Executive Council shall adopt an ordinance setting out the procedures governing the referendum process.

ARTICLE XV – SAVINGS CLAUSE

All enactments of the Tribe adopted before the effective date of our Constitution shall continue in full force and effect to the extent that they are consistent with our Constitution. If prior enactments are not consistent with our Constitution, our Constitution governs and the prior enactments are null and void to the extent of their inconsistency with our Constitution.

ARTICLE XVI – ADOPTION/EFFECTIVE DATE

This Constitution, when **adopted** by a majority vote at a special election called by the Secretary of the Interior in which at least thirty percent (30%) of the eligible and registered voters of the Tribe have voted, shall be submitted to the Secretary of the Interior for approval and shall be **effective** from the date of the Secretary of the Interior's approval.

DEFINITIONS

The following terms as pertained to the Election Ordinance of HABEMATOLEL Pomo of Upper Lake:

Secretary: The Secretary of the Interior **or** his/her representative. The Secretary of the Interior reports directly to the President of the U.S. and is in charge of several governmental departments/divisions including the Bureau of Indian Affairs.

Authorized Representative or Officer in Charge: The Secretary of the Interior authorizes a representative from the Bureau of Indian Affairs giving full authority to call and conduct a Secretarial Election.

Member of Habematolel Pomo of Upper Lake: A person enrolled as a member of the tribe according to the tribe's membership criteria.

DEFINITIONS

(Continued – Page 2)

Registered Voter: An enrolled member who has attained the age of eighteen (18) years within 150 days from the date of election is authorized and who have completed and returned a registration form to the Election Committee is a registered voter.

Executive Council: The governing body of the tribe and **consists** of seven (7) members elected at large by the eligible voters of the tribe.

Secretarial Election: An election held within a tribe according to regulations prescribed by the Secretary as authorized by Federal Statute (as distinguished from tribal elections which are conducted under tribal authority).

First Election: The first election of the tribe after the Secretary of the Interior approves the tribe's Constitution, also known as the **Secretarial Election**. (See Secretarial Election)

Administrative Officers of the Executive Council: The Chairperson, Vice-Chairperson, Treasurer and Secretary of the Executive Council.

Candidate: An eligible member of the tribe seeking office of the tribe's Executive Council or Tribal Court, etc.

Misdemeanor: Any minor offense for which punishment is lesser than a felony.

Felony: A crime, which is punishable with death or by imprisonment in the state prison.

Election Ordinance Committee: A group of six (6) eligible members of the tribe to 1) write an Election Ordinance procedures for the **Secretarial Election** and Tribal Elections. Conduct and perform all required duties and responsibilities for each election during their two-year term.

Election Board: After the Secretarial Election is adopted by the Membership and approved by the Secretary of the Interior; the Election Ordinance Committee will be known and referred to as the **Election Board**.

Signature Verification Form: A pre-registration form that is completed by eligible members in order to vote. Eligible names are placed on the official list of registered voters.

Ballots: An official document listing all valid candidates for an election. Each ballot is handled and cast as a secret ballot by the voter. The Bureau of Indian Affairs prepares all official ballots.

Absentee ballots: An official document listing all valid candidates for an election and marked "Absentee" and is to be used when a registered voter is unable to vote in person.

Invalid ballots: An official cast ballot, discovered at the time the votes are counted, does not comply with the requirements for voting or is not an official ballot.

DEFINITIONS

(Continued – Page 3)

Spoiled ballot: An official ballot that has been marked in such a way that it is not possible to determine the intent of the voter, a ballot that has not been marked at all, or one that has been marked so as to violate the secrecy of the ballot. There are two types: 1) A ballot that is spoiled and **not cast**, in this case, the spoiled ballot may be exchanged for a new one. No additional time will be provided for the new ballot to be received by the Election Committee. 2) A ballot that is spoiled and **cast** is to be counted in tabulating the total votes cast in conjunction with determining whether the required percentage of the qualified voters has participated in the election.

Mutilated ballot: An official ballot that has been damaged to the extent that it is not possible to determine the choice the voter intended to make. There are two kinds of mutilated official ballots: 1) A ballot that is mutilated and not cast may be exchanged for a new one. No additional time will be provided for an exchanged new ballot to be received by the Election Committee. 2) A ballot that is mutilated and cast is to be counted in the same manner as a spoiled cast ballot.

Write-in votes: Write-in votes will **not be allowed** in any election. Any ballots containing write-in names will be disqualified and not counted as a vote.

Appeal: To call upon some authority for a decision or opinion after being removed from office.

Recall: The process of removing, or right to remove, an official from office by popular vote, usually after using petitions to call for such a vote.

Forfeiture: Something that one loses, resigns or has to give up because of some crime, fault, or neglect of duty; specifically a fine or penalty.

Initiative: An origination of an idea, matter, method, etc. presented via a petition to the Election Committee for an initiative election.

Referendum: A law or ruling, proposed or already in effect, submitted for a direct vote of the members and would supersede all previous rulings.

Enactment: To make into law.

Majority: The greater part or larger number; more than half of a total.

Quorum: The minimum number of members required being present at an assembly or meeting before it can validly proceed to transact or conduct business.

Proxy: A document empowering a person to act for another, as in voting at a General Membership meeting. (Note! Proxy voting is not allowed at **Election** voting.)

Duly: Rightfully; at the right time; as required; sufficiently.

DEFINITIONS

(Continued – Page 4)

Misconduct: To conduct oneself improperly, to manage badly or dishonestly.

Malfeasance: Wrongdoing or misconduct especially by a public official.

Neglect of duty: Failure to carry out expected or required action through carelessness or by intention.



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Resolution # 02-20-04

MONTH - YEAR - SEQUENCE

**Authorizing the Amendment of the Election Ordinance Terms
Governing Absentee Voting in Tribal Elections (Article VII.1.G and
Article X.3) Pursuant to Request and Recommendation of the
Election Board**

WHEREAS, the Habematolel Pomo of Upper Lake (“Tribe” or “The Tribe”) was not lawfully terminated pursuant to the provisions of the Act of August 18, 1958, P.L. 85-671, 72 Stat. 619, as amended by the Act of August 11, 1964, P.L. 88-419, 78 Stat. 390 (“The Rancheria Act”), and is a federally recognized, sovereign Native American Tribe as confirmed by the judgment in Upper Lake Pomo Association, et al., vs. Cecil Andrus, et al., No. C-75-0181-SW; **AND**

WHEREAS, distributees and their lineal dependent Members, now living, listed on the partial summary judgment in the Upper Lake Pomo Association, et al., vs. Cecil Andrus et al., No. C-75-0181 SW, entered May 15, 1979, are those that comprise the General Membership of the Tribe (“The General Membership (GM)”), and are legally entitled to receive services and work within the formal organization of the Tribe; **AND**

WHEREAS, the Habematolel Pomo of Upper Lake is a federally recognized gaming Tribe by the U.S. Department of Interior, Bureau of Indian Affairs (BIA) located in Lake County, California having 168 adult voting Tribal Members; **AND**

WHEREAS, the Habematolel Pomo of Upper Lake, is a sovereign Tribe, possessing inherent powers of the Tribal self-government and self-determination; **AND**

WHEREAS, on May 12, 2004, the Tribe certified and adopted its Constitution with the United States Department of Interior, Bureau of Indian Affairs (BIA), Pacific Regional Office (PRO) through a Secretarial Election; **AND**

WHEREAS, on October 15, 2019, the Tribe certified and adopted its amended Constitution, through another Secretarial Election, which actions were recognized by the United States Department of Interior, Bureau of Indian Affairs, Pacific Regional Office on November 5, 2019 (“Constitution”);

WHEREAS, as per the Tribe’s Constitution under Article IV – Governing Body Section 1. The Executive Council is the governing body of the Tribe and are known as the Executive Council (EC). The Executive Council (EC) consists of seven (7) Members elected at large from the eligible voters of the Tribe; **AND**

WHEREAS, the Habematolel Pomo of Upper Lake, Executive Council is empowered by its Constitution to negotiate and conduct agreements with Federal, State and Local government, which may effect the Tribe; **AND**

WHEREAS, in the Tribe’s Constitution Article X – Powers Section 1. (A), it authorizes the Tribe’s Executive Council to exercise its power to act in all matters that concerns the general welfare of the Tribe, and to make decisions consistent with this Constitution; **AND**

WHEREAS, the Executive Council of the Tribe has the authority pursuant to Article X, Section 1. (K) of the Tribe’s Constitution to manage, lease, contract and otherwise deal with tribal assets and community resources, and to take such actions as are necessary to carry into effect such authority; **AND**

WHEREAS, in the Tribe’s Constitution Article X – Powers Section 1. (L) it authorizes the Tribe’s Executive Council to charter, and regulate enterprises, associations, and corporations formed by members of the Tribe for business or charitable purposes and to authorize formation of corporations under Federal Law for economic, charitable or public purpose;” **AND**

WHEREAS, in the Tribe’s Constitution Article X – Powers Section 1. (P), it authorizes the Tribe to exercise its power to adopt Resolutions, Ordinances, set Codes, etc.; **AND**

WHEREAS, pursuant to the Constitution (Article VI, Section 6), it is the Executive Council’s responsibility to enact and maintain the Election Ordinance; **AND**

WHEREAS, the Tribe’s Executive Council initially approved and adopted by way of motion, the Habematolel Pomo of Upper Lake – Election Ordinance which established official requirements/conditions of the Tribe’s elections as set forth in the Election Ordinance adopted March 13, 2004 (“Election Ordinance”); **AND**

WHEREAS, there have not been any amendments to the Election Ordinance to date; **AND**

WHEREAS, the Election Ordinance’s purpose is to provide an ordinance for all elections as required by Article VI, Nomination and Elections of the Constitution.

WHEREAS, the Election Ordinance provides for the establishment of an Election Board, to perform specific duties, and contains a limited delegation of authority by the Executive Council to the Election Board as set forth therein; **AND**

WHEREAS, the Election Board, through past experience, has identified the need for revisions to terms governing absentee voting in Tribal Elections as set forth in the Election Ordinance (Article VII.1.G and Article X.3) in order to allow it to better serve the Tribe and to facilitate the use of absentee voting to the maximum extent possible while safeguarding the integrity of all Tribal Elections and voting in the same by Tribal members); **AND**

WHEREAS, the Executive Council and Election Board have consulted each other regarding desired amendments, proposed amendments, and related matters; **AND**

WHEREAS, the Executive Council and Election Board have consulted with various external groups and persons with expertise in these matters over an extended period of time regarding the amendments to the Tribe's Election Ordinance, including but not limited legal counsel and outside consultants with experience in conducting tribal elections and, specifically, handling and processing absentee ballots; **AND**

WHEREAS, based on the above-mentioned consultations and experience in administering the Election Ordinance, the Election Board has recommended the changes reflected in the attached **Exhibit A** (for clarity, attached as **Exhibit A** is a document illustrating and tracking substantive and non-substantive edits to Article VII.1.G and Article X.3 of the Enrollment Ordinance, including original (unamended), red-lined revision, and final clean revised versions); **AND**

WHEREAS, in light of the above and past experience related to absentee voting, the Executive Council believes it is in the best interests of the Tribe to adopt the revisions as recommended by the Election Board; **AND**

NOW THEREFORE BE IT RESOLVED that the Executive Council hereby accepts those changes recommended by the Election Board and adopts them in the form attached hereto as **Exhibit A** with the understanding that a final clean version of the Election Ordinance incorporating the revisions set forth in **Exhibit A** shall be forthcoming; **AND**

BE IT FURTHER RESOLVED, that the Election Ordinance as Amended by Exhibit A shall be commonly referred to as the 2020 Amended Election Ordinance; **AND**

BE IT FURTHER RESOLVED that the 2020 Amended Election Ordinance shall become effective immediately.

CERTIFICATION

We the undersigned Officers of the Habematolel Pomo of Upper Lake (the "Tribe"), being the Chairperson and Secretary of the Executive Council (EC) of the Tribe, do hereby certify that the foregoing Resolution was adopted by an official poll vote of Executive Council which is composed of seven (7) Council Members, of which 6 participated, constituting a quorum, a poll vote was duly conducted on this day of FEBRUARY 23, 2020 and that this Resolution was initially adopted by an affirmative poll vote of 5 YEAS, 0 NAYS, and 1 ABSTENTION. We further certify that this Resolution has not been rescinded, amended, or modified in any way.

DATED SIGNED: March 5, 2020

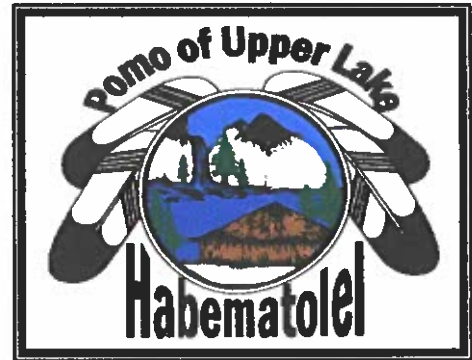
ATTEST:



SHERRY TREPTA,
Executive Council (EC) Chairperson



IRIS PICTON,
Executive Council (EC) Secretary



Proposed Revision to Election Ordinance Article VII.1.G (P. 5) and Article X, Section 3 (P. 8) Re:
Qualifications & Absentee Ballot Submission Procedures

Current Language

ARTICLE VII – ELECTION PROCEDURES

Section 1 – Voter Eligibility

Any enrolled member of the Tribe who will be eighteen (18) by or on the Election Day shall be eligible to vote pursuant to Article III – Voter Registration of this Ordinance. Following are important procedures that are applicable to all elections.

....

- G. All absentee ballots must be returned and received by the Tribal Office by 5:00 p.m. the day before Election Day. **No absentee ballot will be counted** if received after 5:00 p.m. the day before the Election Day. (Emphasis in original)

ARTICLE X – ELECTION NOTICES/VOTING

Section 3 – Absentee Voting

A registered and eligible member is not able to appear in person at the polls to vote, may request from the Election Board an absentee ballot. The Election Board shall give or mail the absentee ballot to the registered voter who may be entitled to receive them. Appropriate records shall be kept of those from whom requests are received. In order to be properly counted, the absentee ballots must be received back at the Tribal Office no later than 5:00 p.m. the day prior to the Election. After all other ballots have been counted; the absentee ballots shall be counted immediately and included in the results of the election.

Proposed Revision to Election Ordinance Article VII.1.G (P. 5) and Article X, Section 3 (P. 8) Re:
Qualifications & Absentee Ballot Submission Procedures

Proposed Revised Language (Redlined)

ARTICLE VII – ELECTION PROCEDURES

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- G. ~~All absentee ballots must be returned and received by the Tribal Office by 5:00 p.m. the day before Election Day. **No absentee ballot will be counted** if received after 5:00 p.m. the day before the Election Day. (Emphasis in original)~~ Voting may occur by absentee ballot as set forth in Article X, Section 3 and below:
- i. Registered Voters wishing to vote by absentee ballot must complete a Request for Absentee Ballot Form, and must further submit that request form to the Election Board by the deadline noticed by the Election Board. Once a Registered Voter timely and properly submits a Request for Absentee Ballot Form, that Registered Voter shall be eligible to vote by absentee ballot for all future elections, without resubmitting any additional Request for Absentee Ballot Forms, until and unless he or she revokes that request by stating the same in a writing delivered to the Election Board.
 - ii. Prior to each election, the Election Board shall make available the then-current Request for Absentee Ballot Form to all Registered Voters, and it shall clearly identify both: (1) the deadline for the Registered Voter to submit his or her completed Request for Absentee Ballot Form (if one is not already on file); and (2) applicable return information (e.g., address, etc.), typically via the official Notice of Election.
 - iii. The Election Board will issue an absentee ballot to each Registered Voter who timely submits a completed (and signed) Request for Absentee Ballot Form.
 - iv. The absentee ballot must be completed and signed by the Registered Voter, and he or she must arrange for its return, in one of the manners set forth below, **before the close of ballot voting on the Election Day (as identified on the applicable Notice of Election).**
 - v. Absentee ballots may be returned by U.S. Mail, Federal Express, UPS, or any other established carrier. Ballots may also be hand delivered, **either by the Registered Voter personally or by any other person on behalf of the Registered Voter.** No special or separate form is required to establish that one person has authority to deliver another Registered Voters absentee ballot. Instead, the absentee ballots shall be designed in a manner that establishes and maintains the authenticity of that

Proposed Revision to Election Ordinance Article VII.1.G (P. 5) and Article X, Section 3 (P. 8) Re: Qualifications & Absentee Ballot Submission Procedures

- absentee ballot as submitted by that individual Registered Voter, regardless of who actually delivers it to the Election Board.
- vi. Neither the Tribe nor the Election Board accepts any responsibility for delivery delays, spoliation, or other mishandling of any absentee ballot to the extent such delay, spoliation or mishandling occurs while the absentee ballot is in the possession of any entity other than the Election Board or its designee. It is the responsibility of the Registered Voter casting an absentee ballot and submitting it via one of the approved methods to ensure such ballot is received, in acceptable and unspoiled form, by the Election Board by the close of ballot voting on Election Day.
 - vii. All absentee ballots returned to the Election Board, as set forth above and by the close of ballot voting as identified on the applicable Notice of Election, shall be considered a duly cast ballot to be counted in accordance with this Election Ordinance and subject to the same standards for other ballots (e.g. spoliation, intent clarity, etc.).
 - viii. Absentee ballots may never be returned via fax, e-mail, text message or other such electronic means. Any absentee ballot returned in this manner will not be counted in the applicable election.
 - ix. Any Registered Voter who requested an absentee ballot but did not ultimately submit it may participate by standard ballot voting on the date of the election, as identified on the applicable Notice of Election.

ARTICLE X – ELECTION NOTICES/VOTING

Section 3 – Absentee Voting

A Registered and eligible member Voter who is not able to appear in person at the polls to vote on the Election Day, may request from the Election Board an absentee ballot, as set forth above in Article VII, Section 1(G) and the applicable Notice of Election. The Election Board shall give or mail the absentee ballot to the Registered Voter who may be entitled to receive them has requested it by submitting the appropriate form(s) within the applicable timelines, as designated by the Election Board. Appropriate records shall be kept of those from whom requests are received and to whom absentee ballots are issued. ~~In order to be properly counted, the absentee ballots must be received back at the Tribal Office no later than 5:00 p.m. the day prior to the Election.~~ After all other ballots have been counted; the absentee ballots shall be counted immediately and included in the results of the election in conformity with the standards set forth in this Ordinance.

Proposed Revision to Election Ordinance Article VII.1.G (P. 5) and Article X, Section 3 (P. 8) Re:
Qualifications & Absentee Ballot Submission Procedures

Proposed Revised Language - CLEAN

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 - ii. Prior to each election, the Election Board shall make available the then-current Request for Absentee Ballot Form to all Registered Voters, and it shall clearly identify both: (1) the deadline for the Registered Voter to submit his or her completed Request for Absentee Ballot Form (if one is not already on file); and (2) applicable return information (e.g., address, etc.), typically via the official Notice of Election.
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ARTICLE X – ELECTION NOTICES/VOTING

Section 3 – Absentee Voting

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