



**HABEMATOLEL POMO OF UPPER LAKE
INITIATIVE AND REFERENDUM ORDINANCE**

SECTION I – TITLE

This Ordinance shall be cited as the Habematolel Pomo of Upper Lake Initiative and Referendum Ordinance.

SECTION II – AUTHORITY AND PURPOSE

The Constitution of the Habematolel Pomo of Upper Lake requires that the Executive Council adopt an ordinance setting out the procedures governing the Referendum and Initiative processes. This Ordinance aims to set out such procedures for use by members of the Tribe. Accordingly, pursuant to Article XIV, Section 1 and Section 2 of the Constitution of the Habematolel Pomo of Upper Lake, this Ordinance is implemented.

SECTION III – DEFINITIONS

As used herein, the following terms shall have the following meanings unless otherwise specified, even if they are not capitalized.

A. *Appeal* shall mean a complaint to the Habematolel Pomo of Upper Lake Tribal Court that an administrative body made an error or caused an injustice to be done.

B. *Appellant* shall mean a person who asks that a decision of one body be reviewed by a body with authority to change the decision.

C. *Circulated* shall mean the distribution of the Petition for signatures by Eligible Voters.

D. *Constitution* shall mean the Constitution of the Habematolel Pomo of Upper Lake.

E. *Days* shall mean calendar days unless specifically stated otherwise.

F. *Duly Registered* shall mean a Tribal member over the age of eighteen (18) years of age who is registered with the Election Board, including submission of a completed Signature Verification Form.



G. *Election Board* shall mean the group of Tribal Members appointed to formally work on all election matters in accordance with the Tribe's Election Ordinance.

H. *Election Ordinance* shall mean the Tribe's Election Ordinance that details out the policies and procedures for the conduct of Tribal elections (non-secretarial).

I. *Eligible Voter* shall mean any enrolled member of the Habematolel Pomo of Upper Lake who will be eighteen (18) by or on election day and has registered to vote with the Election Board in accordance with the Election Ordinance. An Eligible Voter is the same as a Qualified Voter.

J. *Executive Council* shall mean the governing body of the Tribe, as defined in the Constitution.

K. *General Membership* shall mean the group of adult persons who are members of the Tribe.

L. *Habematolel Pomo of Upper Lake Tribal Court or Tribal Court* shall mean the court established by the Habematolel Pomo of Upper Lake in accordance with the Tribe's Constitution. If no such court exists in operation, then the Executive Council of the Habematolel Pomo of Upper Lake shall act as the Tribal Court with the members of the Executive Council acting as the Judge and the Tribe's Executive Secretary acting as the Court Clerk. Alternatively, the Executive Council may appoint an appeals board to hear matters under this Ordinance in place of the Tribal Court.

M. *Initiative* shall mean the origination of an idea, matter, method, etc. by Tribal Member(s) and presented via petition to the General Membership for a direct vote.

N. *Legal Opinion* shall mean a formal document prepared by the Tribe's Legal Counsel expressing legal conclusions about and/or legal analysis of a matter which may be relied upon by the Tribe, the Election Board, and Executive Council.

O. *Notice of Appeal* shall mean the document and corresponding evidence that an Appellant submits to the Tribal Court to begin the appeal hearing process detailed in this Ordinance.

P. *Ordinance* shall mean this Initiative and Referendum Ordinance.

Q. *Petition* shall mean a formal written request for proposed legislation to be voted upon by the General Membership in a Special Election.



R. *Petitioner(s)* shall mean an Eligible Voter who begins the process of preparing an Initiative Petition for vote by the Eligible Voters of the General Membership.

S. *Petition Cover Sheet* shall mean the cover sheet approved by the Election Board that is attached to the front of an Initiative or Referendum Petition.

T. *Qualified Voter* shall mean any enrolled member of the Habematolel Pomo of Upper Lake who will be eighteen (18) by or on election day and has registered to vote with the Election Board in accordance with the Election Ordinance. A Qualified Voter is the same as an Eligible Voter.

U. *Referendum* shall mean a law or ruling, proposed or already in effect, submitted by the Executive Council for a direct vote of the General Membership.

V. *Signature Verification Form* shall mean a pre-registration form that is completed by eligible members in order to vote in a Tribal election.

W. *Specific Performance* shall mean a remedy that may be used by the Tribal Court whereby the Tribal Court issues an order requiring a party to perform a specific act.

X. *Submits* shall mean the act of presenting a Petition to the Election Board for consideration under this Ordinance .

Y. *Tribal Member* shall mean an individual who meets the membership requirements specified by the Habematolel Pomo of Upper Lake in its Constitution and Enrollment Ordinance, and is accordingly approved for enrollment in the Tribe by the Executive Council and duly enrolled.

Z. *Tribal Officials* shall mean individuals that are elected or appointed by the Tribe's General Membership or Executive Council and authorized to fulfill a specific government function.

AA. *Tribe* shall mean the Habematolel Pomo of Upper Lake, a federally recognized Indian tribe.

SECTION IV – INITIATIVE PROCESS

A. The Initiative Process is a procedure whereby the General Membership may directly enact laws of the Tribe.



1. The Initiative Process shall strictly apply to matters that are legislative or “laws” and shall not apply to matters that are administrative or executive, including but not limited to, budgets or salaries. Additionally, the Initiative Process shall not apply to amendments to the Tribe’s Constitution, which shall be handled in accordance with Article XIX of the Tribe’s Constitution.

B. Process. The following is the process that must be followed by Tribal Members wishing to place legislation on the ballot.

1. Pre-Authorization of Petition Format and Circulation. Eligible Voters, or Petitioner(s), wishing to place legislation on the ballot shall submit a copy, by certified mail, of the draft Petition to the Election Board Chairperson before it is Circulated so that it may be reviewed and pre-authorized for sufficiency and compliance with the Petition requirements listed herein.

a. The Petition shall include the following:

- i. Each Petition page has the official title of the Initiative and a summary of the nature and purpose of the Initiative proposed;
- ii. The Petition has attached the full text of the Initiative proposed so signers may read the contents;
- iii. Each Petition page is numbered;
- iv. Each page of the Petition states a warning clause “Eligible Voters only may sign the Petition. Liability may be incurred by unauthorized signing;”
- v. Each Petition must require of the signer to write his/her name (in printed and signature form), Tribal Enrollment Number, and date.

b. Each proposed Initiative must be submitted to the voters as an individual proposal. Two or more proposals addressing legislation shall not be joined in a single Petition, even if they involve related matters.



c. Within 20 business days of receipt of the draft Petition, at least a quorum of the Election Board shall determine whether the draft Petition contains all required items listed in this Section. If a quorum of the Election Board determines that it meets the requirements of this Section, the Election Board Chairperson shall pre-authorize the Petition for Circulation. If a quorum of the Election Board determines that the Petition does not contain all the required items listed in this section, the Election Board Chairperson shall return the draft Petition to the Petitioner within five (5) days and declare it incomplete. The Petitioner may resubmit the Petition for pre-authorization at any time once he/she has made the required changes.

i. As part of this review and before the Election Board may pre-authorize the Initiative Petition, the Election Board shall send the draft Petition to the Tribe's legal counsel to review the proposed initiative and prepare a Legal Opinion that summarizes the proposed law, details the effect the Petition will have, and states whether such provisions will impact and/or conflict with the Tribe's Constitution or any of the Tribe's laws. If the Legal Opinion of the Tribe's legal counsel concludes that the propose law violates or conflicts with the Tribe's Constitution, the Election Board shall return the Petition to the Petitioner within five (5) via certified mail and indicate that pre-authorization is denied because the proposed law violates or conflicts with the Tribe's Constitution and thus the Constitution must be amended prior to the General Membership voting on the proposed law contained in the Petition.

d. Once the Election Board Chairperson has pre-authorized the draft Petition, the Petitioner(s) shall be free to circulate the Petition. Note: pre-authorization does not in any way reflect that the Tribal Officials, Tribal Administration, or the Tribe's Legal Counsel approves, recommend approval, or has reviewed the content of the proposed law, except as described in Section IV(B)(1)(c)(i).

2. Petition Submittal. Eligible Voters, or a group of Eligible Voters, shall submit a Petition, including signatures, the Petition Cover Sheet, proposed language for the draft law (legislation), and payment for the fees listed below by certified mail to the Tribe's Office, Attn: Chairperson of the Tribe's Election Board, once sufficient signatures are obtained

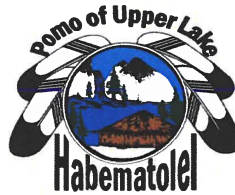


- a. The Petition shall be signed by at least thirty percent (30%) of the Eligible Voters of the General Membership.
- b. The Petition Cover Sheet shall indicate the Petitioner contact person for the Initiative Petition and contain a signed statement by the Petitioner certifying that the proposed law does not violate or conflict with the Tribe's Constitution.
- c. The Petitioner(s) submitting the Petition shall verify in writing by making an oath and subscribing on each page the following: "The signatures obtained are the genuine signature of the person whose name it purports to be. "
- d. The Petitioner(s) submitting the Petition shall pay \$500.00 to cover the costs associated with operating a Special Election for its Petition.
- e. Petitions must be filed within 180 days of the date of the Election Board's Pre-authorization of the Petition. If the Petition has not been Submitted within 180 days of Pre-authorization, it must go through the Pre-authorization process again, and signatures must be collected again.
- f. Once the Petition has been filed with the Election Board, the Petitioners may not remove or withdraw the Petition for the purpose of adding or changing information. Petitions removed after filing with the Election Board shall be denied and returned to the Petitioners.

3. Copy to the Executive Council. The Election Board shall, upon receipt of such Petition, forward an electronic copy of the Petition to the Executive Council.

4. Certification of Petition. The Election Board shall certify that the Petition is signed by at least thirty percent (30%) of the Eligible Voters of the General Membership by verifying the signatures on the Petition based on the most recent Signature Verification Form on file with the Election Board. The Election Board shall certify the Petition within ten (10) business days of receipt of the Petition.

- a. If the Petition does not have sufficient valid signatures, the Election Board shall return the Petition to the contact person listed on the Petition Cover Sheet by certified mail with an explanation as to why the Petition



was returned for insufficiency and notice that if they wish to challenge the decision of insufficiency, they may request a hearing within 30 days in the Habematolel Pomo of Upper Lake Tribal Court in accordance with Section VIII below or they may resubmit the Petition once the Petition has sufficient valid signatures.

b. The Election Board shall hold the check submitted by the Petitioners and not deposit it, until the Petition has been certified or return it to the contact person on the Petition Cover Sheet if it fails to be certified.

5. Initiative Election Process. Once the Petition is verified, the Election Board shall meet and set a time, place, and date for the Initiative Special Election in accordance with the Election Ordinance and as described in Section VII below.

C. At least fifty-one percent (51%) of the Qualified Voters must vote in such an Initiative Special Election, and a two-thirds (2/3) majority of those voting shall be required for the Initiative to become law.

D. Should that Initiative measure fail, the same issue cannot be voted upon again by the General Membership until at least one (1) year has passed from the date of the Initiative Special Election. Should it pass, the Executive Council is bound by that decision. Any ordinance submitted by Initiative for ratification can only be amended by like action.

SECTION V – REFERENDUM PROCESS

A. The Referendum Process is a procedure whereby the Executive Council may propose legislation directly to the General Membership for approval.

B. Process. The following is the process that must be followed by the Executive Council wishing to place legislation on the ballot.

1. The Tribe's Executive Council shall, in a Resolution, approve by majority vote to send legislation to the General Membership for approval by Referendum.



2. The Chairperson of the Executive Council shall submit either electronically or by inter-office mail the proposed legislation to the Chairperson of the Tribe's Election Board for approval by the General Membership at least 45 days in advance of the next Tribal Election or call for a Special Election, also on 45 days' advance notice.

a. The Executive Council Resolution approving such proposed legislation for the Referendum Process shall state whether the Executive Council would like the matter placed on the next Tribal Election ballot or decided in a Special Election just for that purpose.

3. Referendum Election Process. The Election Board shall, upon receipt of legislation proposed by the Executive Council as a Referendum ("Certified for the Referendum Process"), meet and set a time, place, and date for the Referendum Special Election in accordance with the Election Ordinance and as described in Section VII below.

C. A two-thirds (2/3) majority, or two-thirds (2/3) of those voting in the election shall approve the legislation, for the proposed Referendum legislation to become law.

D. Should that Referendum measure fail, the same issue cannot be voted upon again by the General Membership until at least one (1) year has passed from the date of the Referendum Special Election. Should it pass, the Executive Council is bound by that decision. Any ordinance submitted to Referendum for ratification can only be amended by like action.

SECTION VI – SPECIAL ELECTION PROCEDURES

A. Any election conducted because of a valid Initiative Petition or Certified for the Referendum Process shall be considered a Special Election and conform to the procedures and rules outlined in this Section.

B. The Special Election shall be conducted in accordance with the Election Ordinance unless specifically noted below.

C. Special Election Requirements.



1. The Election Board shall conduct an election within 45 days of receipt of a valid Initiative Petition or legislation submitted and certified for the Referendum Process that is to be voted upon in a Special Election.
2. Special Elections conducted under this Ordinance shall include absentee ballots.
3. Once a Special Election is set by the Election Board, notice will be mailed to all enrolled members of the Tribe who will be 18 years of age or older on the day of the Special Election.
 - a. The notice shall contain the date and place of the Special Election, the official title, descriptive summary and brief statement of legal effect of the proposed Initiative or Referendum measure, the full text of the proposed Initiative or Referendum measure, and a statement about who is eligible to vote in the Special Election and instructions for registering to vote. The notice shall also state that copies of the full text of the Initiative or Referendum are available for inspection at the Tribal Administration Building.
 - i. The official title of the Initiative or Referendum measure shall be the same as the title on the Initiative Petition or as indicated by the Executive Council for a Referendum.
 - ii. The descriptive summary of the Initiative or Referendum measure shall be prepared by the Election Board, upon recommendation of the Tribe's Legal Counsel. The descriptive summary shall provide the voters with an objective and unbiased statement of the purpose and principal provisions of the Initiative or Referendum measure to be voted on.
 - iii. The brief statement of legal effect shall, in a brief and objective phrase, explain the resulting effect a "yes" or "no" vote will have on existing law should the measure pass. The brief statement of legal effect shall be prepared by the Tribe's Legal Counsel.
4. Only Eligible Voters may vote in the Special Election, as defined herein.



E. The entire Referendum Petition shall be immediately quashed by the Election Board if the brief statement of legal effect prepared by the Tribe's Legal Counsel concludes that the proposed law violates or conflicts with the Tribe's Constitution. Upon receipt of a brief statement of legal effect that indicates the proposed law violates or conflicts with the Tribe's Constitution, the Election Board shall return the Petition to the Executive Council and indicate that it is denied because the proposed law violates or conflicts with the Tribe's Constitution and thus the Constitution must be amended prior to the General Membership voting on the proposed law contained in the Petition.

F. If the Initiative Petition legislation or legislation certified for the Referendum Process is approved by the General Membership, it shall immediately be in full force and effect.

SECTION VII – APPEAL HEARING

A. Any Petitioner(s) who Submits an Initiative Petition or the Executive Council who Submits a Referendum Petition to the Election Board and has its Petition returned for insufficiency in accordance with Section V(B)(4)(a), shall have the right to request an appeal hearing regarding the matter in the Habematolel Pomo of Upper Lake Tribal Court within 30 days of the date the Election Board returned the Petition.

B. An appeal action shall commence by filing a Notice of Appeal and all documentation supporting and/or related to the basis for any such appeal. In signing and filing this Notice of Appeal, the Appellant expressly authorizes the Election Board to: (1) copy any documents relating the appeal; and (2) provide such copy to the Tribal Court.

C. The Tribal Court shall set a hearing date to take place within a reasonable time and shall notify all parties of such. The Tribal Court shall have authority to call witnesses and inquire into the facts, including the ability to determine authenticity of signatures. Power to call a witness shall include power to subpoena.

D. The Tribal Court shall only review the documents, procedures, and processes in the matter for compliance with this Ordinance and all decisions of the Tribal Court shall be final.

E. The only remedy available to the Tribal Court in an appeal hearing shall be Specific Performance of Tribal Officials to comply with this Ordinance and/or refund of the Petition Cost if the Special Election Process has not begun.



SECTION VIII – CONFLICTS OF INTEREST

If a member of the Election Board Submits or signs an Initiative Petition, he/she shall be automatically recused from working on all matters relating to the Initiative Petition and corresponding Special Election. Likewise, if any member of the body hearing any appeals under this Ordinance signs an Initiative Petition, he/she shall be automatically recused from participating in any appeal hearings.

SECTION IX – AMENDMENTS

This Ordinance may be amended by Resolution of the Habematolel Executive Council.

SECTION X – EFFECTIVE DATE

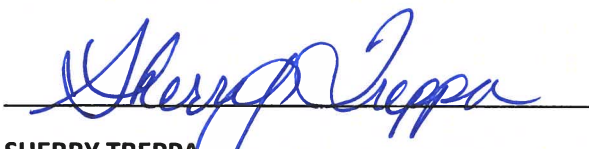
This Ordinance is effective as of the date the Executive Council takes formal action, via Resolution that attaches the amended Ordinance as an exhibit, to adopt them.

CERTIFICATION

The undersigned Officer of the Habematolel Pomo of Upper Lake (the “Tribe”), being the Chairperson of the Executive Council (EC) of the Tribe, do hereby certify that the Executive Council is composed of seven (7) Council Members, of which 7 were present, constituting a quorum, at a *monthly* meeting thereof, duly called, noticed and conducted on this day of AUGUST 9, 2019 and that this Ordinance was adopted by way of Resolution and an affirmative vote of 5 YEAS, 1 NAYS, and 1 ABSTENTIONS. We further certify that since its adoption this Ordinance has not been rescinded, amended, or modified in any way.

DATED SIGNED: August 9, 2019

ATTEST:



SHERRY TREPPA,
Executive Council (EC) Chairperson

