“Disclaimer: The Nooksack Indian Tribe attempts to ensure that the most current version of its laws is published. Interest parties should contact the Tribal Council Offices to verify whether subsequent ordinances and/or resolutions were passed that may affect the validity of those posted herein.”

TITLE 62

NOOKSACK TRIBAL ELECTION ORDINANCE
# NOOKSACK TRIBAL ELECTION ORDINANCE

## TABLE OF CONTENTS

### Chapter 62.01 TITLE, AUTHORITY, AND EFFECT
- 62.01.010 Short Title ......................................................... 4
- 62.01.020 Authority ............................................................ 4
- 62.01.030 Effect of Prior Enactments ............................. 4

### Chapter 62.02 DEFINITIONS, TIME AND PLACE, AND COUNCIL POSITIONS
- 62.02.010 Definitions ......................................................... 5
- 62.02.020 Time and Place of Elections ............................. 5
- 62.02.030 Council and Office Positions ....................... 5
- 52.03.040 Enrollment Department ............................... 6

### Chapter 62.03 ELECTION BOARD, MISSION, AND JURISDICTION
- 62.03.010 Election Board Superintendent, Ballot Clerks and Election Clerk .... 7
- 62.03.020 Mission of the Election Board .......................... 7
- 62.03.030 Jurisdiction ....................................................... 7

### Chapter 62.04 NOTICE OF ELECTION, ELIGIBLE VOTERS, QUALIFIED CANDIDATE, FORMS, AND FILING DATE
- 62.04.010 Notice of Election .............................................. 8
- 62.04.020 Eligible Voter .................................................... 8
- 62.04.030 Qualified Candidate .......................................... 8
- 62.04.040 Qualified Candidate Form ................................. 9
- 62.04.050 Petition Forms .................................................. 10
- 62.04.060 Deadline for Filing Qualified Candidate and Petition Forms .... 10

### Chapter 62.05 CERTIFICATION OF CANDIDATES, APPEALS, AND OFFICIAL LIST OF CANDIDATES
- 62.05.010 Certification of Candidates ............................... 11
- 62.05.020 Appeal to Election Board ................................. 11
- 62.05.030 Appeal of Final Decisions of the Election Board to Tribal Court .... 11
- 62.05.040 Official List of Candidates ............................. 12

### Chapter 62.06 BALLOT PREPARATION, VOTING, VOTE COUNTING, UNOFFICIAL RESULTS, RECOUNTS, AND TIES
- 62.06.010 Ballot Preparation ............................................. 13
- 62.06.020 Voting ............................................................ 13
- 62.06.030 Unused Ballots ................................................ 15
- 62.06.040 Announcement of Unofficial Results ................. 15
- 62.06.050 Primary Election Results .............................. 16
- 62.06.060 Recounts ....................................................... 16

Title 62 - Nooksack Tribal Election Ordinance
Amended January 17, 2018
Page 2 of 21
Chapter 62.01

TITLE, AUTHORITY AND EFFECT

62.01.010  Short Title.

This ordinance shall be known as the Nooksack Tribal Election Ordinance.

62.01.020  Authority.

Pursuant to Article VI, Sections 1(F), (H) and (J) the Nooksack Tribal Council has established this ordinance to fairly and safely regulate the conducting of Tribal Council Elections for the benefit of the Tribal Membership.

62.01.030  Effect on Prior Enactments.

As of the date of the enactment of the Nooksack Tribal Election Ordinance, all prior resolutions or motions enacting and/or amending Title 62, the Nooksack Tribal Election Ordinance or any other Nooksack Tribal Council action affecting the regulation of elections, are hereby repealed and shall be of no further force and effect. The Nooksack Tribal Court shall have appellate jurisdiction to hear reviews of final decisions of the Election Board consistent with this Ordinance.
Chapter 62.02
DEFINITIONS, TIME AND PLACE AND COUNCIL POSITIONS

62.02.010 Definitions.

The following terms and phrases, when used in this ordinance shall have the meaning ascribed to them:

A. "Eligible Voter": a tribal member meeting the qualifications to vote in the election being referred to in this ordinance. The terms "Eligible Voter", "Qualified Voter", and "Legal Voter" may be used interchangeably.

B. "Qualified Candidate": a tribal member meeting the minimum qualifications under the Nooksack Constitution and Bylaws.

C. "Certified Candidate": a candidate who has met the qualifications for candidacy under this ordinance and who has been certified by the Election Board.

D. "Council Member Elect": a winning candidate who has been certified by the Election Board.

E. "Council Member": an elected member who has received the oath of office from the Tribal Council.

F. "Primary Election": is an election held one month before the Regular Election to have the two candidates with the highest vote totals certified to the Regular Election.

G. "Provisional Ballot": is a ballot used to record a vote when there are questions about a given voter's eligibility.

62.02.020 Time and Place of Elections.

The Nooksack Tribal Council Primary Election shall be conducted on the third Saturday in February on even numbered years. The Nooksack Tribal Council Regular Election shall be conducted on the third Saturday in March on even numbered years. All elections shall be conducted by mail out ballot.

In the event that elections cannot or are not held during the December-March calendar cycle, the Election Board shall establish a schedule for election-related events to ensure a fair and safe election.

62.02.030 Council and Office Positions.

Pursuant to Article III to the Nooksack Tribal Constitution and Bylaws:

A. The governing body of the Nooksack Indian Tribe is known as the Nooksack Tribal Council, and shall be elected by staggered terms by the qualified voters of the tribe, pursuant to the "staggered terms" provisions of the Nooksack Tribal Constitution.

B. Starting with the 1990 election the Tribal Chairman, Tribal Secretary, and Council Positions A and B elections will be held every 4 years thereafter. Starting with the 1992 elections the
Tribal Vice-Chairman, Treasurer, and Council Positions C and D will be held every 4 years thereafter.

62.02.040 **Enrollment Department.**

The Enrollment Department is charged with such duties as identified herein. To those ends, the Enrollment Department is authorized to release such records to the Election Board as may be necessary to facilitate a fair and safe election.
Chapter 62.03

ELECTION BOARD, MISSION AND JURISDICTION

62.03.010 Election Board Superintendent, Ballot Clerks and Election Clerk.

A. Election Superintendent: Pursuant to Article IV, Section 4, of the Nooksack Tribal Constitution, the Tribal Council Chairperson shall appoint and swear in an Election Superintendent. The Election Superintendent will be appointed by the first Thursday in December in the year preceding a Tribal Council Election.

B. Ballot Clerks and Election Clerk: The Election Superintendent will appoint two Ballot Clerks and may appoint an Election Clerk. Pursuant to Article IV Section 4 the Election Superintendent and the two Ballot Clerks shall consist of the Election Board. The Election Board will be governed by bylaws approved by the Tribal Council. The Election Board shall be exempt from the hiring procedures and requirements of the Nooksack Tribe. The Ballot Clerks will be officially appointed and sworn in by the Election Superintendent to serve as Election Board Members. The Election Superintendent and Ballot Clerks will be appointed for the duration of the elections. The job description and duties of the Election Superintendent, Ballot Clerks, Election Clerk and any staff hired or assigned to assist the Election Board shall be included in the Election Board Bylaws.

62.03.020 Mission of the Election Board.

Pursuant to Article IV, Section 2, of the Nooksack Tribal Constitution, the Election Board shall supervise, certify, and resolve any election disputes in a manner that will ensure fair and honest elections. The Nooksack Tribal Constitution and Bylaws, Title 62 Nooksack Tribal Election Ordinance, and regulations promulgated under this Ordinance, shall govern the election process and procedures. The Election Board shall provide and prepare election materials in an impartial and fair manner that informs the voters of the election procedures.

62.03.030 Jurisdiction.

The Election Board shall be the administrative body with original jurisdiction to hear all appeals of its decisions. The Nooksack Tribal Court shall have appellate jurisdiction to hear reviews of final decision of the Election Board consistent with this Ordinance.
Chapter 62.04

NOTICE OF ELECTION, ELIGIBLE VOTERS, QUALIFIED CANDIDATE, FORMS AND FILING DATE

62.04.010 Notice of Election.

A. Date of Notice of Election: The Election Superintendent will issue a Notice of Election. Notices shall be numbered uniquely by year of issuance and number of elections that year. The Election Superintendent shall mail the Notice of Election by the fourth Friday in December in the year preceding the election to all Tribal members who will be eligible to vote on the scheduled election days. The Election Superintendent shall post the Notice of Election, by the fourth Friday in December in the year preceding the election, at the following places and complete an affidavit of posting:

1. Nooksack Tribal Administration Building, Deming, Washington (on the secure bulletin board reserved for official Tribal notifications), and
2. Placed in the next Nooksack Tribal Newsletter.
3. Placed on the Nooksack Indian Tribe’s website.

B. Contents of Notice of Election: The Notice of Election shall state the positions open for election, dates and times of the elections, and the deadlines for filing prospective Candidate Packets consisting of the Qualified Candidate and Petition Forms. It shall also state the Election Board’s Office hours beginning on the date the Notice of Election was mailed. The Election Board’s Office hours shall be Monday through Friday from 10 am to 7 pm beginning on the fourth Friday in December through the first Friday in January. Thereafter the Election Board’s Office hours shall be Monday through Friday from 9 am to 5 pm and shall be open during the noon hour. The Election Board Office shall be closed on all NIT holidays and emergency closures. The Election Superintendent or Election Clerk shall certify that the Notice of Election was mailed to all eligible voters at their last known address.

62.04.020 Eligible Voter.

Each enrolled member of the Nooksack Indian Tribe who is eighteen (18) years of age or over shall have the right to vote. The voter must be at least age eighteen (18) on the scheduled election day in order to vote.

62.04.030 Qualified Candidate.

Pursuant to Article IV, Sections 2 and 3 of the Nooksack Tribe’s Constitution establishing minimum candidate qualifications and authorizing the Nooksack Tribal Council to be the sole judge of the qualifications of its own members through the enacting of this Ordinance, a candidate must meet the following requirements:
A. Must have been an enrolled Nooksack Tribal Member for at least one (1) year prior to the scheduled election day, provide proof by verification of the Nooksack Enrollment Office, and otherwise be an Eligible Voter.

B. Is eighteen (18) years old or older on the date of filing for candidacy.

C. Has been a resident of Whatcom County for one (1) year prior to the first scheduled election and must provide proof of residency in Whatcom County for one (1) year prior to the first scheduled election by submitting sufficient proof of that residency in the form established by the Election Board.

D. File for candidacy with a petition signed by ten (10) legal voters.

E. No two (2) members of one household may run for office in the same election. No person may be a candidate who is in the household of another candidate who has already filed for election to the Nooksack Tribal Council. In the event that an incumbent candidate files after a household member has already filed for a Tribal Council position, the incumbent will remain on the ballot, and the household member will be disqualified. In the event that two or more household members, who are not incumbents, file for any Council positions, the first one to file will remain on the ballot and any who filed subsequently will be disqualified. In the event that a candidate files who is a household member of a member of the Election Board, the Election Board member will have his/her appointment rescinded and a new Board member will be appointed to fill the vacancy.

F. No person may be a candidate for more than one position on the Tribal Council

G. No person appointed to the Election Board may file for candidacy unless first resigning from the Election Board.

62.04.040 Qualified Candidate Form.

The Election Superintendent shall obtain the approved Qualified Candidate Form from the Nooksack Tribal Council. The Election Board may make changes to the Qualified Candidate Form that are ministerial in nature and that are not in conflict with the requirements of this Ordinance. Qualified Candidate Forms may be obtained from the Election Board beginning the fourth Friday in December. The form shall require the following information to be completed by the prospective candidate:

A. Council Position the Prospective Candidate is Applying For: The candidate must identify the position they are applying for.

B. Contact Information: Current mailing and physical address, contact phone number and if available an e-mail.

C. Copy of the candidate's valid Washington State Driver's License or Identification Card

D. Enrollment in the Nooksack Indian Tribe for One (1) Year Prior to Election Date: Nooksack Indian Tribe enrollment number.

E. Date of Birth

F. Proof of Residency in Whatcom County for One (1) Year Prior to the First Scheduled Election: Residency is defined as the prospective candidate’s primary place of residence. Documents to establish proof of residency for one (1) year prior to the first scheduled election can be proven by providing any documentation that contains all of the following

Title 62 - Nooksack Tribal Election Ordinance
Amended January 17, 2018
Page 9 of 21
information: (1) names the prospective candidate; (2) identifies the physical address where the service is provided or where the document was mailed; and (3) dates on the document establish that services have been provided at that address or the documents have been mailed to that address for at least one year prior to the first scheduled election.

G. Resume and Candidate Statement: The form will have a section that allows the prospective candidate to submit a resume and a candidate statement, not to exceed two (2) pages that the Election Board will provide to the public. The candidate statement is the opportunity for the prospective candidate to tell the public why they are running for the Nooksack Tribal Council and the candidates shall be advised that they are strongly encouraged to provide a resume and candidate statement because it will be released to the public. The failure to provide a resume and candidate statement shall not disqualify the prospective candidate.

62.04.050 Petition Forms.

A. Pursuant to Article IV, Section 3, any qualified candidate seeking election must submit a petition signed by at least ten (10) legal voters from the Election Superintendent. The Election Board may make changes to the Petition Form that are ministerial in nature and that are not in conflict with the requirements of this ordinance.

B. Petition Forms may be obtained from the Election Clerk beginning the fourth Friday in December. The Election Clerk will mark the petition with the Candidate's full legal name, with any nicknames placed in parenthesis. The Election Clerk will also mark the petition with the Council position the candidate declares he/she wishes to run for prior to the circulation of the petition. The Candidate must obtain original signatures on the Petition Form from at least ten (10) persons legally eligible to vote on the date of the signing the petition. The Petition Form shall have places for twenty (20) signatures and will notify the Candidate to obtain more than the minimum of ten (10) signatures in the event signatures are declared invalid. The Petition Form shall require any person signing the form to print that person's full legal name, date of birth, Nooksack Tribal enrollment number, signature, provide a current mailing address and a contact phone number. The information is required for the purpose of verifying voter eligibility and in the event a signature needs further investigation.

62.04.060 Deadline for Filing Qualified Candidate and Petition Forms.

The Qualified Candidate and Petition forms together consist of the Candidate Packet. The Candidate Packet shall be filed with the Election Superintendent or his/her designee by 2:00 PM on the first Friday in January. The Election Superintendent, or his/her designee, shall place the time and date of receipt of each Candidate Packet consisting of the Qualified Candidate and Petition form and sign said Candidate Packet as having been filed. A copy of the completed dated and signed Candidate Packet shall be given to the candidate. The Election Clerk shall retain all Candidate Packet forms filed by the date and time, regardless of the completeness of each Candidate Packet form.
Chapter 62.05

CERTIFICATION OF CANDIDATES, APPEALS, AND OFFICIAL LIST OF CANDIDATES

62.05.010 Certification of Candidates.

Candidates will not be certified for placement on the ballot until so declared by the Election Board. The Election Board shall meet to certify candidates no later than the third Friday in January. The Election Board will review each candidate packet for all required qualifications. A Candidate Packet must be accurately completed and have provided the necessary information required. If information is missing, the Election Board will give the prospective candidate one opportunity after written notice to provide the required information. The Enrollment Department will confirm and certify to the Election Board the Nooksack Tribal Enrollment status and age of the prospective candidates and of the persons who signed the Petition Form. The residency status will be established if the document(s) provided by the prospective candidate, names the person, identifies the physical address listed in the Candidate Packet, and establishes the services have been provided or mail has been received for at least one (1) year prior to the date of the first election. In the event that the Election Board deems a potential candidate to be ineligible, the Election Board shall notify the potential candidate by personal service or U.S. certified mail postmarked within one (1) business day of the Board’s determination. Business days under this Ordinance shall be defined as days the Election Board Offices are open. The notification must specifically state the reason(s) why the candidate was disqualified.

62.05.020 Appeal to Election Board.

Any potential candidate deemed ineligible may request a hearing before the Election Board to contest the Election Board’s decision by filing a written request to the Election Board, within five (5) calendar days after the Election Board has mailed or personally served the potential candidate with the Election Board’s decision. Notice of disqualification is deemed given when written notice thereof, addressed to the candidate, is deposited in the U.S. mail, certified postage prepaid or by personal service. The written request must state the reasons why the Election Board should reconsider its decision and attach relevant documentation to support the request. A hearing before the Election Board shall be held within one (1) business day of the Election Board’s receipt of the request. The prospective candidate will be notified of the time and place of the hearing, after which the Election Board shall render a written decision within in two (2) business days of the hearing. Notice of the decision is deemed given when written notice thereof, addressed to the candidate, is deposited in the U.S. mail, certified postage prepaid or by personal service.

62.05.030 Appeal of Final Decisions of the Election Board to Tribal Court.

Decisions of the Election Board may be appealed to the Nooksack Tribal Court as an appellate court. Appeals to the Nooksack Tribal Court shall be filed within five (5) calendar days after the
Election Board has mailed the Election Board’s decision. If the potential candidate has been personally served they shall have two (2) calendar days to appeal the decision of the Election Board. Copies of the appeal shall be served upon the Election Board at the same time of filing with the Nooksack Tribal Court and a proof of service shall be attached to the prospective candidate’s appeal. The appeal shall state the reasons why the Election Board’s decision should be reversed. Election Board responses to the appeal must be filed within one (1) business day of its receipt of the appeal. The Election Board is not required to respond. The Nooksack Tribal Court shall only review the evidence the Election Board used to make its decision (the record below) and shall not review new evidence or hear new testimony. The standard of review shall be substantial evidence. The Court has the discretion to have oral arguments so long as the time frames are met but it is not required. The Nooksack Tribal Court shall issue a written decision within two (2) business days of receiving the appeal and an Election Board response, if any. The decision of the Nooksack Tribal Court shall be final.

62.05.040 Official List of Candidates.

After the time for appeals have passed for decisions of the Election Board and there are no pending appeals, the Election Superintendent shall prepare an Official List of Candidates, which shall be used to prepare an Official Election Ballot. The list and any resumes and/or candidate statements shall be placed at the Nooksack Tribal Administration Building, Deming Washington, the next published Tribal newsletter and on the Nooksack Indian Tribe’s website.
Chapter 62.06
BALLOT PREPARATION, VOTING, VOTE COUNTING, UNOFFICIAL RESULTS, RECOUNTS AND TIES

62.06.010  Ballot Preparation.

The Election Board shall prepare an Official Ballot for printing which clearly identifies all the candidates running for the election. The candidates will be listed by full legal name and any nicknames will be placed in parenthesis. To prevent ballot fraud, the ballots will be sequentially numbered in the upper right hand corner on a unique paper color chosen for that election and watermarked in such a manner to prevent unlawful duplication. Ballots shall contain an instruction sheet informing the voter of the proper ballot marking procedure and examples of when a vote will not be counted.

62.06.020  Voting.

A. Manner of Voting. Voting shall be conducted entirely through the United States Postal Service.

B. Voting. For Primary and General Elections, the Election Board must mail ballots to all Eligible Voters no sooner than thirty (30) calendar days nor later than twenty (20) calendar days prior to an election, or, within three (3) days following the conclusion of a final appeal of a Primary Election, if any, whichever is later; provided however, the Board shall not mail a ballot to any individual whom the Board asserts is not eligible to vote. Ballots will be mailed to all Eligible Voters to the address shown on the official records of the Enrollment Department.

1. Envelopes, Declaration, and Instructions: In addition to the ballot, the Election Board shall send each Eligible Voter, a security envelope in which to conceal the ballot after voting and labeled “Official Ballot”, a larger envelope in which to return the security envelope that is preaddressed to the Election Board with a certification as follows:

   I, (name of voter), hereby certify that I am an Eligible Voter, and that I will be 18 years of age or over at the election date and am entitled to vote in the election to be held on (date of election). I further certify that I marked the enclosed ballot in secret.
   Signed: ____________________ (voter’s signature).

2. Ballot Deadline: No ballot will be counted if received later than the close of polls on the Election Day; it is the Eligible Voter’s responsibilities to ensure his or her ballot is actually received by the Election Board by the close of polls on the Election Day.
3. **Returned Address List**: A list of Eligible Voters with returned addresses ("Returned Address List") will be maintained by the Election Board during each election session. No ballot will be mailed to a person listed on the Returned Address List. It is the responsibility of the Eligible Voter to ensure his or her address is current with the Enrollment Office.

Should the U.S. Postal Service (or another mailing service) indicate for any reason that mail cannot be delivered to said Eligible Voter at his or her address as shown by the official records of the Enrollment Office, that person will be placed on the "Returned Address" list. If an Eligible Voter’s ballot is returned, the Eligible Voter can contact the Election Board and the Enrollment Department to update their information and request another ballot. Eligible Voters should contact the Election Board with any inquiries about their ballots.

4. **Replacement Ballots**: An Eligible Voter may obtain one (1) replacement ballot if the ballot is destroyed, spoiled, lost, or not received by the voter. The Eligible Voter may request a ballot by telephone, by mail, electronically, or in person. Once a replacement ballot is issued, the original ballot is void. In the event that there is fewer than ten (10) days before the Election Day, a replacement ballot shall be provided and the Eligible Voter may cast the replacement ballot; however, no ballot will be counted if received later than after the close of polls on the day of the election.

5. **Provisional Ballots**: If the Election Board has determined that there are questions about an individual’s eligibility to vote, such individual shall be provided a provisional ballot, but the ballot shall not be counted unless the individual complies with the following requirements:

a. The individual must provide a written affirmation to the Election Board stating that the individual is an Eligible Voter under Nooksack law and providing the individual’s mailing address.

b. The Election Board shall mail a provisional ballot—both the ballot and ballot envelope will be stamped with “PROVISIONAL”—to the address provided by the individual.

c. If the individual casts a provisional ballot in the election, the ballot shall not be counted unless the individual submits proof of eligibility to vote to the Election Board at least 10 days before the election. The following shall be acceptable proof of eligibility:

   1. A birth certificate, driver’s license, or passport establishing that the individual is at least 18 years of age; and
   2. Certification from the Enrollment Office of current enrollment in the Nooksack Indian Tribe; or
   3. Proof, through certified copies of birth certificates, of lineal descent from any enrolled member of the Nooksack Indian Tribe subsequent to January 1, 1942, and proof of at least one-fourth (1/4) degree verified Indian blood

d. If the Election Board determines that the individual is eligible to vote under Nooksack law, the individual’s provisional ballot shall be counted as a vote in that election in accordance with Nooksack law.

Title 62 - Nooksack Tribal Election Ordinance
Amended January 17, 2018
Page 14 of 21
e. The Election Board must notify in writing any individual who cast a provisional ballot whether the individual’s vote was counted, and, if the vote was not counted, the reason that the vote was not counted.

6. Voting: An Eligible Voter shall mark the ballot and the completed ballot shall then be folded so as to conceal the marking and be placed in the envelope marked “Official Ballot” and the envelope sealed. The voter shall then place the sealed envelope marked “Official Ballot” in the outer envelope, seal it and complete the certificate and mail it. The preaddressed outer envelope shall be directed to the Election Board. Ballots must be received by the Election Board no later than the close of polls on the day of the election; the Election Board is not responsible for untimely delivery of a voter’s ballot, failure of postage, or failure of delivery by the close of polls on the day of the election.

7. Ballot Records: The Election Board shall make and keep a record of ballots mailed, to whom mailed, the date of mailing, the address where the ballot (or replacement) was mailed, requests for replacement ballots (including by whom and when made), voided ballots, and when a ballot is received (and from whom).

8. Processing Incoming Ballots: The Election Board shall process the incoming ballots in accordance with this provision.

a. All received returned envelopes must be placed in a secure location from the time of delivery to the time the Election Board opens the envelopes.
b. Only ballots received at or before the close of polls on Election Day shall be counted.
c. After duly recording the receipt date of the ballots received on time, if the postmark is missing or illegible, the date on the ballot declaration to which the voter has attested determines the validity, as to the time of voting, for that ballot. Any ballot postmarked after the close of polls shall not be counted. The received returned envelope shall be secured and left unopened.
d. Following the close of polls on Election Day, the Election Board shall open the outer envelopes, secure the outer envelopes, and tabulate the votes from Eligible Voters.
e. The Election Board shall retain and safeguard all rejected ballots until final certification of the election results.

62.06.030 Unused Ballots.

After the close of the polls on Election Day, the Election Board shall keep all unused ballots for documentation. Unused ballots will be retained pursuant to 62.10.020.

62.06.040 Announcement of Unofficial Results.

On the evening of the election, after completing the counting, the Election Board shall announce and post the unofficial results of the elections on the main front door of the Nooksack Tribal Administration Building, Deming Washington, the next published Tribal newsletter, and on the Nooksack Indian Tribe’s website.
62.06.050   **Primary Election Results.**

In a Primary Election, the two (2) candidates who receive the highest number of votes for each position shall be certified to the Regular Election. In the event only one (1) or two (2) candidate(s) files for a given position, there shall be no primary election for that position and those candidates shall be certified to the Regular Election. In the event one (1) of the two (2) primary candidates running for a position withdraw or are unable to participate in the Regular Election, the Election Board shall certify the candidate with the next highest vote for that position in the Primary Election to participate in the Regular Election for that position.

62.06.060   **Recounts.**

When the ballot count difference between the first and second place for a Tribal Council position is less than or equal to three-quarters (3/4) of one (1) percent of the total number of votes cast for that position, a candidate may by written request, by 4:00pm on the Monday immediately following the date of election, obtain a recount of the ballots for that candidate’s position only.

62.06.070   **Ties.**

In the event of a tie, unless one candidate withdraws, a run-off election will be scheduled within thirty (30) days. The incumbent shall remain in office until the Council Elect is sworn in.
Chapter 62.07
CONTESTS, APPEALS AND CERTIFICATION OF ELECTION RESULTS

62.07.010 Contests.

A. Reasons for a Contest: Any voter may contest the election results or any candidate may contest the election results of the office they were a candidate for any of the following reasons:

1. Any member of the Election board was guilty of misconduct in the performance of his or her duties on the Board.
2. That any candidate has given to any voter or member of the Election Board any bribe or reward for the purpose of procuring the election.
3. That illegal votes were cast sufficient to change the results of the election.
4. That the Election Board in conducting the election or in counting the returns, made errors sufficient to change the results of the election as to any person who has been declared elected.
5. That there was an error in the vote counting or summation of ballot counts sufficient to change the results of the election.
6. That a candidate knowingly submitted false information to the Election Board at the time of their qualification.

B. Misconduct, Bribe or Reward: When any election is contested on account of misconduct of, or bribe or reward to the Election Board, or any member thereof, the election shall not be annulled or set aside upon any proof thereof, unless the action was such that changes the result of the election.

C. Illegal Votes: An election shall not be set aside on account of illegal votes unless it appears that a number of illegal votes has been given to the person whose right to the office is contested, or who has been certified as having tied for first place, which if taken from him or her would reduce the number of the legal votes below the number of votes given to some other person for the same office, after deducting the illegal votes which may be shown to have been given to that other person.

62.07.020 Appeal to Election Board.

Any qualified voter or candidate contesting an election under this section shall file a written statement with the Election Board stating (1) his or her name and address; (2) the name of the candidate and office; and (3) the particular grounds of the contest. Such a written statement must be delivered to the Election Superintendent no later than 4:00 PM on the Monday immediately following the election. Upon receipt of a contestant’s written statement the Election Board shall review the allegation(s) and such review may include a hearing at the discretion of the Election Board, where the contestant and any candidate may present evidence, after which the Election
Board shall respond in writing prior to posting the official certification of election results. If scheduled, hearings must be held within one (1) business day after the request is received by the Election Board. If a hearing is held, a written decision shall be issued within two (2) business days after receipt of the written statement. If no hearing is held a written decision will be issued within one (1) business day after the receipt of the written statement.

62.07.030 Appeal of Final Decisions of the Election Board to Tribal Court.

Decisions of the Election Board may be appealed to the Nooksack Tribal Court as an appellate court. Business days under this Ordinance shall be defined as days the Election Board Offices are open. Appeals to the Nooksack Tribal Court shall be filed within five (5) calendar days after the Election Board has mailed the Election Board’s decision. If the candidate has been personally served they shall have two (2) calendar days from service to appeal the decision of the Election Board. Copies of the appeal shall be served upon the Election Board at the same time of filing with the Nooksack Tribal Court and a proof of service shall be attached to the qualified voter’s or candidate’s appeal. The appeal shall state the reasons why the Election Board’s decision should be reversed. Election Board responses to the appeal must be filed within one (1) business day of its receipt of the appeal. The Election Board is not required to respond. The Nooksack Tribal Court shall only review the evidence the Election Board used to make its decision (the record below) and shall not review new evidence or hear new testimony. The standard of review shall be substantial evidence. The Nooksack Tribal Court has the discretion to have oral arguments so long as the time frames are met but it is not required. The Nooksack Tribal Court shall issue a written decision within two (2) business days of receiving the appeal and an Election Board response, if any. The decision of the Nooksack Tribal Court shall be final.

62.07.040 Certification of Election Results.

After the time for appeals has passed for decisions of the Election Board and there are no pending appeals of decisions, the Election Superintendent will sign and post the Certification of Elections within one (1) business day. The Election Superintendent will provide a copy of the signed Certification of Election to the Tribal Council, marked “CERTIFIED COPY,” by 5:00 PM on the day it is signed. The names of the winning candidates will be listed and the Superintendent of the Election Board will sign said list and post it in the following places:

A. Nooksack Tribal Administration Building, Deming, Washington (on the secure bulletin board reserved for official Tribal notifications).
B. Placed in the next Nooksack Tribal Newsletter.
C. Placed on the Nooksack Indian Tribe’s website.
Chapter 62.08

INSTALLATION OF COUNCIL MEMBERS, OATH OF OFFICE AND NOTIFICATION TO BUREAU OF INDIAN AFFAIRS

62.08.010 Installation of Council Members.

Candidates-Elect will be installed the day after the Tribal Council has received the Certification of Elections.

62.08.020 Oath of Office.

Each newly elected Nooksack Tribal Council Member and appointed Election Board Member shall subscribe to the following oath of office given by the Election Superintendent:

I, __________________________________________, do solemnly swear (or affirm) that I will support and uphold the Constitution of the United States, and the Constitution and Bylaws and Ordinances of the Nooksack Indian Tribe of the State of Washington, and, I will in all respects, faithfully and fully perform the duties of my office of __________________________________________ for the Nooksack Indian Tribe, so help me God.

62.08.030 Notification Sent to Bureau of Indian Affairs.

Within one (1) business day of the swearing in of the newly elected Nooksack Tribal Council Members, the Election Board shall send the Bureau of Indian Affairs, Puget Sound Agency, a copy of the certified election results and certification of the date that the newly elected Nooksack Tribal Council Members were officially sworn in.
Chapter 62.09

TEST FOR ILLEGAL DRUGS, RECORDS, TIME COMPUTATION, SEVERABILITY, AMENDMENTS AND SOVEREIGN IMMUNITY

62.09.010 Test for Illegal Drugs.

The Nooksack Tribal Council has determined it has an important governmental interest to ensure that its prospective candidates for the Nooksack Tribal Council and current Nooksack Tribal Council Members are free from the effects of illegal drugs. The Nooksack Tribal Council maintains direct oversight and control over the Tribal government and its relationship to its membership is on a much closer level than non-Tribal governments. Therefore, Nooksack Tribal Council Members are in sensitive positions that require an absence of the effects of illegal drugs. Because of this important governmental interest, prospective candidates shall submit to a test for illegal drugs at the Nooksack Tribal Health Clinic. The Prospective Candidate will receive a drug testing form from the Election Board which must be successfully completed and returned to the Election Board prior to receiving the Candidate Packet. Failure to pass the test will result in the prospective candidate’s disqualification as a candidate in the election.

62.09.020 Election Records.

A. Records: The Election Superintendent shall be responsible for seeing that files on each election for which they are responsible for are maintained and provided to the Tribal Council and include the following material:

1. Election notices
2. Candidate Qualification and Petition forms and associated documents
3. Sample ballot
4. Unofficial and official certification of election results
5. Ballots: Executed and unused ballots.

B. Retention and Destruction: All of the articles mentioned in this section with the exception of the ballots and ballot numbers must remain in the files permanently. At no time will an original document be permanently removed from the files. After certification of an election, with the prior approval of the Nooksack Tribal Council the ballots described in 62.10.020 A(6) may be disposed of. Candidate Qualification forms shall be treated as confidential records and are not available to the public except pursuant to a court order.

62.09.030 Time Computation.

Whenever a response or document is required to be filed in a certain number of days, the time computation does not include the day the action was taken, but begins as of the next following day.
and runs until the last day specified, unless the last day falls on a weekend or a tribal holiday, in which even the due date is the next Election Board Office work day.

62.09.040 Severability.

If any provision of this Ordinance, or its application to any person, legal entity or circumstance is held invalid, the remainder of the Ordinance, or the application of the provision to other persons, legal entities, or circumstances, shall not be affected.

62.09.050 Amendments.

The Nooksack Tribal Council may amend this ordinance by a majority vote of a quorum at duly called meeting, provided that no amendments may be made at any time during the period commencing one week prior to the mail out of the ballots for a Primary Election though and including the holding of the General Election.

62.09.060 Sovereign immunity.

Nothing in this Ordinance shall be deemed or construed to be a waiver of the sovereign immunity of the Nooksack Indian Tribe, its officials, its entities, or employees acting within their official or individual capacities.