

Constitution and By-Laws of Qutekcak Native Tribe

PREAMBLE

WE, THE QUTEKCAK PEOPLE, having a common bond of residency living in the vicinity of Seward, Alaska, in order to exercise our inherent right to self-determination and self-governance, and to maintain and strengthen our distinct political, economic, social, and cultural characteristics in the spirit of our ancestors, for ourselves and our posterity do ordain and establish this Constitution and By-Laws pursuant to the Indian Reorganization Act (IRA) of June 18, 1934, Sections 16 and 17, as amended by the Acts of June 15, 1935, and May 1, 1936 (25 U.S.C. § 473a and 25 U.S.C. § 476, *et. seq.*, as amended).

ARTICLE I - NAME

This is the Constitution and By-Laws of the People and Government of Qutekcak Native Tribe.

ARTICLE II – PURPOSE

This organization is organized exclusively for charitable and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code. Its objectives and purposes are:

1. To promote pride on the part of tribal members in their Alaska Native cultures and traditions.
2. To preserve the customs, folklore, and art of the Native races.
3. To promote the physical, economic, and social well-being of tribal members.

ARTICLE III – PROFITS

This tribe is not organized for profit, and no dividends shall be declared or paid, nor shall it have the power to issue certification of stock, and no part of its net earning shall inure to the benefit of any person or organization. The balance, if any, of all money received by the tribe from its operations, enterprises, or other means, shall be used and distributed exclusively for the purposes set forth in Article II of these Articles.

ARTICLE IV – PLACE OF BUSINESS

The registered address of the Qutekcak Native Tribe shall be P.O. Box 1467, Seward, Alaska 99664.

ARTICLE V - TERRITORY

The territorial boundaries of Qutekcak Native Tribe shall extend to and include the aboriginal lands and waters customarily and traditionally used or owned by the Native people of Qutekcak and neighboring villages in Resurrection, Aialik, and Nuka Bays since time immemorial.

ARTICLE VI - JURISDICTION

Qutekcak Native Tribe shall have jurisdiction to the fullest extent possible within its territory, to the extent such jurisdiction does not violate federal or Qutekcak Tribal law.

ARTICLE VII - MEMBERSHIP

There shall be three classes of membership: Base Roll members, New members, and Lineal Descendants.

SECTION 1. Base Roll

The Base Roll of Qutekcak Native Tribe consists of those ¼ blood degree Alaska Natives who are the first members of the tribal organization, Mt. Marathon Native Association, created in 1972-74 as the modern-day successor of the original tribe.

SECTION 2. New Members

Adults over the age of 18 years who are ¼ or more Alaska Native and who have resided within tribal boundaries for at least three years may apply for membership in the Tribe.

SECTION 3. Lineal Descendants

All lineal descendants of base roll members and new members are automatically eligible for enrollment in the tribe. As used herein, "lineal" descendant includes children by adoption, provided that such children are of Alaska Native or Native American descent.

SECTION 4. Loss of Membership. The Tribal Council may disenroll members who do not contact the Tribal Council at least once every three (3) years in accordance with a tribal ordinance adopted under this Constitution. Prior to disenrolling members, the Council shall issue Notice of Disenrollment to the individual and allow ninety (90) days for response.

SECTION 5. Enrollment Ordinance. The Council shall have the power to enact ordinances and resolutions, not inconsistent with this Constitution, prescribing rules and regulations governing membership, including application and appeal procedures, loss of membership, and adoption of members.

SECTION 6. Tribal Benefits

No member may receive tribal benefits from more than one tribe. If Qutekcak tribal members, or applicants for membership, are also enrolled in another Alaska Native or American Indian tribe, they must relinquish their rights to tribal benefits in either Qutekcak or the other tribe. Dual members who have relinquished their rights to tribal benefits in Qutekcak are not entitled to vote pursuant to Article IX. Benefits relinquished include but are not limited to tribal employment preference and/or others as may be defined by the Council. Persons who have been declared incompetent by a court of competent jurisdiction, and who are otherwise eligible for membership, may be enrolled as non-voting dual members without such relinquishment. Notwithstanding any other provision of this Section, Native Americans eligible for services funded by an outside agency shall be offered such services on a fair and equal basis, in accordance with the regulations of the funding agency.

SECTION 7. Forfeiture of Membership

Any member may willingly give up his or her membership by notifying the Tribal Council in writing.

SECTION 8. Guardianship of Children

Any child of an enrolled member who has not reached the age of eighteen (18) and whose Native parent or parents are deceased, or who has been removed from his or her home for custody or other purposes, whether residing in a foster home or in an institution, shall have, upon notice to the tribe, his or her tribal interest protected by a guardian, who shall be appointed by the Council.

SECTION 9. Procedures Established by Tribal Ordinance

The Qutekcak Tribal Council shall adopt an ordinance establishing the procedures for implementation of this Article.

ARTICLE VIII - TRIBAL MEMBERSHIP MEETINGS

The Council may call a tribal membership meeting at any time, but at least one (1) such meeting shall be called each calendar year in the Seward area. Notice of the annual meeting shall be given at least thirty (30) days in advance by posting and publishing the Notice. The Council may call a special tribal membership meeting for any proper purpose, provided that at least a similar thirty (30) day notice is given.

ARTICLE IX - VOTING

SECTION 1. Eligible voters

Eligible voters are tribal members who conform to the following guidelines:

1. Are at least 18 years old.
2. If a dual tribal member, have relinquished their rights to tribal benefits in the other tribe.
3. Are a resident of Seward, AK or vicinity and can prove residency for 30 days or more immediately prior to the election.

SECTION 2. Procedures Established by Tribal Ordinance

The Qutekcak Tribal Council shall adopt an ordinance establishing the procedures for implementation of this Article.

ARTICLE X - ELECTIONS

SECTION 1. General and Special Elections

The general election of the Council will be held at the annual membership meeting. Notice of the election shall be given at least thirty (30) days in advance by posting and publishing the Notice. The Council may call special elections (meetings) for any proper purpose, provided that at least a similar thirty (30) day notice is given.

SECTION 2. Quorum

Thirty percent (30%) of the members eligible to vote present in person or by absentee ballot, constitutes a quorum for an election.

ARTICLE XI - GOVERNING BODY

SECTION 1. Name

The governing body of Qutekcak Native Tribe shall be the Qutekcak IRA Council, hereinafter referred to as the Council.

SECTION 2. Composition

The Council shall consist of five (5) members, who shall be elected by a majority vote of the tribe's eligible voters voting. Until the first election under this Constitution, the members of the existing traditional Council of Qutekcak Native Tribe shall serve as the Council.

SECTION 3. Qualifications

Tribal members who are eligible voters may run for tribal council.

SECTION 4. Officers

Officers are Council President, Vice-President, and Council Secretary/Treasurer. The Council President, Vice-President, and Secretary/Treasurer are elected by the Council at its first meeting following certification of annual election results. The Council may assign the duties of the Secretary/Treasurer as may be necessary or convenient, but such assignments are clerical in nature and do not relieve the officer of the responsibilities set forth under Article XII of this Constitution.

SECTION 5. Terms of Office

Council members serve three-year terms, except as may be necessary to establish staggered terms of office.

SECTION 6. Oath of Office

Before entering upon their official duties, all elected officials must take and subscribe to the following oath to be administered by an Executive Officer.

I, (name) _____, do solemnly swear or affirm that I will preserve, protect, and defend the Constitution/By-Laws, Ordinances, and Policies of Qutekcak Native Tribe, and will faithfully discharge the duties of my office, to the best of my ability.

SECTION 7. Resignation and Forfeiture

Any member of the Tribal Council who submits a written resignation, dies, is convicted of a felony while in office, or is absent from three regular monthly Council meetings without being excused by the Council shall automatically forfeit his or her office.

SECTION 8. Removal

Any member of the Council found guilty by the Council of neglect of duty, unethical behavior, gross misconduct in office, any offense involving dishonesty, or who is convicted of a felony by a court of competent jurisdiction, may be removed from office by the Council. Any such member shall first be given ten (10) days notice in writing of the reasons for the removal and be given an opportunity to answer the allegations before the Council. A supermajority (2/3's or greater) of Council members must vote in favor of removal. No member of the Council shall preside over the meeting at which his or her removal is being considered, or cast a vote on the question of removal. All questions of removal under this section shall be resolved by the Council and the decision of the Council shall be final.

SECTION 9. Vacancies

Any elected position which is vacated for any reason shall be filled by a supermajority (2/3's or greater) of the remaining Council members appointing an eligible voter, and such replacement shall serve until the vacated term is expired.

SECTION 10. Council Meetings

(a) The Council shall meet at least quarterly on a date and place to be fixed by action of the Council, and at such other times and places as may be designated by the presiding officer or decided by a quorum of Council members. A quorum to transact business consists of at least one more than half of the number of Council members. Except as otherwise provided in this Constitution, at least a majority of the members present at a meeting at which a quorum is in attendance, must vote in favor on any motion or resolution in order for the vote to be effective. For ordinances or financial matters not involving normal operating matters involving an amount greater than \$5,000 (five thousand) a supermajority (2/3's or greater) of the whole must vote in favor for the action to become effective.

(b) All meetings of the Tribal Council shall be open to the membership of the Tribe.

(c) The Tribal Council may move to meet in a closed executive session during regular, special or emergency meetings of the Tribal Council when the subject matter concerns child welfare, personnel, litigation, tribal enrollment and other matters made confidential by tribal ordinance or law. The general subject matter to be discussed is expressed in the motion calling for such session, and included in the meeting minutes, and no final or official action is taken thereon in the closed or executive session

SECTION 11. Ordinances

All final decisions of the Council on matters of general or permanent interest to members of the Tribe are embodied in ordinances. The ordinances are codified and are available to Tribal members and others upon reasonable request.

ARTICLE XII - DUTIES OF OFFICERS

SECTION 1. Assuming Duties. Newly elected officers shall assume their respective office and duties at the next regular council meeting after the election immediately after taking the oath of office.

SECTION 2. Council President

The Council President shall preside at all meetings of the Council and shall execute on behalf of the Qutekcak Native Tribe all contracts, leases, or other documents approved by the Council. Except as otherwise provided for in this Constitution, the Council President shall vote in matters before the Council, and shall have general supervision of the chief administrative employee of the tribal government, and see that the employee's duties are properly performed.

SECTION 3. Vice-President

The Council Vice-President shall assist the Council President when called upon to do so. In the absence of the Council President, the Council Vice-President shall preside, and when so presiding shall have all the rights, privileges, duties, and responsibilities of the Council President.

SECTION 4. Secretary/Treasurer

The Council Secretary/Treasurer shall act as Council President in the absence of the President and Vice-President. The Secretary/Treasurer shall perform, or shall oversee the performance, of the following duties: keep the minutes of all meetings and attest to the enactment of all resolutions and ordinances; issue notices of all meetings and elections and conduct all general correspondence as directed by the Council; carry out the financial directives of the Council, and properly safeguard the tribal funds, keeping an accurate accounting of all receipts and disbursements.

ARTICLE XIII – RULES OF PROCEDURE

Unless otherwise determined by the Tribal Council, all meetings of the Tribal Council shall be conducted in accordance with Robert's Rules of Order Revised. In the event of any dispute regarding Robert's Rules of Order Revised, the decision of the Presiding Officer of the meeting is final.

ARTICLE XIV - POPULAR PARTICIPATION IN GOVERNMENT

SECTION 1. Recall

Voting members shall have the power to recall any member of the Council. The recall process shall be initiated by filing a valid petition with the Tribal Council asking for such recall, signed by at least sixty percent (60%) of the eligible voters, and setting forth the reasons for the recall. Upon the receipt of such petition, the Council shall call an election pursuant to Article X. Once an individual has been subjected to recall proceedings, that person shall not again be subject to recall proceedings again for the same action during the balance of his or her current term of office. Removal of a council member requires a supermajority of (2/3's or greater) of the whole.

SECTION 2. Initiative

Tribal members have the right to propose legislation and vote by secret ballot to determine whether it will be adopted or rejected. Upon receipt of a valid petition signed by at least sixty percent (60%) of the eligible voters, the Council shall call an election pursuant to Article X. An affirmative vote by at least a majority of the eligible voters at a tribal meeting where a quorum of sixty percent (60%) has been established shall be required to determine the tribe's position on the issue submitted to a vote, except for financial matters or ordinances, which require a supermajority of (2/3's or greater) of the whole.

SECTION 3. Referendum

The Council, by an affirmative vote of at least three (3) of its members, shall call an election pursuant to Article X, for the purpose of deciding issues or questions that are within the authority of the Council. An affirmative vote by at least a majority of the eligible voters at a tribal meeting where a quorum of thirty percent (30%) has been established shall be required to determine the Tribe's position on the issue submitted to a vote, except for financial matters or ordinances, which require a supermajority of (2/3's or greater) of the whole.

SECTION 4. Decision of Tribal Members

The decision of the voters in recall, initiative, and referendum elections are binding on the Council and the Qutekcak Native Tribe, and remain in full force and effect until amended or rescinded by subsequent action of the voters or expired on its own terms.

ARTICLE XV - POWERS OF THE TRIBE

SECTION 1. General Law Powers

Except as specifically limited by this Constitution, the powers of the Qutekcak Native Tribe are exercised by its Council, including but not limited to those specified in this Article, insofar as such powers do not violate the law of the United States. The Council may authorize an officer to act in specific circumstances.

SECTION 2. Internal Procedures

Consistent with this Constitution, the Council may enact ordinances to govern its internal tribal organization, including but not limited to further defining the duties of Council Members and promulgating regulations and policies in furtherance of the conduct of Tribal business.

SECTION 3. Other Powers

In addition to all powers vested in the Tribe by traditional law and this Constitution, the Qutekcak Native Tribe, acting through its Council, has the following powers:

- (a) To negotiate instruments and agreements with federal, state, or local governments and others on behalf of the Tribe, and to advise and consult with officials of the United States on federal matters which may affect the Tribe.
- (b) To promote and protect the health, education, and general welfare of Tribal members, and to administer charity and such other services as may contribute to the social and economic development of the Tribe.
- (c) To raise revenue.
- (d) To encourage, guard, and foster the traditional cultural practices of the Qutekcak Native people, including the arts, crafts, languages, and customs of Tribal members.
- (e) To authorize or direct subordinate boards, committees, or officials to administer Tribal affairs and to carry out the directives of the Council.
- (f) Except as limited by this Constitution, to manage, lease, exchange, acquire, or otherwise affect Tribal or other property.
- (g) To regulate and control the use of natural resources within those areas under the jurisdiction of the Tribe.
- (h) To manage and administer Tribal funds.
- (i) To engage in economic development for the benefit of the Tribe or its members.
- (j) To safeguard and promote the peace, safety, morals, and physical and general welfare of Tribal members, including the establishment of Tribal courts or other judicial bodies of special or general jurisdiction.
- (k) To employ legal counsel.
- (l) To charter enterprises, corporations, and associations, and to join or charter housing authorities.
- (m) To enact ordinances, policies, and regulations necessary to give effect to any provision of this Constitution, and to exercise any power not contrary to Tribal or applicable federal law.
- (n) To exercise any and all powers heretofore or hereafter delegated by the state or federal governments.

SECTION 4. Powers Reserved to the Membership

Except by an affirmative vote of a majority of the eligible voters present and acting through a general membership meeting or properly called election, no Tribal lands or interest in lands may be sold, leased, or otherwise encumbered or disposed of. This Section does not apply to the acquisition of real property through mortgages or other instruments which use the acquired property as collateral.

SECTION 5. Sovereign Immunity of Qutekcak Native Tribe

Nothing in this Constitution or actions taken under it shall be deemed or construed to be a waiver of the sovereign immunity or jurisdiction of the Tribe, which may only be waived by express resolution of the Council, and only to the extent specified in such resolution and permitted by this Constitution and Federal law. Waivers of sovereign immunity or jurisdiction shall not be general but must be specific and limited as to duration, grantee, transaction, and Tribal property or funds that are subject thereto, and to the court having jurisdiction, and the applicable law. Waiver of Tribal sovereign immunity shall not be deemed a general consent to the levy of any judgment, lien, or attachment upon the property or funds of the Tribe, other than that property or those funds specifically pledged, assigned, or otherwise explicitly made subject to levy in the waiver resolution.

SECTION 6. Retained Powers

The retained powers of the Tribe not set forth in this Constitution are not lost by omission, but may be exercised by a majority vote of the eligible voting members, or delegated by them to the Council.

ARTICLE XVI - RIGHTS OF MEMBERS

SECTION 1. Civil Rights

Consistent with the customs, laws, and traditions of the Qutekcak Native Tribe, the Tribe, in exercising its powers of self-government, shall not deny to any person within its jurisdiction, freedom of speech, press, or religion, or the right to assemble peacefully, nor shall the Tribe deny to any person the equal protection of Tribal law or deprive any person of liberty or property without due process of law.

SECTION 2. Property Rights

Resident and non-resident members shall have equal right to use such aboriginal lands and waters claimed by the Tribe, or any such property otherwise obtained by the Tribe, and to receive such Tribal benefits for which they may be eligible.

SECTION 3. Access to Tribal Records. Tribal members shall have the right to review all tribal records including financial records at any reasonable time in accordance with procedures established by the Tribal Council except in child welfare cases, litigation, personnel, enrollment records, confidential records as defined by tribal ordinance or any item protected by law.

SECTION 4. Proposal of ordinances. Tribal members have the right to propose ordinances to the Tribal Council. Tribal members have the right to be present and allowed to speak at tribal meetings when ordinances are being considered and/or voted upon.

ARTICLE XVII - AMENDMENTS

This Constitution may be amended by a supermajority (2/3's or greater) vote of the eligible voters of the Tribe at an election called by the Secretary of the Interior in which at least thirty percent (30%) of the eligible voters take part.

The Secretary shall call such an election on a proposed Constitutional amendment at the request of either a supermajority (2/3's or greater) of the members of the Tribal Council or upon a petition by at least sixty percent (60%) of the eligible voters.

ARTICLE XVIII- ADOPTION

This Constitution, when ratified by a majority vote of the eligible voters of the Qutekcak Native Tribe, voting at an election called for that purpose by the Secretary of the Interior or his/her authorized representative, in which at least thirty percent (30 %) of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his/her approval and shall be effective on the date of such approval.

ARTICLE XIX – SAVINGS AND SEVERABILITY

SECTION 1. Savings. Unless inconsistent with this Constitution, all tribal legislation enacted prior to the adoption of this Constitution shall remain in effect.

SECTION 2. Severability. If any provision of this Constitution shall, in the future, be declared invalid by a court of competent jurisdiction, the invalid provision shall be severed and the remaining provisions shall continue in full force and effect.