

## STANDING ROCK SIOUX TRIBAL PARDON COMMISSION

### POLICIES AND PROCEDURES

#### I. AUTHORITY AND POLICY

Authority for these policies and procedures is derived from Title IV of the Standing Rock Sioux Tribal Code of Justice. The Pardon Commission shall have the sole and exclusive power to grant pardons for convictions as defined by Title IV and these policies and procedures. The Commission shall have no authority over convictions arising in any state or federal court.

It is the policy of the Tribe to allow for the pardon of an individual's tribal court conviction when the public interest necessitates it, that such pardon be recognized by the courts, and that each pardon be given such practical effect as serves the public interest upon which the pardon was based. No individual is entitled to a pardon under Title IV or these policies; rather, a pardon is granted upon the discretion of the Pardon Commission. For the Pardon Commission to consider granting a pardon for a conviction, the conviction must be final as defined under these Policies and Procedures.

#### II. DEFINITIONS

(a) Applicant – The individual requesting a Pardon.

(b) Application – form filled out by an applicant for Pardon which, to be considered complete, must at minimum:

- i. Be sworn under oath;
- ii. Include the name of the applicant and any aliases;
- iii. Include the date and offenses for each specific conviction the applicant is seeking a pardon for;
- iv. Include the name of the tribal judge from the underlying conviction;
- v. Include the date of the appellate decision from the conviction (if any);
- vi. Include the age, birthplace, parentage, occupation and residence of the applicant;
- vii. Include other arrests, indictments, and convictions of the applicant (even if no pardon is sought for such convictions), whether Tribal, state or federal; and
- viii. Include a legible copy of a verification of information (i.e., birth certificate, driver's license, social security card, enrollment verification, or diploma/certificate).

- (c) Application File – The record of an applicant that must be presented to the Pardon Commission for its consideration. The record shall consist of the application for Pardon; criminal background checks (tribal, federal and state) that are no more than six (6) months old; proof of victim notification and statements if provided; recommendation(s) of the Chief Judge and Prosecutor of the Tribal Court, if submitted; and certification by the Pardons Clerk that the file is complete..
- (d) Conviction – A finding made by the Standing Rock Sioux Tribal Court that an individual was found guilty, entered a plea of guilty or entered a plea of “no contest” to an offense in the Tribal Code of Justice. For purposes of this Policy a conviction must be a final conviction before being acted upon by the Pardon Commission.
- (e) Final Conviction – A conviction is final for the purpose of these policies and procedures if:
- (1) For felony convictions, 10 years have passed since whichever of the following occurred latest in time: no portion of the sentence remained unexecuted, the time period for appeal ended, any costs or fees were paid (or the time to pay expired), all requirements of probation were satisfied (i.e., completed any alcohol or drug evaluations and/or treatment), and the period of probation ended.
  - (2) For misdemeanor convictions, 5 years have passed since whichever of the following occurred latest in time: no portion of the sentence remained unexecuted, the time period for appeal ended, any costs or fees were paid (or the time to pay expired), all requirements of probation were satisfied (i.e., completed any alcohol or drug evaluations and/or treatment), and the period of probation ended.
- (f) Pardon – An act of clemency in which the grantee is absolved of the legal consequences of a specific, pardoned crime (however, a pardon does not include, nor may be used for, granting a reprieve, commuting a sentence, or remitting fines or forfeitures). A pardon does not reverse, eliminate or negate a previous finding of guilt; rather, a pardon implies and acknowledges guilt, and removes the legal effects of a conviction and/or punishment upon a person. Pardon is not the same as an expungement, and therefore does not itself remove an individual's pardoned offense from his or her record. A pardon is not official under Title IV and these policies unless and until it has been authorized and granted by the Pardons Commission and an official Certificate of Pardon has been issued.
- (g) Pardons Clerk – The Executive Director of the Standing Rock Sioux Tribe. Duties of the Pardons Clerk may be delegated by the Executive Director to his or her designee; however, regardless of any such designation, all records of the Pardons Commission shall remain under the care and custody of the office of the Executive Director.
- (h) Pardons Commission (or “Commission”) – The Tribal Pardon Commission as provided for under Title IV of the Standing Rock Sioux Tribal Code of Justice.

- (i) Tribe or Tribal – The Standing Rock Sioux Tribe.

### III. TIME

When computing time under these policies and procedures, exclude the day of the event that triggers the period, and count every day (including intermediate Saturdays, Sundays and legal holidays), provided that if the last day is a Saturday, Sunday or legal holiday, the time period shall be extended to the next day that is not a Saturday, Sunday or legal holiday.

### IV. PARDON COMMISSION

- (a) Membership. The Pardon Commission shall consist of four (4) enrolled members of the Standing Rock Sioux Tribe, and one (1) alternate (who shall also be a member of the Standing Rock Sioux Tribe), who, by their actions over a period of time, have proven to be worthy of passing judgment over requests for Pardon. The Tribal Chairman shall appoint each member of the Commission, including in the event of a vacancy on the Commission, upon the successful completion of a background check which reveals the potential Commissioner has been convicted of no Tribal, Federal or state felony. The Chairman's appointment(s) must be ratified by a majority vote of the Tribal Council members voting on the question prior to an individual officially beginning their term on the Commission.
- (b) Terms. The members of the Pardon Commission shall serve a two (2) year term commencing on the date which the Tribal Council ratifies the appointment. At the end of the term, the seat becomes vacant, and the Tribal Chairman may re-appoint the member whose term is expiring, or appoint any other individual to the vacancy who is qualified under subsection (a) of this Section.
- (c) Resignation. A member of the Commission may resign with a 60-day written notice submitted to the Pardons Clerk.
- (d) Chairman of Commission. A Chairman of the Commission shall be appointed as provided by Title IV of the Code of Justice. If Title IV does not so provide, the Commission shall appoint a Chairperson from within its membership to preside over Commission hearings and assume any other duties required of the position.
- (e) Regular Hearings. The Commission shall conduct regular hearings on a quarterly basis (i.e., approximately once every three (3) months) to consider applications for Pardon which have been timely submitted for consideration. Such quarterly meetings shall be held as long as there is at least one (1) application for the Commission to consider at that meeting. If no applications

were filed to consider at the quarterly hearing, the Commission shall not meet until the next quarterly meeting.

- (f) Removal. Pursuant to Title IV of the Standing Rock Sioux Tribal Code of Justice, a member of the Commission may be removed by a 2/3 vote of the Tribal Council – upon a notice of no fewer than 20 days and the chance to be heard – if the member is no longer eligible to serve on the Commission under subsection (a) of this section, or if the member is found guilty by Tribal Council of misconduct in office, neglect of duty, or an offense involving dishonesty.

**V. PROCEDURES**

(a) Application Process.

- (1) Application forms shall be available from the Pardons Clerk.
- (2) Completed applications must be submitted to the Pardons Clerk in order to be considered by the Commission. If a submitted application is not complete, the Pardons Clerk shall notify the applicant of the deficiency, and it shall not be considered until completed and re-submitted.
- (3) If the application is complete, the Pardons Clerk shall:
  - i. Arrange for all appropriate tribal, state and federal background checks to be completed on the applicant; the applicant shall be required to pay any fee or cost imposed by the source of the background check (i.e., Standing Rock Sioux Tribal Court, etc.);
  - ii. Request the names of any victims and/or complainants of offenses for which a pardon is requested from the Tribal Prosecutor; and
  - iii. Request any recommendations on the application for pardon from the Chief Judge and Tribal Prosecutor of the Tribal Court.

(b) Pre-Hearing Process.

- (1) The Pardons Clerk – after having received the complete application and all relevant information requested and/or received under Section V(a)(3), and after confirming the conviction(s) for which a pardon is requested are "final" as defined under these



policies – shall compile an application file as defined by these policies and procedures.

- i. If, at any time, it is discovered the conviction(s) for which a pardon is requested is/are not final, the applicant shall be so informed and the Pardon Commission shall not consider a pardon for any such non-final conviction(s).
- (2) All completed applications for which all relevant and required information has been received under Section V(a)(3) by no later than thirty (30) days prior to a hearing shall be contemplated by the Commission at that hearing.
- (3) In advance of each regular hearing of the Commission, the Pardons Clerk shall:
  - i. Provide or make available to each member of the Commission:
    1. The application file of each applicant whose application is complete and for which all information has been received under Section V(3); and
    2. The date, time and place at which the hearing is to be held, and a list of those applying for a pardon.
  - ii. Cause a notice of the Pardons Hearing – including the date, time and location of the hearing - to be publicly posted by (a) mailing such notice to the District chairperson and District postmaster (if the District has a postmaster) of each District at least ten (10) days prior to the hearing, and (b) causing such notice to run at least once in the official newspaper(s) of the Tribe prior to the hearing.
  - iii. At least fourteen (14) days prior to the hearing, send a notice to the last known mailing address of the recipient, to any complainant and/or victim as identified under Section V(a)(3)(iii) that the relevant applicant has requested a pardon for the specific offense, and the date, time and location of the hearing at which the pardon will be contemplated by the Commission. This notice shall also inform the complainant and/or victim they have the right to provide sworn testimony on the requested pardon.
  - iv. At least fourteen (14) days prior to the hearing, send a notice, to the last known mailing address of the recipient, to the applicant for Pardon of the date, time and location of the hearing. This notice shall also inform the

Applicant that they have a right to be represented at the hearing by legal counsel or other advocate at their own expense, and that their application shall not be considered unless they appear in person at the hearing.

1. If, after receiving notice under subsection (iv) of this Section, the applicant timely informs the Pardons Clerk that they will be unable to attend that hearing, they may request their application be held for consideration at the next regular hearing of the Commission. Any additional delays will require the applicant to submit a new application for Pardon.
- v. Arrange for the Chief Judge and Tribal Prosecutor to be made aware of the date, time and location of the hearing, and be provided a list of the applicants for pardon to be considered at that hearing.
- (4) If, prior to the hearing, either the Chairperson alone, or at least two (2) other Commission members by motion directing the Chairperson, determine(s) that there are witnesses other than the applicant, victim and/or complainant, Chief Judge or Tribal Prosecutor of the Tribal Court from whom it wishes to receive oral testimony or documentary evidence at the hearing, the Chairperson may cause a summons to be issued to that individual no later than ten (10) days prior to the hearing date. Such summons shall specify the time, date and location of the hearing and, if documentary evidence is requested, shall describe the evidence as specifically as possible.

(c) Hearings.

- (1) The Commission shall hold quarterly hearings to review applications for Pardon. All hearings and meetings of the Pardon Commission will be held in Fort Yates, ND, and shall be tape recorded, with the exception of those deliberations held in executive session pursuant to these policies and procedures.
- (2) A simple majority of the Pardon Commission (3) shall constitute a quorum, which shall be required for the Commission to conduct business. The alternate member of the Commission may be counted in determining whether a quorum is present.
- (3) All hearings before the Pardon Commission shall be open to the public. The Pardon Commission reserves the right to meet in executive session to deliberate and discuss those applications pending before it at a date and time prior to the hearing date, and/or after the hearing including for purposes of voting on an application.

- (4) The applicant requesting a pardon must attend the hearing in person in order for the Commission to consider the application. The applicant shall be allowed the right to be represented by legal counsel or other advocate at their own expense.
- (5) No telephone calls will be accepted while the Pardon Commission is in session hearing cases.
- (6) At least one (1) Tribal Court employee is required to attend hearings with a complete record of each applicant.
- (7) The Commission Chairperson shall preside over the hearing, and shall swear in all witnesses providing testimony, by reciting the following oath to which an affirmative response must be audibly made: "Do you solemnly swear or affirm that the testimony you are about to give is the truth and nothing but the truth?"
- (8) Each applicant, victim and/or complainant, the Chief Judge and Tribal Prosecutor of the Tribal Court shall have the right to provide sworn testimony in support or opposition of the application. The Commission may, at their own discretion, allow other individuals – whether requested under subsection (b)(4) of this Section, offered by the applicant or victim and/or complainant, or a member of the public attending the hearing - to provide sworn testimony on any application if such testimony is relevant to the specific application. Such other sworn testimony may be allowed by either:
  - i. Consent of the Chairperson alone, or
  - ii. Consent of at least two (2) other Commission members.
- (9) Any sworn witness appearing before the Commission may also provide the Commission with relevant, physical evidence – including documentary evidence – for the Commission to consider during deliberations on the applications.
- (10) In lieu of appearing at the hearing, the victim of an offense for which a pardon is being sought may submit a notarized, written statement to the Commission – by providing such statement to the Pardons Clerk at any time prior to commencement of the hearing – either in support or opposition of the application. The victim may attach to the written statement such other relevant, documentary evidence as they may wish. Any such statements timely submitted shall be read into the record during the hearing by the Pardons Clerk, and copies of the statement and any attached evidence shall be provided to each Commission member and the applicant at the hearing.



(d) Decisions of the Pardons Commission.

- (1) In making a decision on an application, the Pardons Commission may:
  - a. Grant a pardon; or
  - b. Deny a pardon.
- (2) The Pardons Commission may vote on the applications before it either at the close of the hearing, or at a meeting held subsequent to the hearing, and such vote may be made in executive session. However, if done at a subsequent meeting, the Commission must hold such meeting no more than twenty (20) days after the close of the hearing at which the application was considered.
- (3) Notice of the Commission's decision must be sent to the applicant, victim and/or complainant, and the Tribal Court within ten (10) days of the vote, regardless of when the vote is held. To the extent a pardon is granted, the notice sent to the applicant and Tribal Court shall be accompanied by a Certificate of Pardon pursuant to sub-paragraph (7) of this Section.
- (4) Within fourteen (14) days of the Commission vote, the Pardons Clerk shall send Notice of Pardons to the District Chairperson and District postmaster (if there is a postmaster in the District) of each District those specific pardons granted by the Commission, and cause the notice to run at least once in the official newspaper(s) of the Tribe.
- (5) Decisions of the Pardon Commission shall be specific as to which offenses are being pardoned, regardless of whether the applicant has requested and/or been granted a pardon for all of his/her convictions, or only specific convictions.
- (6) Decisions of the Pardon Commission shall be based upon the contents of the application file and testimony at the pardon hearing.
- (7) A pardon shall be granted only upon a clear showing that the public interest necessitates it and only when approved by at least three (3) members of the Commission who attended the hearing.
- (8) Once a pardon has been granted, the Pardon Commission shall direct the Pardons Clerk to issue a Certificate of Pardon to the applicant and the Tribal Court. The Certificate of Pardon shall specify the offenses (including the court case number) for which a Pardon was granted and the date on which the Pardon was granted. The Certificate must be signed by the Pardons Clerk and the Chairperson of the Commission.
- (9) If denied a pardon, the Pardon Commission will not consider a reapplication for a Pardon on the same conviction for at least six (6) months after the date of denial.



- (10) The decision of the Pardon Commission shall be final and no appeal to any entity shall be allowed.

## **VI. MISCELLANEOUS**

- (a) Policies and Procedures. These policies and procedures may be amended by the Pardon Commission, by majority vote at any regularly scheduled meeting of the Commission, and enacted upon Tribal Council approval
- (b) Additional Duties of the Pardons Clerk. In addition to the duties outlined throughout these policies and procedures, the Pardons Clerk shall also maintain a register of all applications filed with the Commission as well as maintain a record of proceedings. Such register and record shall be physically kept in the office of the Executive Director of the Standing Rock Sioux Tribe.
- (c) State and federal background checks completed by the Pardons Clerk will only be reviewed by the Pardon Commission as a reference as to the applicant's character; the Pardon Commission has no jurisdiction to grant a pardon over any such convictions.

## **VII. EFFECT OF PARDON**

- (a) A pardon properly granted under Title IV and these Procedures shall pardon the legal effects of a prior conviction, and relieves the pardoned individual from all legal disabilities resulting from his or her conviction. However, a properly granted pardon does not pardon a felony offense, nor relieve the pardoned individual from legal disability resulting from their conviction, for the purpose of the eligibility requirements for running for Tribal Council under Article III of the Constitution of the Standing Rock Sioux Tribe, and even a pardoned felony conviction shall stand as a bar to an individual being qualified to seek and hold membership on the Tribal Council.
- (b) Upon receipt of the Certificate of Pardon, the Tribal Court will – on its official records - recognize the grant of a “pardon” on any record of conviction of the applicant for the specific pardoned offenses. Any background check issued subsequent to the pardon shall contain the following notation, with the pertinent Certificate-specific information inserted: “Certificate of Pardon, issued the \_\_\_ day of \_\_\_, 20\_\_\_.”
- (c) A pardon does not have the same effect as an expungement, and neither Title IV nor these policies and procedures provide for an exertion of authority over Tribal Court records aside from the requirement that such records shall indicate a pardon was granted as provided under subsection (b) of this Section.

## **RESOLUTION NO. 002-14**

**WHEREAS**, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Section 16, and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

**WHEREAS**, the Standing Rock Sioux Tribal Council, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1[c], is empowered to promote and protect the health, education and general welfare of the members of the Tribe, and to administer charity and such other services as may contribute to the social and economic advancement of the Tribe and its members; and

**WHEREAS**, the Standing Rock Sioux Tribal Council, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1[h], is empowered to authorize or direct subordinate boards, committees and tribal Officials, to administer the affairs of the Tribe and to carry out the directives of the Tribal Council, provided that no Tribal Land or other Tribal Property may be alienated, encumbered or leased without express authority of the Tribal Council by resolution covering each transaction; and

**WHEREAS**, Title IV of the Standing Rock Sioux Tribal Code of Justice provides for a Pardons Commission which may consider applications for a pardon of a final Tribal court conviction and, upon a clear showing the public interest necessitates it, grant a pardon for the offense; and

**WHEREAS**, Pardon Commission Policies and Procedures were originally adopted by the Standing Rock Sioux Tribal Council on February 23, 2001; and

**WHEREAS**, a revised version of the Pardon Commission Policies and Procedures were adopted by the Standing Rock Sioux Tribal Council on October 13, 2001; and

**WHEREAS**, new amendments and revisions to the Pardon Commission Policies and Procedures are needed.

**NOW, THEREFORE, BE IT RESOLVED**, that the Pardon Commission Policies and Procedures are hereby amended and revised as presented, and all prior versions of the Policies and Procedures are repealed; and

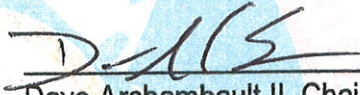
**BE IT FURTHER RESOLVED**, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.



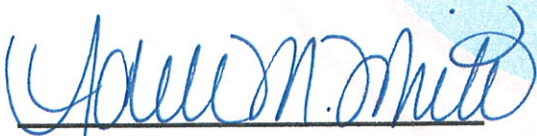
## CERTIFICATION

**WE**, the undersigned, Chairman and Secretary of the Tribal Council of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of **[17]** members, of whom 15 constituting a quorum, were present at a meeting thereof, duly and regularly called, noticed, convened and held on the 08<sup>th</sup> day of **JANUARY, 2014**, and that the foregoing resolution was duly adopted by the affirmative vote of 12 members, with 2 opposing, and with 1 not voting, **THE CHAIRMAN'S VOTE IS NOT REQUIRED, EXCEPT IN CASE OF A TIE.**

**DATED THIS 08<sup>th</sup> DAY OF JANUARY, 2014.**

  
\_\_\_\_\_  
Dave Archambault II, Chairman  
Standing Rock Sioux Tribe

**ATTEST:**

  
\_\_\_\_\_  
Adele M. White, Tribal Secretary  
Standing Rock Sioux Tribe

**[OFFICIAL TRIBAL SEAL]**

Meeting Date: 01-08-2014  
Motion No.: 12