

# Wahnapitae First Nation Band Custom Election Code



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## **Preamble**

Whereas the members of Wahnapiatae First Nation created and amended the Wahnapiatae First Nation Band Custom Election Procedures on September 11, 2004;

Whereas the members of Wahnapiatae First Nation desire to update and amend their Band Custom Election Procedures;

Therefore, we, the members of Wahnapiatae First Nation, by virtue of our inherent right, aboriginal and self-government rights do hereby enact the following band custom election code.

1. This code shall be called the Band Custom Election Code of the **Wahnapiatae First Nation**.

## **Coming Into Force**

2. This code shall come into full force and effect on the date of the ratification vote which approves this code.

## **Definitions**

3. In this code:

"appellant" means an individual who submits an appeal in accordance with this code with respect to an election.

"by-election" means a special election to fill a position for chief that has become vacant.

"code" means the leadership selection process set out herein.

"Appeal Board" means the body appointed by a band council resolution in accordance with this code to review and rulings concerning election appeals and issues.

"corrupt practices" means bribery direct or indirect, or providing a financial or material incentive to an elector in exchange for a vote.

"council" means the body composed of those persons elected pursuant to this code.

"deputy electoral officer" means any person appointed by the electoral officer for the purposes of an election to assist him in the conduct of the election process.

"elder" means a member Wahnapiatae First Nation who is at least 65 years of age.

"election" means a general election or by-election of the band held pursuant to the provisions of this code.

"electoral officer" means a person, appointed by a band council resolution before each election, who has the responsibility for conducting the nomination meeting, the election and post-election procedures.

"elector" means a person who:

- a) is a member of the Wahnapiatae First Nation; and
- b) is at least 18 years of age on the day on which the election is held.

"mail-in ballot" means a ballot mailed or delivered in accordance with this code.

"nomination meeting" means the meeting at which electors come forward to nominate and second candidates for the Wahnapiatae First Nation election.

"oath" means a solemn affirmation.

"ordinarily resident" means

- a) the place the person uses as their dwelling;
- b) the place the person normally eats and sleeps;
- c) the place the person returns to on a daily basis;
- d) the place the person receives mail; and
- e) the residence of the person's immediate family;

A person can only be ordinarily resident in one place at one time, and a person is ordinarily resident in that place until another place of ordinary residence is acquired.

"polling station" means a building, hall or room which is selected as the site at which voting takes place.

"spoiled ballot" means those ballots that have been improperly marked and/or defaced by elector(s) which are not included in the tally of valid ballots cast during the counting of the votes.

"voter declaration form" means a document that sets out, or provides for:

- a) the name of the elector;
- b) the band membership or registry number of the elector or, if the elector does not have a band membership or registry number, the date of birth of the elector; and
- c) the name, address and telephone number of a witness to the signature of the elector.

"voters list" means the list of band members eligible to vote in an election.

## **The Council**

4. The council shall consist of one (1) chief and four (4) councillors.

5. Chief and councillors shall be elected by a vote held in accordance with this code.
6. The term of office in a general election for the positions of chief and councillors shall be four (4) years held on the third Saturday of June.
7. The term of office for the chief and councillors commences when the elected council is declared by the electoral officer. Once the term of office is declared for the elected council the previous chief and councillors term of office is immediately terminated.

### **Vacancy**

8. A chief or councillor position on the council may become vacant if, while in office:
  - a) the chief or councillor resigns in writing from office of his own accord;
  - b) the chief or councillor has been unable to perform the functions of his office for more than six months due to illness or other incapacity;
  - c) the chief or councillor dies; or
  - d) the chief or councillor is removed from office in accordance with section 139.

### **By-election**

9. Unless otherwise provided in this code, in the event that the office of chief becomes vacant, a by-election shall be held within 90 days after the date on which the position is declared vacant.
10. No by-election shall be held if there are less than 3 months remaining in the term of the chief's office.
11. No sitting council member is eligible to be a candidate in a by-election. If a council member wishes to be a candidate in a by-election, they must resign their council position prior to the nomination meeting for the by-election.
12. In the event of a councillor position becoming vacant prior to the end of their term of office and more than one year remains in the term a by-election shall occur within 90 days after the date on which the position is declared vacant.
13. The successful candidate in a by-election shall hold office for the remainder of the original term of office of the individual whom they replace.
14. Except as expressly provided otherwise in this code, the rules and procedures in this code shall apply to by-elections.

### **Pre-Nomination Procedure**

15. The electoral officer shall be appointed by a band council resolution not less than 100 days before the expiration of the council's term of office.
16. The band council resolution for the appointment of the electoral officer shall include:

- a) electoral officer's full name and address;
- b) the date of the election;
- c) the type of election: general election or by-election;
- e) appointments to the appeal board.

17. The electoral officer must be a person who:

- a) is impartial to the outcome of the election;
- b) is at least 21 years of age; and
- c) has experience in the conduct of elections or has received appropriate training.

18. The electoral officer shall appoint deputies as they deem necessary, who shall work under their direction.

19. The deputy electoral officer shall have such powers as described in this code as well as those powers of the electoral officer as delegated to the deputy by the electoral officer.

20. A deputy electoral officer shall not be a member of council or a candidate in the election.

### **Voters List**

21. At least 79 days before the day on which an election is to be held, the electoral officer shall obtain the names, band membership numbers and dates of birth of all band members who will have attained the age of 18 years on the date on which the election is to be held.

22. The First Nation shall, no later than 79 days before the date on which the election is to be held, provide the electoral officer with the last known addresses, if any, of all electors who do not reside on the reserve.

23. Electors are responsible for providing the Wahnapiatae First Nation with their current addresses.

24. An elector's address shall be used by the electoral officer only for the purpose of providing notices, mail-in ballots or other election documents to electors who are entitled to receive them under this code.

25. Except for the purposes of providing mail-in ballots, the electoral officer shall not disclose an elector's address without the consent of the elector.

26. A candidate for election as chief or councillor may obtain from the electoral officer a list of the names and addresses of electors who have consented to have their addresses disclosed to candidates.

27. The electoral officer shall post the voters list in a public area of the band administration building as may be determined by the electoral officer, no later than 72 days prior to the date on which the election is to be held.

28. On request, the electoral officer shall confirm whether the name of a person is on the voters list.

29. The electoral officer shall revise the voters list upon presentation of documentary evidence which demonstrates that:

- a) the name of an elector has been omitted from the voters list;
- b) the name of an elector is incorrectly set out in the voters list; or
- c) the name of a person not qualified to vote is included in the voters list.

30. A person may demonstrate to the electoral officer that the name of an elector has been omitted from or incorrectly set out in the voters list by presenting evidence that the elector:

- a) is entitled to have his name entered on the band list;
- b) will be at least 18 years of age on the date on which the election is to be held; and
- c) is qualified to vote in band elections.

31. A person may demonstrate to the electoral officer that the name of a person not qualified to vote has been included in the voters list by presenting evidence that the person:

- a) is neither on the band list nor entitled to have his name entered on the band list;
- b) will not be at least 18 years of age on the date on which the election is to be held; or
- c) is not qualified to vote in band elections.

32. Where the electoral officer believes that a person whose name is on the voters list is not an elector, or where an elector demonstrates to the electoral officer that the name of a person not qualified to vote appears on the voters list, the electoral officer shall give written notice to the person whose eligibility is challenged, sent to their last known address.

33. The notice above shall include the reasons for seeking the removal of the name from the voters list and any supporting documents, and shall provide notice that a written reply may be sent to the electoral officer which must be received no later than 4 days prior to the date on which the election is to be held.

34. After consideration of all information and representations relating to amendments of the voters list, the electoral officer shall amend, add or delete names from the voters list based on whether persons qualify as an elector.

35. A person whose name does not appear on the voters list shall be entitled to vote on election day, provided they present documentary proof to the electoral officer demonstrating qualifications as an elector to the electoral officer's satisfaction.



36. The decision of the electoral officer concerning the voters list is final and is not subject to appeal.

## **The Nomination Process**

### **Notice of Nomination Meeting**

37. The electoral officer shall, at least 30 days before the date on which the nomination meeting is to be held, post a notice of nomination meeting in at least one conspicuous place on the reserve.

38. The electoral officer shall, at least 30 days before the date on which the nomination meeting is to be held, mail a notice of the nomination meeting to every elector who does not reside on the reserve and has provided an address to the First Nation.

39. A notice of a nomination meeting shall include:

- a) the date, time, duration and location of the nomination meeting;
- b) the name and phone number of the electoral officer;
- c) the eligibility criteria for nominating a candidate for the position of Chief or Councillor;
- d) the eligibility criteria for the position of Chief or a Councillor;
- e) a description of the manner in which an elector can nominate or second the nomination of a candidate; and
- f) the statement that, if the elector wants to receive information from candidates, the elector can agree to have his or her address released to the candidates.

40. The electoral officer shall record the names of the electors to whom a notice of the nomination meeting was mailed, the addresses of those electors, and the date on which the notices were mailed.

### **Nomination Meeting**

41. The nomination meeting shall be held at least 42 days prior to the date on which the election is to be held.

42. The electoral officer is responsible for managing and conducting the nomination meeting.

43. At the time and place set for the nomination meeting, the electoral officer shall declare the nomination meeting open for the purpose of receiving the nomination of candidates for the available council positions.

44. The nomination meeting shall remain open from at least 9 am to 8 pm.

45. The electoral officer shall maintain order at all times during the nomination meeting and may cause to be removed any person who, in his opinion, is disrupting or otherwise interfering with the proceedings.

### **Eligibility to Nominate**

46. In order to be entitled to nominate a candidate for election, an elector must, on the day of the nomination meeting:

- a) be at least 18 years of age on the day the election is held; and
- b) be included on the voters list.

47. Any elector who qualifies above may orally nominate or second the nomination of any qualified person to serve as the chief or councillor at the nomination meeting.

48. No elector may nominate or second more than one (1) nominee for Chief and four (4) nominees for councillor.

49. The electoral officer shall record the name of the nominee, the nominator and the seconder.

50. Only electors who meet the requirements of a candidate as set out in this code may be nominated as a candidate.

51. A person may only be a candidate for either chief or councillor, not both, in any election.

52. A nominee must be present at the nomination meeting so that they can sign the following documents:

- a) an acceptance of nomination form; and
- b) a declaration confirming they are eligible to be a candidate for chief or a candidate for councillor.

and give the form and declaration to the electoral officer before the close of the nomination meeting.

53. All nominees who do not sign and give the acceptance of nomination form and declaration to the electoral officer before the close of the nomination meeting will not be considered a candidate for the election and will not have their names on the ballot.

### **Candidate Criteria**

54. A candidate for chief must be a band member who:

- a) is at least 21 years of age on the day on which the nomination meeting is held;
- b) is a member of the First Nation for a period of not less than 12 months immediately preceding the day on which the nomination meeting is held;

- c) is ordinarily resident on the First Nation reserve;
- d) has not been convicted for an indictable offense for which a pardon has not been granted;  
and
- e) has been nominated pursuant to the provisions of this code.

55. A candidate for councillor must be a band member who:

- a) is at least 21 years of age on the day on which the nomination meeting is held;
- b) is a member of the Wahnapiatae First Nation for a period of not less than 12 months immediately preceding the day on which the nomination meeting is held;
- c) is resident within a 100 km driving distance of the First Nation administration office;
- d) has not been convicted for an indictable offense for which a pardon has not been granted;
- e) must take a leave of absence or other leave from employment from Wahnapiatae First Nation for the term of the of office if they are elected; and
- f) has been nominated pursuant to the provisions of this code.

56. No person shall accept candidacy in an election if they are not eligible to be a candidate in accordance with this code.

57. At the end of the nomination meeting, the electoral officer shall:

- a) if only one nominee for the position of chief has signed and submitted the required documents in accordance with this code, declare that person to be elected;
- b) if the number of persons nominated to serve as councillors does not exceed the number to be elected for the positions of councillor and has signed and submitted the required documents under this code, declare those persons to be elected; and
- c) where more than the required number of persons are nominated for election as chief or councillors and have signed and submitted the required documents, announce that an election will be held.

58. On the day following the nomination meeting, the electoral officer shall post in at least one conspicuous place on the reserve a nomination meeting report that includes a list of nominees, their nominators and seconders and the offices for which they are nominated and acclamations if any.

### **Notice of the Election**

59. The election shall be held at least 42 days after the day on which the nomination meeting was held.

60. The electoral officer shall, within 3 days after the day on which the nomination meeting was held, post a notice of election in at least one conspicuous place on the reserve.

61. The notice shall include:

- a) the date of the election;

- b) the times at which the polling station(s) will open and close;
- c) the location of the polling station(s);
- d) the means by which any elector may vote (in person, mail-in);
- e) the time and location of the counting of the votes; and
- f) a statement that the voters list is available for membership viewing and its location.

## Mail-in Ballots

62. The electoral officer shall at least 35 days prior to the date on which the election is to be held, mail to every elector who has provided the First Nation with an address a mail-in ballot package.

63. The mail-in ballot package shall consist of:

- a) a ballot initialed on the back by the electoral officer;
- b) an inner postage-paid return envelope, pre-addressed to the electoral officer;
- c) a second inner envelope marked "ballot" for insertion of the completed ballot;
- d) an voter declaration form which shall set out space for:
  - 1. the name of the elector;
  - 2. the membership number and date of birth of the elector; and
  - 3. the name, address and telephone number of witness to the signature of the elector;
- e) the notice of election;
- f) instruction regarding voting by mail-in ballot which shall also include a statement advising electors that they may vote in person at any polling station on the day of the election if they return their mail-in ballot to the electoral officer at the polling station or swear a written declaration before the electoral officer, a justice of the peace, notary public or duly appointed commissioner for taking oaths that they have lost the mail-in ballot;
- g) A list of the names of any candidates who were acclaimed.

64. An elector who did not receive a mail-in ballot package may at least 10 days prior to the date on which the election is to be held, request a mail-in ballot package from the electoral officer.

65. Upon receipt of a request for a mail-in ballot package above the electoral officer shall mail or deliver a mail-in ballot package to the elector who so requests.

66. The electoral officer shall indicate on the voters list that a ballot has been provided to each elector to whom a mail-in ballot was mailed or otherwise provided and keep a record of the date on which, and the address to which, each mail-in ballot was mailed or otherwise provided.

67. An elector shall vote by mail-in ballot by:

- a) placing an "X" or other mark that clearly indicates the elector's choice, but does not identify the elector, opposite the name of the candidate or candidates for whom they desire to vote;
- b) folding the ballot in a manner that conceals the names of the candidates or any marks, but exposes the electoral officer's initials on the back;

- c) placing the ballot in the inner envelope and sealing the envelope;
- d) completing and signing the voter declaration form in the presence of a witness who is at least 18 years of age;
- e) placing the inner envelope and the completed, signed and witnessed voter declaration form in the postage-paid envelope; and
- f) delivering, mailing or otherwise ensuring receipt by the electoral officer of the envelope before the close of polls on the day of the election.

68. Where an elector is unable to vote in the manner set out above, the elector may enlist the assistance of another person to mark the ballot and complete and sign the voter declaration form in accordance with that section.

69. A person referred enlisted to assist above shall attest to:

- a) the fact that the person completing and signing the voter declaration form is the person whose name is set out in the form; or
- b) the fact that the elector is the person whose name is set out in the form and that the ballot was marked according to the directions of the elector.

70. Mail-in ballots that are not received by the electoral officer before the close of polls on the day of the election shall not be counted.

## **Election Day**

71. The electoral officer will establish at least one polling station on the reserve.

72. The electoral officer shall, before the polling station is open, supply the polling station with:

- a) sufficient ballot boxes;
- b) a sufficient number of ballots;
- c) a sufficient number of voting compartments enabling electors to mark their ballots free from observation;
- d) instruments for marking the ballots;
- e) a sufficient number of voting instructions as may be required;
- f) all other equipment necessary to establish and equip the polling stations; and
- g) the final voters list.

73. The electoral officer shall provide a voting compartment in the polling station where electors can mark their ballots free from observation and the electoral officer may appoint security to maintain order in the polling station.

74. The electoral officer shall not be allowed to vote in the election.

75. A candidate shall be entitled to not more than one agent in the polling station at any one time.

76. A candidate's agent must present a letter of authorization to the electoral officer or the deputy electoral officer, signed by the candidate, in order to be permitted to remain in the polling station.

### **Polling Hours**

77. The polling station shall be open from 10 a.m. until 8 p.m. local time on the day of the election.

### **Verification of the Ballot Box**

78. The electoral officer or deputy electoral officer shall, immediately before the commencement of the poll:

- a) open the ballot box and call such persons as may be present to witness that it is empty and complete a written statement to that effect, verified by a witness;
- b) lock and properly seal the ballot box in a manner preventing it from being opened without breaking the seal; and
- c) place the ballot box in public view for the reception of the ballots.

### **Secrecy and Security**

79. Voting shall be by secret ballot.

80. No elector may vote by proxy or authorize another person to vote on his or her behalf.

81. The electoral officer or deputy electoral officer shall maintain order at all times in the polling station and may cause to be removed any person who in any way interferes, disrupts or attempts to influence the orderly conduct of the poll.

82. No person shall, on the day the election is held, on the premises of the polling station:

- a) distribute any election-related printed materials except such materials as may be distributed by the electoral officer or deputy electoral officer for the purpose of conducting the election;
- b) attempt to interfere with or influence any elector in marking his ballot; or
- c) attempt to obtain information as to how an elector is about to vote or has voted.

### **In Person Voting Procedure**

83. Each person, on arriving at the polling station, shall give his name to the electoral officer or deputy electoral officer.

84. An elector who has voted by internet based voting may not receive a ballot.

85. An elector to whom a mail-in ballot was mailed may obtain a ballot and vote in person at a polling place if:

- a) the elector returns the mail-in ballot to the electoral officer or deputy electoral officer; or
- b) where the elector has lost the mail-in ballot, the elector provides the electoral officer or deputy electoral officer with a written affirmation that the elector has lost the mail-in ballot, signed by the elector in the presence of the electoral officer, deputy electoral officer, a justice of the peace, a notary public or a commissioner for oaths.

86. The electoral officer or deputy electoral officer shall, if the person's name is set out in the voters list and has not already voted, provide an initialled ballot to the elector.

87. The electoral officer or deputy electoral officer shall cause to be placed in the proper column of the voters list a mark opposite the name of every person receiving a ballot.

88. The electoral officer or deputy electoral officer shall, when requested to do so, explain the method of voting to the elector.

89. After receiving a ballot, an elector shall:

- a) immediately proceed to the compartment provided for marking ballots;
- b) mark the ballot by placing an "X" or other mark that clearly indicates the elector's choice but does not identify the elector;
- c) fold the ballot in a manner that conceals the names of the candidates and any marks, but exposes the initials on the back; and
- d) deliver the ballot to the electoral officer or deputy electoral officer.

90. On receipt of a completed ballot, the electoral officer or deputy electoral officer shall, without unfolding the ballot, verify the initials placed on it and deposit it in the ballot box in the presence of the elector and any other persons entitled to be present at the polling station.

91. While an elector is in the compartment for the purpose of marking his ballot, no other person shall, except as provided this code, be allowed in the same compartment or be in any position from which they can see the manner in which the elector marks their ballot.

92. At the request of any elector who is unable to vote in the manner set out in section 89, the electoral officer or deputy electoral officer shall assist that elector by marking his ballot in the manner directed by the elector in the presence of another elector selected by the elector as a witness and shall place the ballot in the ballot box.

93. The electoral officer or deputy electoral officer shall note on the voters list opposite the name of an elector requiring assistance the fact that the ballot was marked by him at the request of the elector and the reasons therefor.

94. An elector who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used shall, on one occasion only, upon returning it to the electoral officer or

deputy electoral officer, be entitled to obtain another ballot paper. The electoral officer or deputy electoral officer shall write the word "cancelled" upon the spoiled ballot paper and preserve it.

95. Any person who has received a ballot and who leaves the polling place without delivering the same to the electoral officer or a deputy electoral officer in the manner provided, or after receiving a ballot, refuses to vote, shall forfeit his right to vote at the election, and the electoral officer or deputy electoral officer shall make an entry in the voters list in the column for remarks opposite the name of such person to show that such person received a ballot and declined to vote, and the electoral officer or deputy electoral officer shall, if returned, mark upon the face of the ballot the word "declined" and all ballots so marked shall be preserved.

### **Closing of the Polling Station**

96. Every elector who is inside the polling station at the time fixed for closing the poll shall be entitled to vote before the poll is closed.

### **Counting of the Votes**

#### **Opening Mail-in Ballots**

97. At the time set out in the notice of election for the counting of the votes, the electoral officer or deputy electoral officer shall, in the presence of any members, candidates or their agents who are present at the close of polls, open each envelope containing a mail-in ballot that was received before the close of the polls and, without unfolding the ballot,

- a) reject the ballot if:
  - 1. it was not accompanied by a voter declaration form, or the voter declaration form is not signed or witnessed,
  - 2. the voter declaration form does not contain a date of birth or a band number that matches the information contained for that elector on the voters list;
  - 3. the name of the elector set out in the voter declaration form is not on the voters list; or
  - 4. the voters list shows that the elector has already voted.
- b) in any other case, place a mark on the voters list opposite the name of the elector set out in the voter declaration form, and deposit the ballot in a ballot box.

98. The electoral officer or deputy electoral officer may supply any persons present and who so request with a tally sheet to keep their own tally of the votes.

99. The electoral officer shall tally mail-in and in person voting results.

100. Immediately after the mail-in ballots, if used, have been deposited in the ballot box the electoral officer or deputy electoral officer shall, in the presence of any candidates or their agents who are present, open all ballot boxes and examine each ballot.

101. The electoral officer or deputy electoral officer shall call out the names of the candidates for whom the votes were cast on all valid ballots.



102. A deputy electoral officer shall mark a tally sheet in accordance with the names being called out for the purpose of arriving at the total number of votes cast for each candidate.

103. In examining the ballots, the electoral officer or deputy electoral officer must reject any ballots that:

- a) do not contain the initials of the electoral officer or deputy electoral officer;
- b) do not give a clear indication of the elector's intention;
- c) contain more votes than there are candidates to be elected – One for chief and four for councillor position; or
- d) contain a mark by which the voter can be identified.

104. The electoral officer or deputy electoral officer shall attach a note to each ballot rejected which outlines the reason for rejection.

105. Subject to review on recount or on an election appeal, the electoral officer or deputy electoral officer shall take a note of any objections made by any candidate or his agent to any of the ballots found in the ballot box and decide any questions arising out of the objection.

106. The electoral officer or deputy electoral officer shall number objections to ballots raised and place a corresponding number on the back of the ballot paper with the word "allowed" or "disallowed", as the case may be, with his initials.

Tie

107. If there is a tie or five or less votes different between the successful candidate(s) for either a chief or the fourth councillor position the electoral officer shall immediately conduct a recount or establish a time for the conduct of a recount and publicly announce this time in the presence of all those present in the polling station.

108. At the time established for the recount, the electoral officer shall conduct a recount of the valid ballots.

109. If the recount fails to determine the successful candidate, the electoral officer shall call a by-election.

## **Post-Election Procedures**

### **Announcement**

110. After completing the counting of the votes and establishing the successful candidates, the electoral officer shall declare to be elected the candidate or candidates having the highest number of votes.

111. Following the declaration of elected candidates made, the electoral officer shall complete and sign an election report which shall contain at least:

- a) the names of all candidates;
- b) the number of ballots cast for each;
- c) the number of rejected ballots; and
- d) the number of spoiled ballots.

and post the election report in the polling place.

112. Within 4 days after completion of the counting of the votes, the electoral officer shall:

- a) sign and post, in at least one other conspicuous place on the reserve, the election report;
- b) mail a copy of the election report to electors of the band who do not reside on the reserve; and
- c) forward a copy of the election report to the band administrator.

### Retention of Ballots and Other Election Material

113. The electoral officer shall deposit all ballot papers in sealed envelopes, including those rejected, spoiled and unused, and shall retain these ballots and all materials in connection with the election.

114. All ballots and materials retained in accordance with the above shall be retained for 45 days from the date on which the election was held or until a decision on an appeal is rendered, whichever date is later, after which time the electoral officer may, unless directed otherwise by the council, destroy them in the presence of a witnesses who shall make a declaration that they witnessed the destruction of those papers.

### **Election Appeals**

#### Timing

115. A candidate or an elector may, within 30 days from the date on which the election was held, submit an appeal to the Appeal Board.

#### Grounds for Appeals

116. An appeal must sufficiently outline one or more of the following:

- a) that the person declared elected was not qualified to be a candidate;
- b) that there was a violation of this code in the conduct of the election that might have changed the outcome of the election; or
- c) that there was corrupt or fraudulent practice in relation to the election that might have changed the outcome of the election.

#### Submission

117. An appeal submitted to the Appeal Board must:

- a) be in writing and set out in an affidavit sworn before a notary public or duly appointed commissioner for taking oaths the facts substantiating the grounds for the appeal accompanied by any supporting documentation; and
- b) be accompanied by a deposit in the amount of fifth (\$50) dollars.

## Procedure

118. Upon receipt of an election appeal, the Appeal Board shall:

- a) in the case where the appeal is submitted in accordance with this code, forward a copy together with supporting documents by registered mail to the electoral officer and to each candidate at the election; or
- b) in the case where the appeal is not submitted in accordance with this code, inform the appellant(s) in writing that the appeal will not receive further consideration.

## Response to the Allegations

119. Any candidate or the electoral officer may, within 14 days of the receipt of the appeal(s), forward to the Appeal Board by hand delivery or registered mail a written response to the appeal allegations, together with any supporting documentation.

## Investigation

120. The Appeal Board may, if the material that has been filed is not adequate for deciding the validity of the election complained of, conduct such further investigation into the matter as the board deems necessary.

## Decision

121. After a review of all of the evidence that it has received, the Appeal Board shall rule:

- a) that the evidence presented was not sufficiently substantive to determine that:
  - 1. a violation of this code has taken place that might have affected the result of the election;
  - 2. the person declared elected was not qualified to be a candidate; or
  - 3. there was a corrupt or fraudulent practice in relation to the election that might have affected its results, and dismiss the appeal; or
- b) that all evidence and information gathered allows for the reasonable conclusion that:
  - 1. a violation of this code has taken place that might have affected the result of the election;
  - 2. the person declared elected was not qualified to be a candidate; or
  - 3. there was a corrupt or fraudulent practice in relation to the election that might have affected its results, and uphold the appeal by setting aside the election of one or more council members.

122. The decision of the Appeal Board made pursuant to the above shall be:

- a) published in the community's newsletter, which is mailed to band members, or in a separate written notice delivered or mailed to all band members; and
- b) posted in at least one conspicuous place on the reserve.

123. The decision of the Appeal Board is final and not subject to appeal.

## **Appeal Board**

### **Composition**

124. The Appeal Board shall be composed of three members as follows:

- a) an elder;
- b) a person, at least 21 years of age, who is not a member of the band and who does not have a vested interest in the outcome of an election appeal or a petition for the removal of a council member from office; and
- c) a band member, at least 21 years of age, who is familiar with the traditions, values and language of the band and who does not have a vested interest in the outcome of an election appeal.

125. All members of the Appeal Board shall possess an understanding of the principles of natural justice.

126. At least 100 days before the date on which the election is to be held, the band council shall select the members of the Appeal Board.

127. The term of office of the Appeal Board shall be from its appointment above until the day on which the council selects another Appeal Board for the next scheduled election in accordance with this code.

128. Upon receipt of an election appeal, any Appeal Board member who is immediate family of any appellant or candidate, or who may be reasonably apprehended to have a bias or conflict in connection with the appeal, shall excuse themselves from the board.

129. The remaining members of the Appeal Board will select additional members as required to attain three.

130. Each member of the Appeal Board shall execute an oath of office and accept his appointment by forwarding a written acceptance to the council.

### **Functions**

131. The Appeal Board shall supervise and administer, in accordance with the provisions of this code:

- a) all election appeals; and
- b) all requests for the removal of a council member from office.

### **Removal of Council Members from Office**

132. Subject a ruling under section 140, a chief or a councillor may be removed from office and their seat declared vacant if:

- a) they have been convicted of an indictable offence since their election;
- b) they engage in such other conduct as to be of such a serious nature that the removal is necessary and appropriate as determined by a majority of the council;
- c) they fail to attend three consecutive regular meetings of council without being excused from attendance by a majority of the council;
- d) they are chief and is no longer resident on reserve;
- e) they are chief and engages in full time employment other than as chief of Wahnapiatae First Nation;
- f) they are a councillor and no longer living within a 100 km driving distance from the First Nation administration office.

### **Procedure**

133. Proceedings to remove a chief or councillor from office shall be initiated by:

- a) a majority of council members passing a band council resolution and submitting it to the Appeal Board on which shall appear:
  - 1. the grounds on which removal of a chief or councillor is sought;
  - 2. the evidence in support of the resolution; and
  - 3. the signatures of all council members who voted for the removal.
- b) any elector submitting to the Appeal Board a petition on which shall appear:
  - 1. the statement that the undersigned support the removal of the chief or councillor;
  - 2. the name of the chief or councillor;
  - 3. the grounds on which the removal of a chief or councillor is sought;
  - 4. the signatures of at least 20% of all eligible electors of the band in support of the petition;

134. On receipt of a band council resolution or petition for removal, the Appeal Board shall verify that the petition complies with section 133. If the band council resolution or petition does not comply, the Appeal Board shall so notify the council or petitioner(s) by community notice.

135. In a case where the band council resolution or petition complies with section 133, the Appeal Board shall:

- a) determine that the grounds put forth in the petition are either frivolous, vexatious in nature or unsubstantiated and dismiss the band council resolution or petition; or

- b) schedule a review hearing, which shall take place within 20 days from the date on which the petition was submitted to the board.

136. In a case where the band council resolution or petition has been dismissed above, the Appeal Board shall so inform the council or petitioner(s) in writing and provide written reasons.

137. In a case where the Appeal Board schedules a hearing under subsection 135 (b), the board shall send a written notice of the hearing by registered mail or hand delivery to: council, the petitioner(s) and the council member who is the subject of the petition for removal.

138. The written notice described above shall set out:

- a) the nature of the hearing and all related particulars;
- b) the date, time and location of the hearing; and
- c) a statement that the petitioner(s), any member of council or the council member who is the subject of the removal may, at the hearing, make a presentation to the Appeal Board, which may include the presentation of documents and testimony by witnesses.

139. The Appeal Board shall conduct a hearing at the time and place set out in the notice provided above.

140. Within 5 days of the day on which the hearing above is held, the Appeal Board shall rule:

- a) that the band council resolution or petition shall be allowed to stand, and declare the council position of the member of council who is the subject of the petition to be vacant; or
- b) that the request for removal is dismissed.

141. The Appeal Board shall send, by registered mail or hand deliver, a written notice of the ruling made to: the council, the petitioner(s) and the council member who is the subject of the petition for removal.

142. The ruling of the Appeal Board made under section 140 is final and binding upon all parties.

143. If a council position is declared vacant by the Appeal Board, the Appeal Board may further declare that the chief or councillor removed from office is not eligible to be a candidate for an election under this code for the next 4 years.

### **Emergency Circumstances**

144. If there is a declaration of a state of emergency by the First Nation, the electoral officer may choose to postpone the election to a maximum of 90 days.

## Amendments

145. The process for development and passage of amendments to this code may be initiated by:

- a) a petition presented to council, signed by at least 25 eligible electors and setting out the specific area in this code proposed for amendment; or
- b) a band council resolution.

146. Upon receipt of an amendment proposal in accordance with the above, council shall prepare a notice that sets out:

- a) a summary of the proposed amendments to this code;
- b) a statement that the full copy of the proposed amendments can be obtained at the band administration office or website;
- c) A statement that an elector may vote in person, or by mail-in ballot as determined by council; and
- d) the date, time and location for a vote on the amended code;

147. The notice provided above shall be:

- a) published in the community's newsletter, delivered or mailed to band electors, or by separate notice delivered or mailed to band electors; and
- b) posted in at least one conspicuous place on the reserve.

148. The council shall submit the amended code to a vote.

149. Should the majority of the votes cast on the amended code be in favour of the proposed amendments being brought to the code, council shall amend the code accordingly.

150. Elections held under the amended code shall take place no sooner than 100 days from the vote on the amended code.

THIS ELECTION CODE IS HEREBY DULY ENACTED by community ratification and approved by Chief and Council, Band Council Resolution WFN BCR 20/21-09 on the 15<sup>th</sup> day of September 2020, at Wahnapiatae First Nation, in the Province of Ontario. *A quorum of Council consists of Three ( 3 ) members of Council.*

Chief Larry Roque

Councillor Bob Pitfield

Councillor Ted Roque

Councillor Craig Tyson

Councillor Mary Nicholls Russell

