

## CHIPEWYAN PRAIRIE FIRST NATION ELECTION CODE, 2021

WHEREAS the Chipewyan Prairie First Nation (the “**First Nation**”) has the inherent Aboriginal right as a First Nation and Treaty right as an adherent to Treaty no. 8 to govern relations among its Members and between the First Nation and other governments; and

WHEREAS the First Nation has enacted the Chipewyan Prairie First Nation Band Custom Election Code to govern elections and now desires that it be amended;

NOW THEREFORE BE IT RESOLVED that, at a referendum held on the [insert date] pursuant to the amending provisions of the Chipewyan Prairie First Nation Band Custom Election Code then in force, the Electors approved the Chipewyan Prairie First Nation Election Code, 2021 (the “**Code**”) as outlined herein:

### **1. CITATION**

- 1.1. The rules, procedures, provisions and regulations outlined herein shall be cited as the **Chipewyan Prairie First Nation Election Code, 2021**.

### **2. DEFINITIONS**

For the purpose of this Code:

- 2.1. “**Ballot Count Form**” shall have the meaning ascribed to it in section 9.4.
- 2.2. “**Band Council Resolution**” means a resolution passed by a majority of Council present at a duly convened meeting in accordance with the applicable laws and customs of the First Nation.
- 2.3. “**By-election**” means an Election held before the regularly scheduled General Election for the office of a Chief or Councillor to replace a person(s) who has died, resigned, or been removed from office.
- 2.4. “**Candidate**” means an Elector who has been confirmed by the Electoral Officer as having been properly nominated.
- 2.5. “**Chief**” means an Elector elected to the office of Chief pursuant to this code.
- 2.6. “**Chipewyan Prairie First Nation Business Entity**” means any corporation, limited partnership, or other entity owned or controlled in whole or in part, directly or indirectly, by the Chipewyan Prairie First Nation.
- 2.7. “**Code**” means the Chipewyan Prairie First Nation Election Code, 2021.

2.8. "**Corrupt Election Practices**" means:

- a) offering money or other valuable consideration
- b) threatening adverse consequences, coercing, or intimidating an Elector or an Election official and/or
- c) forging documents or providing false or misleading information

for the purposes of influencing an Elector's Vote or altering a ballot account, vote result, or declaration of Election result.

2.9. "**Councillor**" means an Elector elected to the office of Councillor pursuant to this Code.

2.10. "**Council**" means the Chief and Councillors empowered to act as the governing body of the First Nation elected pursuant to this Code. .

2.11. "**Elder**" means a Member 55 years of age or older who has demonstrated interest and experience with working for the betterment of the First Nation.

2.12. "**Election**" means a General Election, run-off Election or By-election held for the positions of Chief and/or Councillor(s) pursuant to the provisions of this Code.

2.13. "**Election Appeal Committee**" means a panel of persons appointed pursuant to this Code.

2.14. "**Elector**" means a person whose name is entered on the Chipewyan Prairie First Nation Membership List and who is the full age of eighteen (18) years old on the day of the Election.

2.15. "**Electoral Officer**" means a person appointed by Band Council Resolution who shall be responsible for conducting the nominations, Election, run-off Election and other duties as required by this Code.

2.16. "**First Nation**" means the Chipewyan Prairie First Nation and its successors.

2.17. "**General Election**" means a regularly scheduled Election held to fill vacancies caused by the normal passage of time.

2.18. "**Immediate Family**" means a person's spouse or partner(s), child(ren), parent(s), legal guardian(s), sibling(s), grandchild(ren), and grandparent(s).

- 2.19. **"Lists of Electors"** shall mean both the Detailed List of Electors and the Public List of Electors.
- 2.20. **"Member"** means a person whose name appears on the First Nation's Membership List.
- 2.21. **"Membership Clerk"** means the person(s) responsible for maintaining the Membership List in accordance with the membership code of the Chipewyan Prairie First Nation or such other laws then in force respecting membership of the First Nation.
- 2.22. **"Membership List"** means a list maintained by the First Nation in accordance with the membership code of the Chipewyan Prairie First Nation or such other laws then in force respecting membership of the First Nation in which the name and date of birth of every Member of the First Nation is recorded.
- 2.23. **"Notice of Appeal"** shall have the meaning ascribed to it in Section 13.4.
- 2.24. **"Notice of Election"** shall have the meaning ascribed to it in Section 8.1.
- 2.25.
- 2.26. **"Notice of Nomination"** shall have the meaning ascribed to it in Section 7.1.
- 2.27. **"Polling Clerk"** means a person(s) appointed by the Electoral Officer to assist in the conduct of the Election.
- 2.28. **"Polling Station"** means a building, hall, or room in which voting takes place.
- 2.29. **"Reserve"** means Reserves No. 194, 194A, 194B, and any further additions to the First Nation's reserves.
- 2.30. **"Residence"** means the place where one maintains a home and ordinarily sleeps and eats. For greater certainty, a person does not change their place of Residence if they are temporarily absent for education, medical reasons, or employment.
- 2.31. **"Scrutineer"** means an agent of a Candidate appointed pursuant to this Code.
- 2.32. **"Youth"** means an Elector under the age of 30 on the day of the Election.

### 3. DATE OF GENERAL ELECTION

- 3.1. All General Elections shall be regularly scheduled for the second full week of March three years after the last General Election for the office.

3.2. The specific date of a General Election shall be set by Band Council Resolution.

#### **4. COMPOSITION AND TERM OF OFFICE OF COUNCIL**

- 4.1. The First Nation shall be governed by a Council consisting of one Chief and four Councillors.
- 4.2. The term of office for Chief and Councillors shall be the three years, more or less, between the regularly scheduled General Elections for their office as set out in sections 4.2 – 4.4.
- 4.3. Regularly scheduled General Elections shall be as follows:
  - (a) in 2022 and every third year thereafter: the General Election for Chief and the General Election for the office of two (2) Councillors; and
  - (b) in 2024 and every third year thereafter: the General Election for the office of two (2) Councillors.
- 4.4. A Chief or Councillor's term in office shall end on the date of the regularly scheduled General Election for their office.
- 4.5. A Chief or Councillor's term in office shall start on the first Monday following the regularly scheduled General Election for their office.
- 4.6. A Chief or Councillor in office at the time a General Election is called whose term of office will not end on the day of the General Election, must resign from office before being eligible to run for office of Chief or Councillor in that Election.
- 4.7. Upon being elected each member of Council will have six months to take up Residence on Reserve subject to the First Nation providing them with reasonable accommodations.
- 4.8. Subject to section 4.7, each member of Council must maintain their Residence on Reserve during their term.
- 4.9. Each member of Council must perform their duties as Chief or Councillor from the Reserve at least 10 business days per month.

#### **5. APPOINTMENT OF ELECTORAL OFFICER AND ELECTION APPEAL COMMITTEE**

- 5.1. At least 40 days prior to the General Election, the Council shall by Band Council Resolution:
- (a) set the date of the Election;
  - (b) specify the location(s) for Polling Stations not already established by section 8.6 of the Code, if any ;
  - (c) appoint the Electoral Officer;
  - (d) set the remuneration for the Electoral Officer; and
  - (e) appoint the Election Appeal Committee and alternates.
- 5.2. The Electoral Officer shall be qualified to perform their duties as a result of electoral training or prior experience conducting elections and shall not be:
- (a) a Member;
  - (b) the Immediate Family of a Candidate;
  - (c) a permanent employee or a full-time contractor of the First Nation or a Chipewyan Prairie First Nation Business Entity.

An employee of the First Nation or Chipewyan Prairie First Nation Business Entity who has taken an unpaid leave of absence from employment prior to being selected as the Electoral Officer shall not be considered a permanent employee within the meaning of this section.

## **6. LISTS OF ELECTORS**

- 6.1. The First Nation shall maintain an updated Detailed List of Electors and Public List of Electors which shall be provided to the Electoral Officer 35 days prior to the Election.
- 6.2. The Detailed List of Electors available to the Electoral Officer and other Election officials shall be in alphabetical order and may contain only the following information about the Electors:
- (a) the Elector's surname, given name, and middle initial;
  - (b) the Elector's address;
  - (c) the Elector's Treaty number; and

- (d) the Elector's date of birth.
- 6.3. The Detailed List of Electors may only be used by the Electoral Officer or other Election officials for the purpose of carrying out their duties under the Code.
- 6.4. The Public List of Electors available to the Candidates and Electors shall be in alphabetic order and may only contain the surname, given name, and middle initial of the Electors.
- 6.5. The Public List of Electors may only be used by:
- (a) Candidates for the purposes of campaigning for an Election; and
  - (b) Electors for verifying they are on the list.
- 6.6. The First Nation's Membership Clerk shall be solely responsible for any updates to the Lists of Electors and may update the Lists of Electors to correct omissions and reflect additions to the Membership List.
- 6.7. A person is eligible to have their name included on the Lists of Electors if they are an Elector as defined in the Code. If a person's name is not on the Lists of Electors they are not entitled to vote.

## 7. **NOMINATIONS:**

- 7.1. At least thirty-five (35) days prior to the Election, the Electoral Officer shall post a notice of nomination meeting (the "**Notice of Nomination**") on the First Nation's website and in a public place on the Reserve.
- 7.2. The Notice of Nomination shall set out the following information:
- (a) the specific time, place, and date for the nomination meeting and its duration;
  - (b) the offices for which nominations are to be held;
  - (c) the qualifications for nomination as set out in section 7.3;
  - (d) that the Public List of Electors and a copy of the Code shall be made available by the Electoral Officer upon request; and
  - (e) that nominations must be accepted by the date the Notice of Election is posted and the date on which the Notice of Election will be posted.

- 7.3. In order to qualify for nomination, a person must:
- (a) be an Elector; and
  - (b) not have been convicted of any indictable offence under the Criminal Code within 5 years of the date of the Election.
- 7.4. A person may only accept a nomination for the position of either Chief or Councillor. No one may run for both offices.
- 7.5. The nomination of each Candidate for Chief and Councillor must be in the form and manner prescribed in this Code.
- 7.6. The Electoral Officer shall attend at the time and place set out in the Notice of Nomination and shall receive nominations of potential Candidates for the positions advertised from 10:00am to 5:00pm.
- 7.7. The nomination meeting shall be held at least 30 days prior to the date of the Election and the Electoral Officer shall give at least three days notice of the nomination meeting.
- 7.8. A nomination must be signed by at least five Electors. A nomination does not need to be signed by the person nominated, but if the person nominated does sign, they will be counted as one of the five Electors.
- 7.9. In order to become a Candidate a person nominated must, by the date the Notice of Election will be posted:
- (a) notify the Electoral Officer that they accept their nomination for the office of Chief or Councillor;
  - (b) provide the Electoral Officer with their name written as they would like it to appear on the ballot;
  - (c) provide the Electoral Officer with a copy of a Canadian Police Information Centre (CPIC) report or letter from the RCMP indicating that they have not been convicted of an indictable offence under the Criminal Code within five years of the date of the Election.
- 7.10. The Electoral Officer shall determine whether a nomination is fully complete and constitutes a proper nomination and shall promptly advise the nominee of any deficiencies in a nomination form, their acceptance of a nomination or the submission of their Canadian Police Information Centre (CPIC) report or letter from the RCMP.

- 7.11. Nominees who are ruled to be ineligible by the Electoral Officer, or whom the Electoral Officer determines have not been properly nominated, accepted their nomination, or provided the Electoral Officer with the other documents required by this Code by the date the Notice of Election will be posted are not eligible to run as Candidates.

## 8. ELECTIONS:

- 8.1. At least 25 days prior to the date of the Election, but no more than 28 days prior, and on the date set out in the Notice of Nomination the Electoral Officer shall post notice of the Election (the “**Notice of Election**”) on the First Nation’s website and a public location on Reserve.
- 8.2. The Notice of Election shall contain the following information:
- (a) the date of the Election;
  - (b) the offices for which the Election is being held and all Candidates for each office;
  - (c) the location of each Polling Station and the hours during which the Polling Station shall be open at each location on the day of the Election; and
  - (d) that a Public List of Electors and a copy of the Code can be obtained from the Electoral Officer.
- 8.3. The Electoral Officer shall ensure that all necessary preparations are undertaken for the proper conduct of the Election including:
- (a) arranging for Polling Stations;
  - (b) the construction of proper Election facilities and voting compartments with sufficient security precautions to protect voter privacy;
  - (c) the preparation of ballots and arranging for ballot boxes which can be sealed;
  - (d) preparing voting instructions in writing; and
  - (e) appointing Polling Clerks and interpreters and ensuring that they are available at each Polling Station.
- 8.4. The Electoral Officer may appoint Polling Clerks or other Election officials to assist them. All officials appointed by the Electoral Officer must meet the same eligibility requirements as the Electoral Officer.



- 8.5. The name of each Candidate must appear on the Notice of Election and ballot in the manner requested by the Candidate when accepting their nomination.
- 8.6. Polling stations shall be located on the Reserve, in Edmonton, in Fort McMurray and at any other locations designated by Band Council Resolution prior to the Election.
- 8.7. Polling stations shall be open from 10:00 am to 8:00 pm on the day of the Election.
- 8.8. Any Elector in line to vote at 8:00 pm is entitled to vote and the Electoral Officer's decision on who is in line at 8:00 pm is final.
- 8.9. Each Candidate is permitted to appoint two Scrutineers to attend at each Polling Station to scrutinize the voting procedure and counting of ballots cast at that Polling Station. Scrutineers are not paid by the First Nation.
- 8.10. The name of the Scrutineers appointed by each Candidate for each Polling Station must be submitted in writing to the Electoral Officer two days prior to Election Day. No parties, other than the named Scrutineers, may act on behalf of or represent the Candidate.
- 8.11. The Electoral Officer may designate the place or places at a Polling Station where the Scrutineer may observe the voting and other Election procedures.
- 8.12. When, in this Code, anything is required to be done or authorized to be done, then that thing may be done in the presence of the Scrutineers, but the non-attendance of a Scrutineer(s) does not invalidate the act.
- 8.13. Voting in all Elections will be by secret ballot.
- 8.14. No Candidate or Scrutineer shall be present in the voting compartment during the marking of another Elector's ballot.
- 8.15. The Electoral Officer or a Polling Clerk, at the request of an Elector who is unable to mark their ballot in the usual manner because they are unable to read or are incapacitated by blindness or other physical condition:
  - (a) may mark the vote of that Elector on the Elector's ballot in the manner directed by that Elector, and shall immediately deposit the ballot in the ballot box; or
  - (b) may permit a friend of the Elector to accompany the Elector into a voting compartment for the purpose of marking the Elector's ballot and the ballot

when marked shall be delivered by the Elector or the friend to the Electoral Officer to be deposited in the ballot box.

Where any Elector has required assistance, the Electoral Officer shall make a report.

- 8.16. If an Elector does not understand the English language, the Electoral Officer may allow and/or appoint an interpreter to translate any statements, questions, or documents necessary to allow the Elector to vote. Where any Elector has required the assistance of an interpreter, the Electoral Officer shall make a report.
- 8.17. The Electoral Officer or a Polling Clerk may refuse to allow a person to vote if, in their sole opinion:
  - (a) the person's name is not listed on the Lists of Electors;
  - (b) the person appears to be causing a disturbance; or
  - (c) the person has already been given a ballot, marked off on the Electors List as receiving a ballot, and has not returned the ballot as a spoiled ballot.
- 8.18. An Elector may vote for only one Candidate for Chief.
- 8.19. An Elector may vote for as many Candidates for Councillor as there are offices available.
- 8.20. Upon entering the Polling Station, each Elector shall be given a ballot containing the initials of the Electoral Officer or Polling Clerk on the back. An Elector who has received a ballot from the Electoral Officer or Polling Clerk may not take the ballot out of the Polling Station and if they do so they will forfeit their right to vote at that Election.
- 8.21. If an Elector returns a ballot and states that the Elector is declining to vote, the Elector is not entitled to another ballot. The Electoral Officer or Polling Clerk shall write the word "declined" on the ballot, initial the ballot, and place the ballot in the ballot box.
- 8.22. When the Electoral Officer or Polling Clerk issues a ballot to an Elector, it must be folded and initialled by the Electoral Officer or Polling Clerk so that the initials are visible without opening the ballot.
- 8.23. The Polling Clerk shall place a mark on the voters list next to the name of an Elector who has received a ballot. An Elector may only vote once at an Election.

- 8.24. After marking the ballot in the voting compartment, the Elector shall immediately fold the ballot so as to conceal the names of the Candidates and the mark(s) on the face of the ballot, and to expose the initials of the Electoral Officer or Polling Clerk who issued the ballot and shall return the ballot to the Electoral Officer or Polling Clerk who shall, without unfolding a ballot or in any way disclosing the marks made by the Elector on the ballot, verify the initials on the ballot and deposit the ballot at once in the ballot box.
- 8.25. An Elector who inadvertently has spoiled their ballot may return the ballot to the Electoral Officer or the Polling Clerk and receive another ballot. The Electoral Officer or Polling Clerk shall write the word "spoiled" on the ballot, initial the ballot, and place the ballot in the ballot box.
- 8.26. The Electoral Officer or Polling Clerk shall record the total number of ballots distributed to Electors at each Polling Station, the number of Electors who voted, and the number of declined, spoiled, and unused ballots.
- 8.27. If requested to do so by the Electoral Officer or the Polling Clerk, each person requesting a ballot shall present identification to the Electoral Officer or Polling Clerk verifying their age and name.
- 8.28. Except for the Electoral Officer, Election officials, Scrutineers authorized to attend at the Polling Station, and the Electors who are actually engaged in voting, no other person is entitled to be present, nor shall any other person be permitted to be present, in the Polling Station during the time appointed for voting. For greater certainty, the persons prohibited from the Polling Station include Candidates, unless attending for the purposes of casting their own vote.
- 8.29. The Electoral Officer or Polling Clerk shall maintain order in the Polling Station and may cause to be removed from the Polling Station any person who attempts to influence Electors or in any way interferes with or disrupts the orderly conduct of the vote. For greater certainty, Scrutineers may be removed under this provision.

## **9. COUNTING OF VOTES:**

- 9.1. Immediately upon the close of the Polling Stations, the Electoral Officer or Polling Clerk shall, in the presence of at least one (1) Elector and any of the Candidates or their Scrutineers who wish to attend, open each ballot box and count and record the number of votes cast for each Candidate.
- 9.2. The Electoral Officer or their designate shall examine the ballots and any ballot:
- (a) not bearing the initials of the Electoral Officer or Polling Clerk;

- (b) on which anything is written or marked by which an Elector can be identified;
- (c) torn, defaced or otherwise dealt with in a material way by which an Elector can be identified; or
- (d) which is not marked;

is void and cannot be counted.

9.3. Notwithstanding sections 9.2(b) and (c), if a vote, though incorrectly marked on a ballot, clearly indicates for whom the Elector intended to vote, the Electoral Officer or their designate may count that ballot.

9.4. The Electoral Officer or Polling Clerk shall complete and sign a ballot count form (the “**Ballot Count Form**”) which shall contain the following information:

- (a) the location of the Polling Station;
- (b) the date of the Election;
- (c) the number of ballots distributed to Electors;
- (d) the number of Electors who voted;
- (e) the number of ballots marked for each Candidate;
- (f) the number of declined, spoiled, voided, and unused ballots; and
- (g) the number of ballots not accounted for.

9.5. At the completion of the counting of the ballots, the Electoral Officer shall make up into separate packets:

- (a) the valid ballots;
- (b) the valid ballots objected to, together with the notes of objections made to the ballots found in the ballot box;
- (c) the declined ballots;
- (d) the spoiled ballots;
- (e) the void ballots; and

- (f) the unused ballots.

9.6. The Electoral Officer shall personally retain custody or arrange custody of the sealed ballot boxes. Six months following the expiry of the election appeal period, the Electoral Officer will destroy the ballots and the Ballot Count Form, unless otherwise ordered by the Federal Court of Canada..

#### **10. DECLARATION OF OUTCOME:**

10.1. The Electoral Officer shall, within one (1) hour of completing the count of ballots, declare:

- (a) the Candidate for Chief receiving the greatest number of votes to be elected; and
- (b) the Candidates for Councillor receiving the greatest number of votes to be elected.

10.2. Within twenty-four (24) hours of the closing of the Polling Stations, the Electoral Officer shall post a notice of the election result on the First Nation's website and at a public location on Reserve.

#### **11. RE-COUNT OF VOTE:**

11.1. Within one hour of the declaration of the outcome pursuant to Section 10.1, a Candidate may, in writing, request the Electoral Officer conduct a re-count of the vote for the office the Candidate ran for if there are ten (10) or fewer votes separating the successful and unsuccessful Candidates for that office.

11.2. Before the re-count, the Electoral Officer shall:

- (a) notify any Candidates who may be affected by the recount; and
- (b) notify those Election officials that the Electoral Officer considers necessary to assist in the recount.

11.3. The Electoral Officer shall, immediately upon a request being properly made pursuant to section 11.1, conduct a re-count of the vote in the same manner as prescribed in section 9 and declare the outcome pursuant to section 10.

11.4. After the recount, the Electoral Officer shall correct the ballot account if necessary and seal all ballot boxes in the same manner prescribed in sections 9.5 and 9.6.

**12. RUN-OFF ELECTION FOR TIE VOTES:**

- 12.1. In the event of a tie vote for the office(s) of Chief or Councillor(s), the Electoral Officer shall conduct a recount of the vote in the same manner as prescribed in this Code.
- 12.2. In the event the recount fails to determine a successful Candidate for the office(s) and the tie is not resolved by one or more Candidate withdrawing, a run-off Election between only the Candidates who tied shall be held for the office(s).
- 12.3. At least twenty-seven (27) days prior to the date of the run-off Election, the Electoral Officer shall post a Notice of run-off Election in the same manner, form, and places as the initial Notice of Election.
- 12.4. Subject to the following, the procedures for conducting the vote in a run-off Election shall be the same as the procedures used in the Election:
  - (a) the Lists of Electors from the Election in which the tie occurred shall be used. For greater certainty, the date for determining the eligibility of an Elector will be the date of the General Election or By-election not the run-off Election;
  - (b) in a tie between two or more Candidates for one office the Electors shall be asked to vote for one Candidate and in a tie between three or more Candidates for two offices the Electors shall be asked to vote for two Candidates and
  - (c) a Candidate may withdraw at any time by submitting a signed and witnessed withdrawal to the Electoral Officer.
- 12.5. Notwithstanding section 12.3, a run-off Election may be delayed in the event of an Election appeal which may affect the result which gave rise to the equality of votes. In such cases, and subject to the Election Appeal Committee's decision, the Notice of Election for the run-off Election shall be posted within five (5) days of the determination of the Election Appeal Committee.

**13. ELECTION APPEALS:**

- 13.1. At least 40 days prior to the Election, the Council appoint the Election Appeal Committee by Band Council Resolution.

13.2. The Election Appeal Committee shall consist of three people who fit the following criteria:

- (a) one lawyer or retired judge who:
  - i. is not or has not been retained by the First Nation or any Member other than as a member of the Election Appeal Committee or as an Electoral Officer, Polling Clerk, or other Election official;
  - ii. is not a Member; and
  - iii. is not the Immediate Family of a Member.

(b) one Elder who is not the Immediate Family of any of the Candidates.

(c) one Youth who is not the Immediate Family of any of the Candidates.

13.3. Given that the Election Appeal Committee shall be appointed prior to the declaration of Candidates and to ensure that eligible members are appointed to the Election Appeal Committee prior to the Election Council shall also appoint:

- (a) one alternate who meets the criteria set out in 13.2(a);
- (b) a first, second, and third alternate who meet the criteria set out in 13.2(b); and
- (c) a first, second, and third alternate who meet the criteria set out in 13.2(c).

13.4. An appeal of an Election result may be made by any five Electors if made in writing and delivered to the Electoral Officer within 7 consecutive days of the Election (the “**Notice of Appeal**”).

13.5. The Notice of Appeal shall be signed by the five Electors appealing the Election and must state:

- (a) the Election results appealed from and the name of the affected Candidate or Candidates;
- (b) the grounds upon which the appeal is made including reference to the relevant sections of this Code;
- (c) the material facts on which the five Electors rely on for their appeal;
- (d) the names of any witnesses the five Electors intend to call or a statement that they do not intend to call any witnesses; and
- (e) a list of documents or records the five Electors intend to rely on or a statement that they do not intend to rely on any documents or records.

13.6. Grounds for an appeal shall be one or more of the following:

- (a) an error was made in the interpretation or application of this Code that materially and directly affected the conduct and outcome of the Election;
- (b) a Candidate was ineligible for nomination and such ineligibility materially affected the results of the Election;
- (c) a Candidate promoted or aided corrupt Election practices or a Candidate consented to such practices;
- (d) persons who voted were not eligible to vote to an extent that the results of the Election were materially affected;
- (e) deliberate improper actions by the Electoral Officer, assistant Electoral Officer(s) or Polling Clerk(s) materially affected the conduct and outcome of the Election; or
- (f) other extraordinary events directly and materially affected the results of the Election.

13.7. The Electoral Officer shall reject any Notice of Appeal that does not meet the requirements set out in sections 13.4 - 13.6.

13.8. The Electoral Officer shall forward any Notice of Appeal that meets the requirements set out in sections 13.4 – 13.6 to the Election Appeal Committee and post a copy on the First Nation's website and in a public location on the Reserve.

13.9. Upon request the Electoral Officer shall prepare the following documents and deliver them to the Election Appeal Committee:

- (a) a copy of the Code;
- (b) the ballots and objections, if any;
- (c) copies of all filed nomination papers;
- (d) a copy of the Notice of Appeal(s);
- (e) any other relevant information in the possession of the Electoral Officer.



13.10. Within ten days of receipt of the Notice of Appeal, the Election Appeal Committee shall:

- (b) determine that the allegations and evidence filed in the Notice of Appeal are so lacking in merit that it would be an abuse of the appeal process if the appeal was allowed to proceed and dismiss the appeal; or
- (b) determine that the allegations and evidence filed in the Notice of Appeal, if proven, may lead to a reasonable conclusion that a violation of this Code has taken place which may have affected the result of the Election and set the time, place, and date for the appeal to be heard. The date set for the hearing shall not be more than 20 days from when the Notice of Appeal was delivered to the Electoral Officer.

13.11. If an appeal hearing is required, a notice of the hearing date set by the Election Appeal Committee shall be displayed on the First Nation's website, posted in a public location on the Reserve, and delivered to the appellants and all Candidates.

13.12. The Election Appeal Committee shall be responsible for establishing such procedures as are necessary for the fair conduct of the appeal hearing in accordance with the rules of natural justice and administrative fairness.

13.13. Both the appellants and other Electors or representatives of the appellants or other Electors shall be entitled to make verbal or written submissions to the Election Appeal Committee which shall be subject to both cross-examination by the other parties of the appeal hearing and examination by the Election Appeal Committee.

13.14. The Election Appeal Committee has the following powers:

- (a) to determine if an appeal hearing is required;
- (b) to determine the time, place and date of the appeal hearing;
- (c) to determine whether the appeal hearing is open to Members and who may or may not attend the appeal hearing;
- (d) to determine questions of law arising in the course of the appeal hearing;
- (e) to rule on any objections made during the course of the appeal hearing;

- (f) to order production of documents which are material and relevant to the appeal; and
- (g) to determine the procedure to be followed having regard for fairness and the principles of natural justice.

13.15. The Election Appeal Committee does not have the power to:

- (a) subpoena any witness or compel any person to give evidence at any appeal hearing except the Electoral Officer; or
- (b) order any relief not specifically permitted by the Code.

13.16. This Code sets out all the powers of the Election Appeal Committee and neither the Arbitration Act of Alberta nor the Commercial Arbitration Act of Canada or any other like legislation applies to the Election Appeal Committee or to appeal hearings under this Code.

13.17. Within five days of concluding the appeal hearings, the Election Appeal Committee shall promptly make one of the following decisions:

- (a) to deny the appeal on the basis that evidence presented did not fully and properly establish the necessary grounds for an appeal;
- (b) to uphold the grounds for an appeal but allow the results of the Election to stand, as the infraction did not directly and materially affect the result of the Election; or
- (c) to allow the appeal and call a new Election for all or some offices or call a run-off Election.

13.18. The Election Appeal Committee shall provide written reasons for its decision.

13.19. The interested parties shall be immediately notified in writing by the Election Appeal Committee of their decision and the decision shall be posted on the First Nation's website and a public location on Reserve.

13.20. If the Election Appeal Committee determines that an appeal was so lacking in merit as to constitute an abuse of the appeal process they may order the appellant to pay all or a portion of the costs of the appeal hearing, including the fees and disbursements of the Election Appeal Committee, or the costs of the affected Candidates or both.

13.21. Subject to section 13.20, the costs of the Election Appeal Committee including fees and disbursements and associated hearing costs, shall be paid

by the First Nation. These do not include any costs of the appellants or interveners.

- 13.22. No decision, order directive, declaration, ruling or proceeding before the Election Appeal Committee shall be questioned or reviewed in any court by application for judicial review or otherwise and no order shall be made or process entered or proceedings taken in any court whether by way of injunction, declaratory judgment, prohibition, quo warranto, or otherwise to question, review, prohibit or restrain the decision of proceedings before the Election Appeal Committee.
- 13.23. Notwithstanding section 13.22, a decision, order, directive, declaration, ruling or proceeding of the Election Appeal Committee may be questioned or reviewed by way of an application for judicial review in the Federal Court of Canada on the basis that the Election Appeal Committee erred in law or failed to observe a principal of natural justice.
- 13.24. If the appeal is upheld and a new Election or a run-off Election is called the Election Appeal Committee shall set the date for the Election and they may direct the current Electoral Officer or a new Electoral Officer conduct the new Election or run-off Election in accordance with this Code.
- 13.25. In the event the Election Appeal Committee directs that a new Election shall be held for all of the positions, then the Chief and Council elected in the previous Election whose terms were to end shall continue in office until the new Election, which shall be no longer than two months after the Election Appeal Committee decision. For greater certainty, the term of office of the Candidates ultimately elected is not extended.

#### **14. SUSPENSION AND REMOVAL FROM OFFICE:**

- 14.1. A Chief or Councillor will be suspended from office by Council if while in office they:
- (a) are convicted of an indictable offence under the Criminal Code;
  - (b) subject to section 4.7, fail to maintain their Residence on Reserve;
  - (c) fail to perform their duties as Chief or Councillor from the Reserve at least 10 business days per month; or
  - (d) fail to regularly participate in community events including but not limited to Treaty days, cultural days and the annual Christmas dinner.

- 14.2. In the event of a suspension pursuant to section 14.1, Council may determine the appropriate length of the suspension and whether it will be with or without pay. A Chief or Councillor is not permitted to vote on their own suspension.
- 14.3. In addition to the discretion to suspend, Council shall have the discretion to remove a Chief or Councillor from office if the cause is sufficiently serious, goes unremedied, or is repeated.
- 14.4. Notwithstanding sections 14.1 and 14.2, the Council may excuse a Chief or Councillor from compliance with Sections 14.1(b), (c) and (d) for medical reasons.

#### **15. BY-ELECTION:**

- 15.1. In the event a Chief or Councillor dies, resigns, or is removed from office and there is more than six (6) months remaining in their term of office, the Council shall, within 3 weeks of the effective date of the death, resignation or removal, set the date for the By-election to fill the vacancy and appoint an Electoral Officer to conduct the By-election. The By-election shall be held no later than 90 days after the death, resignation or removal of the Chief or Councillor.
- 15.2. The rules and procedures for conducting a By-election will be the same as those used for conducting a General Election.
- 15.3. In the event a member of Council dies, resigns, or is removed from office and there is six (6) months or less remaining in their term of office, the office shall be filled at the next General Election.
- 15.4. A person who has resigned from office, thereby prompting the holding of a By-election, is not eligible to be a Candidate in that By-election.
- 15.5. A person whose removal from office by Council pursuant to section 14 has prompted the holding of a By-election is not eligible to be a Candidate in that By-election or for any office in the next General Election.
- 15.6. An incumbent Chief or Councillor is not eligible to be a Candidate in a By-election unless they first resign from their position on Council.

#### **16. TRANSITION:**

- 16.1. The General Election for Chief and Councillor that would have been held in March 2022 but for the amendment of this Code, and corresponding General Election for Chief and two Councillors that would be regularly scheduled for March 2022 pursuant to the general provisions of this Code, shall be held in April 2022 and the term of office of the incumbents is extended accordingly.

- 16.2. The General Election for Councillor that would have been held in 2023 but for the amendment of this Code shall be held in 2024 and the term of that office is extended accordingly.

**17. ADMINISTRATIVE PROCEDURES:**

- 17.1. The Council by Band Council Resolution from time to time may approve administrative procedures necessary to implement this Code.

**18. AMENDMENT:**

- 18.1. This Code may only be amended if such proposed amendment is approved by a majority of all Electors. If the proposed amendment is approved by a majority of Electors who voted but not a majority of the Electors then a second vote will be held and the amendment will be approved by a majority of the Electors who voted.
- 18.2. Notice of a proposed amendment of this Code shall be posted on the First Nation's website and in a public location on the Reserve at least 25 days before a vote is held to ratify the amendment.
- 18.3. A vote to amend this Code shall be by secret ballot in a referendum to be held on the Reserve.
- 18.4. Notwithstanding sections 18.1 – 18.3, provisions of the Code which are of an administrative or procedural nature and do not alter the purposes of the Code may be amended at any time by Band Council Resolution.