

2019 NAK'AZDLI WHUT'EN

ELECTION CODE

As Amended and Approved by Council

February, 2019

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BACKGROUND

- A. Nak'azdli Whut'en Council is recognized as a Band pursuant to the *Indian Act*;
- B. The Band opted to hold elections pursuant by custom, rather than by the *Indian Act*, and adopted the Election Code to govern the election procedure to elect the Chief and Council;
- C. The Band is not subject to s. 74(1) of the *Indian Act* relating to the election of Chief and Council pursuant to the *Indian Act*;
- D. The Council and membership deemed it necessary to update the Electoral Code to address evolving circumstances, the increase in membership and to allow greater involvement of off-reserve members in elections;
- E. Membership was involved in developing this Code through general meetings; and
- F. The Council and members are of the view that this Code is in the best interests of the Band.

SECTION 1 DEFINITIONS

Aboriginal Affairs: Aboriginal Affairs and Northern Development Canada or any replacement Ministry.

Advance Polls: Elections Polls that are conducted before election day.

Appeal: the appeal of an Election result under s. 13 of Election Code.

Appeal Board: the Nak'azdli Whut'en Election Appeal Board established under s. 13 of the Election Code.

Assistant: a person or persons appointed by the Electoral Officer to assist in conducting the Election.

Band: Nak'azdli Whut'en.

Band office: the Nak'azdli Whut'en office.

Candidate: a candidate in an Election who has been nominated to run in an Election pursuant to s. 7 of the Election Code.

Complaint: an Elector (including any Candidate) who files an Appeal under s. 13 of the Election Code.

Contact List: the list described in s. 16 of this Election Code.

Council: the Nak'azdli Whut'en Council.

Election: a regularly scheduled Nak'azdli Whut'en election for one or more positions on the Council, held on the second Thursday of August, or a by-election resulting from a successful Appeal or vacancy of office.

Election Code: the Nak'azdli Whut'en Election Code, as may be amended from time to time.

Elector: a person who, on the day of the Election:

- (i) is been a registered member of the Nak'azdli Whut'en; and
- (ii) is at least 18 years old.

Electoral Officer: a person appointed by the Council before each Election to conduct the Election and who:

- (i) is free of any conflict of interest,
- (ii) has read the Election Code; and
- (iii) has confirmed their willingness to assume the responsibilities described in the Election Code.

Polling Station: a building, hall or room, which is selected as a voting location for an Election.

Respondent: a person who becomes a party in an Appeal under s. 13.

Voters List: the list of people who have been identified by the Electoral Officer as the Electors.

CHIEF AND COUNCIL STRUCTURE, DUTIES, AND MODE OF ELECTION

1. The Council shall consist of one Chief and eight Councillors.
2. The term of office for Chief and Council begins September 1st in an election year and shall be a staggered term of four years and three years.
3. The authority, duties and responsibilities of Council are based upon the governance policy of the Band and the practices of the Band.
4. The office of Chief and the offices of Councillors shall be filled by an Election held in accordance with this Code.

SECTION 2 PRE-ELECTION TIMELINE

- 2.1 Where the Election is a regularly scheduled Election, the pre-Election timeline described in this Election Code applies. Where the Election is a by-election;
 - (a) the Council will set the Election date and appoint the Electoral Officer at least 45 days before the Election; and
 - (b) the Electoral Officer shall set the pre-Election timeline. The pre-Election events and the order in which they take place will be the same, but the timeline will be condensed as required by the shorter pre-Election period.

SECTION 3 APPOINTMENT OF ELECTORAL OFFICER

- 3.1. The Council shall appoint the Electoral Officer by Band Council Resolution at least 90 days before the Election. The appointment document will confirm:
- (a) the Electoral Officer's name;
 - (b) the type of Election that will be conducted (regularly scheduled election or by-election);
 - (c) the location of the Polling Station on election day;
 - (d) whether there will be any Advance Polling Station, and if so, the location of those Polling Stations; and
 - (e) in the case of a by-election, the date of the Election, which must be between 45 and 60 days from the date that the Council or the Appeal Board (as the case may be) determines that a by-election will take place.
- 3.2 The Council shall provide the Electoral Officer with a current version of the Election Code and the Contact List.
- 3.2(a) The Council shall provide an opportunity for the Electoral Officer and the Appeal Board to meet to review the current Election Code.
- 3.3 The Electoral Officer may appoint their Assistant(s), who, at the direction of the Electoral Officer, may assist the Electoral Officer in carrying out the functions described in this Election Code.
- 3.4 The Electoral Officer and Assistant(s) shall take the Oath of Electoral Officers & Electoral Assistants set out in **Appendix A**.
- 3.5 The Electoral Officer and Assistant(s) may not vote in the Election even if they are Nak'azdli Whut'en members.
- 3.6 The Electoral Officer shall create a file for all documentation associated with the Election. This file will include but not be limited to: public notices, the record of the nomination meeting, the original Voters' List, records of any decisions regarding additions or deletion applications to the Voter's List, and the election report.
- 3.7 The Electoral Officer shall keep the Election file in a safe location until the later of:
- (a) one year after the Electoral is held or
 - (b) until any legal proceedings relating to the Election have been resolved with finality; and
 - (c) after which time the Electoral Officer will ensure that all the contents of the file are destroyed.
- 3.8 Where the Appeal Board hears a complaint arising from the Election and requests to see all or part of the Election file, the Electoral Officer shall promptly provide the requested documents.

SECTION 4 VOTERS LIST

- 4.1 By the first Monday in June, the Electoral Officer shall, with the assistance of the Nak'azdli Whut'en Membership Clerk, prepare a Voters List showing the Electors' surnames in alphabetical order and make this List available for review by Nak'azdli Whut'en members at the Band office.
- 4.2 Each Elector is responsible for ensuring that his/her name appears on the Voters List.
- 4.3 Any Elector who believes that there is an error on the Voters List may notify the Electoral Officer of this concern and provide any supporting information or evidence.
- 4.4 The Electoral Officer will investigate any alleged error on the Voters List and either correct the Voters List or, if they determine there is no error, notify the Elector of this fact in writing and of the basis for this decision.
- 4.5 Where an Elector alleges that another person should not be on the Voters List, the Electoral Officer's investigation will include notification to the affected person and a reasonable opportunity for that person to respond to the allegation.
- 4.6 A decision of the Electoral Officer under s. 4.5 is final.

SECTION 5 ELIGIBILITY TO RUN AS A CANDIDATE

- 5.1 In order to be eligible to run as a Candidate in an Election, a person must satisfy all of the following criteria:
 - (a) be 18 years or older on the day on which the nomination meeting is held;
 - (b) is a registered member of the Nak'azdli Whut'en;
 - (c) if, a current employee of the Nak'azdli Whut'en (e.g. Administration Staff, Health Centre staff, Justice Centre staff, Daycare staff) is elected to Council then the candidate agrees to resign from his/her employment upon election;
 - (d) not been convicted of an indictable offence within the ten (10) years prior to his or her nomination except offences of a political nature relating to the exercise or defence of Nak'azdli Whut'en's Aboriginal rights or title;
 - (e) never have been convicted of any offence relating to corruption or misconduct in relation to an Election or Nak'azdli Whut'en business;
 - (f) a copy of a detailed RCMP Criminal Record must be submitted (to a person appointed by Council to review criminal records confidentially) prior to eligibility, completed no earlier than three (3) months before the day on which the Notice of Nomination was published; and
 - (g) be nominated to be a Candidate pursuant to the provisions of this Election Code.
- 5.2 A Candidate may run for either Chief or Council, but not both.

SECTION 6 PRE-NOMINATION PROCEDURE

- 6.1 For regularly scheduled Elections, nominations for the Elections Candidate(s) will take place at a nomination meeting on the first Monday in June, from 11:00 a.m. to 7:00 p.m. Pacific Standard Time.
- 6.2 At least 14 days before the nomination meeting, the Electoral Officer shall post at the Band Office (and at the Electoral Officer's discretion, any other conspicuous locations), and email to the addresses on the Contact List, a notice of the nomination meeting.
- 6.3 The notice of nomination meeting shall set out:
- (a) the date and time of the Election;
 - (b) the position(s) open for election;
 - (c) the time, date and place of the nomination meeting;
 - (d) the fact that the Voters List and the Election Code are available at the Band Office;
 - (e) the fact that off-reserve Electors may contact the Electoral Officer or the Membership Clerk to confirm that they are on the Voters List;
 - (f) the fact that any concerns about the Voters List should be raised with the Electoral Officer;
 - (g) the fact that mail-in ballots are available upon request from the Electoral Officer; and
 - (h) the Electoral Officer's contact information.

SECTION 7 NOMINATION MEETING

- 7.1 At the time, date, and place advertised, the Electoral Officer and Assistant(s) will open the nomination meeting and begin taking nomination of Candidates for the advertised positions.
- 7.2 The Electoral Officer will keep the nomination meeting open from 11:00 a.m. to 7:00 p.m. Pacific Standard Time.
- 7.2(a) The Electoral Officer will post the Election Code at the Nomination Meeting and will ask Nominators to ensure they are familiar with the Code.
- 7.3 The Electoral Officer shall maintain order at all times during the nomination meeting and may have any person removed who in their opinion is disrupting or interfering with the meeting.
- 7.4 Only Electors may nominate or second the nomination of a Candidate.
- 7.5 An Elector may only nominate or second the nomination of a Candidate to two Candidates in total, regardless of how many positions are open for election.
- 7.6 The Electoral Officer shall record the name of the Candidate, the Nominator and the Secunder. The Nominator and Secunder will sign that record.

SECTION 8 CONFIRMATION OF NOMINATIONS

- 8.1 The Electoral Officer will make every effort to contact the Candidate(s) within 48 hours to inform them of the nomination.
- 8.2 The Candidate(s) must confirm with the Electoral Officer in writing whether they accept or decline their nomination within seven days of being notified of their nomination.
- 8.3 Any Elector may challenge the eligibility of a person to stand as a Candidate after the nomination meeting and up until 5 days after the Electoral Officer posts the notice of Election by notifying the Electoral Officer of their challenge and identifying the eligibility criteria that they allege the Candidate in question does not meet.
- 8.4 Upon receipt of a challenge under s. 8.3, the Electoral Officer will take the following steps:
- (a) investigate the complaint, which will include notifying the affected Candidate and providing the Candidate with an opportunity to respond and provide any evidence on the matter;
 - (b) determine whether the complaint is founded; and
 - (c) promptly inform the Elector who made the challenge, the Candidate and the Nak'azdli membership in writing of their decision and the basis for it.
- 8.5 Any challenge to the eligibility of a person to stand as a Candidate more than 5 days after the Electoral Officer has posted the notice of Election must take place in accordance with the Election Appeal provisions found in s. 13 of the Election Code.
- 8.6 Where no Elector has filed a complaint but the Electoral Officer has reason to believe that a Candidate does not meet all of the eligibility criteria set out in s. 5:
- (a) The Electoral Officer shall investigate the matter, and the investigation will include notifying the affected Candidate and provide that Candidate with an opportunity to respond and provide any evidence on the matter.
 - (b) The Electoral Officer shall determine whether the Candidate meets all of the eligibility criteria; and
 - (c) If the Electoral Officer concludes that the Candidate is not eligible to run for office, they shall remove the Candidate from the list of Candidates and promptly inform the Candidate and the Band Office in writing of their decision and the basis for it.
- 8.7 A decision of the Electoral Officer under this section is final.
- 8.8 A Candidate may withdraw their nomination from the Election by confirming this withdrawal with the Electoral Officer in writing at least 7 days before the first Advanced Poll or if there is none, 7 days before the Election.

SECTION 9 GENERAL PRE-ELECTION PROCEDURE

- 9.1 If the number of Candidates does not exceed the number of positions open for election, the Electoral Officer shall:
- (a) declare such Candidate(s) elected by acclamation;
 - (b) provide this declaration in writing to the Band office and to Aboriginal Affairs; and
 - (c) post a notice of the acclamation at the Band office and, at the Electoral Officer's discretion, in any other conspicuous locations.
- 9.2 If the number of Candidate(s) exceeds the number of positions open for election, an Election shall be held.
- 9.3 The Election will take place on the second Thursday in August in an election year.
- 9.4 The Electoral Officer shall post at the Band Office (and at the Electoral Officer's discretion, any other conspicuous locations) and email to the addresses on the Contact List a notice of Election.
- 9.5 The notice of Election will set out:
- (a) the date and time of the Election;
 - (b) the date and time of any Advance Polls;
 - (c) the location of the Polling Station(s);
 - (d) the position(s) open for election;
 - (e) the list of Candidate(s) running for each position;
 - (f) the fact that the Voters List and the Election Code are available at the Band Office;
 - (g) the fact that any concerns about the Voters List should be raised with the Electoral Officer as soon as possible;
 - (h) the fact that mail-in ballots are available upon request from the Electoral Officer and must be received by the closing of the Polls on Election day; and
 - (i) the Electoral Officer's contact information.
- 9.6 The notice of Election shall be posted and emailed at least 45 days before the Election.
- 9.7 The Electoral Officer shall have separate ballots prepared for the positions of Chief and Councillor (if both are open for election).
- 9.8 The ballots will list the full names of all the Candidates for the relevant position, in alphabetical order by surname.
- 9.9 The Electoral Officer shall obtain sufficient ballot boxes and ballots for the purpose of the Election, and all other equipment as necessary to establish and equip the Polling Stations.

SECTION 10 MAIL-IN BALLOTS

- 10.1 The membership Clerk shall provide the Electoral Officer with the last known addresses, if any, of all Electors who are not ordinarily resident on Nak'azdli Whut'en Reserve.
- 10.2 It is the responsibility of any Elector who wants to vote by mail-in ballot to:
- (a) contact the Band office any time after the notice for the nomination meeting has been posted but before Election day;
 - (b) request a mail-in ballot; and
 - (c) provide a mailing address for a mail-in ballot.
- 10.3 Upon receiving a request for a mail-in ballot, the Membership Clerk has the following responsibilities, which must be discharged promptly:
- (a) confirm that the person's name is on the Voters List;
 - (b) inform any person who request a mail-in ballot if their name is not on the Voters List and direct them to the Electoral Officer to resolve this matter; and
 - (c) provide the Electoral Officer with the name and mailing address of any persons on the Voters List who have requested a mail-in ballot.
- 10.4 The Electoral Officer will mail to every Elector who requests a mail-in ballot:
- (a) 1 ballot for Chief position with Electoral Officer's initial on back of ballot (if that position is open);
 - (b) 1 ballots for Councillor position with Electoral Officer's initial on back of ballot;
 - (c) 1 Elector Declaration Form for Mail-in Ballot (**Appendix B**);
 - (d) 1 pre-stamped and pre-addressed envelope to return the ballot(s) and Electoral Declaration Form for Mail-in Ballot; and
 - (e) instructions on how to vote.
- 10.5 The Electoral Officer will maintain a record of the names and address of Electors who have requested and have been sent a mail-in ballot.
- 10.6 Electors must return their mail-in ballots to the Band office by 8:00 p.m. Pacific Standard Time on Election day or ensure that they are delivered in person at the Polling Station before the closing of the Poll or they will be spoiled ballots.
- 10.7 The Band secretary is responsible for:
- (a) picking up the mail-in ballots from the Post Office up to and including on Election day;
 - (b) receiving any couriered or hand-delivered mail-in ballots;

- (c) stamping the unopened mail-in ballot envelopes with the date of receipt; and
- (d) delivering the unopened mail-in ballot envelopes to the Electoral Officer before the closing of the Polling Station on Election day.

SECTION 11 ELECTION POLL

- 11.1 In order to ensure consistency in procedure, the Electoral Officer will be present to conduct every Election poll, including Advanced Polls.
- 11.2 The Electoral Officer shall ensure that the voting booth is set up so as to maintain the privacy of the Elector while voting.
- 11.3 The Electoral Officer shall immediately before the opening of the Polling Station open the ballot box(es) and call such persons as may be present to witness that it is empty. They will then seal the box(es) to prevent them from being opened and place them in full view in the Polling Station. The ballot box(es) shall not be re-opened until the votes are counted.
- 11.4 The Electoral Officer shall hold the Polling Station open from 8:00 a.m. to 8:00 p.m. Pacific Standard Time.
- 11.5 The Electoral Officer or an Assistant will be present at all times at the Polling Station between the opening and closing of the poll. If it becomes necessary for the Electoral Officer and the Assistant to leave the Polling Station at the same time, the Polling Station will close during their absence. The Electoral Officer will make best efforts to ensure that closures of the Polling Station are avoided or, if unavoidable, of minimal duration.
- 11.6 All Candidates are entitled to have one agent at the Polling Station. Candidates shall provide their agent with a signed note confirming that they have authorized this person to act as their agent at the Polling Station.
- 11.7 Agents may witness the opening of the ballot box, the conduct of the poll, and the vote count. Agents must not in any way interfere with the voting or the work of the Electoral Officer and their Assistant(s) and they may not engage in any campaigning inside, or within 100 metres of, the Polling Station.
- 11.8 If an agent raises a concern with the Electoral Officer about the conduct of the poll and the Electoral Officer agrees with the concern, the Electoral Officer will take any steps they consider appropriate to address the concern that are consistent with this Election Code and that are procedurally fair.
- 11.9 The Electoral Officer shall keep a record of any concerns raised by Candidates' agents, the Electoral Officer's views on the matter, and any steps taken to address those concerns.
- 11.10 The 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 with, disrupts or attempts to influence the orderly conduct of the Election or attempts to influence or intimidate Voters. Nak'azdli Whut'en may provide security for the Election.

- 11.11 Upon confirming that persons presenting themselves for the purpose of voting are Electors, the Electoral Officer will:
- (a) initial the ballot(s);
 - (b) give the Elector the ballot(s); and
 - (c) cross the Elector's name off the Voters List.
- 11.12 Where an Elector requests assistance to vote due to a physical condition or inability to read English, the Elector may obtain the assistance of the Electoral Officer to vote. The Electoral Officer will record this event.
- 11.13 Each Elector, after receiving the ballot(s) shall proceed directly to the place provided for making ballots and shall mark their ballot(s) by placing an "x" or other mark that clearly indicates the Elector's choice(s) in the space provided. Where there is more than one Councillor position open, the Elector shall vote for a number of candidates equal to or less than the number of open positions.
- 11.14 After completing the ballot(s), the Elector shall deposit the ballot(s) in the ballot box(es) supplied.
- 11.15 Electors have the right to privacy when voting except where they have requested voting assistance.
- 11.16 An Elector who spoils his/her ballot and wants a new one may return it to the Electoral Officer who shall write the word "spoiled" on the ballot, preserve it, and provide the Elector with a new ballot.
- 11.17 The Electoral Officer may not replace a ballot once the Elector has placed it in the ballot box or has left the Polling Station.
- 11.18 Any Elector whose name does not appear on the Voters List may present identification and evidence of membership to be verified by the Electoral Officer. If the Electoral Officer is satisfied that the person is an Elector, they will add that person to the Voters List, cross their name off the List, and allow the Elector to vote.
- 11.19. Any Electors who are inside the Polling Station at 8:00 p.m. Pacific Standard Time shall be entitled to vote if they have not yet done so.
- 11.20 At the closing of a Polling Station or an Advance Polling Station, the Electoral Officer will store the ballot box(es) records in a safe place. The ballot box(es) must remain closed until the vote count on Election day.
- 11.21 The Electoral Officer shall document any irregularities in connection with voting.

SECTION 12 ELECTION TABULATION

- 12.1 Immediately following the close of the Polling Station on Election day, the Electoral Officer shall, in the presence of such Agents and any Electors (excluding Candidates) as may be present, count the ballots as follows:
- (a) remove the mail-in ballots from their envelopes without opening them and cross off from the Voters List the names of all Electors from whom a mail-in ballot has been received;
 - (b) if the name of an Elector who sent a mail-in ballot is already crossed off from the Voters List (i.e. because they voted in person), discard the mail-in ballot and record the irregularity;
 - (c) place the mail-in ballots in the appropriate ballot box;
 - (d) count the number of Electors whose names are crossed off on the Voters List and record the total number of Electors who voted;
 - (e) open the ballot boxes (including those from the Advance Polls), empty their contents, and allow all those present to see that the boxes are empty;
 - (f) count the ballots and confirm that the number of ballots matches the number of Electors whose names are crossed off on the Voters List, recording any irregularity in this regard;
 - (g) count the ballots, allowing all those present to view (but not touch) each ballot, and reject all of the following ballots:
 - (i) any that are not initialed by the Electoral Officer or their Assistant;
 - (ii) any other ballots that in the Electoral Officer's opinion do not give a clear indication of the Elector's preference;
 - (iii) any ballot that has more votes than there are vacancies for that position;
 - (iv) any ballot that identifies the Elector after tabulation, the Electoral Officer shall announce the names of the Candidate(s) that received the highest number of votes and publicly declare the Candidate(s) elected.
 - (h) in counting, consider any objection from those present about the counting or rejection of a ballot, and if the Electoral Officer overrules the objection, record the outstanding objection, number the objection and place that same number on the back of the disputed ballot;
 - (i) tally the total count for each Candidate and ensure that the sum of the vote counts for all of the Candidate(s) matches the total number of ballots;
 - (j) record the results with a written statement and have the Assistant or another person present witness the statement;

- (k) where two Candidate(s) are tied for first place, place an “x” by each Candidate’s name on separate ballots, place the ballots in the ballot box, and draw one ballot from the box. The name drawn is the winner;
 - (l) record the tie-breaking procedure and the result in a written statement and have the Assistant or another person present witness the statement; and
 - (m) repeat the procedure for any second ballot box (i.e. where the Election was for both the Chief and Councillor positions).
- 12.2 After tabulation, the Electoral Officer shall announce the names of the Candidate(s) that received the highest number of votes and publicly declare the Candidate(s) elected.
- 12.3 Following the election announcement, the Electoral Officer shall post at the Band office and, at their discretion, in other conspicuous places, a signed statement showing the number of votes cast for each Candidate.
- 12.4 Within two days of the Election, the Electoral Officer shall complete and sign an Election report that sets out:
- (a) a list of all Candidates;
 - (b) the number of Electors who voted;
 - (c) the number of votes for each Candidate;
 - (d) the number of spoiled ballots; and
 - (e) any voting irregularities.
- 12.5 The Electoral Officer will send a copy of the signed Election report to:
- (a) Aboriginal Affairs; and
 - (b) the Band office.
- 12.6 The Band office will make the Election Report available for review to Electors upon request.

SECTION 13 ELECTION APPEALS

GROUNDS FOR APPEAL

- 13.1 Within ten days of the Electoral Officer’s public announcement of the Election results, a Complainant may appeal the results if they believe that:
- (a) there was corrupt practice in connection with the Election; or

- (b) there was a violation of the Election Code that may have affected the outcome of the Election.

PROCESS FOR APPEAL

- 13.2 The Complainant must start the Appeal by providing Chief and Council a written, signed statement, accompanied by any evidence upon which the Complainant relies. This Appeal may be delivered to the Band Administration Office in person or by Registered Mail.
- 13.3 The Complainant must make best efforts to promptly provide a copy of the Appeal and the supporting evidence to all potentially affected Candidates.

APPOINTMENT OF APPEAL BOARD

- 13.4 Upon receiving an Appeal, the Council (excluding any members who have a conflict of interest)¹ must promptly appoint an Appeal Board.
- 13.5 The Appeal Board shall consist of five people, all of whom must be:
 - (a) at least 18 years old;
 - (b) familiar with the Election Code;
 - (c) free of any conflict of interest;¹ and
 - (d) willing and available to serve as Appeal Board members.
- 13.6 At least two of the Appeal Board members will not be Nak'azdli Whut'en members.
- 13.7 On the same day as it appoints the Appeal Board, the Council will provide the Appeal Board members with a copy of the Appeal including all supporting evidence.
- 13.8 The Appeal Board will remain in existence until it renders its decision.
- 13.9 Any Appeal Board member who resigns from the Appeal Board must do so in writing and deliver the resignation to the Band Office.
- 13.10 The Appeal Board will continue to function as long as it still counts at least three members.
- 13.11 If the Appeal Board no longer counts three members, the Council will appoint a new Appeal Board, which may include any of the prior Appeal Board members, and the Appeal will start over.

¹ The Term "conflict of interest" is defined in the Chief and Council Terms of Reference. See "Appendix D".

PROCESS FOR ADJUDICATING APPEAL

- 13.12 The Appeal Board shall, within five consecutive days of its appointment, forward a copy of the Appeal with all support documents to:
- (a) the Electoral Officer;
 - (b) each potentially affected Candidate; and
 - (c) any person accused of having participated in a corrupt Election practice.
- 13.13 The Appeal Board may request copies of any relevant documents from the Election file and the Electoral Officer shall provide these documents within 7 days.
- 13.14 Potentially affected Candidates and any person accused of having participated in a corrupt Election practice may become Respondents in the Appeal by providing the Appeal Board with a written, signed response along with any supporting evidence within 7 days of receiving the Complainant's materials.
- 13.15 The Appeal Board will promptly provide the Complainant with a copy of all the Respondent materials.
- 13.16 The Appeal Board may, at its discretion, hold a hearing and hear evidence from witnesses as part of the Appeal process.
- 13.17 The Appeal Board may establish additional Appeal procedures, though these must provide adequate procedural fairness to Complainant(s) and Respondent(s). Subject to s. 13.18, the additional procedures must be consistent with the Election Code.
- 13.18 Notwithstanding the fact that the Appeal Board's procedures must be consistent with the Election Code, the Appeal Board may extend the Appeal timelines set out in the Code in order to afford adequate procedural fairness and where the extension will not be unduly prejudicial to other parties in the Appeal or the Nak'azdli Whut'en.

APPEAL DECISION AND FOLLOW UP

- 13.19 The Appeal Board will render its decision within 21 days of receiving the evidence and arguments of the Respondent(s).
- 13.20 If the Appeal Board is satisfied that one or more of the Appeal grounds described in s. 13.1 has been made out on a balance of probabilities, it will allow the Appeal and order a new Election for the relevant Council position(s).
- 13.21 If the Appeal Board is not satisfied that one of the Appeal grounds described in s. 13.1 has been made out on a balance of probabilities, it will deny the Appeal.
- 13.22 The Appeal Board will render its decision in writing and promptly provide it to the Complainant(s), Respondent(s), Council and Electoral Officer.

13.23 The decision of the Appeal Board is final.

13.24 All decisions of the Appeal Board will be published in the next issue of the Dust'lus Newsletter and posted in the Band office and the Kwah Hall.

SECTION 14 TERMS OF OFFICE

14.1 The Band Council shall be composed of one Chief and eight Councillors.

14.2 The term of office for Band Council shall be a staggered term of:

- (a) the Chief and the four Councillors with the highest number of votes, a four year term;
- (b) the four Councillors with the next highest number of votes, a three year term.

14.3 The term of the newly elected Council members begins after they have taken an Oath of Chief & Councillors (**Appendix C**) and

- (a) if no Appeal is filed, 14 days after the announcement of the Election results; or
- (b) within 3 days of the denial of an Appeal by the Board.

14.4 Where an Appeal is filed, the outgoing Council members shall remain in office until the Appeal is denied or, where the Appeal Board orders a by-election, until the new Election has taken place and the new Council members take office pursuant to s. 14.3.

14.5 If one or more vacancies occurs on Council, and more than 10 months remain in the term of office for the vacant position(s), the Council may, at its discretion, order a by-election.

14.6 At the Chief and Councillors end of term, the Chief and Councillors shall retire from officer and their successors shall be elected in accordance to this Code.

14.7 A retiring Chief or Councillor shall be eligible for re-election.

SECTION 15 CHIEF OR COUNCILLOR POSITION BECOMING VACANT

15.1 A Chief or Councillor's position on the Council automatically becomes vacant if the member of Council:

- (a) fails to take the Oath of Chief & Councillors as set out in **Appendix C**;
- (b) dies;
- (c) resigns in writing and delivers that resignation to the other members of Council;
- (d) becomes mentally or physically incapacitated to the point of being unable to perform the required duties and this fact is confirmed with the written opinion of a medical professional;

- (e) is convicted of an indictable offence while in office, as defined by the Criminal Code of Canada, except those of a political nature relating to the exercise or defence of Nak'azdli Whut'en's Aboriginal rights or title;
- (f) is convicted of any offence relating to corruption or misconduct in relation to a Band Election or Band business; and
- (g) is removed from office by a unanimous decision of the remaining Band Council members pursuant to the grounds and the procedure described in s.15.2 and 15.3.

15.2 A Chief or Councillor may only be removed from office pursuant to s. 15.1(g) on one or more of the following grounds:

- (a) major conflict of interest (**Appendix D**);
- (b) major breach of confidentiality rules (**Appendix E**);²
- (c) misappropriation of Band funds;
- (d) theft of Band property;
- (e) violent behaviour towards another person that is not in self-defence or in protection of another person; and
- (f) missing of three consecutive duly convened, regular Council meetings.

15.3 To remove a Chief or Councillor from office on one of the grounds listed under s. 15.2, the following procedure must be followed;

- (a) A majority of Council (excluding any members who are in a conflict of interest) must agree to consider removing the Council member from office.
- (b) The Council must provide the Council member with a letter that:
 - (i) states that they are considering voting on whether to remove the Council member from office;
 - (ii) provides enough details for the Council member to understand the basis for the proposed removal, including the specifics of the alleged misconduct;
 - (iii) identifies any witnesses whose evidence is being relied on as a basis for the proposed removal;
 - (iv) is accompanied by any written statements provided by witnesses that are being relied on as a basis for the proposed removal;
 - (v) tentatively schedules a date and time for the Council member to address the Council on the issue of the proposed removal that is at least 7 days from the date of delivery of the letter;

² Confidentiality rules are set out in the Chief and Council Terms of Reference. See "Appendix E".

- (vi) notifies the Council member that s/he may request that the Council meeting described in (v) be rescheduled to a later date based on an important prior commitment that the Council member cannot reasonably reschedule;
 - (vii) explains that after the Council member has had the opportunity to address the Council, the Council will retire in private and deliberate and vote on whether to remove the Council member;
 - (viii) confirms that the Council member is entitled to provide written submissions to the Council and to have other person(s) speak on his or her behalf at the Council meeting, including to refute any of the allegations that found the basis for the proposed removal; and
 - (ix) the letter must be provided to the Council member by personal delivery, to a valid email address, or by leaving it with an adult family member at the Council member's home.
- (c) At the Council meeting referred to in paragraph 15.3(b)(v) above, the following procedure must be followed:
- (i) The Council shall give the Council member proposed to be removed a reasonable opportunity to speak against the proposed removal and to have any other person speak on his or her behalf.
 - (ii) After any submissions by and on behalf of the Council member under (i), the remainder of the Council (excluding any other members who have a conflict of interest) shall deliberate in private on whether to remove the Council member from office. In addition to considering any oral submissions, the Council will also consider any written submissions or statements provided by or in support of the Council member proposed for removal.
 - (iii) The Council shall vote on whether to remove the Councillor, and may only do so if the vote of all the Councillors present at the meeting is unanimous.
- (d) If the Council member is removed, the Council must prepare a written decision confirming the removal decision, the date of the decision, and stating the grounds for the removal.
- (e) If the Council member is removed, the Council must promptly share the written decision confirming this fact with that person and must also post the decision at the Band office and any other prominent locations so Nak'azdli members are informed of the removal.

SECTION 16 CONTACT LIST

- 16.1 The membership Clerk shall develop and maintain Contact List with the email addresses of off-reserve Electors who have indicated that they wish to be included on the Contact List.
- 16.2 The Membership Clerk will promptly add or update the contact information as provided by Electors.

- 16.3 During pre-Election periods, the Membership Clerk will promptly provide any updates to the Contact List to the Electoral Officer.
- 16.4 Inclusion in the Contact List is voluntary.
- 16.5 It is the responsibility of Electors wishing to be on the Contact List to provide current contact information to the Membership Clerk.

SECTION 17 AMENDMENTS

- 17.1 The Council may amend the Election Code, but only pursuant to the procedure described in this section.
- 17.2 Council will post at the Band office and email to the addresses on the Contact List a notice containing the following information:
- (a) notice that an Election Code amendment is proposed;
 - (b) a summary of the proposed amendment and notice that the proposed amendment is available for review at the Band office;
 - (c) the date, time and location of the community meeting that will be held to discuss the proposed amendment;
 - (d) notice that Band members may submit written comments about the proposed amendment anytime up to and including the day of the community meeting; and
 - (e) notice that members may request from the Band office an electronic or mailed copy of the proposed amendment.
- 17.3 The notice will be posted at least 30 days before the community meeting.
- 17.4 A copy of the proposed amendments will be available for review at the Band office.
- 17.5 A quorum of Council will attend the community meeting to discuss the amendment and hear comments from the membership.
- 17.6 At the end of the discussion, a vote by show of hands will be taken to determine whether a majority of the Electors present support the proposed amendments.
- 17.7 If over 20 Electors (not counting the Council members) vote at the community meeting, and if 65% of those Electors vote in favor of the proposed amendment, Council may consider making the amendment, including with any minor modifications that do not change the substance of the amendment.
- 17.8 If the community vote does not yield the required level of support for the amendment, Council may not adopt the amendment. However, Council may propose a new amendment or call another community meeting to consider the same amendment, in accordance with the procedure described in this section.

- 17.9 In making its final decision on whether to make the proposed Election Code amendment, the Council will consider all of the comments received from Electors at the community meeting and in writing as well as the level of support for the amendment and the community meeting vote.
- 17.10 Any decision to amend the Election Code will be made at a duly convened Council meeting and confirmed by Band Council Resolution.
- 17.11 Council will ensure that the Election Code is updated to reflect all duly authorized amendments. It will provide a copy of this new Election Code to:
- (a) Aboriginal Affairs; and
 - (b) upon request, to any Nak'azdli Whut'en member.
- 17.12 Any amendments to the Election Code that are adopted during a pre-Election period will only take effect in the subsequent Election.

APPENDICES

APPENDIX A OATH OF OFFICE FOR ELECTORAL OFFICERS & ELECTORAL ASSISTANTS

I, _____ accept the office of Electoral Officer/Electoral Assistant for Nak’azdli Whut’en and agree to maintain confidentiality as is appropriate during my term.

In my capacity as an Electoral Officer/Electoral Assistant, I will do my utmost to serve the residents of the Nak’azdli Whut’en with impartiality, integrity, and honesty.

In the performance of my duties, I will adhere to the provisions set out in the Nak’azdli Whut’en Election Code and agree that any violation of this Oath shall render me liable to dismissal from service at Electoral Officer/Electoral Assistant.

I solemnly swear/affirm that I will carry out my responsibilities honestly, conscientiously, and to the best of my abilities.

SWORN BEFORE ME at Nak’azdli, in the)
Province of British Columbia, this _____)
day of _____, 20 _____.)

Signature of Electoral Officer

_____)
A Commissioner for taking Affidavits within the)
Province of British Columbia, an Electoral Officer,)
Justice of the Peace, or a Notary Public.)

In order for your vote to be counted by mail-in ballot this declaration must be completed and signed by you and a witness who is at least 18 years old and be returned to an Electoral Officer with your sealed ballot envelope.

Voter Declaration Accompanying the Mail-in Ballot

I, _____, solemnly declare that:
(Please print your name)

1. I am a member of the Nak'azdli Whut'en.
2. I am at least 18 years of age on the date of the upcoming Election.
3. My Nak'azdli Whut'en number is _____ and my date of birth is _____.
4. I do not know of any reason why I would be disqualified from voting at this election.
5. I make this solemn declaration conscientiously believing it to be true and knowing that it has the same force and effect as if made under oath. I understand that it is an offence to make a false statement in this declaration.

Current Mailing Address: _____

Signature of Elector

Date

Witness Declaration

Declared before me (print name): _____

at: _____ (City/Reserve)

Date (m/d/y): _____

Signature: _____

Address: _____

Telephone number of Witness: (_____) _____

APPENDIX C OATH OF CHIEF & COUNCILLORS

I, _____, do solemnly take oath and declare as follows:

1. I will faithfully perform the duties of my office and will not allow any private interest to influence my conduct in public matters.
2. I will work for the good of the Nak'azdli Whut'en community, to preserve and enhance our culture and heritage, protect our Aboriginal rights and title, and improve the education, health, economic standing and overall wellness of our community members.
3. I will discharge my duties in a fair and equitable manner and work with all community members who are willing to participate in a shared effort to strengthen our community and improve our lives.
4. I have reviewed the Nak'azdli Whut'en Terms of Reference for Chief and Council and will abide by those Terms of Reference.
5. In particular, I will remove myself from any decision-making that gives rise to a conflict of interest and I will maintain confidentiality of the information I obtain in my capacity as a Council member in an appropriate manner.

SWORN BEFORE ME at Nak'azdli, in the)
Province of British Columbia, this _____)
day of _____, 20 _____.)

)

)

Signature of Witness

)

Signature of Council Member

)

Print Name

)

)

)

A “**Conflict of Interest**” exists where the Council member has an interest in the situation that is:

- (a) real or potential,
- (b) direct or indirect, and
- (c) personal or financial or professional, and which
- (d) competes, or reasonably appears to compete, with:
 - (i) the interests of Nak’azdli Whut’en, or
 - (ii) the objective exercise of the councillor’s powers, duties, functions and responsibilities.

For clarity, a Council member’s personal, financial or professional interests include the personal, financial or professional interests of the councillor’s immediate family members (parent, child, spouse, grandparent, grandchild, as well as immediate aunt, uncle, niece or nephew) and any people with whom they have close personal relationships.

Basic Rule Against Conflicts of Interest

A Council member must never be involved in any transaction, decision or matter where they are, or could reasonably be perceived to be, in a Conflict of Interest. However, Council members may set their own remuneration, as long as they follow the rules set out in these *Terms of Reference* and the *Nak’azdli Whut’en Office Policies and Procedures Manual*.

Duty to Disclose Conflict of Interest

A Council member who is in a Conflict of Interest or may reasonably be perceived by others as being in a Conflict of Interest, must disclose the general nature and extent of the Conflict of Interest to Council at the first available opportunity.

Procedure for Dealing with Conflict of Interest

A Council member who is in a Conflict of Interest or who may reasonably be perceived to be in a Conflict of Interest must:

- (a) not participate in any discussions in respect to the matter (except to share relevant information that the remainder of Council requires to deal with matter, that no one else can provide, and only where the Council has requested that the Council member provide this information.);
- (b) immediately excuse himself or herself from any portion of a meeting where the matter is being discussed;
- (c) not influence or attempt to influence in any way, any discussion or vote relating to the matter; and
- (d) not participate in any vote relating to the matter.

If a Council member discloses a Conflict of Interest (including a reasonably perceived Conflict of Interest) at a Council meeting, the minutes of the meeting must record the disclosure and note any departure of the Council member from the meeting on account of the Conflict of Interest.

Procedure where Conflict of Interest Unclear or Denied by Council Member:

- (a) If a Council member is in doubt as to whether he or she is, or could reasonably be perceived to be, in a Conflict of Interest, the member must inform the Council. The Council will then need to decide whether a Conflict of Interest or a reasonably perceived Conflict of Interest exists.
- (b) A Council member who has reason to believe that another Council member may be in a Conflict of Interest may request a clarification of the circumstances at a Council meeting.
- (c) If, as a result of a clarification discussion, the Council member is alleged to be in a Conflict of Interest but denies this allegation, the Council must decide whether the Council member is, or could reasonably be perceived to be, in a Conflict of Interest.
- (d) Where the First Nations Council must make decision as to whether a Council member is in a Conflict of Interest under 1 or 3, the Council member that may be in the Conflict of Interest must not participate in that decision and must excuse himself or herself from that portion of the meeting. The First Nations Council must then make its decision as to whether the member is in a Conflict of Interest.
- (e) The meeting minutes must record the outcome of any deliberations about the existence of a Conflict of Interest or a reasonably perceived Conflict of Interest.
- (f) If the Council determines that a Council member is in a Conflict of Interest, that Council member must follow the Procedure for Dealing with Conflict of Interest described above.

Additional Rules

Council members shall not directly or indirectly accept any gifts or any type of benefit where the gift or benefit is offered or may be offered to influence the Council member's decision or action in respect of any band business.

Council members must not use any information that was obtained in the performance of their office and is not available to the general public for the purpose of gaining advantage over, causing harm to others, or for the purpose of gaining or furthering a direct or indirect personal or financial interest.

Council members must not take advantage of a business or investment opportunity being considered by Nak'azdli or a related entity unless the Council or related entity has clearly decided not to pursue the opportunity and the opportunity has been made available to all Nak'azdli Whut'en members.

What is Confidential Information?

“Confidential Information” includes:

- (a) the contents of discussion at “in camera” Council meetings;
- (b) sensitive personal information, i.e. personal information of band members, their spouses or children that is not common knowledge and that is contained in Nak’azdli Whut’en files or records; and
- (c) sensitive information relating to Nak’azdli Whut’en which, if shared outside of the community, could compromise Nak’azdli Whut’en’s legal, political or economic interests (e.g. legal advice to Nak’azdli Whut’en, sensitive strategic advice for Nak’azdli Whut’en and Nak’azdli Whut’en strategies, confidential Nak’azdli Whut’en agreements with third parties, sensitive information relating to Nak’azdli Whut’en business interests).

Duty to Protect Confidential Information

Council members have a duty to protect Confidential Information.

They should never share with anyone the contents of their “in camera” meetings or sensitive personal information (e.g. (a) and (b) above), except where:

- (a) they must do so to carry out their obligations as Council members;
- (b) they have been authorized by Council to do so and for a legitimate purpose; or
- (c) they are obliged at law to share the information (e.g. by legislation or by a court).

A Council member who is in doubt as to whether he or she must disclose the contents of “in camera” meetings or sensitive personal information in order to carry out his or her obligations should discuss the matter with the Council before making a decision.

Sensitive information relating to Nak’azdli Whut’en may generally be shared with Nak’azdli Whut’en members, Nak’azdli Whut’en entities, and persons retained by Nak’azdli Whut’en to assist the Nation (e.g. consultants, lawyers, business advisors, historians) where they reasonably require the information to do their work. However, when sharing this sensitive information internally, Council must impress upon the recipient(s) the need to keep that information confidential from the outside world. In some cases, it may be appropriate for Council to require the recipient(s) to sign a confidentiality agreement.

Subject to any applicable laws or agreement provisions that may restrict disclosure ever further, sensitive information relating to Nak'azdli Whut'en should not be shared with the outside world except where:

- (a) it has already become public knowledge;
- (b) the Council determines that the information is no longer sensitive;
- (c) the Council has reasonably decided that it is in the interests of Nak'azdli to share the information; or
- (d) disclosure is required by law.