

ʔakisq̓nuk First Nation

CUSTOM ELECTION REGULATIONS

January 6, 2022



Table of Contents

Heading #	Heading Title	Page #
1	Preamble	3
2	Mission	3
3	Definitions and Interpretation	3
4	Election Regulations	5
5	Election of Council	5
6	Chief Councillor Position	6
7	Term of Office	7
8	Eligibility of Electors	7
9	Eligibility of Candidates	7
10	Records Check	8
11	Appointment of Electoral Officer and Appeals Committee	8
12	Contact Addresses	9
13	Electors' List	9
14	Notice of Nomination Meeting and Entitlement to vote by Mail-in Ballot	10
15	Nomination Meeting and Process	10
16	Notice of Final List of Candidates	11
17	Notice of Polls	12
18	Preparation of Ballots	12
19	All Candidates Forum	12
20	Voting at Polling Station	13
21	Absentee Voting	15
22	Advanced Poll	17
23	Procedures for the Close of Polls	17
24	Notification of Election Results	18
25	Disposal of Ballots	19
26	Oath of Office	19
27	Election Appeals	20
28	Vacancies	20
29	Procedure of Election Appeals, Petitions for Removal From office and Appeals from Vacancy	22
30	Review and Amendment of Election Regulations	24

1) PREAMBLE

- a) Together, the People of the ʔakisq̓nuk First Nation form one of the members communities of the Ktunaxa Nation and as such, share the Ktunaxa Nation Inherent Right to govern and the responsibility to protect this right for current and future generations of Ktunaxa Citizens.
- b) The Ktunaxa Nation, having existed as a Nation prior to the formation of Canada, maintains that their right to self-government is an Inherent Right established at the time of Creation and an Aboriginal Right recognized and protected by the *Constitution Act*, 1982 (Canada).
- c) The People of the ʔakisq̓nuk First Nation, through these regulations, have defined the process through which to select their government, the ʔakisq̓nuk First Nation Council, and have approved these regulations for implementation effective upon the date so ratified.

2) MISSION

a) *ʔakisq̓nuk First Nation Mission Statement*

Through sound, responsible leadership, we will promote the well-being and economic self-reliance of our people by encouraging and fostering education and sustainable employment.

3) DEFINITIONS AND INTERPRETATIONS

a) In these regulations:

- i) **ABSENTEE VOTER** – means a person who is unable to be present at a ʔakisq̓nuk First Nation Election and or by-election.
- ii) **ʔAKISQ̓NUK FIRST NATION** – means the body of people who comprise the entity known under the *Indian Act* as the ʔakisq̓nuk First Nation.
- iii) **ʔAKISQ̓NUK FIRST NATION CUSTOM ELECTON REGULATIONS** – means the regulations that govern ʔakisq̓nuk First Nation Chief and Council elections.
- iv) **ʔAKISQ̓NUK FIRST NATION MEMBER** – means a person registered with the ʔakisq̓nuk First Nation in accordance with the *Indian Act*, and whose name appears in the ʔakisq̓nuk First Nation Membership List.

- xxi) **INDEPENDENT THIRD PARTY** - means a party who is not an ʔakisq̓nuk First Nation Member, not entitled to vote in ʔakisq̓nuk First Nation elections, and who is not a member of the immediate family of any of the candidates in question.
 - xxii) **KTUNAXA ANCESTRY** – someone who is born into one or more Ktunaxa parents.
 - xxiii) **MEMBER** – means a person registered on the ʔakisq̓nuk First Nation Membership List.
 - xxiv) **MEMBERSHIP CLERK** – means the staff person who is delegated the responsibility of overseeing the Indian registry program in according with ʔakisq̓nuk First Nation policy and procedures, the Indian Act, and the applicable sections of the ʔakisq̓nuk First Nation custom regulations.
 - xxv) **ORDINARILY RESIDENT** – means living in a place in the ordinary course of a person’s day to day life on an extended and regular basis for at least a consecutive twelve-month period before being elected or appointed, the calculation of which period is not affected by temporary absences such as attending school or working at a temporary job elsewhere.
 - xxvi) **POLLING SITE** – means the facility in which the polling station is located.
 - xxvii) **PROOF OF IDENTITY** – means a document which legally verifies the identity of an Elector, which may include a Certificate of Indian Status card, British Columbia Identification Card, Drivers License, BC Care Card, Passport, Birth Certificate or Social Insurance Card.
 - xxviii) **SCRUTINEER** – means a person appointed in writing by a candidate to observe voting and counting procedures for an Election.
- b) Unless otherwise specified, where there is a reference to a number of days or a number of days between two events:
 - i) It shall be interpreted to mean calendar days, and
 - ii) In calculating the number of days, the days in which the events happen are excluded.
 - c) Wherever the singular, or masculine or the term ‘person’ is used in these regulations, it shall be deemed to include the plural, feminine, body corporate, ʔakisq̓nuk First Nation or other entity where the context so requires.

4) ELECTION REGULATIONS

- a) These regulations as revised in accordance with these regulations from time to time, shall be known as the ʔakisq̓nuk First Nation Custom Election Regulations. Accordingly, these regulations govern all Elections for ʔakisq̓nuk First Nation Council.

- b) These regulations will be posted on the Band Office Bulletin board and on the ʔakisq̓nuk First Nation webpage.
- c) Any Member may request a copy of these regulations by contacting the Administration Office during normal business hours.

5) ELECTION OF COUNCIL

- a) The Band Council of the ʔakisq̓nuk First Nation shall comprise one (1) Chief Councillor and four (4) Band Councillors, collectively known as the Council.
- b) No more than two Ktunaxa immediate family members can serve on Council at any one time.
- c) No Council member shall be an employee or contractor for ʔakisq̓nuk First Nation or any of its businesses for the duration of their term notwithstanding section 6. Elected candidates who are employees of the ʔakisq̓nuk First Nation or an ʔakisq̓nuk First Nation controlled business or society or a contractor of the ʔakisq̓nuk First Nation, must cease their employment or contractual relationship before taking the Oath of Office. NO EXCEPTIONS.
- d) The offices of Council shall be determined through a vote by secret ballot of Electors in an Election, or in the event of a vacancy on Council, in a by-election. An ʔakisq̓nuk First Nation Band Councillor or Chief Councillor shall be deemed to have resigned from office upon signing a letter of offer or procurement contract with the ʔakisq̓nuk First Nation or an ʔakisq̓nuk First Nation wholly controlled business or society.
- e) Elections after the date these regulations come into force shall be held in accordance with these regulations.
- f) By-elections shall be held on the date set by the Electoral Officer.
- g) Except with respect to a by-election, the Election process for Council shall normally begin during the month of January.

6) CHIEF COUNCILLOR POSITION

- a) The Chief Councillor position shall be a fulltime, elected official paid position for the duration of the term of office. The duties and responsibilities of the Chief Councillor shall in accordance with Appendix A – Office of the Chief Councillor
- b) When an Election is being held to vote for a Chief Councillor, the candidate with the highest number of votes in that Election will hold the office of Chief Councillor.

- c) If the person with the most votes does not wish to hold the position of Chief, the candidate with the next highest number of votes shall serve as Chief Councillor.

7) TERM OF OFFICE

- a) The term of office for each duly elected member of Council shall normally not be more than four (4) years.
- b) Terms of office are staggered. Elections are held every second year.
- c) The term of office for Council members commences thirty (30) days following the public declaration of the Election results by the Electoral Officer and subject to any vacancy arising under these regulations, expires 30 days following the subsequent election for their office, at eleven fifty-nine (11:59) p.m.

8) ELIGIBILITY OF ELECTORS

- a) In order to be entitled to vote in an Election, Members must have achieved the full age of eighteen (18) years on or before the date of the Election and be included on the Electors' List.

9) ELIGIBILITY OF CANDIDATES

- a) Any candidate for the office of Chief and Councillor must:
 - i) be of **Ktunaxa ancestry**;
 - ii) qualify as an Elector;
 - iii) be nominated for that office, in accordance with the procedures set out in these regulations;
 - iv) ordinarily reside within the Ktunaxa Traditional Territory;
 - v) not have been convicted of a criminal offence within seven (7) years prior to their nomination;
 - vi) subject to a five (5) years drivers license abstract that is clean from Immediate Roadside Prohibitions;
 - vii) provide a clean vulnerable sector check; and
 - viii) not be in arrears on any established legal indebtedness to ʔakisq̓nuk First Nation or any of its business entities by the date of the election;
 - ix) a Council member who resigns from Council during their term for any reason will not be eligible to run for Council again for a minimum of four (4) years from the date of the resignation
 - x) if a Council member has been removed per section 28, they will not be eligible to run for Council again for a minimum of five (5) years.

10) RECORDS CHECK

- a) Any nominee who accepts their nomination, must agree to the undertaking of records checks, in accordance with Paragraph 9 of this Regulation.
- b) It shall be the responsibility of the Electoral Officer to ensure the records checks are conducted on every candidate in the election. These records check shall commence as soon as possible after the nominee agrees to become a candidate and be completed at least 15 days before Election Day.
- c) Any candidate that is shown not to have clear records will have that history reviewed by the Electoral Officer to ascertain whether that candidate is to be disqualified, or approved to remain, as a candidate in the election.
- d) Any candidate disqualified from being a candidate under this section shall be notified of his/her disqualification.

11) APPOINTMENT OF ELECTORAL OFFICER AND APPEALS COMMITTEE

- a) Council shall, at least fifty (50) days prior to the date on which the Election is to be held, appoint an Electoral Officer and appeals committee.
- b) If an Electoral Officer and appeals committee have not been appointed within the time set out in these regulations, the two offices shall be appointed by the Senior Staff Person as soon as possible and confirmed by Band Council resolution at the next duly convened Band Council meeting.
- c) The Electoral Officer shall not be a Member or employee of ʔakisq̓nuk First Nation or holder of other contracts other than elections or referendums of services with ʔakisq̓nuk First Nation, and not be a resident of the ʔakisq̓nuk Community, or married to or living common-law with a Member of the ʔakisq̓nuk First Nation.
- d) Every Electoral Officer shall sign an Oath of Office swearing to:
 - i) uphold and comply with these regulations and all related ʔakisq̓nuk First Nation regulations;
 - ii) fulfill the duties and responsibilities of their office under these regulations;
 - iii) carry out their duties faithfully, honestly, impartially and to the best of their abilities;
 - iv) keep confidential, both during and after their term of office, any matter or information which, under these regulations, other law or policy, is considered confidential; and
 - v) always act in the best interests of ʔakisq̓nuk First Nation in carrying out their duties.
- e) The Electoral Officer shall file the signed Oath of Office with the Senior Staff Person before assuming their office.

- f) The Electoral Officer may issue such instructions consistent with the provisions of these regulations as may from time to time be deemed necessary for the effective administration of the Election.
- g) Upon his or her appointment, the Electoral Officer will receive an orientation from the Senior Staff Person and the Membership Clerk including a review of the current Election regulations, a review of the current Electors' List and any other related documents.

12) CONTACT ADDRESSES

- a) The Membership Clerk shall, within seven (7) days of the Electoral Officer assuming office, provide the Electoral Officer with the name and contact address of Members who will have attained the age of eighteen (18) on or before the date of the Election.
- b) The contact address may be either a mailing address or e-mailing address.
- c) The contact address shall be used only for the purposes of providing notices, mail-in ballots or other documents to Electors who are entitled to receive them under these regulations.
- d) Electors shall be responsible for providing the Membership Clerk with their current contact address.
- e) A document shall be considered properly provided if it was mailed, emailed or hand-delivered to the contact address of the Elector.

13) ELECTORS' LIST

- a) Prior to the Nomination Meeting, the Electoral Officer shall, in consultation with the ʔakisq̓nuk First Nation Membership Clerk, prepare an Electors' List, which will be the official record of Electors for the next Election.
- b) The names on the Electors' List will be reviewed at the nomination meeting by those present.
- c) Members who are unable to attend the Nomination Meeting may contact the Membership Clerk to verify their inclusion on the Electors' List.
- d) A person whose name does not appear or does not appear correctly on the Electors' List and who believes that they are eligible to be an Elector, may no later than ten (10) days prior to the Election date, apply in writing to the Membership Clerk to have their name added to the List.

- e) The Electoral Officer will determine whether a Member is entitled to be included on the Electors' List and will add and/or delete Members from the list, based on their eligibility in accordance with these regulations.
- f) Members may be required to provide documents in support of their application for addition to the Electors' List.
- g) The Electoral Officer will provide the person who has requested to be added or deleted from the list, with a written notice of the decision, at least five (5) days prior to the date of the Election.
- h) Between Elections, a copy of the Electors' List will be held in trust by the ʔakisq̓nuk First Nation Membership Clerk. Electors can confirm their inclusion on the list during regular business hours.
- i) During an election period, amendments to the Electors' List can only be made by the Electoral Officer.

14) NOTICE OF NOMINATION MEETING

- a) The Electoral Officer shall, at least forty (40) days prior to the Election date, publish a notice and forward to Electors at their contact address, a notice advising them of the Nomination Meeting and setting out the conditions for voting.
- b) The Notice shall include:
 - i) the date, time and location of the nomination meeting;
 - ii) a reminder that copies of these regulations may be obtained from the ʔakisq̓nuk First Nation Administration department and or the ʔakisq̓nuk First Nation website
 - iii) methods through which to confirm inclusion on the Electors' List;
 - iv) a statement indicating that Members may vote by mail-in ballot, telephone, electronic ballot OR in person and a description of the process through which this is managed;
 - v) the contact address and telephone number of the Electoral Officer; and
 - vi) the date of the notice.
- c) The Notice of Nomination Meeting will:
 - i) be posted in public places throughout ʔakisq̓nuk First Nation Band office buildings;
 - ii) posted on the ʔakisq̓nuk First Nation website, and
 - iii) be sent to the contact address of Eligible Voters.
- d) The nomination meeting will be held from 6:00 pm to 7:00 pm (local time) on the date set.

15) NOMINATION MEETING AND PROCESS

- a) The Electoral Officer will oversee the nomination process.
- b) Nominations shall be open for a maximum of one (1) hour after the commencement of the nomination meeting.
- c) An Elector may propose or second a nomination for any qualified candidate for Council.
- d) To be nominated, a person must be in attendance either by virtual means or in person at the nomination meeting.
- e) The nominee will be asked at the time of nomination to verbally accept or decline the nomination.
 - a. If the nominee declines their nomination, they have until the close of the nominations to change their mind and accept the nomination. Once nominations are closed, the option to accept is lost.
 - b. If the nominee accepts the nomination, they must sign the following documents within forty-eight hours of accepting the nomination
 - i. acceptance of nomination;
 - ii. sign a criminal records check form;
 - iii. a declaration confirming their eligibility as a candidate.
 - c. Any nominee who does not comply with Subsection 15 of this Regulation shall be considered to have rejected their nomination.
- f) If, after one (1) hour of the commencement of a Nomination Meeting to nominate only Band Councillor(s), the number of person(s) nominated does not exceed the number of vacancies, the Electoral Officer shall declare the nominees duly elected by way of acclamation.
- g) If, after one (1) hour of the commencement of a Nomination Meeting to nominate candidates for Chief and Council, the number of persons nominated does not exceed the number of vacancies, an election will be held to decide who will hold the position of Chief.
- h) Where the number of qualified candidates exceeds the number of vacancies, the Electoral Officer shall declare that a poll will be held.
- i) Elections will be held within forty-five (45) days of the Nomination Meeting.
- j) The Electoral Officer will, during the Nomination Meeting, ask for Electors to volunteer as witnesses for ballot counting and will record their names in the meeting proceedings.
- k) The Electoral Officer will call for a close to Nominations within one (1) hour after the commencement of nominations.
- l) Upon the close of nominations, the Electoral Officer shall require each person nominated to sign an acceptance of nomination and a declaration of interest, confirming their eligibility as a candidate.

16) NOTICE OF FINAL LIST OF CANDIDATES

- a) The Electoral Officer will prepare a final list of candidates who are deemed eligible for election, in alphabetical order, have complied with section 15.1, and at least twenty-five (25) days prior to the Election date, will ensure that the list is:
 - i) posted in public places on the ʔakisq̓nuk First Nation Reserve and on ʔakisq̓nuk First Nation website;
 - ii) sent to the contact address of Eligible Voters.

17) NOTICE OF POLLS

- a) When a poll is required, the Electoral Officer shall, at least thirty-five (35) days prior to the Election date, prepare a notice of polls and will ensure that the notice is:
 - i) posted in public places on the ʔakisq̓nuk First Nation Reserve and on ʔakisq̓nuk First Nation website.
 - ii) sent to the contact address of Eligible Voters.
- b) The notice of polls shall include:
 - i) the date of the Election;
 - ii) the time that the polling stations open and close;
 - iii) the location of polling stations;
 - iv) the date, time and location of advanced poll;
 - v) a statement indicating that Members may vote by mail-in ballot, telephone OR in person and a description of the process through which this is managed;
 - vi) a statement that the Electors' List is prepared, and that Members can confirm their inclusion on the list by contacting the Electoral Officer; and
 - vii) the contact address and telephone number of the Electoral Officer.

18) PREPARATION OF BALLOTS

- a) The Electoral Officer shall prepare ballots setting out the names of the candidates nominated for election in alphabetical order.
- b) The ballot may, at the request of the candidate, include the candidate's commonly used nickname

- c) The ballot shall indicate that the Elector is to signify his or her choice of candidate(s) by clearly marking an “X” or other mark in the appropriate space opposite the name of the candidate.

19) ALL CANDIDATES FORUM

- a) All persons who have accepted nomination and are deemed eligible for Council must participate in an All Candidates Forum, at a time and place to be determined by the Electoral Officer. Candidates may elect to participate virtually.
- b) Notice of the All Candidates Forum will be posted at the Band Administration Office and on the ?akisqnuuk web site, at least 7 days prior to the forum.
- c) Candidates who do not participate in the Forum will give up their candidacy, unless they can justify their absence. Just cause will include validated illness or injury to the candidate or within their immediate family.

20) VOTING AT POLLING STATION

- a) The Polls shall remain open from ten o’clock (10:00) in the morning until seven o’clock (7:00) in the evening, local time, on the day on which the Election is to be held.
- b) Prior to the opening of the polling station, the Electoral Officer will ensure that the polling station has been supplied with:
 - i) ballot boxes;
 - ii) a sufficient number of ballots;
 - iii) the final Electors’ List;
 - iv) the necessary materials for marking ballots; and
 - v) a ballot tally sheet to identify the number of confirmed votes and the number of rejected ballots.
- c) The Electoral Officer shall provide a voting compartment at the polling station where Electors can mark their ballots free from observation; voting shall be by secret ballot.
- d) Only those ballots that have been prepared by the Electoral Officer and provided for the Election will be counted.
- e) Each ballot must be clearly marked by the Elector with his or her choice of candidate(s) by clearly marking an “X” or other mark in the appropriate space opposite the name of the candidate(s).

- f) Notwithstanding section 19 c). Eligible Voters may vote by telephone. The identity of telephone voters must be confirmed by two (2) other people in the presence of the Electoral Officer. These two (2) people shall not be a party to the voting conversation. To confirm their identity callers will be required to state their Indian Status Number and date of birth.
- g) Any Ballot marked so as to not be legible or has been marked with more marks than there are candidates, will constitute a spoiled ballot and such a ballot shall not be counted.
- h) Where a candidate wishes to authorize a scrutineer, he or she shall provide a letter of authorization to the Electoral Officer on or before the opening of the polling station, in which the candidate names the scrutineer.
- i) Immediately prior to the opening of the poll, the Electoral Officer shall:
 - i) open the ballot box and, in the presence of any scrutineers, confirm that it is empty and complete a written statement to that effect;
 - ii) lock and properly seal the ballot box in a manner preventing it from being opened without breaking the seal; and
 - iii) place the ballot box in public view for the reception of the ballots.
- j) Each person presenting themselves at a polling station for the purpose of voting shall present to the Electoral Officer, Proof of Identity.
- k) Where a person does not have Proof of Identity, they shall be deemed to be properly identified if two other individuals sign a declaration in the presence of the Electoral Officer, confirming their identity.
- l) Where a person is identified as an Elector, he or she will sign the sign-in sheet presented by the Electoral Officer and list their membership number on the sign-in sheet.
- m) Upon signing in, the Elector shall receive a ballot initialed by the Electoral Officer.
- n) The Electoral Officer shall place in the proper column of the Electors' List, a mark opposite the name of every Elector receiving a ballot.
- o) When asked to do so, the Electoral Officer shall explain the method of voting to the Elector.
- p) Voting at all Elections shall be by secret ballot; no one other than the Elector in the process of voting is permitted inside the voting compartment at one time, except in the case of an attendant required to assist an elderly or physically disabled person to mark their ballot.
- q) No Elector may vote by proxy or authorize another person to vote on his or her behalf.
- r) Notwithstanding section 19.q any Elector who requires assistance may request that the Electoral Officer mark the ballot for them for candidates of the Elector's choice, in their presence.

- s) In the event that the Electoral Officer assists an Elector with marking of his or her ballot, the event and the reason shall be noted in the Electors' List in the remarks column.
- t) Upon receiving the ballot, each Elector shall:
 - i) proceed directly to the voting compartment and mark their ballot, clearly indicating their choice of candidate(s) in the appropriate space opposite the candidate's name;
 - ii) fold the ballot so that their choice is concealed and only the Electoral Officer's initials are exposed; and
 - iii) have the Electoral Officer verify his or her initials, and deposit the ballot in the ballot box immediately, in the presence of the Electoral Officer and all scrutineers present at the polling station.
- u) An Elector who accidentally spoils their ballot may return it to the Electoral Officer in order to obtain another ballot; the Electoral Officer shall write the word "cancelled" upon the spoiled ballot, deposit it in an envelope for cancelled and declined ballots and provide the Elector with a new ballot initialed by the Electoral Officer.
- v) An Elector who receives a ballot and then decides not to vote must return the ballot to the Electoral Officer who shall mark the word "declined" upon the ballot and deposit it in the envelope for cancelled and declined ballots.
- w) After receiving a ballot, an Elector cannot leave the polling station without first delivering the ballot to the Electoral Officer otherwise they forfeit his or her right to vote.
- x) Any Elector who is inside the polling station at the time fixed for the closing of the poll shall be entitled to vote.
- y) Each candidate shall be entitled to have two (2) scrutineers at a polling station at any one time.
- z) The Electoral Officer may request or appoint security to remove any person from the polling station who is:
 - i) distributing Election related materials other than those authorized by the Electoral Officer;
 - ii) interfering with or attempting to influence any Elector;
 - iii) disrupting, or attempting to disrupt, the voting process.

21) ABSENTEE VOTING: VOTING BY MAIL-IN, ELECTRONICALLY OR TELEPHONE BALLOT

- a) Any Elector who is unable to vote in person may, at least fifteen (15) days prior to the date on which the Election is to be held, apply in writing to the Electoral Officer, to vote by mail-in ballot.

- b) An Elector requesting a mail-in ballot package shall provide the Electoral Officer with a current mailing address.
- c) The Electoral Officer shall, at least ten (10) days prior to the date on which the Election is to be held, mail to every–Elector whose application for a mail-in ballot has been received, a mail-in ballot package consisting of:
 - i) an official ballot initialed by the Electoral Officer;
 - ii) an inner postage-paid return envelope, pre-addressed to the Electoral Officer;
 - iii) a second inner envelope marked “ballot” for insertion of the completed ballot;
 - iv) an Electoral declaration form which shall set out:
 - a) the name and membership number of the Elector; and
 - b) the name, address and telephone number and signature of the witness to the signature of the Elector.
 - v) a letter of instruction regarding the voting by mail-in ballot; and
 - vi) a statement advising the Elector that they may vote in person on the day of the Election if they return their mail-in ballot to the Electoral Officer at the polling station, and the location of the polling station.
- d) Upon a receipt of an application under section 16.e to vote by mail-in ballot, the Electoral Officer shall mail a mail-in ballot described in section 16.g to the Elector whose name appears on the application.
- e) An Elector may vote by mail-in ballot by:
 - i) clearly marking the ballot with an “X” or other mark in the appropriate space opposite the name of the candidate(s) of his or her choice;
 - ii) folding the ballot in a manner so as to conceal their choices, but exposing the Electoral Officer’s initials on the back;
 - iii) placing the ballot in the inner envelope marked “ballot” and sealing the envelope;
 - iv) completing and signing the Elector declaration form in the presence of a witness who is at least eighteen (18) years of age, and having the witness sign the declaration form;
 - v) placing the inner envelope and the completed, signed (in ink) and witnessed declaration form in the postage-paid, return envelope pre-addressed to the Electoral Officer; and
 - vi) delivering to, or otherwise ensuring receipt of the envelope by, the Electoral Officer before the time at which the polls close on the day of the Election.

- f) Mail-in ballots that are not received by the Electoral Officer before the time at which the polls close on the day of the Election shall not be counted.
- g) The Electoral Officer shall place the ballot in its sealed envelope into the ballot box.
- h) The ballot in the envelope shall be recorded and counted during the counting of ballots after the polls close.
- i) An Elector who has received a mail-in ballot may vote in person at a polling station if they return the mail-in ballot to the Electoral Officer.
- j) In the case of a telephone or electronic vote, multi-level security measures will be enforced by the Electoral Officer such as provision of full name, status number, birth date, etc. Upon validation of such information, the Electoral Officer shall mark the ballot according to the Eligible Voter's wishes and shall place the ballot in the ballot box and record the name of the voter on the Voter's list. The telephone votes must reach the Electoral Officer prior to the closing of the polls in order to be considered valid.

22) ADVANCED POLL

- a) Electors may vote in an Advanced Poll.
- b) The Advanced Poll shall be held one week prior to the date on which the Election is to be held, at a time and place chosen by the Electoral Officer and confirmed in the notice of poll.
- c) All electronic ballots shall be accounted for and added to the ballot count
- d) The Advanced Poll shall be open from twelve o'clock (12:00) noon to six o'clock (6:00) in the evening, local time, on the date so chosen.
- e) Electors who choose to vote in the advanced poll will be provided with a ballot and privacy envelope.
- f) Electors at the Advanced Poll will cast their vote in accordance with the same procedure described in section 19.

23) PROCEDURE FOR THE CLOSE OF POLLS

- a) Immediately following the close of polls, the Electoral Officer shall, in the presence of the candidates, scrutineers and any Electors who choose to be present, open each envelope containing a mail-in ballot that was received before the close of polls and without unfolding the ballot:
 - i) set aside the ballot if:
 - (1) it was not accompanied by a signed Elector declaration form;
 - (2) the name of the person set out in the Elector declaration form is not on the

Electors' List; or

(3) the Electors' List shows that the Elector has already voted; and

- ii) deposit all remaining ballots in the ballot box and place a mark on the final Electors' List opposite the name of the Elector.
- b) As soon as all valid mail-in ballots have been deposited in the ballot box, the Electoral Officer shall open the ballot box and examine the ballots and reject all ballots that:
- i) have not been initialed by the Electoral Officer;
 - ii) contain more votes than are candidates to be elected;
 - iii) are marked in such a way that the Elector can be identified; or
 - iv) are marked in such a way that the Elector's choice cannot clearly or unambiguously be determined.
- c) Any rejected ballot shall not be counted as a vote cast.
- d) The Electoral Officer shall report in writing the reasons for rejection of each ballot and attach that report to the rejected ballot.
- e) The rejected ballot and the written report shall be held by the Electoral Officer until the expiration of any appeal period provided for in these regulations.
- f) The Electoral Officer shall:
- i) show the ballots to be counted to any scrutineer's present;
 - ii) count the votes given for each candidate from the ballots not rejected in the presence of at least five (5) Electors, in addition to all scrutineers so appointed by the candidates; and
 - iii) at the conclusion of the count complete and sign a ballot tally sheet setting out the number of confirmed votes for each candidate and the number of rejected ballots.
- g) Immediately after the completion of the counting of the votes, the Electoral Officer shall publicly declare the candidates with the highest number of votes to be elected for the vacant Council positions.
- h) Where two or more candidates are tied with the highest number of votes, the Electoral Officer shall declare the Election for that office a tie and either:
- i) one or more of the candidates in the tie willingly agree to decline the office of Chief/Councillor and declare the remaining candidate elected to the office of Chief/Councillor in which case, the other candidate(s) in the tie are elected as Councillor(s) if a seat is available; or

- ii) if the candidates involved in the tie do not wish to decline the office of Chief/Councillor, a new election specifically for that office of Chief/Councillor be held within twenty-one (21) days with the candidate not elected as Chief/Councillor winning a seat as Councillor, if a seat is available.
- i) The final Electors' List for the new Election shall be the final Electors' List from the Election which resulted in the tie.
- j) The candidates for office to be determined in the new Election shall be the candidates who received an equal number of votes for that office in the original Election.
- k) The term of office for the successful candidate in the new Election shall be deemed to have commenced on the day of the Election which resulted in the tie.
- l) Sections 13, 14 and 15 & 16 do not apply to the new Election.

24) NOTIFICATION OF ELECTION RESULTS

- a) The Electoral Officer shall:
 - i) within three (3) days of the date on which the Election is held post in a public area of the ʔakisq̓nuk Administration building and in other conspicuous place or places on ʔakisq̓nuk Lands, as may be determined by the Electoral Officer, a written statement signed by the Electoral Officer, showing the number of votes cast for each candidate and the number of rejected ballots;
 - and
 - ii) publish, in either the ʔakisq̓nuk Community newsletter or in a separate written notice mailed or delivered to Electors, a statement showing the number of votes cast for each candidate and the number of rejected ballots.

25) DISPOSAL OF BALLOTS

- a) The Electoral Officer shall deposit the ballots used in the voting and the cancelled and declined ballots in a sealed envelope and retain it in a safe place for a period of thirty (30) days after the close of the polls, or until a decision on an appeal is rendered, whichever date is later, after which time the Electoral Officer may, destroy the Ballots in the presence of two (2) witnesses and sign a declaration confirming their destruction.

26) OATH OF OFFICE

- a) All candidates who have been elected to office shall sign an oath of office before the ʔakisq̓nuk Members, swearing to:
 - i) uphold and comply with ʔakisq̓nuk First Nation laws, by-laws and applicable policies;
 - ii) carry out their duties faithfully, honestly, impartially and to the best of their ability;
 - iii) fulfill the responsibilities of their office;
 - iv) keep confidential, both during and after their term of office, any matter or information which, under regulation or policy, is considered confidential; and
 - v) always act in the best interest of the entire ʔakisq̓nuk Community when carrying out their duties.
- b) No person elected shall be permitted to assume their office until they have sworn and filed with the Electoral Officer the oath of office required under section 26.
- c) Where a person elected to office fails to file the sworn oath of office with the Electoral Officer within fifteen (15) days of being declared elected, the Electoral Officer shall declare the office vacant.
- d) The Electoral Officer shall give five (5) days notice in writing to the candidate(s) elected whose office is about to be declared vacant under section 28.c
- e) Where a candidate elected cannot because of illness or other valid reason swear the oath of office within the time prescribed in section 26 they, or an Elector acting on their behalf, may within that time file a Petition with the Electoral Officer for an extension of the time to swear the oath of office.
- f) The Electoral Officer shall determine whether the circumstances justify an extension of the time to swear the oath of office and shall provide the candidate making the request a written decision with reasons that must address consideration of the major points in issue.
- g) A candidate elected as Chief or Councillor whose office is declared vacant as a result of the Electoral Officer's decision made under section 26.c may appeal the decision by filing a notice of appeal together with supporting documents and a non-refundable filing fee of twenty-five dollars (\$25) with the Appeals Committee within fifteen (15) days of the date the Electoral Officer's decision was sent.

27) ELECTION APPEALS

- a) Any candidate or Elector may file a notice of appeal with the Appeals Committee, requesting that the election of a candidate be declared invalid, based on one or more of the following grounds:
 - i) the person declared elected was not eligible as a candidate;
 - ii) the person declared elected was not nominated in accordance with the procedures set out;

- iii) there was a violation of any provision of these regulations in the conduct of the Election that might have affected the result of the Election; or
 - iv) there was corrupt or fraudulent practice in relation to the Election.
- b) Every notice of appeal shall:
- i) identify the office being appealed;
 - ii) set out in an affidavit sworn before a notary public or duly appointed commissioner for taking oaths the facts substantiating the appeal;
 - iii) be accompanied by any supporting documentation; and
 - iv) be filed with the Senior Staff Person within twenty (20) days from the date upon which the Council member was declared elected together with a non-refundable filing fee of twenty-five dollars (\$25). A receipt will be provided.
- c) The Appeals Committee will, in the event of an appeal, receive an orientation from Electoral Officer prior to carrying out their duties.
- d) Where an appeal has been filed under section 26 and or section 27, no by-election shall be called unless the Appeals Committee's decision confirms the vacancy.

28) VACANCIES

- a) The office of a Council member shall become vacant immediately when the person who holds that office:
- i) dies;
 - ii) resigns from office;
 - iii) removed from office;
 - iv) has been convicted of a criminal offence in Canada since their election and all appeals are completed;
 - v) has transferred his or her membership to another Band;
 - vi) no longer meets the criteria of candidacy as per section 13;
 - vii) has his or her election declared invalid by the Appeals Committee and no other person has been declared by the Appeals Committee as duly elected; or
 - viii) has been removed from office by declaration of the Appeals Committee.
- b) The office of a Council member shall become vacant if the person:
- i) has been unable to perform the functions of his or her office for more than six

- (6) months due to illness or other incapacity; or
- ii) has missed three (3) regularly scheduled Council or Membership meetings – or any other meetings as required – which may include a combination thereof, within a period of twelve (12) months, without just cause, without having an alternate attend, where permissible.
- c) Whether just cause exists for a Council member missing a meeting shall be determined after each absence by a Majority vote of other Council members present at a Council meeting and the decision shall be recorded in the minutes of that meeting.
- d) The Council member whose absence from a meeting is being considered shall be deemed in conflict of interest and shall leave the room prior to any debate on the question, not be counted in determining whether there is a quorum, nor participate in the vote determining whether the absence was with just cause.
- e) If a Council member has resigned, or has been removed from office (, he/she shall not be eligible for Nomination or Election to Band Council for a period of five (5) years from the date of vacancy.
- f) The Council member whose office has been declared vacant under section 28.b.ii or in the case of illness or incapacity of the Council member, an Elector acting on his or her behalf, may appeal the decision by filing a notice of appeal with the Appeals Committee within fifteen (15) days of the date notice of the decision was sent together with supporting documents and a non-refundable filing fee of twenty-five dollars (\$25).
- g) Where an appeal has been filed under section 26.g no by-election shall be called unless the Appeals Committee’s decision confirms the vacancy.
- h) Should a by-election be necessary, Council shall immediately, by way of a Band Council Resolution appoint an Electoral Officer to oversee the by-election.
- i) A by-election shall be held within forty-five (45) days of a vacancy being declared.
- j) By-elections will follow the same procedures as General Elections.
- k) If a vacancy occurs within 120 days prior to a General Election, no by-election will be held, and the vacancy will be filled during the next General Election.
- l) A candidate elected in a by-election will assume office immediately.

29) PROCEDURE ON ELECTION APPEALS, PETITIONS FOR REMOVAL FROM OFFICE AND APPEALS FROM VACANCY

- a) the case of an Election appeal, the security for costs that may be ordered to be paid in the event that the appeal is lost or discontinued shall be twenty-five (\$25) for each position appealed.
- b) In the case of a Petition for the removal of a Council member or members, Security for costs shall be twenty-five dollars (\$25) to be paid by the petitioner.
- c) The security for costs shall be deposited with the Membership Clerk. A receipt will be issued.
- d) Upon deposit of the required security for costs, the Membership Clerk shall forward the appeal or Petition and all supporting documents to the Appeals Committee.
- e) The Appeals Committee may, at his or her discretion, give directions for:
 - i) fixing the date, time and place for the hearing of the Petition or appeal;
 - ii) designating the method of taking evidence, either by sworn declaration or written testimony, or both;
 - iii) designating what persons are to be notified and how they are to be served; and
 - iv) dealing with any matter not otherwise provided for in this section.
- f) A copy of the notice of appeal or Petition and any documents relied upon shall be delivered to the Council member whose election is being appealed or the Council member whose removal is sought or the person whose office is being declared vacant.
- g) In the case of an appeal under section 26 or section 27, the notice of appeal and supporting documentation shall be delivered to the Electoral Officer at least fourteen (14) days prior to the date of the hearing.
- h) In the case of an appeal by an Elector under section 28 the notice of appeal and supporting documentation shall be delivered to the Council member whose election is being appealed at least fourteen (14) days prior to the date of the hearing.
- i) In the case of an appeal under section 28, the notice of appeal and supporting documentation shall also be delivered to the Membership Clerk at least fourteen (14) days prior to the date of the hearing.
- j) The Council member whose election is being appealed, the Electoral Officer in an appeal under section 26 or section 27, or the Membership Clerk in an appeal under section 28 or as the case may be, may file a written reply with the Appeals Committee at least four (4) days prior to the date of the hearing.
- k) No witness shall be required to divulge whom he or she voted for in the Election.
- l) The Appeals Committee shall issue a written decision together with reasons in every appeal or Petition.
- m) In the case of an Election appeal under section 27 the Appeals Committee may:
 - i) confirm the election of the Council member; or
 - ii) invalidate the election of the Council member.

- n) If the election of a Council member is declared invalid, the Appeals Committee shall order that any person found not to have been duly elected shall be removed from office and if it is adjudged that some other person was duly elected, the Appeals Committee shall order that such person take office upon their swearing the oath of office described in section 26 within three (3) days of the making of the order.
- o) The election of a Council member shall not be declared invalid by reason only of an irregularity or non-compliance with the rules set out in these regulations if it appears to the Appeals Committee that the Election was conducted in good faith unless the non-compliance, irregularity or mistake materially affected the result of the Election.
- p) In an appeal of the decision of the Electoral Officer under section 26.g the Appeals Committee may:
 - i) confirm the decision of the Electoral Officer and declare the office vacant; or
 - ii) reverse the decision of the Electoral Officer and allow the candidate elected a specified time within which to sign the oath of office.
- q) the Petition is for removal of a Council member under section 28 the Appeals Committee may:
 - i) confirm the Council member in their office; or
 - ii) remove the Council member from office and declare the office vacant.
- r) The Appeals Committee may in his or her discretion order by whom, to whom and in what manner costs shall be paid. The Appeals Committee shall make disposition of the security for costs in accordance with their order.
- s) The Appeals Committee shall provide a copy of the decision to the Senior Staff Person and to any party to an appeal or Petition.
- t) The Appeals Committee's decision shall be:
 - i) delivered by mail to Electors in a written notice; and
 - ii) posted in a public area of the ?akisq̄nuk administration building.
- u) The decision of the Appeals Committee is final.

30) REVIEW AND AMENDMENT OF ELECTION REGULATIONS

- a) Any Council member or Elector may request to hold an election regulation review meeting by filing a written request with the Council, stating what sections are to be discussed.
- b) Election regulations will be reviewed not more than once yearly.

- c) Notice of an election regulation review and /or amendment meeting must be mailed to all Electors, posted in a public place at the ?akisq̓nuk First Nation Administration office and posted to the community web site at least fourteen (14) days prior to the proposed meeting dates.
- d) The meeting notice shall indicate the date, place and time for the review and/or amendment meeting.
- e) Those Electors in attendance at the election regulation review meeting may draft recommended amendments to the regulations.
- f) Within five (5) business days after the deadline for submission of proposed amendments to the Code, the proposed amendments will be sent to the contact address of all Eligible Voters, along with a notice of the date, time and place of the final meeting to discuss and approve proposed amendments to election regulations. All minutes of meetings held to review election regulations will be distributed with the draft amendments.
- g) The meeting to approve regulation amendments shall be held fourteen (14) days following the distribution date. In the event that the proposed approval meeting date falls on a statutory holiday, the meeting will be held the next business day.
- h) Electors may comment on the proposed amendments prior to the amendment recommendation meeting by submitting written comments to the Senior Staff Person.
- i) In the event that there are comments received from Electors, these comments will be recorded in the minutes of the regulation review meeting and made available to persons who attend the final meeting to approve election regulation amendments.
- j) If no comments are received from Electors within fourteen (14) days after the draft amendments being circulated, those persons in attendance at the final regulation review meeting will draft the final recommendations for presentation to Council.
- k) A Special Meeting will be held by Council within seventy-two (72) hours to ratify the amendments.
- l) No additional changes will be made to the election regulations by Council or any other person, without the knowledge and consent of the eligible voters.
- m) Upon the receipt of a written request, a copy of the ratified amended election regulations will be sent to the Elector.

RATIFIED THIS 6 DAY OF JANUARY, 2022

Signed by the ?akisq̄nuk First Nation Council

Ryan Nicholas
Print Name

R. Nicholas
Signature

Lillian Rose
Print Name

L. Rose
Signature

Rosemary Phillips
Print Name

DocuSigned by:
Rosemary Phillips
2D29484F7D554FC...
Signature

Theresa Kains
Print Name

DocuSigned by:
Theresa Kains
C88A23B22EC743F...
Signature

Print Name

Signature

Akisqnuk First Nation Custom Election Code - Appendix A

ʔAkisqnuk First Nation

Office of the Chief Councillor

Terms of Reference

1.0 Role:

The role of Chief Councillor requires a commitment equivalent to a full-time position with remuneration paid by the ʔAkisqnuk First Nation (AFN). As a result, the Chief Councillor has duties and responsibilities over and above that of other Councillors.

2.0 Approval:

The approval to establish and maintain the Office of the Chief Councillor (Chief Councillor) as a full-time paid position is given by the AFN electors through the AFN Election Regulation.

3.0 Constituency:

- 3.1** The Chief Councillor represents all the members of the Band, both residing on and off-reserve. The Chief will be responsible for regular communications to AFN Band members on general matters and important issues. This is achieved by regular reports in the monthly newsletter, reporting at Band meetings, one-on-one visits, and other means as determined. The Chief Councillor will need to be familiar with Band programs and services to direct inquiries to appropriate Band staff.
- 3.2** The Chief Councillor will be provided with an office within the AFN Administration compound and establish and post regular office hours.

4.0 Responsibilities:

The role of Chief Councillor requires a commitment equivalent to a full-time position with remuneration paid by the ʔAkisqnuk First Nation. As a result, the Chief Councillor has duties and responsibilities over and above that of other Councillors. The Chief Councillor has a high level of administrative responsibilities unique as a member of the AFN Council. These responsibilities are carried out in cooperation with staff through the Senior Administrative Officer. Specific duties may change throughout the fiscal year depending on the Band's needs. Responsibilities will include aspects of communications, government relations, finance, human resources, program delivery and evaluation.

- 4.1** Other duties of the Chief Councillor shall include, but are not limited to:

- a) Act on behalf of the Council as a whole between regular Council meetings;

- b) Specific responsibilities set out in the AFN Financial Administration Law (FAL) and other laws and bylaws subsequently enacted.
- c) Regularly communicate and engage with Band membership;
- d) Faithfully represent and advocate for the Band;
- e) Represent and attend meetings for the Band with external parties following general direction and instruction from Council;
- f) Participate in all opportunities to promote the Band locally, regionally, nationally and internationally;
- g) Speak on behalf of the Band to external media sources, other agencies and organizations and the general public;
- h) Report monthly to Council on the activities undertaken on behalf of the Band;
- i) Attend and represent the Band at Chiefs meetings, conferences, summits, and events as requested by Council;

4.2 Committees of Council

The Chief Councillor shall Chair all Committees of Council. The Chief Councillor is not counted in establishing a quorum and does not vote.

4.3 Relationship to Administration

- a) The Chief Councillor should report all justifiable matters of membership concern or issues that have been brought to his attention to the SAO, who in turn will relate the or issue to the appropriate staff person.
- b) The Chief Councillor must respect the organizational structure and not take part in the day-to-day administration of the Band. The Chief Councillor has no authority to direct any staff member or interfere with the authority of the Senior Administrative Officer.
- c) The Chief Councillor will not engage in behaviour that disparages any member of Council or Administration.
- d) The Chief Councillor does not engage on an ad hoc basis with internal groups other than to be a conduit of communication as appropriate.

5.0 Conduct

The Chief Councillor shall be held to the standard of conduct expected of an elected official and, more specifically, as set out in the AFN Governance Policy and AFN Election Regulation.

6.0 Decision Making:

The Decision-making authority of the Chief Councillor is as set out in the AFN Governance Policy.

7.0 Conflict of Interest:

The Chief Councillor shall adhere to and be held accountable by the Conflict of Interest policy set out as a schedule to the AFN Financial Administration Law.

8.0 *Remuneration*

- 8.1 The Office Chief Councillor shall be remunerated on a bi-weekly basis. Such remuneration shall include MERC and benefits afforded to other AFN full-time permanent staff as per the current AFN Human Resource Policy.
- 8.2 To avoid double-dipping, any honoraria or stipend available or payable to the Chief Councillor from external sources for activities during work hours, including but not limited to the Ktunaxa Nation Council, shall be paid directly to the AFN whenever possible. If direct payment is not possible, the Chief Councillor shall reimburse the AFN the exact amount received as soon as practical.
- 8.3 Eligible expenses shall be paid or reimbursed, whatever the case may be, following the AFN Financial policy. If travel or other expenses are claimed by the Chief Councillor for external activities, the Chief Councillor may claim and receive payment for such directly from the external source. However, a claim may not be made to the AFN for the same purpose.

8.0 *Evaluation*

The Office of the Chief Councillor shall be evaluated at minimum, every four years. The evaluation should consider the following:

- (a) successes and challenges;
- (b) areas where improvement is needed;
- (c) the functionality of the Office;

The evaluation is not conducted to determine the continuation of the Office of the Chief Councillor but rather to make improvements to the Office and to inform revisions to this terms of reference.

The evaluation shall be conducted by an ad-hoc committee consisting of AFN elected leaders and members. The committee shall generate a report summarizing its findings and providing recommendations for consideration by AFN membership.

9.0 *Revisions*

Revisions to these Terms of Reference may be made from time to time as part of the AFN Election Bylaw review process. The date of adoption and any duly adopted revisions shall be added as a footer to this terms of reference.

10.0 *Approval*

These terms of reference have been initially adopted as part of the AFN Election Bylaw review process on:

Date of approved by AFN Membership: January 6, 2022