

Wahnapitae First Nation Band Custom Election Code



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A. Preamble

Whereas the members of Wahnapiatae First Nation created and amended the Wahnapiatae First Nation Band Custom Election Procedures on September 11, 2004 and September 15, 2020;

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

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

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

B. Definitions

2. In this code:

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

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

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

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

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

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

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

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

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

“electronic voting” enables votes in an election to be cast and/or counted through electronic means. Electronic voting is an alternative to traditional forms of voting like postal voting or in person voting. Technically, electronic voting refers to systems where the recording, casting or counting of votes in political elections and referendums involves information and communication technologies.

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

"elector" means a person who:

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

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

“natural justice” consists of the right to an impartial decision-making authority, and to a fair hearing. This latter requires that an appellant receive adequate notice, be informed of the allegations against their person, and have the opportunity to be heard and present their case.

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

"oath" means a solemn affirmation.

"ordinarily resident" means

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

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

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

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

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

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

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

C. The Council

3. The council shall consist of one (1) Chief and six (6) Councillors.
4. Chief and Councillors shall be elected by a vote held in accordance with this code.
5. The term of office in a general election for the positions of Chief and Councillors shall be four (4) years held on the third Saturday of June.
6. The term of office for the Chief and Councillors commences when the elected council is declared by the electoral officer. Once the term of office is declared for the elected council the previous Chief and Councillors term of office is immediately terminated.

D. Vacancy

7. A Chief or Councillor position on the council may become vacant if, while in office:
 - a) the Chief or Councillor resigns in writing from office of their own accord;
 - b) the Chief or Councillor has been unable to perform the functions of their office for more than six months due to illness or other incapacity;
 - c) the Chief or Councillor dies; or
 - d) the Chief or Councillor is removed from office in accordance with the provisions of this code.

E. By-election

8. Unless otherwise provided in this code, in the event that the office of Chief becomes vacant, a by-election shall be held within 90 days after the date on which the position is declared vacant.
9. No by-election shall be held if there are less than 3 months remaining in the term of the Chief's office.

10. No sitting council member is eligible to be a candidate in a by-election. If a council member wishes to be a candidate in a by-election, they must resign their council position prior to the nomination meeting for the by-election.

11. In the event of a Councillor position becoming vacant prior to the end of their term of office and more than one year remains, Chief and Council will identify by way of Band Council Resolution which of the following options they would like to proceed with for the process in which they will take in order to fill the vacant position for the remainder of the term:

- (a) The candidate finishing seventh in the last election shall be offered the vacant position for the remainder of the term, if they decline the position it shall be offered to the candidate finishing eighth and so on; or
- (b) A by-election shall occur within 90 days after the date on which the position is declared vacant.

12. Except as expressly provided otherwise in this code, the rules and procedures in this code shall apply to by-elections.

F. Pre-Nomination Procedure

13. The electoral officer shall be appointed by a band council resolution not less than 100 days before the expiration of the council's term of office.

14. The band council resolution for the appointment of the electoral officer shall include:

- a) electoral officer's full name and address;
- b) the date of the election;
- c) the type of election: general election or by-election;
- e) appointments to the appeal board.
- f) approval of a Digital Contractor for the purposes of electronic voting.

15. The electoral officer must be a person who:

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

16. The electoral officer shall appoint deputies as they deem necessary, who shall work under their direction and supervise and direct duties of the Digital Contractor.

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

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

G. Voters List

19. At least 79 days before the day on which an election is to be held, the electoral officer shall obtain the names, band membership or registry number, and dates of birth of all band members who will have attained the age of 18 years on the date on which the election is to be held from the Membership Clerk of the First Nation.

20. The First Nation shall, no later than 79 days before the date on which the election is to be held, provide the electoral officer with the last known addresses, if any, of all electors.

21. Electors are responsible for providing the Wahnapiatae First Nation with their current addresses and other contact information such as emails, specifically for providing the eligible voter with updated information concerning an election, in accordance with Personal Information Protection and Electronic Documents Act (PIPEDA)

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

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

24. A candidate for election as Chief or Councillor may obtain from the electoral officer a list of the names and addresses of electors who have further consented to have their addresses disclosed to candidates.

25. The electoral officer shall post the voters list (excluding band membership or registry numbers) in a public area of the band administration building and/or an online members only secured area as may be determined by the electoral officer, no later than 72 days prior to the date on which the election is to be held.

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

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

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

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

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

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

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

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

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

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

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

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

35. Mail-in ballots will be mailed to an Electoral Officer's Canada Post mailbox, and will be safeguarded in place until Election Day.

H. The Nomination Process

Notice of Nomination Meeting

36. The electoral officer shall, at least 30 days before the date on which the nomination meeting is to be held, post a notice of nomination meeting in a conspicuous place in the band administration building and/or an online members only secured area.

37. The electoral officer shall, at least 30 days before the date on which the nomination meeting is to be held, mail and electronically mail a notice of the nomination meeting to every elector who has provided a mailing address and/or email address to the First Nation.

38. A notice of a nomination meeting shall include:

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

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

Nomination Meeting

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

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

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

43. The nomination meeting shall remain open from 9 am to 8 pm.

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

I. Eligibility to Nominate

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

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

46. Any elector who qualifies above must be in person for the nomination meeting and orally nominate or second the nomination of any qualified person to serve as the Chief or Councillor at the nomination meeting.

47. No elector may nominate or second more than one (1) nominee for Chief and six (6) nominees for Councillor.

48. The electoral officer shall record the name and band membership or registry number of the nominee, the nominator and the seconder.

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

50. A person may only be a candidate for either Chief or Councillor, not both, in any election.

51. All those nominated wishing to accept the nomination must provide the electoral officer with the signed Acceptance of Nomination form, a declaration confirming they are eligible to be a candidate for Chief or a candidate for Councillor, along with the prescribed fee (\$25.00 by way of cash or certified cheque/bank draft payable to Wahnapiatae First Nation), within (3) three days after the nomination meeting in order to be included on the ballot for election. Those that do not provide the Acceptance of Nomination form and fee shall be disqualified from the election and their names shall not appear on the ballot.

J. Candidate Criteria

52. A candidate for Chief must be a Wahnapiatae First Nation band member who:

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

- c) is ordinarily resident on the First Nation reserve;
- d) has not been convicted for an indictable offense for which a records suspension has not been granted;
- e) must take a leave of absence or other leave from any other employment from Wahnapiatae First Nation other than as Chief for the term of the office if they are elected; and
- f) has been nominated and accepted by the Electoral Officer as a candidate pursuant to the provisions of this code.

53. A candidate for Councillor must be a band member who:

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

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

55. After the nomination meeting the electoral officer shall:

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

56. Within five (5) business days following the nomination meeting, the electoral officer shall post in at least one conspicuous place in the band administration building and/or an online members only secured area a nomination meeting report that includes a list of nominees, their nominators and seconders and the offices for which they are nominated and acclamations if any.

K. Notice of the Election

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

58. The electoral officer shall, within five (5) business days after the day on which the nomination meeting was held, post a notice of election in a conspicuous place in the band administration building and/or an online members only secured area..

59. The notice shall include:

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

L. Mail-in Ballots

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

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

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

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

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

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

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

- a) placing an "X" or other mark that clearly indicates the elector's choice, but does not identify the elector, opposite the name of the candidate or candidates for whom they desire to vote;
- b) folding the ballot in a manner that conceals the names of the candidates or any marks, but exposes the electoral officer's initials on the back;
- c) placing the ballot in the inner envelope and sealing the envelope;
- d) completing and signing the voter declaration form in the presence of a witness who is at least 18 years of age;
- e) placing the inner envelope and the completed, signed and witnessed voter declaration form in the postage-paid envelope; and
- f) delivering, mailing or otherwise ensuring receipt by the electoral officer of the envelope before the close of polls on the day of the election.

66. Where an elector is unable to vote in the manner set out above, the elector may request accommodations for any disabilities in order to participate in voting by contacting the Electoral Officer at least ten (10) business days in advance of an election. For example, they may enlist the assistance of another person to mark the ballot and complete and sign the voter declaration form in accordance with that section.

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

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

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

M. Electronic (Digital) Voting

69. The electoral officer shall at least 35 days prior to the date on which the election is to be held, electronically mail to every elector who has provided the First Nation with an email address an electronic voting package,

- (a) To cast an electronic vote, an elector will:
 - i. access the website address provided;
 - ii. confirm their name, date of birth, and band membership or registry number;
 - iii. be provided the opportunity to update their personal contact information;
 - iv. confirm their desire to vote by electronic means;
 - v. confirm their eligibility to vote through electronic voting methods;
 - vi. declare their intent to vote;
 - vii. confirm intent to vote by entering their PIN (Personal Identification Number), Date of Birth and band membership or registry number;
 - viii. open the link to their electronic ballot sent by email and cast their vote; and
 - ix. confirm their vote.
- (b) Immediately after an electronic vote is completed the voters list will be automatically updated with the exact time, and date that the vote was cast and recorded for the elector.
- (c) Immediately after an electronic vote is completed an email will be automatically generated that confirms the vote of the elector was received and recorded to:
 - i. the elector; and
 - ii. the Electoral Officer.
- (d) Upon receipt of the email notification, the Electoral Officer will:
 - i. confirm that the voter is an elector and will record the vote;
 - ii. confirm that no other Mail-in Voting Package, in-person, or electronic vote was received for the same voter; and
 - iii. record the date when the vote was received.
- (e) Where the Electoral Officer is notified of an incomplete or failed electronic based - voter registration or vote, the Electoral Officer will contact the elector immediately with alternative voting solutions, including Mail-in Ballot or voting in person.
- (f) Electronic voting will end on close of polls, and the electronic voting platform will no longer be accessible by electors. Electronic voting must be completed by this time.
- (g) Immediately upon the closing of the poll, the approved digital contractor will automatically email to the Electoral Officer a link to the electronic based voting results

and make the information accessible on the electronic voting platform to the Electoral Officer.

N. Election Day

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

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

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

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

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

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

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

Polling Hours

76. The polling station shall be open from 9 a.m. until 8 p.m. local time on the day of the election.

Verification of the Ballot Box

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

- a) open the ballot box and call such persons as may be present to witness that it is empty and complete a written statement to that effect, verified by a witness;

- b) lock and properly seal the ballot box in a manner preventing it from being opened without breaking the seal; and
- c) place the ballot box in public view for the reception of the ballots.

Secrecy and Security

78. Voting shall be by secret ballot.

79. No elector may vote by proxy or authorize another person to vote on their or her behalf.

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

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

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

In Person Voting Procedure

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

83. An elector who has voted by electronic based voting may not receive a ballot.

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

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

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

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

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

88. After receiving a ballot, an elector shall:

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

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

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

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

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

93. An elector who has inadvertently dealt with their ballot paper in such a manner that it cannot be conveniently used shall, on one occasion only, upon returning it to the electoral officer or deputy electoral officer, be entitled to obtain another ballot paper. The electoral officer or deputy electoral officer shall write the word "spoiled" upon the spoiled ballot paper and preserve it.

94. Any person who has received a ballot and who leaves the polling place without delivering the same to the electoral officer or a deputy electoral officer in the manner provided, or after receiving a ballot, refuses to vote, shall forfeit their right to vote at the election, and the electoral officer or deputy electoral officer shall make an entry in the voters list in the column for remarks opposite the name of such person to show that such person received a ballot and declined to vote,

and the electoral officer or deputy electoral officer shall, if returned, mark upon the face of the ballot the word "declined" and all ballots so marked shall be preserved.

Closing of the Polling Station

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

Counting of the Votes

Opening Mail-in Ballots

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

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

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

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

99. Immediately after the mail-in ballots, have been deposited in the ballot box the electoral officer or deputy electoral officer shall, in the presence of any candidates or their agents who are present, open all ballot boxes and examine each ballot. Candidates and/or their agents may witness the opening of all ballot boxes and the examination of each ballot.

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

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

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

- a) do not contain the initials of the electoral officer or deputy electoral officer;
- b) do not give a clear indication of the elector's intention;
- c) contain more votes than there are candidates to be elected – One for Chief and six for Councillor position, except that such ballot shall be good for any position where the eligible voter has not voted for more candidates than are to be elected; or
- d) contain a mark by which the voter can be identified.

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

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

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

Tie

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

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

108. If the recount fails to determine the successful candidate, the electoral officer shall call a by-election for that position.

O. Post-Election Procedures

Announcement

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

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

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

and post the election report in the polling place.

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

- a) sign and post, in the band administration building and/or an online members only secured area, the election report;
- b) mail and/or email a copy of the election report to all electors of the band; and
- c) forward a copy of the election report to the Executive Director of the First Nation.

Retention of Ballots and Other Election Material

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

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

P. Election Appeals

Timing

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

Grounds for Appeals

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

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

Submission

116. An appeal submitted to the Appeal Board must:

- a) be in writing and set out in an affidavit sworn before a notary public or duly appointed commissioner for taking oaths the facts substantiating the grounds for the appeal accompanied by any supporting documentation; and
- b) be accompanied by a payment in the amount of \$25.00.

Procedure

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

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

Response to the Allegations

118. Any candidate or the electoral officer may, within twelve (12) business days of the receipt of the appeal(s) by the candidate or electoral officer, forward to the Appeal Board by hand delivery or registered mail a written response to the appeal allegations, together with any supporting documentation.

Investigation

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

Decision

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

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

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

- a) mailed and/or electronically mailed to all electors, ; and
- b) posted in the band administration building and/or an online members only secured area.

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

Q. Appeal Board

Composition

123. The Appeal Board shall be composed of five (5) members as follows:

- a) a senior;
- b) two persons, at least 21 years of age, who is not a member of the band and who does not have a vested interest in the outcome of an election appeal or a petition for the removal of a council member from office; and
- c) a band member, at least 21 years of age, who is familiar with the traditions, values and language of the band and who does not have a vested interest in the outcome of an election appeal.
- d) A legal representative with knowledge concerning appeals.

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

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

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

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

128. The remaining members of the Appeal Board will select additional members as required to attain five (5).

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

Functions

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

- a) all election appeals; and
- b) all requests for the removal of a council member from office in accordance with this election code.

R. Removal of Council Members from Office

131. Subject a ruling under section 140, a Chief or a Councillor may be removed from office and their seat declared vacant if:

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

Procedure

132. Proceedings to remove a Chief or Councillor from office can be initiated by:

- a) Band Council Resolution- a majority of council members passing a band council resolution to revoke a position including:
 - i. the grounds on which removal of a Chief or Councillor is sought;
 - ii. the evidence in support of the resolution; and
 - iii. the signatures of all council members who voted for the removal.
- b) Elector petition- any elector submitting a petition on which shall appear:
 - i. the statement that the undersigned support the removal of the Chief or Councillor;
 - ii. the name of the Chief or Councillor;
 - iii. the grounds on which the removal of a Chief or Councillor is sought;
 - iv. the signatures of at least 20% of all eligible electors of the band in support of the petition;

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

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

- a) determine that the grounds put forth in the petition are either frivolous, vexatious in nature or unsubstantiated and dismiss the band council resolution or petition; or
- b) schedule a review hearing, which shall take place within 20 business days from the date on which the petition was submitted to the board.

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

136. In a case where the Appeal Board schedules a hearing under subsection 134 (b), the Board shall send a written notice of the hearing by registered mail or hand delivery to: Chief and Council, the Council member who is the subject of the petition for removal and a public notice to the petitioner(s).

137. The written notice described above shall set out:

- a) the nature of the hearing and all related particulars;
- b) the date, time and location of the hearing; and

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

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

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

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

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

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

142. If a council position is declared vacant by the Appeal Board, the Appeal Board may further declare that the Chief or Councillor removed from office is not eligible to be a candidate for an election under this code for up to the next two (2) elections.

S. Emergency Circumstances

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

T. Amendments

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

- a) a petition presented to council, signed by at least 25 eligible electors and setting out the specific area in this code proposed for amendment; or
- b) a band council resolution, signed by the majority of Council, which outlines general matters for review and amendments approved for consultation with membership

145. The council shall submit the proposed amendments to community consultation and determine the amendments for ratification vote, by band council resolution.

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

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

147. The notice provided above shall be:

- a) published in the community's newsletter, delivered or mailed to band electors, or by separate notice delivered or mailed to electors; and
- b) posted in the band administration building and/or an online members only secured area.

148. Should the majority of the votes cast on the amended code be in favour of the proposed amendments being brought to the code, the amended code is approved.

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

Minor amendments.

150. A ratification vote is not required for revisions made to this code that do not change the substance of this Code. Council may, from time to time, revise or update this Code. Revisions or updates may include:

- a) an amendment to any portion of the title of this code;
- b) rendering accurate a reference in this code to a clause in a different code or document after the amendment or renumbering of that clause;
- c) rendering accurate a reference in this code to a different code or parts thereof that has expired, been repealed, or been suspended;
- d) minor changes in this code as are required to reconcile seeming inconsistencies with any other code;
- e) minor improvements to the language in this code as may be required to more clearly indicate intention or meaning without resulting in a change in substance; and
- f) the correcting of grammatical or typographical errors.

THIS ELECTION CODE IS HEREBY DULY ENACTED by community ratification and approved by Chief and Council, Band Council Resolution _____ on the _____ day of _____, at Wahnapiatae First Nation, in the Province of Ontario.

A quorum of Council consists of Five (5) members of Council.

Chief Larry Roque _____

Councillor Bob Pitfield _____

Councillor Adam Roque _____

Councillor Craig Tyson _____

Councillor Mike Teddy _____