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Sn'Pintktn Penticton Indian Band

Custom Election Code

May 27, 2020

DRAFT

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CITATION

This Code may be cited as the *Penticton Indian Band Custom Election Code, 2020*.

DEFINITIONS AND REFERENCES

In this Code:

“**Appellant**” means an individual who submits an appeal in accordance with this Code with respect to an election;

“**Band**” means Sn’pintktn (Penticton Indian Band)

“**By-election**” means a special election held in between general elections for the purpose of filling a seat on Council that has become vacant;

“**Campaign**” means to advocate for the selection of a particular candidate in the election;

“**Candidate**” means a Band member who has accepted a nomination to run for a position of Chief or Councillor;

“**Chief**” means a person who is declared by the Chief Electoral Officer (CEO) to be elected to the position of Chief in accordance with this code;

“**Chief Electoral Officer**” (**CEO**) means a person, appointed by a quorum of Council under section 16 who is responsible for conducting an election process;

“**Code**” means the custom election system set out herein;

“**Complaints and Appeal Adjudicator**” means a person appointed by Council under section 147 to review and make decisions concerning petitions or requests for removal from office and election appeals;

“**Council**” means the body composed of those persons who are declared or elected into positions of Chief or Councillor;

“**Councillor**” means a person who is declared by the CEO to be elected to the position of Councillor under paragraph 50 (a) or section 116;

“**Deputy Electoral Officer**” (**DEO**) means a person appointed by a quorum of Council under section 16 to assist the Chief Electoral Officer in conducting an election process;

“**Election**” means a general election or by-election of the Band held pursuant to the provisions of this Code;

“Elector” means a person who:

- (a) is a registered member of the Penticton Indian Band on the day of an election; and
- (b) is at least eighteen (18) years of age or older on the day of an election;

“Mail-in ballot” means a ballot that is mailed or delivered to the CEO in accordance with this Code;

“Membership clerk” means the Band employee responsible for maintaining the Band’s membership list;

“Nomination meeting” means a meeting at which electors come forward to nominate and second candidates for an election;

“Nominee” means a Band member who has been nominated to run for a position of Chief or councillor but has not yet accepted that nomination;

“Ordinarily resident on the reserve” means the residential status of an elector who has their ordinary residence on the reserve, and the following factors are indicators of a person’s ordinary residence:

- (a) a registered member of the Penticton Indian Band
- (b) the place the person normally eats and sleeps;
- (c) the place the person receives mail; and
- (d) a place in proximity to the person’s place of employment;

A person may 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.

A person may be temporarily absent from a place of ordinary residence for education, medical or temporary employment reasons;

“Polling station” means a building, hall, room or other site at which voting takes place;

“Rejected ballots” mail-in ballots that are received after the close of polls on Election Day, that are not included in the tally of valid ballots cast during the counting of the votes;

“Spoiled ballots” means ballots that have been improperly marked or defaced by an elector or, mail-in ballots that are received without following the required direction, that are included in the tally of valid ballots cast during the counting of the votes;

“Voters list” means a list of Band members who are eligible to vote in an election.

THE COUNCIL

Composition and size

1. Council must consist of one (1) Chief and eight (8) Councillors

Quorum

2. A majority of sitting council

First Meeting of Council

3. The first meeting of Council must be held within thirty 30 days from the date that Council are elected.

Term of Office

4. The term of office for the positions of Chief and councillors is four (4) years.
5. Elections for the positions of Chief and councillors must be held every four (4) years.
6. The term of office for a newly elected Chief or councillor commences on the day the newly elected Chief of councillor swears their oath of office and continues until the earlier of:
 - (a) another Chief or councillor taking office in their place under this Code;
 - (b) the Chief or councillor ceasing to be a member of Council under this Code; or
 - (c) four (4) years from the date that the Chief or councillor swore their oath of office.
7. The successful candidate in a by-election must hold office for the remainder of the original term of office of the Chief or councillor whom he or she is elected to replace.
8. If a person is declared disqualified from office as a result of an election appeal, the successful replacement candidate must hold office for the remainder of the original term of office of the Chief or councillor whom he or she is elected to replace.

Vacancy

9. A Chief or Councillor position must become vacant if, while in office:
 - (a) The Chief or Councillor resigns in writing from office on their own accord;
 - (b) The Chief or Councillor is unable to perform the functions of their office for more than six (6) months due to illness;
 - (c) The Chief or Councillor dies;

- (d) The Chief or Councillors is removed from office in accordance with this Code; or
- (e) A quorum of Council determines that the Chief or Councillor is otherwise unable to fulfill the terms of office.

10. In the event that the office of a Chief or councillor is vacant and more than sixteen (16) months remain in that Chief or councillor's term, a by-election for that vacant position must be held within four (4) months after the date that the position is declared vacant.
11. If it is necessary to hold a by-election to maintain a seated quorum, a by-election may be held to replace a position of councillor that is vacant and that has less than sixteen (16) months remaining in the term of office.
12. (1) If a current councillor wishes to be a candidate for Chief in a by-election, they must resign their Council position in writing to the Band Administrator prior to the nomination meeting for the by-election.
 - (2) The position of a Councillor who resigns under subsection (1) will be voted on at the same by-election that is being held for the position of Chief.
 - (3) A resignation under subsection (1) is binding.
13. Except as expressly provided otherwise in this Code, the rules and procedures in this Code must apply to by-elections.

By-Election Not Required

14. (1) Subject to section 15, if less than sixteen (16) months remain in the term of office for a position of councillor that becomes vacant, a by-election must not be held.
15. If less than sixteen (16) months remain in the term of office for a position of Chief that becomes vacant, the remaining Council will appoint a councillor to represent the interests of the Band to third parties.

PRE-NOMINATION PROCEDURE

Posting for Chief Electoral Officer and Deputy Electoral Officer Positions

16. At least six months (6) months prior to the date that the term of office for a current Chief is set to expire, Chief Administrative Officer must put out a Request for Quotations and must state that the CEO and DEO are required:
 - (a) If they are a Band member, to provide a written affirmation that they give up any right to participate as an elector, candidate, campaigner or scrutineer in an election or any subsequent by-elections during the term of office to which an election relates;

- (b) To be at least eighteen (18) years of age;
- (c) To provide a copy of a criminal record check that shows the CEO or DEO has no convictions and that is completed no less than three (3) months before the CEO or DEO's appointment; and
- (d) To have direct experience in the conduct of elections, or to have completed education or training related to electoral administration;
- (e) Agree to comply with this Code, the Code of Conduct and all Penticton Indian Band laws, by-laws, policies and procedures.

Appointment of a Chief Electoral Officer (CEO) and Deputy Electoral Officer (DEO)

- 17.** At least five (5) months prior to the date that the term of office for a current Chief is set to expire, a quorum of Council must approve the selection of a CEO and DEO and set out;
- 18.** The appointment of a CEO and DEO must be in writing, signed by the Chief Administrative Officer and set out:
 - (a) The Contractor's full name and address;
 - (b) The deadline for when an election must be held; and
 - (c) The type of election which is to be conducted (general election or by-election).
- 19.** A CEO and DEO must accept their Contract by forwarding a letter of acceptance to the Chief Administrative Officer.

Oath of Office

- 20.** The CEO and DEO must, immediately after their approval;
 - (a) Uphold and sign all Penticton Indian Band related Conduct Forms; Code of Conduct, Confidentiality form and AUP.
 - (b) Fulfill the duties and responsibilities of their office under this Code;
 - (c) Carry out their duties faithfully, honestly, impartially and to the best of their abilities;
- 21.** Keep confidential all personal information they collect in carrying out their duties as CEO or DEO; and
- 22.** Always act in the best interests of the community in carrying out their duties.

Responsibilities and Ethics

23. The CEO is responsible for administering all pre-electoral, electoral and post-electoral processes and procedures prescribed in this Code and must;

- (a) Refrain from voting in an election or by-election to which he or she acts as CEO unless it is required that a vote be cast to break a tie;
- (b) Not be a Councillor or candidate in an election or by-election to which they act as CEO;
- (c) Uphold and abide by the rules and regulations established in this Code and pursuant to the Code of Conduct;
- (d) Remain neutral and professional in the conduct of their duties;
- (e) Not provide preferential treatment or express support for or opposition to any candidate;
- (f) Not accept anything of value (including, but not limited to money, offers of employment, gifts, travel) in exchange for preferential treatment or access to a public official or non-public information;
- (g) Not discriminate against anyone in the course of their duties;
- (h) Not use public office facilities for personal or partisan benefit;
- (i) Not pressure or intimidate other officials or personnel to favour a certain candidate; and
- (j) Avoid conflicts of interest, or the appearance of conflicts of interest, by not participating in decision making where the CEO has a conflict of interest in the matter at issue.

24. In the event that the CEO cannot fulfill their duties:

- (a) The DEO must immediately be responsible for the CEO's duties under the same level of responsibility and ethics as is expected of the CEO; or
- (b) In the absence of a DEO, the Chief Administrative Officer must immediately appoint a new CEO for approval by Council.

Voters List

25. Within four (4) months before the current Chief's term expires, the CEO must obtain from the membership clerk the names, Band membership numbers and dates of birth of all Band members who will have attained the age of eighteen (18) years on the date that an election is to be held.

26. Electors are responsible for providing the membership clerk with their current addresses.

- 27.** An elector's address must be used by the CEO 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.
- 28.** The CEO must not disclose an elector's personal information unless doing so is required by Law or the elector has provided their consent to the CEO to disclose that information for another specific purpose.
- 29.** At least ninety (90) days before the day that an election is to be held, the CEO must:
 - (a) Prepare a voters list in alphabetical order that contains the names of all Band members, who will have attained the age of eighteen (18) years on the date that an election is to be held;
 - (b) Post the voters list in a public area of the Band Administration building; and
 - (c) Post the voters list in other conspicuous places on the reserve as may be determined by the CEO.
- 30.** On request by an elector, the CEO or DEO must confirm whether the elector's name is on the voters list.
- 31.** The CEO must 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.
- 32.** No later than ten (10) business days prior to the date that an election is to be held, a person, or an elector acting on their behalf, may demonstrate that their name has been omitted from or not qualified to vote or incorrectly set out in the voters list by presenting the CEO with written evidence from the membership clerk that the elector:
 - (a) Is entitled to have their name entered on the Band list;
 - (b) Will be at least eighteen (18) years of age on the date that an election is to be held; and;
 - (c) Is qualified to vote in Band elections.
- 33.** After consideration of all information and representations relating to amendments of the voters list, the CEO must add or delete names from the voters list based on whether persons qualify as electors.
- 34.** The decision of the CEO under section 33 is final and is not subject to appeal.

Right to Vote

- 35.** An elector whose name appears on the voting list has a right to vote:
- (a) in person at a polling station on polling day;
 - (b) in person at an advance polling station during the advance polling period; or
 - (c) by mail-in ballot in accordance with this Code.
- 36.** A person whose name does not appear on the voters list must be entitled to vote on election day, provided that they present documentary proof to the CEO demonstrating that they are a qualified elector.

THE NOMINATION AND ELECTION DEADLINES

- 37.** A nomination meeting for the position of Chief is to be held in the third week of August in an electoral year.
- 38.** An election for the position of Chief is to be held in the third week of October in an electoral year.
- 39.** A nomination meeting for Council positions is to be held in the fourth full week of October in an electoral year.
- 40.** An election for Council positions is to be held in the second week of December in an electoral year.
- 41.** Subject to section 10, a by-election for the position of a Chief or councillor that has been declared vacant must be held within four (4) months of a vacancy.

Notice of Nomination Meetings

- 42.** The CEO must, at least fourteen (14) days before the date that a nomination meeting is to be held, cause a notice of the nomination meeting to be posted:
- (a) In at least two (2) conspicuous places on the reserve;
 - (b) On the Penticton Indian Band website; and,
 - (c) In the Band's newsletter.
- 43.** A notice of a nomination meeting for Chief or councillor positions must include:
- (a) The date, time, duration and location of the meeting;
 - (b) Notice that the voters list will be read by the CEO at the nomination meeting; and
 - (c) A description of the manner in which an elector can nominate a candidate, or second the nomination of a candidate as listed.

Eligibility to be a Valid Candidate

44. (1) To be entitled to run as a candidate, an elector must:

- (a) Be at least eighteen (18) years of age on or before the day of an election;
- (b) Be a registered member of the Band on or before the day of an election;
- (c) Consent to a criminal record search within five (5) days of being nominated;
- (d) Not have a history of removal from office or employment with the Band due to a contravention of the *Penticton Indian Band Financial Administration Law*;
- (e) Not have a history of being terminated from office or employment with the Band for just cause related to theft or fraud;
- (f) Not have a criminal conviction for an indictable offence, unless:
 - I. they have been granted a pardon; or
 - II. the conviction is related to the defence of Aboriginal rights and title;
- (g) Not owe any debt to the Band, unless they have a debt repayment agreement that was entered into at least six (6) months prior to the day of an election.

(2) If a candidate for the position of Chief is not successful in securing that position, that individual may be nominated in the subsequent nomination meeting for Council positions.

Eligibility to Nominate a Candidate

45. To be entitled to nominate a candidate, on the day of the nomination meeting the elector must be:

- (a) Present at the nomination meeting;
- (b) At least eighteen (18) years of age; and
- (c) Registered on the voters list.

Duration of Nomination Meeting

46. After the floor opens for nominations, nomination meetings must remain open for at least thirty (30) minutes.

Maintaining Order and Security at Nomination Meeting

47. The CEO must maintain order at all times during a nomination meeting and may cause to be removed any person who, in their opinion, is disrupting or otherwise interfering with the proceedings.

Nomination Meeting Procedure

- 48.** (1) Subject to subsections (2) and (3) a candidate must be nominated and seconded by an elector.
- (2) A candidate must not nominate or second themselves.
- (3) An elector must not nominate more than one candidate at each nomination meeting.
- 49.** (1) The CEO must open a nomination meeting by announcing:
- (a) The positions on Council that are vacant and open for nominations;
 - (b) The eligibility criteria in section 44 for persons wishing to run as candidates;
 - (c) The eligibility criteria in section 45 for persons wishing to nominate someone to run as a candidate;
 - (d) That each elector who is eligible to make a nomination may only nominate one (1) person to run as a candidate; and
 - (e) That the floor is open for nominations.
- (2) When an elector makes a nomination, the CEO must:
- (a) Record the name of the nominee, the nominator and the seconder;
 - (b) Ask those present at the meeting if they have any reason to believe that the nominee may not be eligible to be a candidate in an election; and
 - (c) Record any reasons provided by those present at the meeting for why a nominee may not be eligible to run as a candidate.
- 50.** At the end of a nomination meeting, the CEO must:
- (a) If only one (1) person has been nominated for the position of Chief and no person has raised a belief that the nominee may not be eligible to run as a candidate, declare that person to be elected by acclamation and announce that an election date for the position of Chief has been completed;
 - (b) If the number of persons nominated to serve as councillors does not exceed the number to be elected and no person has raised a belief that a nominee may not be eligible to run as a candidate, declare those persons to be elected by acclamation and announce that an election date for the positions of councillors has been completed;
 - (c) Where more than the required number of persons are nominated for Chief or councillor positions, announce that an election will be held and the date of that election.

Notice of Acclamation

51. If a candidate is declared elected by acclamation, the CEO must, within seven (7) days of the nomination meeting, post a notice of that candidate's declaration in the following places:

- (a) At least two (2) conspicuous places on the reserve;
- (b) On the Band's website; and
- (c) In the Band's community newsletter.

Notice of Election

52. If a nomination meeting is held and the position of a Chief or councillor is not declared, the CEO must, within seven (7) days of the nomination meeting, post a notice of election in the following places:

- (a) At least two (2) conspicuous places on the reserve;
- (b) On the Band's website; and
- (c) In the Band's community newsletter.

53. A notice of election must include:

- (a) The candidates' names;
- (b) An election date;
- (c) The times when the polling station(s) and advanced poll(s) will open and close;
- (d) The location(s) of the polling station(s);
- (e) The time and location of the counting of the votes; and
- (f) A statement that the voters list is posted for public viewing and its location.

Accepting Candidacy

54. Within five (5) days of being nominated, a nominee must:

- (a) Complete and sign a notice of acceptance of nomination;
- (b) Complete and sign a declaration confirming their eligibility to be a candidate;
- (c) Complete and submit a criminal record search form to the local police station, naming the CEO in part 2 of that form as a party to receive a copy of the completed criminal record search by mail at the following address:

Penticton Indian Band
841 Westhills Dr.

Withdrawal

55. A candidate may only withdraw their candidacy up fourteen (14) days of the nomination date by submitting a written withdrawal of nomination to the CEO.

Campaigning Conduct

56. Candidates may campaign up until the day prior to the election date.

57. While campaigning, a Candidate must:

- (a) Not use coercion or vote-buying;
- (b) Respect the rights and freedoms of other candidates to organize and campaign;
- (c) Respect the rights of electors to obtain information from a variety of sources and to attend political meetings;
- (d) Act ethically, focusing on political issues and candidate platforms;
- (e) Act in a non-violent manner and refrain from intimidating opposing candidates, supporters or the media;
- (f) Respect the freedom of the press to cover the campaign and to express opinions on the campaign; and
- (g) Respect and not interfere with the duties of the CEO, DEO or polling clerks.

58. On the day an election is held, a candidate may not:

- (a) Campaign;
- (b) Distribute campaign-related materials;
- (c) Attempt to interfere with or influence any elector in marking their ballot; or
- (d) Attempt to obtain information as to how an elector is about to vote or has voted at the polling station or within five hundred (500) meters of the polling station.

Offences Related to Campaigning

59. A person who contravenes any of the campaign restrictions listed in section 57 or 58 is guilty of an offence.

60. A person who is guilty of an offence under section 57 or 58 is liable to a fine of not more than one thousand dollars (\$1,000.00) payable; to PIB Elders Group.

PRE-ELECTION PROCEDURES AND SPECIAL VOTING

All-candidates Forum

- 61.** An all-candidates forum must take place no more than twenty-one (21) days after a nomination meeting has occurred.
- 62.** Immediately after a nomination meeting has occurred, the CEO must:
 - (a) Arrange the date, time and place for an all-candidates forum;
 - (b) Contact each candidate and invite them to participate in an all-candidates forum; and
 - (c) Confirm the names of those candidates who agree to participate in an all-candidates forum.
- 63.** At least seven (7) days before an all-candidates forum, the CEO must post an all candidates forum notice:
 - (a) In at least two (2) conspicuous places on the reserve;
 - (b) On the Penticton Indian Band website; and
 - (c) In the Band's newsletter.
- 64.** An all-candidates forum notice must:
 - (a) Provide details on the date, time and location of the all-candidates forum; and
 - (b) Invite electors to submit questions to the CEO no later than the day before the all-candidates forum for the CEO to consider asking at the all-candidates forum.
- 65.** The CEO must moderate an all candidates forum and:
 - (a) Ensure each candidate is provided no more or less than five (5) minutes to speak in relation to their election platform;
 - (b) Ask the candidates questions that are submitted by electors, or that directly relate to the role of Chief or the affairs of the Band, and allow each candidate equal response time;
 - (c) Open the floor to electors who may ask questions that are directly related to the vacant role or the affairs of the Band;
 - (d) Provide each elector who takes the floor no more three (3) minutes on the floor; and
 - (e) Allow each candidate equal response time to elector questions.

All-Candidates Forum Meeting Recordings

- 66.** (1) The CEO must ensure that a recording is made of the all-candidates forum.
- (2) At the request of an elector, the CEO must provide the elector with the recording of the all candidates forum.

Ballots

- 67.** (1) The CEO must prepare ballots setting out:
- (a) The position(s) being voted on;
 - (b) Instructions for marking the ballot; and
 - (c) The candidates' names in alphabetical order by surname with a box beside each candidates' name for the elector to mark their vote in.
- (2) The back of each ballot must be numbered.
- (3) Where two (2) or more candidates have the same name, the CEO must add to the ballots the necessary additional information required to distinguish between those candidates.
- (4) At the request of a candidate, a ballot may include a candidate's commonly used nickname.
- 68.** A mail-in ballot package must include:
- (a) A ballot initialled and numbered on the back by the CEO;
 - (b) An inner postage-paid return envelope, pre-addressed to the CEO;
 - (c) An inner envelope, marked "ballot" for insertion of the completed ballot, that fits inside the postage-paid return envelope, pre-addressed to the CEO;
 - (d) A voter declaration form setting out a space for:
 - I. the date the declaration form is filled out;
 - II. The name of the elector;
 - III. The elector's signature;
 - IV. The elector's membership number;
 - V. The elector's date of birth;
- (1) A statement that by signing the declaration form, the elector declares they are the person named on the envelope and that they know of no reason why they may be ineligible to vote in an election; and
- (2) The name, address and telephone number of a person who must witness the elector's signature;
- (a) The notice of election; and
 - (b) A letter of instruction setting out:

- (3) The method of voting by mail-in ballot;
- (4) That the mail-in ballot must be received prior to an election date;
- (5) That mail-in ballots that are not received prior to an election date will not be counted in the votes;
- (6) That electors may vote in person at any polling station on the day of an election if:
 - (a) They return their mail-in ballot to the CEO at the polling station; or
 - (b) They swear a written declaration before the CEO they have lost the mail-in ballot.

Duty to Document Mail-in Ballot Package Distribution

69. The CEO has a duty to document the following on the voters list:

- (a) All elector requests for mail-in ballots, including the:
 - I. name of the elector,
 - II. Date the request is received, and
 - III. Whether the request is an initial request or a request for a replacement mail-in ballot package;
- (b) All mail-in ballot packages sent to an elector, including:
 - I. the name and address of the elector to whom a mail-in ballot package is sent,
 - II. The date a mail-in ballot package is sent out,
 - III. The number on the back of the ballot in each mail-in ballot package, and
 - IV. Whether the mail-in ballot package is an original package or a replacement package.

MAIL-IN BALLOT REQUESTS – ELECTORS NOT ORDINARILY RESIDENT ON RESERVE

- 70.** At least forty-two (42) days prior to an election, an elector who is not ordinarily resident on the reserve may make a written request to the CEO for a mail-in ballot package.
- 71.** At least twenty (20) days prior to an election, an elector who is not ordinarily resident on the reserve and who has requested but not received a mail-in ballot package may make a written request to the CEO for a replacement mail-in ballot package.

Mail-in Ballot Request – Electors Ordinarily Resident on Reserve

72. At least twenty (20) days prior to an election, an elector who is ordinarily resident on the reserve and who is unable to vote in-person may make a written request to the CEO for a mail-in ballot package.

Distribution of Mail-in Ballots

73. The CEO must send a mail-in ballot package:

- (a) At least twenty-eight (28) days prior to an election, to every elector who has made a written request under section 70 and 71;
- (b) Immediately, to every elector who has made a written request under section 72.

Voting by Mail-in Ballot

74. To vote by mail-in ballot an elector must:

- (a) Place a mark, which does not identify the elector, on the ballot opposite the name of the candidate or candidates for whom he or she desires to vote;
- (b) Fold the ballot in a manner that conceals the names of the candidates or any marks, and that exposes the CEO's initials on the back;
- (c) Place the ballot in the inner envelope and seal the envelope;
- (d) Complete and sign the voter declaration form in the presence of a witness who is at least eighteen (18) years of age and have the witness sign the voter declaration form confirming that the elector is the individual who signed the form;
- (e) Place the inner envelope and the completed, signed and witnessed voter declaration form in the postage-paid envelope; and
- (f) Ensure the mail-in ballot is received by the CEO before the close of polls on Election Day.

75. (1) Where an elector is unable to personally complete the mail-in ballot procedure, the elector may enlist an assistant to mark the mail-in ballot forms on the elector's behalf and in accordance with the elector's instructions.

(2) If an assistant is used pursuant to subsection (1), the assistant must attest in writing:

- (a) That the elector is the person whose name is set out in the ballot; and
- (b) That the ballot was marked according to the directions of the elector; and
- (c) Provide their name, address and phone number for the CEO.

Receiving Mail-in Ballots

- 76.** The CEO must stamp “received” the date a mail-in ballot is received and must, as soon as practicable, deposit the mail-in ballots in the mail-in ballot box unopened.
- 77.** The CEO must keep the mail-in ballot box locked in the vault at the Band Administration Office until the day of an election.

Set-up of Polling Stations

- 78.** The CEO must establish at least one (1) polling station on the reserve.
- 79.** The CEO may appoint security to maintain order in the polling station.
- 80.** The CEO must ensure that an interpreter is available at each polling station to assist voters who have difficulty reading or understanding English.
- 81.** Before the polling station is open, the CEO must ensure each polling station is supplied with:
 - (a) Ballot boxes which must be constructed so that ballots can be inserted into them, but so that ballots cannot be withdrawn unless the box is opened;
 - (b) A voting compartment for each ballot box that allows electors to mark their ballots free from observation by others;
 - (c) A sufficient number of ballots for each elector to vote;
 - (d) Pen or Pencil for marking the ballots;
 - (e) Voting instructions for each voting compartment;
 - (f) All other equipment and personnel necessary to establish and equip the polling stations; and
 - (g) The final voters list.
- 82.** The CEO must set up a station for candidate scrutineers to sit near the polling stations but away from the ballot booths and away from the location of the CEO and DEO.

ADVANCE POLLING

- 83.** The CEO must establish an advance polling station to be open from 9 a.m. until 8 p.m. for five (5) business days prior to an election.
- 84.** The CEO or DEO must follow the polling station requirements set out in sections 86 to 92, and the voting procedures set out in sections 93 to 101 to administer the advance polling station.

85. The advance polling ballot box must be locked in the vault at the Band Administration Office:

- (a) From 8 p.m. until 9 a.m. each day of the advance polling period; and
- (b) From 8 p.m. on the last day of the advance polling period until the advance polling ballots require counting.

ELECTION DAY

Scrutineers

86. Each candidate is entitled to have a maximum of two (2) scrutineers present in the designated area at the polling station.

87. A scrutineer must:

- (a) Provide the CEO or DEO with a letter signed by the candidate nominating them as a scrutineer;
- (b) Not campaign in the polling station;
- (c) Not be a candidate; and
- (d) Remain in the designated area.

Polling Hours

88. The polling station must be open no later than 9 a.m. and remain open until at least 8 p.m. on the day of an election.

Verification of the Ballot Box

89. Immediately before the commencement of the poll, the CEO or DEO must:

- (a) Open each ballot box and call such persons as may be present to witness and verify in writing that each ballot box is empty;
- (b) Lock and properly seal each ballot box in a manner preventing it from being opened without breaking the seal; and
- (c) Place each ballot box in a voting compartment that allows electors to mark their ballots free from observation by others.

Secrecy of Votes and Security of Polling Stations

90. Voting must be by secret ballot.

91. At the discretion of the CEO and only in the case of a sudden emergency that precludes an elector to vote by mail-in ballot, an elector may vote by proxy or

authorize another person to vote on their behalf in a manner approved in writing by the CEO.

- 92.** The CEO or DEO must maintain order at all times in the polling stations and may cause to be removed any person who in any way interferes, disrupts or attempts to influence the orderly conduct of the poll.

Voting Procedure

- 93.** The only persons who may be present at a polling station on a polling day are:

- (a) The CEO and DEO;
- (b) The polling clerks;
- (c) Two (2) scrutineers for each candidate; and
- (d) Electors.

- 94.** (1) On arrival at the polling station, each elector must give their name to the CEO or DEO.

(2) Upon request by the CEO or DEO, the elector must provide photo identification.

(3) If the elector's name is set out in the voters list, the CEO or DEO must:

- (a) Initial a ballot;
- (b) Write the number on the back of the ballot down in the proper column of the voters list next to that elector's name; and
- (c) Provide the ballot to the elector.

- 95.** An elector to whom a mail-in ballot was mailed or provided may obtain a ballot and vote in person at a polling station if:

- (a) The elector returns the mail-in ballot to the CEO or DEO; or
- (b) Where the elector has lost the mail-in ballot, the elector signs a written affirmation in front of the CEO that the elector has lost the mail-in ballot.

- 96.** At the request of an elector, the CEO or DEO must explain to the elector the method of voting and the voting procedure.

- 97.** After receiving a ballot, an elector must:

- (a) Immediately proceed to the compartment provided for marking ballots;
- (b) Mark the ballot by placing a mark that clearly indicates the elector's choice for the exact number of vacant seats listed but does not in any way indicate who the elector is;
- (c) Ensure that the marks he or she makes on a ballot do not identify them as the elector;
- (d) Fold the ballot in a manner that conceals the names of the candidates

and any marks, but exposes the CEO's initials on the back; and

(e) Deliver the ballot to the CEO or DEO.

98. On receipt of a completed ballot, the CEO or DEO must, without unfolding the ballot:

(a) Verify the initials placed on the ballot; and

(b) Deposit the ballot in the ballot box in the presence of the elector and any other persons entitled to be present at the polling station.

99. Except where an interpreter or assistant is required in accordance with this Code, while an elector is in the compartment for the purpose of marking their ballot paper, no other person is allowed in the same compartment or to be in any position from which he or she can see the manner in which the elector marks their ballot paper.

100. Where an interpreter or an assistant is required, they may, at the elector's request, be permitted to remain with the elector requiring assistance throughout the voting process set out in section 97.

101. (1) Where an elector is unable to vote in the manner set out in section 97 they may request that the CEO or DEO assist by marking that elector's ballot in a manner consistent with the elector's wishes and placing the ballot in the ballot box.

(2) Where the CEO or DEO assists an elector in marking their ballot under subsection (1):

(a) Such assistance must be provided in the presence of a witness selected by the elector; and

(b) The CEO or DEO must make an entry on the voters list in the column for remarks opposite the name of that elector to show that the ballot paper was marked by them at the request of the elector and the reasons therefore.

Voting Irregularities

102. A ballot that does not record a vote cast for each vacant position shall be considered incomplete and a spoiled ballot.

103. (1) On one (1) occasion only, an elector who has inadvertently dealt with their ballot paper in such a manner that it cannot be conveniently used may return it to the CEO or DEO and request another ballot paper.

(2) Where a person makes a request under subsection (1), the CEO or DEO must:

(a) Write the word "cancelled" upon the rejected ballot paper and preserve it; and

(b) Issue a new ballot to the elector in accordance with section 97.

104. (1) Any elector who receives a ballot and leaves the polling station without delivering the same to the CEO or DEO in the manner provided, or who refuses to vote and leaves their ballot in the voting compartment or elsewhere at the polling station, must forfeit their right to vote at an election.

(2) Where an elector forfeits their right to vote pursuant to subsection (1), the CEO or DEO must:

(a) make an entry on the voters list in the column for remarks opposite the name of that elector to show that the elector received a ballot and declined to vote; and

(b) mark upon the face of the ballot, if it is available, the word “declined” and all ballots so marked must be preserved.

Closing the Polling Station

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

COUNTING OF THE VOTES

106. The counting of votes will commence immediately after the close of the polling station.

107. The following persons may be present for the counting of votes:

(a) Any person who is a candidate;

(b) Any person who is a scrutineer; and

(c) Any elector.

108. The CEO must supply a tally sheet to the DEO and all persons who are present.

109. The CEO must ensure each person who is present for the counting of the votes can see the tally and there is a system to supply a polling clerk with a method of recording the votes which is visible to all persons present for the counting of the votes.

Depositing Mail-in Ballot Votes

110. Immediately after the close of polling stations on Election Day, the CEO or DEO must open each envelope containing a mail-in ballot that was received before the close of the polls and without unfolding the ballot:

(a) Verify the envelope includes a completed voter declaration;

(b) Verify the voter has not already voted;

(c) Mark on the voters list that a vote has been cast for that elector;

- (d) Verify the ballot includes the initials of the CEO; and
- (e) Deposit the ballot into the ballot box; or
- (f) Reject the ballot and state out loud the reason for such rejection, if:
 - I. The ballot was not accompanied by a voter declaration form, or the voter declaration form is incomplete or is not signed or witnessed,
 - II. The name of the elector set out in the voter declaration form is not on the voters list, or
 - III. The voters list shows that the elector has already voted; or
 - IV. The ballot does not have the initial of the CEO

111. Mail-in ballots that are not received by the CEO before the close of polls on the day of an election must not be deposited in the ballot box and must not be counted.

Counting the Votes

112. (1) immediately after all of the mail-in ballots have been deposited in the ballot box, the CEO must:

- (a) Open all ballot boxes and empty their contents on to a table;
- (b) Examine each ballot;
- (c) State out loud that the CEO accepts or rejects each ballot;
- (d) If the ballot is accepted, call out the names of the candidates for whom the votes are cast on the ballot; and
- (e) Ask the DEO to mark the results of each ballot on a tally sheet.

(2) In examining the ballots, the CEO must determine any ballots spoiled that:

- (a) Do not contain the initials of the CEO or DEO;
- (b) Do not give a clear indication of the elector's intention;
- (c) Contain more or fewer votes than there are candidates to be elected;
or
- (d) Contain a mark by which the elector can be identified.

113. (1) The CEO or DEO must attach a note to each spoiled ballot setting out the reason for spoiling.

(2) The CEO or DEO must place all notes and reasons for objection in a large envelope which must be sealed once all the votes have been counted and tallied.

Final Tally

114. Once each ballot has been opened and the result of each ballot has been recorded, the DEO must provide the CEO with a final tally of:

- (a) The number of ballots which have been spoiled or rejected; and
- (b) The final tally of votes for each candidate.

Tie

115. (1) If it is not possible to determine the successful candidate(s) due to an equal number of votes being cast (i.e., tie vote), the CEO must conduct a recount and publicly announce the time and place for the recount in the presence of all those present in the counting of the votes.

(2) A recount under subsection (1) must take place immediately after the announcement by the CEO and in the presence of the candidates and their scrutineers who wish to attend.

(3) If the recount under subsection (1) fails to determine a successful candidate, the CEO must immediately cast their ballot in order to break the tie by:

- (a) placing the name of each candidate having the same number of votes on a separate piece of paper that is of equal size and weight, and placing each piece of paper in a box or other receptacle; and
 - (b) Drawing as many papers as there are positions available out of the box or receptacle.
 - (c) If the CEO is not a qualified elector, the DEO will cast the ballot set out in the process above
- (4) The candidate(s) whose name(s) appear on the pieces of paper the CEO has drawn from the receptacle in accordance with subsection (3) constitute the candidate(s) for whom the CEO/DEO must cast a vote.

POST-ELECTION PROCEDURES

Announcement

116. After completing the counting of the votes and establishing the successful candidates, the CEO must declare the candidate or candidates having the highest number of votes to be officially elected.

Election Report

117. Immediately after declaring the elected candidates, the CEO must complete and sign an election report which must contain:

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

118. Within four (4) days after declaring the elected candidates, the CEO must:

- (a) Sign an election report;
- (b) Post an election report on the Penticton Indian Band website;
- (c) Post an election report in at least one (1) conspicuous place on the reserve;
- (d) Publish an election report in the Band community newsletter;
- (e) Forward a copy of an election report to the Chief Administrative Officer; and
- (f) Forward a copy of an election report to Indigenous Services Canada.

Retention of Ballots and Other Election Material

119. (1) The CEO must deposit all ballot papers in sealed envelopes, including those rejected, spoiled and unused, and retain all ballots and materials in connection with an election until the later of:

- (a) Forty-five (45) days from the date that an election was held; and
- (b) The date a decision on an appeal is rendered under Part XIII.

(2) After the time period in subsection (1) has passed and unless directed otherwise by Council, the CEO may destroy the materials stated in subsection (1) in the presence of two (2) witnesses who must make a declaration that they witnessed the destruction of those materials.

Chief and Councillor Formalities

120. Within five (5) days of being declared the successful candidate of a Council position, a newly elected Chief or councillor must:

- (a) Swear an oath of office in front of the Chief Administrative Officer at a public inauguration ceremony, being Schedule A to this Code;
- (b) Agree in writing to abide by the Code of Conduct in front of the Chief Administrative Officer at a public inauguration ceremony, being Schedule

B to this Code;

(c) Swear an Oath of Confidentiality in front of the Chief Administrative Officer at a public inauguration ceremony, being Schedule C to this Code; and

- 121.** Where due to illness or another valid reason a candidate elected as Chief or councillor cannot complete the administrative steps required by section 120 within five (5) business days of being elected, he or she or an elector acting on their behalf may file a petition with the Chief Administrative Officer for an extension of time to do so.
- 122.** (1) The Chief Administrative Officer receiving a petition under section 121 must determine whether the circumstances justify an extension and provide the candidate making the request written notice of:
- (a) The Chief Administrative Officer's decision;
 - (b) If accepted, the extension period that is granted; and
 - (c) If denied, the reasons for such denial.
- (2) The Chief Administrative Officer must not grant an extension of time that exceeds one month from Election Day to complete the steps required by section 128.
- 123.** If a person elected as Chief or councillor does not complete the requirements of section 120 on or before the time period allowed under section 121 or 122, the Chief Administrative Officer must declare their seat vacant.
- 124.** If the Chief Administrative Officer declares a Chief or councillor's position vacant under section 123, they must give written notice of the declaration to the elected candidate whose seat is declared vacant and to the remaining elected Chief and councillors.
- 125.** Unless the vacancy occurring under section 123 results in a situation where the Council can no longer form a quorum, the position must remain vacant until such time as a by-election is held.

COMPLAINTS AND APPEALS

Complaints and Appeal Adjudicator

- 126.** If at least fifty (50) days before the date that an election is to be held a Complaints and Appeal Adjudicator has not been appointed, Chief Administrative Officer must appoint an Adjudicator.
- 127.** The Adjudicator must accept their appointment by forwarding a letter of acceptance to Council.

128. To be eligible to be appointed as an Adjudicator, a person must:

- (a) Be a practising member of the British Columbia legal profession; and
- (b) Not have previously acted for the Band except as a Complaints and Appeal Adjudicator.

129. The Adjudicator's term of office must commence on the date of their appointment and continue until her or she resigns or is removed by Council.

Oath of Office

130. The Adjudicator must execute an oath of office that states they will:

- (a) Abide by the rules and regulations established in this Code;
- (b) Remain neutral and professional in the conduct of their duties;
- (c) Not accept anything of value from a Penticton Indian Band member, including but not limited to, money, offers of employment, gifts and travel;
- (d) Not discriminate against anyone;
- (e) Avoid conflicts of interest, or the appearance of conflicts of interest; and
- (f) Withdraw from their position if they have a personal or private interest in the matter at issue.

Duties and Responsibilities

131. The Adjudicator must supervise and administer hearings that address Election appeals.

Adjudicator Hearings

132. The Adjudicator may hold any combination of written, electronic and oral hearings.

Grounds for Appeal

133. The following persons may submit a notice of appeal to the Adjudicator:

- (a) Following a Council decision to declare the office of a Chief or councillor vacant under section 123, that Chief or councillor whose position in office has been declared vacant;
- (b) Following an election, a candidate or elector who has reasonable grounds to believe that:
 - I. The person declared elected was not qualified to be a candidate;
 - II. The person declared elected violated this Code in a manner that

- might have affected the result of an election; or
- III. The person declared elected was not in compliance with section 44.

Limitation Period

134. (1) A notice of appeal must be submitted:

- (a) If the appeal is related to the results of an election, within seven (7) days from the date of an election; and

Notice of Appeal

135. (1) A notice of appeal must be in the form of an affidavit, sworn before a notary public or duly appointed commissioner for taking oaths, setting out the facts substantiating the grounds for the appeal, including:

- (a) The decision that is being appealed;
- (b) Why the decision should be changed;
- (c) The outcome requested;
- (d) The name, address and telephone number of the appellant;
- (e) If the appellant has an agent to act on the appellant's behalf in respect of the appeal, the name of the agent and a telephone number at which the agent may be contacted during regular business hours;
- (f) An address for delivery of any notices in respect of the appeal.

(2) A notice of appeal must be signed by the appellant or the appellant's agent and attach all supporting valid documentation.

Application Fee

136. An appellant must pay an application fee with the notice of appeal in the amount of one hundred dollars (\$100.00), to be paid by certified cheque or money order in the name of the Penticton Indian Band Youth Group.

Accepting or Rejecting the Appeal

137. Within five (5) business days of receiving a notice of appeal, the Adjudicator must:

- (a) Accept the appeal and forward a copy of the appeal and all supporting documents, by hand or registered mail, to:
- I. If it is an election appeal, the respondent, CEO and each candidate;
- II. If it is an appeal to a Council decision to dismiss a petition or request under section 9, the Council member to whom the appeal relates; or

(b) Dismiss the appeal and inform the applicant in writing, by hand or registered mail, that the appeal will not receive further consideration because:

- I. The application is not within the jurisdiction of the Adjudicator;
- II. The application was not filed within the applicable limitation period;
- III. The application is frivolous, vexatious, and trivial or gives rise to an abuse of process;
- IV. The application was made in bad faith or filed for an improper purpose or motive; or
- V. There is no reasonable prospect the application will succeed.

Summary Dismissal

138. (1) At any time after a notice of appeal is filed, the Adjudicator may dismiss all or part of the appeal if the Adjudicator determines that any of the following apply:

- (a) The application is not within the jurisdiction of the Adjudicator;
- (b) The application was not filed within the applicable limitation period;
- (c) The application is frivolous, vexatious or trivial or gives rise to an abuse of process;
- (d) The application was made in bad faith or filed for an improper purpose or motive; or
- (e) There is no reasonable prospect the application will succeed.

(2) Before dismissing all or part of a notice of appeal under subsection (1), the Adjudicator must give the applicant an opportunity to make written submissions or otherwise be heard.

139. If the Adjudicator dismisses all or part of notice of appeal under section 138, the Adjudicator must inform the applicant and any respondent of their decision in writing and give reasons for that decision.

Respondent Submissions

140. Within fourteen (14) days of receiving a copy of a notice of appeal from the Adjudicator, a respondent must:

- (a) Provide the Adjudicator with a written response to the appeal allegations that must be less than ten (10) pages in length, together with any supporting documentation, setting out that the respondent:
 - I. Admits all or part of the allegations made against them, or
 - II. Opposes all or part of the allegations made against them, or
- (b) By hand or registered mail, deliver to the Adjudicator a written request to make an oral submission in response to the appeal allegations.

141. (1) If a respondent makes a written request under paragraph 140(b), the Adjudicator must:

- (a) Set a date, time and location for the oral submission;
- (b) Provide the respondent with a written notice setting out the date, time and location for the oral submission; and
- (c) Conduct an oral submission hearing.

(2) The maximum length of time allowed for an oral submission must be thirty (30) minutes.

Admissibility of Evidence

142. The Adjudicator may receive and accept information that he or she considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.

Orders for Information

143. At any time before or during an appeal, but before making a decision, the Adjudicator may make an order requiring a person:

- (a) To attend an oral or electronic hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in an appeal, or
- (b) To produce for the Adjudicator a document or other evidence in the person's possession or control, as specified by the Adjudicator, that is admissible and relevant to an issue in an application.

Power to Make Final Orders

144. After hearing an election appeal, the Adjudicator must render a decision and make a final order that:

- (a) The appeal is dismissed because sufficient evidence does not exist to confirm that:
 - I. The person declared elected was not qualified to be a candidate,
 - II. The person declared elected violated this Code in a manner that might have affected the result of an election, or
 - III. The person declared elected was not in compliance with 44, or
- (b) An election of one or more of the Chief or Council positions is declared vacant because sufficient evidence did exist to confirm that:
 - I. The person declared elected was not qualified to be a candidate,
 - II. The person declared elected violated this Code in a manner that might have affected the result of an election, or

III. The person declared elected was not in compliance with section 44.

145. After hearing an appeal regarding a Council decision to remove a Chief or councillor, the Adjudicator must render a decision and order that:

- a) The Chief or councillor is not removed from office because sufficient evidence does not exist to confirm the allegations against that Chief or councillor; or
- (b) The Chief or councillor is removed from office because sufficient evidence does exist to confirm the allegations against that Chief or councillor.

Written Order and Reasons for Decision

146. The Adjudicator must:

- (a) Send a copy of their order and written reasons for their decision to the person who initiated the appeal and all respondents to the appeal; and
- (b) Retain a copy of their order and written reasons for their decision.

147. The order of an Adjudicator is final and not subject to appeal.

148. The decision of the Adjudicator is available to Penticton Indian Band members by request.

AMENDMENTS

Minor Amendments

149. Council may amend this Code by Band Council Resolution to:

- (a) Correct errors, omissions or inconsistencies in this Code; or
- (b) Permit secure electronic voting in elections.

Petition to make Major Amendments

150. All other amendments to this Code must be initiated by:

- (a) An elector submitting to the Council a petition setting out:
 - I. The proposed amendments to the Code;
 - II. The signature of the petitioner; and
 - III. The signatures of at least ten (10) percent of electors in support of the petition; or
- (b) A Chief or councillor submitting a request to have the matter considered at Council, setting out:

I. The proposed amendments to the Code; and

II. Signed by the Chief or councillor in support of the amendments.

151. Within five (5) business days of receiving a petition for an amendment to this Code, Council must:

(a) Place the matter on the agenda for the next regular meeting of Council that must occur at least twenty (20) days after receipt of the petition; and

(b) In writing by hand or by registered mail, notify the petitioner or requestor of the date and time that a Council meeting will be held to review the petition or request.

Notice of Petition

152. (1) Within five (5) business days of receiving the petition for an amendment to this Code, Council must prepare a notice of petition that:

(a) Summarizes the proposed amendments;

(b) Provides that a full copy of the proposed amendments can be viewed at the Band administration office;

(c) Describes the amendment process; and

(d) invites electors to make submissions in writing, and submit them to the Council within ten (10) business days,

(2) Chief Administrative Officer must post the notice of the petition:

(a) In the Band's newsletter; and

(b) In at least two (2) conspicuous places on the reserve.

Submission Period

153. Not more than fourteen (14) days after the posting of a notice of petition, electors may provide written comments to Council concerning the proposed amendments.

154. Council must review and consider all written comments of electors.

155. Following the submission period, Council may make such changes to the proposed amendments as they deem necessary in order to arrive at final draft of the amendments.

Community Approval of Major Amendments

156. The Council must present the final draft of the amendments at a community meeting at a date and time set by a quorum of Council.

157. If a majority of members attending the community meeting, vote in favour of the proposed amendments, Council must amend the Code accordingly.

REPEAL AND EFFECTIVE DATE

158. This Code repeals all prior election codes of the Penticton Indian Band.

159. This Code comes into force and effect on the day after it is approved by Council.

THIS CODE IS HEREBY DULY ENACTED by the Council on the 11th day of August 2020, at Penticton, in the Province of British Columbia.

A quorum of Council consists of the majority of seated Council.

Chief Christopher Chad Eneas

Councillor Vivian Lezard

Councillor Fred Kruger

Councillor Inez Pierre

Councillor Elliott Tonasket

Councillor Carlene George

Councillor Charlene Roberds

Councillor Clint George

Councillor Suzanne Johnson