



WHITE RIVER FIRST NATION

CONSOLIDATED CUSTOM

ELECTION CODE

AUGUST 27, 2010

Consolidated Custom Election Code of the White River First Nation

This Consolidated Custom Election Code has been certified by Barry Stuart, the Referendum Officer for the July/August 2011 White River First Nation Referendum, as reflecting the consensus of the First Nation's membership that was established through that Referendum process to change the rules previously recorded in the "Red Constitution" of 1996 for electing the First Nation's Chief and Council.

Pursuant to the August 27, 2010 decision of the Federal Court in File No. T-1080-08 (2010 FC 854), the following rules now take precedence over the provisions of Articles 6.1 to 6.4 and 7.1 to 7.13 of the Red Constitution governing the conduct of elections for Chief and Council:

Article 1 - Definitions

1. In this Code:

"Chief" means the Member who is elected by Eligible Voters as Chief in accordance with this Code;

"Code" means this Consolidated Custom Election Code of the White River First Nation;

"Council" means the Council of the First Nation consisting of one Chief and four Councillors elected in accordance with this Code;

"Councillor" means a Member elected by Eligible Voters as a Councillor in accordance with this Code;

"Electoral Officer" means the electoral officer appointed by Council;

"Eligible Voter" means a person 16 years of age or older as of the date of an election, who is either

- (a) a Status Member, or
- (b) a Non-Status Member holding Canadian citizenship;

"First Nation" means the White River First Nation;

"Member" means a person who is a Status Member or a Non-Status Member;

"Non-Status Member" means a person listed on the Citizenship List maintained by the First Nation under the Citizenship Code (attached as Schedule I to the Red Constitution) who is not a Status Member;

“Northern Tutchone Eligible Voter” means an Eligible Voter who belongs to the Northern Tutchone linguistic group;

“Red Constitution” means the Constitution of the First Nation adopted at the General Assembly of September 28 and 29, 1996;

“Status Member” means a registered status member of the First Nation under the *Indian Act* of Canada;

“Upper Tanana Eligible Voter” means an Eligible Voter who belongs to the Upper Tanana linguistic group.

Article 2 - The First Nation’s Council

- 2.1** The First Nation’s Council shall be composed of one Chief, four Councillors, and two alternate Councillors elected in accordance with this Code to serve for a term of three years.
- 2.2** Two Councillors and one alternate Councillor shall be elected by Northern Tutchone Eligible Voters, and two Councillors and one alternate Councillor shall be elected by Upper Tanana Eligible Voters, in accordance with this Code.
- 2.3** This Code does not alter the Council Operating Procedures, Conflict of Interest Rules or Rules of Conduct set out in Article 6.5 to 6.22 of the Red Constitution.

Article 3 - Electoral Officer

- 3.1** An Electoral Officer shall be appointed by the Council at least three months before a General Assembly at which the Chief and Council will be elected [*subject to Article 3.10*], and shall be responsible, in accordance with First Nation laws and this Code, for the registration of voters and for the supervision and conduct of nominations and elections, and shall have sole power to hear and decide all protests or disputes related to any matter within his or her responsibilities or power.
- 3.2** The Electoral Officer shall not be an Eligible Voter.
- 3.3** The Electoral Officer shall be appointed for a fixed term and may be reappointed.
- 3.4** The Electoral Officer
 - (a) shall conduct the First Nation’s elections in accordance with this Code and any other applicable rules and regulations respecting First Nation elections,
 - (b) shall have authority to modify time limits under this Code if he or she considers it necessary to do so to ensure the timely and fair conduct of the election, and

- (b) shall have authority to send such other notices or make other changes to the First Nation's election procedure as he or she may consider necessary to implement the results of the July/August 2011 Referendum.
- 3.5** At least two months before a General Assembly at which the Chief and Council will be elected,
 - (a) the Electoral Officer shall *[subject to Article 3.10]* ensure that a list of all Eligible Voters is prepared, and that such list identifies all Eligible Voters as either an Upper Tanana Eligible Voter or a Northern Tutchone Eligible Voter, and
 - (b) a Notice of Election shall be delivered to Eligible Voters, which shall include a Call for Nominations, and instructions for any Eligible Voter to contact the Electoral Officer if he or she would like to receive a mail-in ballot.
- 3.6** The Electoral Officer shall be responsible for preparing mail-in ballots, and distributing mail-in ballots to Eligible Voters who request one in accordance with the instructions specified in the Notice of Election.
- 3.7** The Electoral Officer may hold one or more advance polls for the election of Chief and Council at such time(s) and location(s) he or she considers appropriate.
- 3.8** At least two weeks before the General Assembly, a further notice of the date and place of the meeting and a copy of a tentative agenda shall be mailed and delivered to all Eligible Voters residing in the Yukon, and notice of the date and place of the meeting shall be published in a newspaper having circulation in the Yukon and broadcast upon radio or television in the Yukon.
- 3.9** The Electoral Officer shall *[subject to Article 3.10]* ensure that the list of all Eligible Voters is updated at least one week before the General Assembly at which the Chief and Council will be elected.
- 3.10** *[To facilitate the timely conduct of the Fall 2011 election, the time limits for appointment of the Electoral Officer under Article 3.1, and for preparing and updating a list of all Eligible Voters under Articles 3.5 and 3.9, do not apply in the Fall 2011. For the purposes of the Fall 2011 election, the Electoral Officer shall:*
 - (a) *prepare a list of Status Members and Non-Status Members who are 16 years of age or older as of the date of the election;*
 - (b) *notify Non-Status Members of the requirement to provide proof of Canadian citizenship to establish their eligibility to vote in the election; and*
 - (c) *give Non-Status Members the opportunity to provide proof of Canadian citizenship prior to or at the time of voting.]*

Article 4 - Nomination Process

- 4.1** A Call for Nominations under Article 3.5(b) shall invite any Eligible Voter to submit one or more nominations, in writing, for the election of:
- (a) candidates for Chief; and/or
 - (b) candidates for Councillor in the same linguistic group as the nominator.
- 4.2** Only Members who are 18 years of age or older shall be eligible for nomination for election as Chief or as a Councillor.
- 4.3** A Member may serve as a Chief or Councillor if he or she
- (a) has resided in the First Nation's Traditional Territory at least six months prior to nomination,
 - (b) has not been convicted of an indictable offence within three years before nomination,
 - (c) has not resigned from an elected First Nation position within three years before nomination and without justifiable cause, and
 - (d) is not under court order not to hold an elected office.
- 4.4** All nominees for election shall be required
- (a) to provide consent in writing to nomination, which must be received by the Electoral Officer by a deadline specified by the Electoral Officer, and
 - (b) to make a declaration in writing that they will be eligible to hold office in accordance with the requirements of Articles 4.2 and 4.3.
- 4.5** If there is a dispute over the eligibility of a nominee to hold office under Article 4.3 that cannot be resolved before the preparation of ballots under Article 5:
- (a) the nominee's name shall be listed on the applicable ballot prepared by the Electoral Officer under Article 5; and
 - (b) the dispute shall be determined by the Electoral Officer after the conclusion of the voting process under Article 5.
- 4.6** Any employee of the First Nation who is nominated for election shall take a leave of absence from their employment with the First Nation without pay for at least two weeks before the General Assembly at which the Chief and Council will be elected.

Article 5 - Voting Process

- 5.1** Elections for Chief and Councillors shall be held in conjunction with a General Assembly every three years [*provided that, in the case of the Fall 2011 election, the elections shall*

be held as soon as practicable in accordance with direction of the Referendum Officer for the July/August 2011 election].

- 5.2** The election of the Chief and Councillors shall be by secret ballot in accordance with this Code.

Election of the Chief

- 5.3** The Electoral Officer shall prepare a ballot alphabetically listing all valid nominees for the position of Chief.

- 5.4** Every Eligible Voter shall be entitled to cast one ballot for the position of Chief, using one of the following methods:

- (a) by mail-in ballot;
- (b) at an advance poll (if one or more advance polls are held by the Electoral Officer under Article 3.7); or
- (c) in person at the General Assembly.

- 5.5** If there are three or more candidates for the position of Chief, the ballot for the position of Chief will be a “preferential ballot”, as follows:

- (a) Eligible Voters shall write a “1” beside their first choice, a “2” beside their second choice, and so on, to rank as many candidates as they wish, in order of preference;
- (b) if no candidate receives 50% + 1 of the first choice votes, the ballots for the candidate with the fewest votes will be reassigned to those voters’ next preferences; and
- (c) this process shall be repeated until a candidate emerges with 50% + 1 of the votes, who shall be declared by the Electoral Officer as the winner and elected as Chief.

Election of Councillors

- 5.6** The Electoral Officer shall prepare

- (a) a ballot for the election of two Councillors and one alternate Councillor by Northern Tutchone Eligible Voters, alphabetically listing all valid nominees for those positions, and
- (b) a ballot for the election of two Councillors and one alternate Councillor by Upper Tanana Eligible Voters, alphabetically listing all valid nominees for those positions.

- 5.7** Every Eligible Voter shall be entitled to cast one ballot for the Councillor positions corresponding to his or her linguistic group, using one of the following methods:

- (a) by mail-in ballot;
- (b) at an advance poll (if one or more advance polls are held by the Electoral Officer under Article 3.7); or

(c) in person at the General Assembly.

- 5.8** Eligible Voters may vote for up to three candidates for Councillor on the ballot for the applicable linguistic group.
- 5.9** The two candidates receiving the most votes on each ballot shall be declared by the Electoral Officer to be elected as Councillors, and the next runner-up shall be declared by the Electoral Officer to be elected as an alternate Councillor.

Tie-Breaking

- 5.10** Any ties resulting from the above voting processes may be broken by further secret ballot of Eligible Voters (in the applicable linguistic group) at the General Assembly.

Declaration

- 5.11** All elected members of Council shall make a declaration in writing, sworn to or affirmed in front of a person having the authority to administer such oath, confirming their eligibility to hold office in accordance with the requirements of this Code and any other applicable First Nation election laws or regulations, and shall forfeit his or her seat on Council if any false information was provided in such declaration.

Article 6 - Amendments to Custom Election Code

- 6.1** Despite Article 19 of the Red Constitution, this Code may be amended by majority vote of Eligible Voters in a referendum, provided that the referendum process is similar in principle to the process used in the July/August 2011 Referendum requiring the participation of at least 60% of all Eligible Voters and at least 10 Eligible Voters belonging to each linguistic group, and thereby fairly reflects a consensus of the First Nation's Eligible Voters.
- 6.2** The topic of potential changes to the election process as set out in this Code shall be discussed at the Fall 2012 General Assembly, and the General Assembly may establish an Election Code Committee to give further consideration to such changes as soon as it is feasible to do so within the First Nation's budgetary constraints as recommended by Chief and Council.
- 6.3** The Election Code Committee shall be responsible for consulting with Members about possible changes to the election process, and shall provide a report and recommendations for consideration at a General Assembly after the report is issued.
- 6.4** The General Assembly considering the report of the Election Code Committee under Article 6.3 shall have the authority to refer proposed changes to the election process to a referendum for approval by majority vote in accordance with Article 6.1.