

April 23rd, 2021

Nee Tahi Buhn Election Code

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Whereas:

The Members of Nee Tahi Buhn have the inherent authority to manage their lands, resources and structures of government;

Whereas:

Elections for the Council of Nee Tahi Buhn have in past been held in accordance with Regulations Governing the Nee Tahi Buhn Elections (“the regulations”), approved by community members; and

Whereas:

The Members of Nee Tahi Buhn have indicated their desire to develop a new election process through passage of a Nee Tahi Buhn Election Code (the “election code”), replacing the regulations; and

Whereas:

The membership of Nee Tahi Buhn has ratified the proposed Election Code in a Referendum held on the 23rd day of April 2021

Therefore, in accordance with that ratification, the following shall be the Nee Tahi Buhn Election Code:

PART I – GENERAL

1. Definitions

- a. “Arbitrator” means an independent third party, who upon request of the Council, agrees to act in cases of appeals from the Electoral Officer’s decision concerning the Elector’s List and in cases of election appeals;
- b. “Band Manager” means the designated band manager for Nee Tahi Buhn;
- c. “Chief” means the candidate elected to Council as Chief pursuant to the Election Code;

- d. "Council" means the Council of Nee Tahi Buhn in office, duly elected under the Regulations;
- e. "Councillor" means the candidate elected to Council as a Councillor pursuant to the Election Code;
- f. "Deputy Chief" means the candidate elected to Council as Deputy Chief pursuant to the Election Code;
- g. "Deputy Electoral Officer" means any person appointed by the Electoral Officer for the purpose of assisting him/her in the carrying out of their duties under the Election Code;
- h. "Election" means an election or by-election for Council or a Member of Council; held pursuant to the Election Code;
- i. "Elector" means a person who is eligible to vote in elections or by-elections under the provisions of the Election Code;
- j. "Electoral Officer" means a person appointed by resolution of Council to ensure that all provisions set forth in this Election Code governing Elections and By-Elections are adhered to;
- k. "Electors' List" means an alphabetical list of eligible Electors indicating the name, business address and business telephone number of the electoral officer;
- l. "Majority" means fifty percent plus one;
- m. "Member(s)" means a person registered on the membership (band) list for Nee Tahi Buhn;
- n. "Ordinary Resident" means the place where, in the settled routine of that person's life, that person regularly, normally or customarily lives, for at least six months of the year;
- o. "Nee Tahi Buhn" means the body of people, also known as the Nee Tahi Buhn Indian Band under the *Indian Act*, for whose use and benefit in common Nee Tahi Buhn reserve lands have been set aside by His Majesty the King;
- p. "Nee Tahi Buhn Reserve Lands" means the existing Nee Tahi Buhn reserves, namely Francois Lake Reserve (Eagle Bay) I.R. No. 7, Omineca Reserve, I.R. No.1; the eastern half of Uncha

Reserve and Eastern Island, I.R. No.13A; Isaac Reserve, I.R.No 8 and any lands set apart by Canada in future as reserve lands for the use and benefit of Nee Tahi Buhn; and

2. a. If the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday.
- b. If the time for doing an act in the Nee Tahi Buhn administration building falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.

PART II

Election of Council

3. The Council shall consist of one Chief, One Deputy Chief, and Two Councillors.
4. The Council in office at the time this Election Code comes into effect, shall continue in office until the first election required to be held under this Election Code. Elections and By-Elections, after the election code comes into effect, shall be held in accordance with the Election Code.
5. The offices of Chief, Deputy Chief, and Councillors shall be determined at an election, or in the event of a vacancy on Council, at a By-Election by a vote of electors.
6. a. Elections under the Election Code shall be held on the first Friday of September. Unless a By-Election is required pursuant to the provisions of this Code, the first election, pursuant to the Election Code, shall be held on September 3, 2004.
- b. By-Elections under the Election Code shall be held on the date set by the Electoral Officer pursuant to Part XXIII of the Election Code.

PART III

Term of Office

7. The term of office for Members of Council elected under the Election Code shall be four years from the date of the Election.

PART IV

Eligibility of Electors

8. In order to be entitled to vote in an Election or By-Election held under the Election.

PART V

Eligibility of Candidates

9. Any candidate for the office of Chief, Deputy Chief, or Councillor must;
- a. Qualify as an Elector under the Election Code; and
 - b. be nominated for that office, in accordance with the procedures set out in the Election Code; and
 - c. must not have been convicted of an indictable offence in Canada or a felony in the United States within five years prior to their nomination.
10. A person may only be a candidate for one of the offices of Chief, Deputy Chief, or Councillor in any election or by-election.

PART VI

Appointment of the Electoral Officer

11. a. The Electoral Officer(s) shall be appointed by resolution of Council at least 45 days before the date scheduled for the election.
- b. If an Electoral Officer has not been appointed pursuant to section 11.a, the Electoral Officer shall be appointed by the Band Manager.
12. A Deputy Electoral Officer or Officers shall be appointed by the Electoral officer within 14 days of the appointment of the Electoral Officer.
13. In the case of a By-Election, the Electoral Officer and Deputy Electoral Officer(s) shall be appointed within seven days of the calling of the By-Election.

14. Every Electoral Officer and Deputy Electoral Officer shall swear an Oath of Office, in the form set out in “Schedule A” and attached hereto, before a Justice of the Peace, notary public or duly appointed commissioner for swearing Oaths of Office and shall file with the Band Manager the sworn Oaths of Office before assuming their office.

15. The Electoral Officer may make such order and issue such instructions consistent with the provisions of the Election Code, as he or she may from time to time deem necessary for the effective administration of this Election Code.

PART VII

Electors’ List

16. The Electoral Officer shall prepare an Elector’s List within 20 days of his or her appointment. The Electors’ List will be the official record of all eligible Electors for the next election.

17. The Electoral Officer shall post the Electors’ List in the Nee Tahí Buhn administration building and in other conspicuous place or places on Nee Tahí Buhn Reserve Lands as may be determined by the Electoral Officer no later than 20 days prior to the election.

18. The Electors’ List will show:

- a. the names of all eligible electors in alphabetical order; and
- b. the names of the Electoral Officer, their business address and business telephone number.

19. a. A person whose name does not appear or does not appear correctly on the Electors’ List and who believes that they are eligible to be an elector must, no later than fifteen (15) full days prior to the election, apply in writing to Electoral Officer to have their name added to the Electors’ List.

b. The application shall set out the reason(s) why the applicant's name should be added to the Electors' List and shall also include any documents supporting the application.

20. a. Where the Electoral Officer believes or has information that a person's name is on the Electors' List is not an eligible voter, or where an Elector applies in writing to the Electoral Officer to have another person's name removed from the Electors' because that person does not qualify as an Elector, the Electoral Officer shall give written notice ten (10) full days prior to the election to that person of the application to remove their name from the Electors' List.

b. The application pursuant to subsection (a) shall set out the reasons why a person's name should be removed from the Elector's List together with any document supporting the application.

c. The notice to a person whose name is intended to be removed from the Electors' List shall include the reasons of the Electoral Officer and any supporting documents, and shall give the person two (2) full days from the provision of the written notice within which to make written representations to the Electoral Officer as to whether or not they qualify as an Elector.

21. After consideration of all information and representations relating to amendments to the Electors' List, the Electoral Officer shall add or delete names to the Electors' List, based on whether persons qualify as Electors.

22. The Electoral Officer shall give a person whose name has been added or deleted to the Electors' List, written notice of the decision and shall post the decision in the Nee Tahi Buhn Reserve Lands.

23. a. Any person whose name has been deleted from the Electors' List or whose application to have their name added to the Electors' List has been rejected, or any Elector on the Electors' List may, within two (2) full

days or the posting of the Electoral Officer's decision, appeal that decision in writing to an Arbitrator.

b. The appeal shall be in writing, setting out the reasons why the applicant's name should be added to the Electors' List. The appeal shall include any documents upon which the applicant relies.

24. a. The arbitrator may make any decision with respect to the addition or deletion of a person's name from the Electors' List that could have been made by the Electoral Officer.

b. The Arbitrator shall use his or her best efforts to render a decision on an appeal at least two (2) full days prior to the election and shall notify the Electoral Officer of their decision. The failure of the Arbitrator to render a decision or provide the Electoral Officer with a copy of their decision at least two (2) full day prior to the election, is not grounds for challenging the validity of an election or the election of a candidate.

25. a. The Electoral Officer shall, at least one full day prior to the Advance Poll or if no Advance Poll is held, at least one full day prior to the election, post a final Electors' List in the Nee Tahi Buhn administration office and in other conspicuous place or places on Nee Tahi Buhn Reserve Lands as may be determined by the Electoral Officer.

b. Any person whose name does not appear on the final Electors' List shall not be entitled to vote in the election.

c. Any irregularity in the preparation or revision of the Elector's List shall not be grounds for opposing the validity of an election or the election of a candidate.

PART VIII

Nomination Process

26. The Electoral Officer shall post a Notice of Nomination Meeting, in the form set out in Schedule “C” and attached hereto, of the meeting of Electors held for the purpose of nominating candidates for Council.

27. The Notice of Nomination Meeting shall be posted in the Nee Tahi Buhn administration building and in other conspicuous places on Nee Tahi Buhn Reserve Lands, at least six full days prior to the scheduled nomination meeting.

28. The Nomination Meeting shall be held at least 15 full days before the date of the election.

29. The Notice of Nomination Meeting shall include:

- a. the date on which the meeting shall be held;
- b. the time of day when the meeting will be held;
- c. the location where the meeting will be held;
- d. the signature, name, business address and business telephone number of the Electoral Officer;
- e. the place(s) where copies of the Election Code may be obtained; and
- f. the place(s) where copies of the Electors’ List shall be posted.

30. As soon as the Notice of Nomination Meeting has been posted or immediately thereafter, the Electoral officer will cause the same information to be advertised in a newspaper of local circulation and in a native newspaper of circulation in the Province of British Columbia, if such a native newspaper is in operation.

31. Any Elector may propose or second a nomination of any duly qualified candidate to serve as Chief, Deputy Chief or Councillor.

32. a. if only one qualified candidate is nominated for the office of Chief, the Electoral Officer shall declare such candidate to be duly elected, subject to sections 37 and 38, and any appeal.

b. If only one (1) qualified candidate is nominated for the office of Deputy Chief, the Electoral Officer shall declare such candidate to be duly elected, subject to sections 37 and 38, and any appeal.

c. If only two (2) candidates are nominated for the office of Councillor, the Electoral Officer shall declare such candidates to be duly elected, subject to sections 37 and 38, and any appeal.

33. In the event of more than the required number of persons being nominated for the office of Chief, Deputy or Councillor, the Electoral Officer shall declare that a poll will be held.

34. Within 48 hours of the close of the nominations, the Electoral Officer shall post in the Nee Tahi Buhn administration building and in other conspicuous place or places on Nee Tahi Buhn Reserve Lands as may be determined by the Electoral Officer, a list of nominees and the offices on Council for which they are nominated.

35. a. Any person nominated who wishes to stand for election to Council must provide a written consent to, and pay for, a criminal record search, which shall be utilized by the Electoral Officer solely for the purpose of determining that candidate's eligibility under the Election Code.

b. The information received as a result of this search shall remain confidential, except for the purpose of any appeal with respect to the candidate's eligibility.

36. Once nominations are closed, the Electoral Officer shall require each candidate to establish their qualifications by completing the following documents:

a. a sworn Declaration in the form set out in Schedule "D" and attached hereto, confirming their eligibility as a candidate; and

b. a written Consent to a Criminal Record Search in the form that may be required by law enforcement agencies in Canada or the United

States together with payment of any fee required for Criminal Record Searches in Canada and the United States.

37. Any nominee who fails to file the documents and pay the fees required under section 36 with the Electoral Officer within three (3) full days of the date of the nomination meeting, shall have their name removed as a candidate.

38. Upon receipt of the documents and fees required under section 36, the Electoral Officer shall carry out a Criminal Record Search in Canada and the United States to confirm the eligibility of all candidates.

PART IX

Withdrawal of Candidates

39. a. Any candidate who has been nominated may withdraw their nomination within five (5) full days after the nomination day.

b. Any candidate withdrawing his or her nomination shall file with the Electoral Officer a Notice of Withdrawal, in the form set out in Schedule “E” and attached hereto.

40. If nominated for more than one office, a candidate must withdraw from running for all but one office. If a candidate has not withdrawn from other candidates, the Electoral Officer shall remove the name of that candidate from all offices for which they were nominated.

PART X

Notice of Final List of Candidates

41. The Electoral Officer shall, at least five (5) full days prior to the date of the election, post in the Nee Tahi Buhn Reserve Lands as may be determined by the Electoral Officer, a final list of candidates and the offices for which they are nominated, and the time and place for elections.

PART XI

Notice of Polls

42. Whenever a poll is to be taken, the Electoral Officer shall, at least ten (10) full days prior to the date of the election, post in the Nee Tahí Buhn administration building and in other conspicuous place or places on Nee Tahí Buhn Reserve Lands as may be determined by the Electoral Officer, a Notice of Polls in the form set out in Schedule “F” and attached hereto.

43. The Notice of Polls shall include:

- a. the date of the election and the date of the Advance Poll; and
- b. the times of day the polling stations will be open and closed; and
- c. the signature, name, business address and business telephone number of the Electoral Officer; and
- d. a statement that an Electors’ List is posted in the Nee Tahí Buhn administration building.

44. The Notice of Polls shall be published in a newspaper of local circulation and in a native newspaper of circulation in the Province of British Columbia, if such a native newspaper is in operation.

PART XII

Advance Polls

45. An Advance Poll shall take place no less than three (3) full days prior to the date of the election. The Advance Poll shall be conducted in the same manner as procedures for an election.

46. a. Any Elector wishing to cast his or her vote at an Advance Poll, must apply in writing to the Electoral Officer at least ten (10) full days prior to the election date, and upon the Electoral Officer being satisfied

that the applicant cannot vote on the date of the election, shall permit him or her to vote at the Advance Poll.

b. For the purposes of subsection (a), the Electoral Officer shall consider such criteria as hospitalization, education, training, employment or travel commitments, and physical incapacity.

47. The Electoral Officer shall notify the Elector in writing of their decision at least two (2) full days prior to the Advance Poll.

48. a. At the close of the Advance Poll, the Electoral Officer shall seal and secure the ballot boxes and retain them until the end of the date of the election.

b. At the close of the polls on the date of the election, the Electoral Officer shall bring the ballot boxes from the Advance Poll to a polling station, at which time they shall be opened and the ballots counted in the same manner as the ballots for that polling station.

49. In all other respects, voting procedures at the Advance Poll shall be carried out in the same manner as voting on the date of the election.

PART XIII

Preparation of Ballots

50. The Electoral Officer shall prepare ballots in the form set out in Schedule “F” and attached hereto.

51. The ballot shall list the candidates for office in alphabetical order, and at the request of the candidate, may include a candidate’s commonly used nickname.

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

PART XIV

Voting Procedures

53. The Electoral Officer shall procure as many ballot boxes as there are polling stations and sufficient ballots for the election.

54. The Electoral Officer or the Deputy Electoral Officer shall, before the polling station is open, supply the polling station with;

- a. ballot boxes; and
- b. a sufficient number of ballots; and
- c. the final Electors' List; and
- d. the necessary materials for marking ballots; and
- e. a Ballot Tally Sheet, in the form set out in Schedule "H" and attached hereto.

55. The Electoral Officer shall provide in the polling station an area where the Electors can mark their ballots free from observation and the Electoral Officer may appoint a Sargeant-at-arms to maintain order at the polling station.

56. The polling stations shall be kept open from 8:00 a.m. until 8:00 p.m., in the event of the same day.

57. Any 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.

58. Save and except for the Electoral Officer, Deputy Electoral Officer or any Sargeant-at-Arms appointed by Council to keep the peace, no one other than the Elector, or in the case of an elderly or physically incapacitated person, an attendant, is permitted to be within the polling station.

59. Every person in attendance at a polling station or at the counting of votes, shall maintain and aid in the maintaining of secrecy of voting.

60. No person shall interfere or attempt to interfere with an Elector when marking his or her ballot or attempt to obtain at the polling station information as to how an Elector is about to vote or has voted.

61. Where a person is deemed to have interfered in the manner described in section 60 and refuses to leave the polling station, the electoral Officer may remove the person or instruct the Sergeant-at-Arms and any other Deputy Electoral Officers, confirm that it is empty and complete the statement in Schedule “H”;

b. shall then lock and properly seal the ballot box, in a manner preventing it from being opened without breaking the seal;

c. shall place the ballot box in public view for the reception of the ballots; and

d. does not break nor open the seal until after the closing of polls for the election.

63. a. Each person presenting themselves at a polling station for the purpose of voting shall sign the sign-in sheet presented to him or her by the Electoral Officer or Deputy Electoral Officer and further identify themselves by listing their membership number on the sign-in sheet.

b. Where a person presents him/herself in accordance with this section, the Electoral Officer or Deputy Electoral Officer shall, if satisfied that such person is an Elector and is not under the influence of alcohol or drugs, provide him/her with a ballot, initialed by the Electoral Officer.

64. The Electoral Officer or Deputy Electoral Officer shall place in the proper column of the Electors’ List, a mark opposite the name of every Elector receiving a ballot.

65. The Electoral Officer or Deputy Electoral Officer shall, when requested to do so, explain the method of voting to the Elector.

66. Voting at all elections shall be by secret ballot, and a vote may only be cast by an Elector. There shall be no voting by proxy or other form of authorization allowing another person to vote on behalf of the Elector.

67. Upon receiving the ballot, each Elector shall:

a. Immediately proceed to the voting compartment and place an “X” or other mark clearly indicating his or her choice in the box beside the name of the candidate or candidates for whom they are voting;

b. fold the ballot, so as to conceal their choice in such a manner that exposes the initials of the Electoral Officer; and

c. without unfolding the ballot, have the Deputy Electoral Officer verify his or her initials and at once deposit the ballot into the ballot box in the presence of the Electoral Officer or the Deputy Electoral Officer.

68. An Elector who inadvertently spoils his or her ballot may return it to the Electoral Officer or Deputy Electoral Officer shall write the word “void” upon the spoiled ballot, deposit it in the ballot box and provide the Elector with a new ballot.

69. An Elector who has received a ballot and subsequently decides not to vote, must return the ballot to the Electoral Officer or Deputy Electoral Officer, who shall mark the word “declined” on the face of the ballot deposit it into the ballot box.

70. An Elector forfeits his or her right to vote at the election after being provided a ballot by the Electoral Officer or Deputy Electoral Officer, if that person leaves the polling station without delivering the ballot to the Electoral Officer or the Deputy Electoral Officer.

71. a. Any Elector who requires assistance may request that the Electoral Officer or Deputy Electoral Officer vote on their behalf for the candidate of the Elector’s choice in their presence and in the presence of any other person chosen by the Elector other than a candidate; and

b. In the event that an Elector votes in the manner described in subsection (a), the Electoral Officer or Deputy Electoral Officer shall note on the Elections List in the column for remarks opposite the name of such Elector, the fact that the ballot was marked by him or her in the presence of the Elector and any person chosen by the Elector and the reasons therefore; and

c. Except as in the manner provided in this section, the Electoral Officer or Deputy Electoral Officer shall ensure the Elector's privacy while in the voting compartment.

PART XV

Counting Procedures

72. Immediately after the close of the polls, the Electoral Officer shall allow Electors into the polling station and shall open the ballot boxes.

73. The Electoral Officer or Deputy Electoral Officer shall examine the ballots and reject all those:

a. that have not been initialed by the Electoral Officer or Deputy Electoral Officer. Or

b. that contain more votes than are candidates to be elected; or

c. that contain marks made by the voter other than an "X" or other mark clearly indicating his or her choice; or

d. that are marked in such a way that the voter can be identified.

74. the Electoral Officer or Deputy Electoral Officer shall report in writing the reasons for rejection of each ballot and attach that report to the rejected ballot.

75. The rejected ballot and the written decision shall be held by the Electoral Officer as evidence until the expiration of any appeal period provided for in the Election Code.

76. The Electoral Officer or Deputy Electoral Officer shall;

- a. count the confirmed ballots for each candidate; and
- b. at the conclusion of the count, make a written statement in the form set out in Schedule “H” and attached hereto, of the number of confirmed votes and the number of rejected ballots and shall sign that statement with any Scrutineer’s present as witnesses.

PART XVI

Declaration of Results of Election

77. Immediately after the completion of the counting of the votes, the Electoral Officer shall, in the Nee Tahi Buhn administration building, in presence of any electors who choose to be present, publicly declare:

- a. a candidate for Chief with the highest number of votes to be elected;
- b. the candidate for Deputy Chief with the highest number of votes be elected; and
- c. the two candidates for Councilor with highest number of votes to be elected.

78. In circumstances where two or more candidates have an equal number of votes for the position of Chief or Deputy Chief, or where two or more candidates have an equal number of votes for the second position as a Councilor, the Electoral Officer shall, when publicly declaring a tie for position in question.

79. In the event of a tie for a position, the Electoral Officer shall:

- a. count all eligible electors that are present, and

b. distribute ballot sheets for those eligible electors, listing the candidates and positions for which a tie exists.

80. Where a vote is held to break a tie for a position, the electors present shall:

a. place an “X” or other mark, clearly indicating his or her choice in the box beside the name of the candidate for whom they are voting.

b. fold the ballot so as to conceal their choice, and

c. without unfolding the ballot, deposit the ballot into a ballot box in the presence of the Electoral Officer.

81. Where a vote is held to break a tie, the Electoral Officer shall, when all electors present have deposited their ballots in the ballot box or after the expiration of 30 minutes from distribution of the ballots;

a. count the confirmed ballots for each candidate; and

b. at the conclusion of the count, make a written statement in the form set out in Schedule “I” and attach hereto, stating the number of votes each of the positions to be determined in the tie breaking vote to be elected.

82. Immediately after completion of the counting of votes, the Electoral Officer shall publicly declare the candidate(s) with the highest number of votes for each of the positions to be determined in the tie-breaking vote to be elected.

83. In the case where a tie still exists, the procedure set out in this Part shall be repeated until there’s no longer a tie for that position.

PART XVII

Disposal of Ballots

84. The Electoral Officer shall place all ballots in a sealed envelope and shall retain them in his or her possession for eight weeks from the date of

the election. If no appeal is made pursuant to provisions of the Election Code the Electoral Officer shall destroy all ballots in the presence of two witnesses who shall make a Declaration that they witnessed the destruction of the ballots. A copy of the witnesses' Declaration shall be forwarded to the Band Manager.

PART XVIII

Oath of Office

85. A candidate who has been elected Chief, Deputy Chief or Councilor shall, before taking his or her office, swear an Oath of Office in the form set out in Schedule "I" and attached hereto, before a Justice of the Peace, Notary of the Public or duly appointed Commissioner for Oaths, and shall file it with the Band Manager.

86. a. Subject to sub-section (b), the swearing in of Chief, Deputy Chief and Councilors shall take place on a date set by the Electoral Officer not later than seven days after the date of the election.

b. Where there is an appeal with respect to the validity of the election of a candidate, or where a new election for a position is required because of the tie, the swearing in for that office will be extended to a time not later than seven days after a decision on an appeal is rendered or after the tie breaking election is held.

87. No Chief, Deputy Chief or Councilor shall be permitted to assume their office until they have sworn and filed the Oath of Office. If the Oath of Office has not been filed prior to date set for the swearing in under section 86, the office shall be declared vacant by the Electoral Officer and a by-election shall be held in accordance with the Election Code.

88. The Chief, Deputy Chief or Councilor shall, during their term of office and afterward, comply with provisions of the Oath of Office.

PART XIX

Election Appeals

89. a. Any Elector may present a petition in writing verified by a sworn Declaration to the Band Manager within 15 days from the date upon which the member of Council was declared elected, requesting that the election for the Chief, Deputy Chief or Councilor be declared invalvid, based on one or more of the following grounds:

i. the person declared to be elected was not qualified as a candidate, or

II. the person declared to be elected was not nominated in accordance with the procedures set out in the Election Code

III. the election was not conducted in accordance with the Election Code, or

IV. there was corrupt or fraudulent practice in relation to the election.

b. The petition shall also set out the facts substantiating the ground for declaring the election of the Chief, Deputy Chief or Councilor to be invalid and shall be accompanied by any documents relied on to support the petition.

90. The Electors appealing the election of a candidate shall deposit with the Band Manager together with the petition, security for costs in the amount of Five Hundred (\$500.00) dollars.

91. a. Upon receipt of the election appeal petition, related document and the security for costs, the Band Manager shall forward the petition and relations documents to the person whose election is sought to be declared invalid.

b. A person whose elector is sought to be declared invalid shall have seven days from the receipt of the material to file with the Band Manager a written reply to the petition.

92. Upon expiration of the time to file a reply, the Band Manager shall forward the election appeal petition, related documents and any reply to the Arbitrator to hear and determine the matter raised in the petition.

93. The Arbitrator may, in his or her discretion, give discretion as the need arises for.

a. fixing the times and places for the hearing(s) of the petition; and

b. designating the method of taking evidence, either by sworn declaration or written testimony, or both; provided that any allegations of bribery or corrupt practices shall be proved by oral discretion, declare that some other person was duly elected or that no other person was duly elected.

c. designating what persons are to be notified and how they are to be served, whether personally or substitutionally: and

d. dealing with any matter or thing not otherwise provided for.

94. No Witness shall be required to divulge whom he/she voted for at the election.

95. a. The Arbitrator shall, in its decision on the appeal, make a declaration confirming or invalidating the election of the candidate in question.

b. The Arbitrator may, in his or her discretion, declare that some other person was duly elected or that no other person was duly elected.

96. The Election of a Member of Council shall not be declared invalid by reason only of an irregular or non-compliance with the Election Code or any mistake in the use of the forms in the schedules of it if it appears to the

Arbitrator that the election was conducted in good faith and in accordance with the principles laid down by the election code, unless the non-compliance, irregularity or mistake materially affected the result of the election.

97. if the election of a candidate is declared invalid, the Arbitrator shall order that any person found not to have been duly elected shall be removed from office; and if it is adjudged that some other person was duly elected, the Arbitrator shall order that such person be admitted forthwith to the office upon their taking the prescribed Oath of Office within seven (7) days of the making of the order.

98. The cost of and incidentals to any petition shall be at the discretion of the Arbitrator, who may order by whom and to whom, and in what manner shall be paid. The Arbitrator shall make disposition of the security for costs furnished under the section, in accordance with their order.

99. The Arbitrator shall give the candidate whose election is subject to the appeal, written notice of the decision and shall post the decision in the Nee Tahi Buhn administration building and in other conspicuous place or places on Nee Tahi Buhn Reserve Lands.

100. The determination of the Arbitrator under this Part is final and conclusive and is not subject to appeal.

PART XX

Resignation from Office

101. a. The resignation of a Chief, Deputy Chief or Councillor from his or her office shall be made by submitting a letter of resignation in writing to the Band Manager.

b. Upon receipt of a letter of resignation, the Band Manager shall table the letter of resignation for acceptance at the next scheduled Council meeting.

c. The letter of resignation shall be accepted by Council at the next scheduled Council meeting, and shall be effective as of that date provided that where Council does not accept the letter of resignation or where no quorum of Council is possible because of the resignation of a member or member of Council, the resignation need not be presented to a Council meeting and shall be effective as of the date it was received by the Band Manager.

d. A letter of resignation may be withdrawn at any time before the date it becomes effective.

PART XXI

Removal from Office

102. a. A petition signed by 20 electors may be presented to the Band Manager, requesting that a Member of Council be removed, based on one or more of the following grounds:

I. they are unable to perform the functions of their office for more than six months due to illness and other incapacity, or

II. has been convicted of an indictable offence in Canada or a felony in the United States since their election; or

III. has breach their Oath of Office.

b. The petition shall also set out the facts substantiating the grounds for disqualification of a Chief, Deputy Chief or Councilor and shall be accompanied by any documents relied upon to support the petition.

103. Every petition to have a Member of Council disqualified from continuing to hold office shall be filed with the Band Manager within 30

days after the alleged grounds of disqualification came to the attention of the petitioners.

104. The Electors seeking the removal of a Member of Council shall deposit with the Band Manager at the time of submitting the petition, security for costs in the amount of Two Thousand (\$2,000.00) dollars.

105. a. The petition seeking to disqualify a Member of Council from office and any documents relied upon in the petition, shall be delivered to the Member of Council whose removal is sought.

b. The Member of Council whose removal is sought shall have seven days from the receipt of the material to file with the Band Manager a written reply to the petition.

106. The Band Manager shall, upon expiration of the time for filing a written reply to the Petition:

a. set a date for a meeting of Nee Tahi Buhn Electors to consider the petition and reply ; and

b. post a Notice of Meeting to consider the Petition for Removal in the form set out in Schedule “J” and attached hereto, in the Nee Tahi Buhn administration building and other conspicuous place or places on the Nee Tahi Buhn lands.

107. In order to have a valid meeting to consider a petition for removal, at least 30 Electors must be in attendance at the meeting.

108. The Notice of Meeting to consider the Petition for Removal shall include:

a. the date when such meeting will be held;

b. the time of day when the meeting will be held:

c. the location where the meeting will be held;

- d. the place where copies of the petition, reply and related documents may be obtained;
- e. a notification that at least 30 Electors are required in attendance at the meeting and the vote or the petition will be dismissed; and
- f. the signature, name, business address and telephone number of the Band Manager

109. a. The Chief shall chair the meeting, except in circumstances where a petition is for removal of the Chief, in such circumstances, the Deputy Chief shall chair the meeting.

- b. where the petition is for removal of the Chief and Deputy Chief, a Councillor shall chair the meeting. Where the petition is for removal of the whole council, the meeting shall be chaired by the Band Manager.

110. At the meeting, the chair shall determine whether there are at least thirty (30) electors present, the chair shall adjourn the meeting and the petition shall be dismissed.

111. If there are at least 30 Electors present, the meeting shall be called to order and the chair shall:

- a. give a representative of the petitioners an opportunity to explain the grounds sought for removal or disqualification of the Council Member(s);
- b. give the Council Members, who is subject to the petition , an equal opportunity to reply; and
- c. provide any Elector Present an opportunity to ask the representative of the petitioners or the Member(s) of Council, questions related to matters raised in the petition.

112. After completion of the presentations and questions, the chair of the meeting shall determine whether there are at least 30 electors present, the chair shall call for a vote of Electors present by a show of hands to

determine whether or not the Member(s) of Council should be disqualified and removed from continuing in office.

113. In a vote to determine whether the Member(s) of Council should be disqualified and removed from continuing in office:

- a. the question shall be determined by majority vote of those Electors present at the meeting; and
- b. Electors must attend in person to vote, and no proxy or other form of authorization allowing another person to vote on an Elector's behalf shall be permitted.

114. If the Member(s) of Council is determined to be dissatisfied from holding office, the chair shall declare the office vacant.

115. The decision of the Electors present at the meeting is final and conclusive and is not subject to appeal.

PART XXII

Vacancies

116. The office of Chief, Deputy Chief, and Councillor become vacant when the person who holds that office;

- a. dies, or
- b. resigns their office, or
- c. their election has been declared invalid by the arbitrator under Part XIX and no other person and no other person has been declared duly elected by the Arbitrator, or
- d. is determined to be disqualified from holding office, pursuant to part XXI.

PART XXIII

By-Elections

117. The successful candidate in the By-Election will be held if there are less than six months remaining in the term of a Member(s) of Council whose position has become vacant, except where a By-Election is necessary to have sufficient Member(s) of Council to maintain a quorum.

118. The Successful candidate in the by-election shall hold office for the remainder of the original term of the Chief, Deputy Chief, and Councillor whom he or she is elected to replace.

119. Except as expressly provided otherwise in this Part, the rules and procedures of this Election Code for elections shall apply to by-elections.

PART XXIV

Amendments

120. Amendments to the Election Code may be made by a majority vote of those Electors who are present and vote at a special community meeting Nee Tahi Buhn called to consider the proposed amendments to the Election Code, providing that:

- a. thirty (30) days notice of the meeting is given with the notice, indicating that amendments to the Election Code will be discussed; and
- b. the notice of meeting shall be posted in the Nee Tahi Buhn administration building and other conspicuous place or places on Nee Tahi Buhn Reserve Lands; and
- c. notice of the meeting is published in a newspaper of local circulation and in a native newspaper of circulation in the Province of British Columbia, if such a native newspaper is in operation; and

- d. an attempt be made by the Council to have a detailed copy of the amendments made available to each household of Electors on Nee Tahí Buhn Reserve Lands three days prior to the meeting, and that copy of same be mailed to all Electors not residing on Nee Tahí Buhn Reserve Lands no later than one (1) week prior to the meeting; and
- e. copies of the amendments be made available at the meeting; and
- f. at least 30 Electors are present at the meeting and vote on the proposed amendments.

121. Electors must attend in person to vote and no proxy or other form of authorization allowing another person to vote on an Elector's behalf shall be permitted.