

# **‘Namgis First Nation Election Regulations**



**April 2008**

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**1.0 INTERPRETATION**

1.01 In these Regulations:

“**Act**” means the Indian Act (Canada).

“**Band**” means the ‘Namgis First Nation.

“**Candidate**” means any ‘Namgis First Nation member who is eligible to hold office under the terms of these Election Regulations.

“**Council**” means the Council of the ‘Namgis First Nation elected in accordance with these Regulations.

“**Deputy Electoral Officer**” means the Deputy Electoral Officer appointed pursuant to Section 6.01.

“**Election**” means an election held by the Band for selection of the Chief or Councillors of the Band

“**Elector**” means any person who is eligible to vote under the terms of the Election Regulations;

“**Electoral Officer**” means the Electoral Officer appointed in accordance to Section 6.01.

“**Mail-in Ballot**” means a ballot delivered or mailed in accordance with Section 9.07.

“**Reserve**” means those tracts of lands, the legal title to which is vested in her Majesty, that have been set apart by her Majesty for the use and benefit of the ‘Namgis and includes designated lands as defined in the “Act”.

“**Non-resident Electors**” means those members of the ‘Namgis First Nation who do not reside on Reserve.

“**Voter Declaration Form**” means a document that sets out, or provides for:

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

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- 1.02 All references in these Regulations to the singular shall be construed to include the plural, and to the masculine to include the feminine and neuter genders and vice versa, where the context so admits.

**2.0 COMPOSITION OF COUNCIL**

2.01 The Council shall consist of:

- (a) Once Chief Councilor, and;
- (b) **Nine (9)** Councilors.

2.02 Subject to the provisions of this section, the Chief Councilor and Councilors shall hold office for **three (3)** years. The office of Chief Councilor or Councilor becomes vacant when the person who holds that office:

- (a) Dies or resigns his office, resignation becomes effective on the date of resignation;
- (b) Is or becomes ineligible to hold office or to be nominated to hold office by virtue of these Regulations;
- (c) Is absent without reasonable cause from three consecutive regularly scheduled meetings, (reasonable cause is illness, family crisis, or out of town on Band business).

**3.0 ELECTION OF COUNCIL**

- 3.01 Any Band members who have reached the age of **nineteen (19)** shall be eligible to vote in an election.
- 3.02 The Chief Councilor and Councilors shall be elected by a majority of votes cast by electors who vote in an election held pursuant to these Regulations.

**4.0 ELIGIBILITY FOR CANDIDACY**

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- 4.01 Any elector who has attained the age of **twenty-one (21)** years and resides on ‘Namgis I.R. #1 or I.R. #1A shall be eligible to be nominated for the position of Chief Councilor.
- 4.02 Any elector who has attained the age of **nineteen (19)** years and resides on ‘Namgis I.R. #1 or I.R. #1A shall be eligible to be nominated for position of Councilor.
- 4.03 Due to the “Conflict of Interest Policies” of the ‘Namgis First Nation no person may hold the office of Chief Councilor or Councilor while he or she is an employee with the Band.
- 4.04 An employee of the Band may be, provided he/she meets the other requirements of these Regulations, a candidate in an election but if elected may not hold office unless he resigns his employment with the Band.
- 4.05 No person may be a candidate for election as Chief Councilor or Councilor unless his nomination is moved and seconded by electors.
- 4.06 No person may be a candidate for election as Chief Councilor or Councilor if they were convicted for an offense punishable indictment under the Criminal Code of Canada or an offense under the Narcotic Control Act of Canada for a period of five years after the conviction date.
- 4.07 No person may be a candidate for election as Chief Councilor or Councilor if it is determined that he/she was involved in an infraction of these Regulations.
- 4.08 No Councilor may be a candidate for Chief Councilor without first resigning their position as Councilor.

**5.0 TIME FOR ELECTIONS**

- 5.01 The election of Chief Councilor shall be held on the second Friday of May in each year that the term of office of the incumbent Chief Councilor expires. An election of Councilors will be held on the second Friday of December in each year to fill the positions of Councilors whose terms of office will expire. One-half or as close to one-half the Council as is possible shall be elected in one year and one-half the Council or as to one-half the Council as possible in the next year so that there is continuity in the Council.
- 5.02 Subject to the foregoing the date and place of an election shall be determined by the Council.
- 5.03 An election may only be postponed by a resolution passed by a majority of not less than **two-thirds (2/3)** of the electors of the Band who vote at a General Meeting of the Band of which **six (6)** days notice, given in accordance with the provisions of Section 8.01, has been given specifying the intention to propose such resolution.

**6.0 APPOINTMENT OF ELECTORAL OFFICERS**

- 6.01 The Council shall appoint an Electoral Officer and Deputy Electoral Officers as may be required to conduct an election held pursuant to these Regulations who shall have the functions and duties herein set out.
- 6.02 The Electoral Officer and Deputy Electoral Officers must have attained the age of **nineteen (19)** years.
- 6.03 The Electoral Officer and Deputy Electoral Officers shall not be members or employees of the ‘Namgis First Nation.
- 6.04 The Electoral Officer will conduct elections pursuant to these Regulations in accordance with the guidelines set out in the Guidebook for Electoral Officers as published by the Department of Indian Affairs and Northern Development, except to the extent that they are inconsistent herewith, and shall be assisted by the Deputy Electoral Officer(s).

**7.0 NOTICE OF ELECTION**

7.01 Written notice of the nomination date, advance poll date, election date shall be given at least **thirty (30)** days prior to the nomination date as follows:

- (a) By posting the notice in the Band Office.
- (b) By posting the notice in at least one other conspicuous place on the reserve.
- (c) By mail to all Non-resident Electors whose address is known to the 'Namgis First Nation.

Such notice shall also specify the place designated for submission of nominations.

**8.0 NOMINATIONS**

- 8.01 Nominations shall be submitted to the Electoral Officer in writing in a form approved by the Council at a place and by a date (the “nomination date”) determined by Council. An eligible elector must second all nominations for candidacy. Once candidates have been nominated, the Electoral Officer shall advise the nominees of their nomination immediately. All Nominations must be signed by the candidate, by the nominator and by the seconder to the nomination, on or before the closing date of nominations.
- 8.02 Nominations received from Non-resident Electors shall be mailed to the Electoral Officer along with a “Voter Declaration Form” confirming the identity and eligibility of the Non-resident as per section 1.01
- 8.03 When Nomination is received from a Non-resident elector, which has been seconded by another Non-resident Elector the seconder, may act as the witness for the purposes of the “Voter Declaration Form”.
- 8.04 In the event that only one person is nominated for Chief Councilor or if only the required number of Councilors are nominated, no poll will be taken and such positions will be deemed to have been filled by acclamation.

**9.0 ELECTION PROCEDURES**

9.01 At Least **seventy-nine (79)** days before the day on which an election is to be held, the Electoral Officer shall prepare a list of all electors. The voter's list shall set out:

- (a) The names of all electors in alphabetical order.
- (b) The band membership or registry number of each elector or, if the Elector does not have a band membership or registry number, the date of birth of the elector.
- (c) The Electoral Officer, at the request of a person, shall confirm that the person is on the voters list.

9.02 Once nominated, candidates can only receive the names and addresses of electors if the electors have consented to have their names and addresses released to the candidates by the Electoral Officer.

9.03 Any candidate who has been nominated may withdraw at any time after his nomination, but not later than when ballots have been mailed to Non-resident voters, by submitting with the Electoral Officer a written withdrawal of his nomination, signed by himself in the presence of the Electoral Officer, or in the case of Non-resident candidate, witnessed by a person who submits their name, address and is **nineteen (19)** years of age. Any votes cast for any such candidate shall be null and void.

9.04 Where a candidate withdraws their name from the running after the ballots have already been mailed to Non-resident voters, the Electoral Officer shall not disclose this withdrawal to anyone until after the election.

9.05 Ballot papers shall be prepared in a form prescribed by the Council containing the names of the candidates for Chief Councilor and for Councilors, which names shall be listed on the ballot paper in alphabetical order.

- 9.06 The Electoral Officer shall cause to be prepared a sufficient number of Ballot papers for the purpose of the election. In the event that Council does not establish polling stations for Non-resident Electors, the Electoral Officer shall ensure that ballot papers, the back of which bears the Electoral Officers signature, are mailed to all Non-resident Electors at least **thirty (30)** days before the date of elections along with a package consisting of:
- (a) A postage-paid return envelope, pre-addressed to the Electoral Officer;
  - (b) A second envelope marked ballot for insertion of the completed ballot;
  - (c) A voter declaration form;
  - (d) A statement identifying the location of all polling places, and advising the Elector that he or she may vote in person at a polling place on the day of elections in lieu of voting by mail-in ballot.
- 9.07 Non-resident electors must place their ballots in a sealed envelope provided for that purpose which is, in turn, placed in another envelope wherein they have placed a “Voter Declaration Form” confirming their eligibility to vote in an election. Upon receipt of the sealed envelope containing the ballot the Electoral Officer shall place their signature on the ballot and place it in a secure location identified for that purpose. The sealed envelope may only be opened at the close of election, in the presence of the candidate’s agents, for the purpose of counting these votes. All mail-in ballots received after the close of elections shall be invalid and disqualified.
- 9.08 The Electoral Officer shall arrange an all candidates meeting to be held at least **two (2)** full days prior to the advance poll date.

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- 9.09 An advance poll for persons unable to vote on the election date shall be held **fourteen (14)** days prior to the election date at a place determined by Council.
- 9.10 On the advance poll date the Deputy Electoral Officer(s) shall go to the hospital located on Cormorant Island to obtain the votes from Electors who, for reasons of ill health or disability, will be unable to vote on the election date.
- 9.11 The Deputy Electoral Officer(s) shall be accompanied by one other person to obtain votes as set out in section 9.09. The ballots thereby obtained are to be put in individual envelopes, sealed and signed by the Deputy Electoral Officer(s) and the person who has accompanied the Deputy Electoral Officer(s). These ballots will be presented to the Electoral Officer prior to the close of poll on election date.
- 9.12 The poll on the advance poll date and the election date will be open from 9:00 A.M. to 9:00 P.M. local time, at a location to be determined by Council.
- 9.13 The Deputy Electoral Officer(s) shall be present with the Electoral Officer during the poll on the election date and shall assume the responsibility of the Electoral Officer should the Electoral Officer be absent.
- 9.14 A candidate shall be entitled to not more than **two (2)** agents in the polling place at any one time.
- 9.15 Voting at all elections shall be by secret ballot.
- 9.16 The Electoral Officer or the Deputy Electoral Officer(s) shall, immediately before the commencement of a poll, open the ballot box and call such persons as may be present to witness that it is empty. He shall then lock and properly seal the box to prevent it being opened without breaking the seal and shall place it in view for the reception of the ballots, and the seal shall not be broken or the box unlocked until the

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expiration of the time for taking of the poll on the election date. Separate ballot boxes shall be used on the advance poll date and the election date. On close of poll on the advance poll date the advance poll box will be sealed so that no further ballots can be deposited therein without breaking the seal and the seal shall not be broken or the box unlocked until the expiration of time for the taking of the poll on the election date.

- 9.17 At the request of any candidate or his agent or any elector, an oath or affirmation in the form prescribed by the Council as to an elector's right to vote shall be administered to any person tendering his vote at any election.

**10.0 POLLING PROCEDURES**

- 10.01 Where a person presents himself for the purpose of voting, the Electoral Officer or the Deputy Electoral Officer(s) shall, if satisfied that the name of such person is entered in the voters list at the polling place, provide him with a ballot paper on which to register his vote. Each ballot provided to a voter will be initialed by the Electoral Officer or Deputy Electoral Officer(s).
- 10.02 The Electoral Officer or his Deputy shall cause to be placed in the proper column of the voters list a mark opposite the name of every voter receiving a ballot paper. The Electoral Officer shall keep confidential the list of those who have voted and not voted until after the close of election and may only release such a list in accordance with section 9.02 of these regulations.
- 10.03 No person who has refused to take the oath or affirmation referred to in Section 9.17 when requested to do so shall receive a ballot paper or be permitted to vote.
- 10.04 The Electoral Officer or the Deputy Electoral Officer(s) may and when requested to do so shall explain the mode of voting to a voter.
- 10.05 Each person receiving a ballot paper shall forthwith proceed to the compartment provided for marking ballots and shall mark his ballot paper by placing a cross opposite the name of the candidate or candidates for whom he desires to vote. He shall then fold the ballot paper so as to conceal the names of the candidates and the marks on the face of the paper so as to expose the initials of the Electoral Officer or the Deputy Electoral Officer(s), and on leaving the compartment shall forthwith deliver the ballot paper to the Electoral Officer or the Deputy Electoral Officer(s), who shall, without unfolding the ballot paper, verify his initials and at once deposit it in

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- the ballot box in the presence of the voter and of all other persons entitled to be present in the polling place.
- 10.06 While any voter is in the compartment for the purpose of marking his ballot paper, no other person shall, except as provided in section 10.07, be allowed in the same compartment or be in any position from which he can see the manner in which such voter marks his ballot paper.
- 10.07 The Electoral Officer or the Deputy Electoral Officer(s), on the application of any voter who is unable to read or is incapacitated by blindness or other physical cause from voting in the manner prescribed by section 10.05, shall assist such voter by marking his ballot paper in the manner directed by the voter in the presence of the agents of the candidates in the polling place and of no other person, and place such ballot in the ballot box.
- 10.08 The Electoral Officer or the Deputy Electoral Officer(s) shall state in the voters list in the column for remarks opposite the name of such elector the fact that the ballot paper was marked by him at the request of the voter and the reason therefore.
- 10.09 A voter who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used shall, on returning it to the Electoral Officer or his Deputy, be entitled to obtain another ballot paper, and the Electoral Officer or the Deputy Electoral Officer(s) shall thereupon write the word "cancelled" upon the spoiled ballot paper and preserve it.
- 10.10 Any person who has received a ballot paper and who leaves the polling place without delivering the ballot paper to the Electoral Officer the Deputy Electoral Officer(s), in the manner provided, or who after receiving the ballot paper, refused to vote, shall forfeit his right to vote at the election, and the Electoral Officer or the Deputy Electoral Officer(s)

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shall make an entry in the voter list in the column for remarks opposite the name of such person to show that such person received the ballot paper and declined to vote, and the Electoral Officer or the Deputy Electoral Officer(s) shall mark upon the face of the ballot paper the word “declined” and all ballot papers so marked shall be preserved.

- 10.11 An Elector whose name does not appear on the voters list may vote at an election if the Electoral Officer or the Deputy Electoral Officer(s) is satisfied that such person is qualified to vote.
- 10.12 Every Elector who is inside the polling station at the time fixed for closing the poll shall be entitled to vote before the poll is closed.
- 10.13 Immediately after the close of the poll on the election date the Electoral Officer or the Deputy Electoral Officer(s) shall, in the presence of **five (5)** electors selected by the Electoral Officer and such of the candidates or their agents as may be present, open the ballot box and:
  - (a) Examine the ballot papers and reject all ballot papers that have:
    - (i) Not been supplied by the Electoral Officer or the Deputy Electoral Officer(s),
    - (ii) Subject to the provisions of subsection 10.13(b), by which votes have been given for more candidates than are to be elected, or
    - (iii) Upon which anything appears by which the voter can be identified, but not word, letter or marks are written or made or omitted to be written or made by the Electoral Officer or the Deputy Electoral Officer(s) on a ballot paper shall void it or warrant its rejection;

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- (b) Declare a ballot paper, on which votes are given for more candidates for any officer than have been nominated for that office, to be void.
  - (c) Subject to review on recount or on an election appeal take note of any objection made by any candidate or his agent to any ballot paper found in the ballot box and decide any question arising out of the objection.
  - (d) Number such objection and place a corresponding number on the back of the ballot paper with the word “allowed” or “disallowed”, as the case may be, with his/her initials.
  - (e) Count the votes given for each candidate from the ballot papers not rejected and make a written statement of the number of votes given to each candidate and the number of ballot papers rejected and not counted by him, which statement shall then be signed by him and such other persons authorized to be present as may desire to sign the statement.
- 10.14 Immediately after the completion of the counting of the votes on election date the Electoral Officer shall publicly declare to be elected the candidate or candidates having the highest number of votes and he shall also give notice of the results of the election in the manner set out in section 8.01.
- 10.15 The Electoral Officer shall prepare a statement setting out the results of the election and forward the same to Indian and Northern Affairs Canada. The Electoral Officer and such other candidates or their agents as are present and desire to sign it shall sign the statement.
- 10.16 The Electoral Officer shall deposit all ballot papers in sealed envelopes and shall retain them in his possession for **eight (8)** weeks, and unless otherwise directed by the Board of Appeal appointed pursuant to these Regulations shall then

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destroy the ballot papers in the present of **two (2)** witnesses who shall make a declaration that they witnessed the destruction of those papers.

- 10.17 Where two or more candidates have an equal number of votes and it is necessary to break the tie, a new poll shall be held in which only those candidates who are tied will stand for election for the remaining positions to be filled. Such further poll shall be held at a time determined by the Council and notified to the electors in the manner set out in section 8.01.

**11.0 ELECTION APPEALS**

- 11.01 Within **thirty (30)** days after an election, any candidate at the election or any elector who tendered his vote in the election, who has reasonable grounds for believing that:
- (a) There was a violation of these regulation that might have affected the result of the election, or
  - (b) A person nominated to be a candidate in the election was ineligible to be a candidate,

May file a protest with the Board of Appeal appointed pursuant to these regulations giving particulars of the grounds of the objection to the validity of the election.

- 11.02 A Board of Appeal shall be appointed by the Council prior to each election and shall consist of **three (3)** persons who are not members of the Band and are not employees of the Band.
- 11.03 On making an investigation, the Appeal Board, as it deems necessary, may set aside the election of a Chief Councilor or a Councilor if it is satisfied that:
- (a) There was a violation of these regulations that might have affected the result of the election, or
  - (b) A person nominated to be a candidate in the election was ineligible to be a candidate.
- 11.04 The Appeal Board shall have **seven (7)** days from the date of receiving a written protest to render a decision.
- 11.05 The Decision of the Board of Appeal will be final.

**12.0 ELECTION TO FILL VACANCY**

12.01 Where the office of Chief Councilor or Councilor becomes vacant more than **three (3)** months before the date when another election would ordinarily be held pursuant to these regulations, a special election may be held in accordance with these regulations to fill the vacancy for the remainder of the existing term.

**13.0 AMENDMENTS**

13.01 These regulations may be amended at a general meeting of the Band advertised for at least **six (6)** days, by a secret ballot of the electors of the Band carried by a **two-thirds (2/3)** majority of those electors who are present and vote. The notice of the meeting shall specify what the changes to these regulations to be proposed at such a meeting.