

# **LOWER KOOTENAY BAND**

## **CUSTOM ELECTION**

### **BY-LAW**



**APRIL 17, 2012**

# LOWER KOOTENAY ELECTION REGULATIONS

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## **1) PREAMBLE**

- a) Together, the People of the Lower Kootenay Band, the –Aqak%°axa%°xu or People of the Marsh, form one of the member communities of the Ktunaxa Nation and as such, share the Ktunaxa Nation Inherent Right to govern and the responsibility to protect this right for current and future generations of Ktunaxa Citizens.
- b) The Lower Kootenay Band, having existed as a Nation prior to the formation of Canada, maintains that their right to self-government is an Inherent Right established at the time of Creation and an Aboriginal Right recognized and protected by the *Constitution Act, 1982* (Canada).
- c) The People of the Lower Kootenay Band, through these regulations, have defined the process through which to select their government, the Lower Kootenay Band Council, and have approved these regulations for implementation effective upon the date so ratified.

## **2) VISION**

- a) Lower Kootenay Band Community Vision Statement

...A stable, independent, self-governing authority, providing principled leadership to a dynamic community of caring, healthy Members, from a secure resource base.

- b) Ktunaxa Nation Vision Statement

...Strong, healthy Members and communities, speaking our languages and celebrating who we are and our history in our ancestral homelands, working together, managing our lands and resources as a self-sufficient, self-governing Nation.

## **3) ROLES AND RESPONSIBILITIES OF COUNCIL**

- a) To ensure that there is a clear and responsible direction for the Government.
- b) To provide the best possible programs and services to meet the priority needs of the Members.
- c) To ensure that the Government is fair, honest and effective.
- d) To ensure there are adequate resources, and that these are properly and responsibly managed.
- e) To promote unity within the Council and the Community.

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- f) To conduct themselves as role models, and represent the best interests of the Lower Kootenay Community in all internal and external dealings.

### 4) PRINCIPLES OF GOVERNMENT

- a) The People of the Lower Kootenay Band look to the Council as leaders and role models. The Council is expected to act in the best interests of the whole of community when carrying out their roles. The Council, as the most senior representatives of Lower Kootenay Government, will ensure that they together form a Government that:
  - i) listens to its Members, and consults with them before making major decisions.
  - ii) is open, honest and transparent in its dealings, and provides regular feedback to the Members.
  - iii) is trustworthy, ethical, responsible and accountable to the Members.
  - iv) is caring, compassionate, flexible and present.
  - v) is fully competent, informed, professional and proactive.
  - vi) is visionary, forward-looking.
  - vii) is stable and secure.

### 5) DEFINITIONS AND INTERPRETATIONS

- a) In these regulations:
  - i) **ABSENTEE VOTERS** – means a person who is unable to be present at a Lower Kootenay Band Election and or by-election.
  - ii) **ARBITRATOR** – means the independent third party holding a professional designation in the field of law and appointed by way of a Band Council Resolution, to resolve disputes by hearing arguments and evidence, and rendering decisions that may be filed in a court of law and legally enforced.
  - iii) **BAND COUNCIL** – means the Chief Councillor and four (4) Band Councillors.; and Band means the Lower Kootenay Indian Band.
  - iv) **BAND COUNCIL RESOLUTION** – means a formal motion moved by a Council member, seconded by another Council member and passed by Council.

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- v) **CANDIDATE** – means a member who has been nominated and has declared their intent to run in a Lower Kootenay Band Election or by-election.
- vi) **CHIEF or CHIEF COUNCILLOR** – means the candidate elected to Council as Chief in accordance with these regulations.
- vii) **COUNCIL** – means the governing body of the Lower Kootenay Band elected under these regulations.
- viii) **COUNCILLOR** – means a candidate elected to Council as a Councillor, in accordance with these regulations.
- ix) **CRIMINAL CONVICTION** – means a criminal conviction under the *Criminal Code of Canada*.
- x) **DIRECTOR OF FINANCE** – means the senior staff person of the Lower Kootenay Band, who is responsible for maintaining fiscal accountability; and Chief Operating Officer means the senior staff person responsible for the overall administration and operations of LKB.
- xi) **ELECTION** – means a General Election or by-election held under these regulations.
- xii) **ELECTION REGULATIONS** – means the Lower Kootenay Band Custom Election By-law.
- xiii) **ELECTION REGULATION REVIEW MEETING** – means a meeting called by the Council for the purpose of reviewing the Election regulations.
- xiv) **ELECTOR** – means a person who is entitled to vote in Lower Kootenay Band Elections and by-elections by being a registered member of the Lower Kootenay Band who is over the age of 18 years.
- xv) **ELECTORAL OFFICER** – means the independent third party appointed by Band Council, by way of a Band Council Resolution prior to a nomination meeting, to conduct and oversee a Lower Kootenay Band Election in its entirety.
- xvi) **ELECTORS' LIST** – means an alphabetical list of Electors, including their Legal Name, Alias Names, Current Mailing Addresses, Current Residential Address, , and indicating the name, mailing address and telephone number of the Electoral Officer and the location of the polling station where Electors may vote.
- xvii) **GENERAL ELECTION** – means an Election held in accordance with these regulations, other than a by-election.

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xviii) **IMMEDIATE FAMILY** - means a husband or wife (including common-law), father or mother, son or daughter (including step, adopted and foster children), brother or sister.

xix) **INDEPENDENT THIRD PARTY** - means a party who is not a Lower Kootenay Band Member, not entitled to vote in Lower Kootenay Band elections, and who is not a member of the immediate family of any of the candidates in question.

xx) **LOWER KOOTENAY BAND** – means the body of people who comprise the entity known under the *Indian Act* as the Lower Kootenay Band.

xxi) **LOWER KOOTENAY BAND CUSTOM ELECTON BY-LAWS** – means the regulations that govern Lower Kootenay Band Elections.

xxii) **LOWER KOOTENAY BAND MEMBER** – means a person registered with the Lower Kootenay Band in accordance with the *Indian Act*, whose name appears in the Lower Kootenay Band Membership List.

xxiii) **LOWER KOOTENAY BAND MEMBERSHIP LIST** – means the list containing the names of Lower Kootenay Band Members, maintained by the Lower Kootenay Band Membership Clerk.

xxiv) **LOWER KOOTENAY COMMUNITY** – means the Lower Kootenay Band reserve Lands.

xxv) **MAJORITY** – means fifty per cent plus one (50%+1).

xxvi) **MEMBER** – means a person registered on the Lower Kootenay Band Membership List.

xxvii) **NORMAL BUSINESS HOURS** – means the times at which the Lower Kootenay Band Administration staff normally conduct business, Monday through Friday, excluding statutory holidays and funerals.

xxviii) **POLLING SITE** – means the facility in which the polling station is located.

xxix) **PROOF OF IDENTITY** – means a document which verifies the identify of an Elector, including a status card, British Columbia Identification Card, Drivers License, Passport, Birth Certificate or Social Insurance Card.

xxx) **SAFE PLACE** – means a secure and protected place.

xxxi) **SCRUTINEER** – means a person appointed in writing by a candidate to observe voting and counting procedures for an Election.

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- b) Where there is a reference to a number of days or a number of days between two events, in calculating the number of days, the days in which the events happen are excluded.
- c) Wherever the singular, or masculine or the term 'person' is used in these regulations, it shall be deemed to include the plural, feminine, body corporate, Lower Kootenay Band or other entity where the context so requires.

### **6) ELECTION REGULATIONS**

- a) These regulations shall be known as the Lower Kootenay Band Custom Election by-law. Accordingly, this by-law governs all Elections for Lower Kootenay Band Council.
- b) Any Member may request a copy of these regulations by contacting the Chief Operating Officer during normal business hours.

### **7) ELECTION OF COUNCIL**

- a) The Band Council of the Lower Kootenay Band shall be comprised of one (1) Chief Councillor and four (4) Band Councillors, collectively known as the Council.
- b) No more than two immediate family members can serve on Council at any one time.
- c) The newly elected Council shall assume office thirty (30) days after the public declaration of the Election results by the Electoral Officer.
- d) The offices of Council shall be determined through a vote by secret ballot of Electors in an Election, or in the event of a vacancy on Council, in a by-election.
- e) Elections after the date these regulations come into force shall be held in accordance with these regulations.
- f) By-elections shall be held on the date set by the Electoral Officer.
- g) Except with respect to a by-election, the Election for Council shall be held during the month of November.

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### **8) CHIEF COUNCILLOR POSITION**

a) When an Election is being held to vote for a Chief Councillor, the candidate with the highest number of votes in that Election will hold the office of Chief Councillor.

### **9) TERM OF OFFICE**

a) The term of office for each duly elected member of Council shall be four (4) years.

b) Terms of office are alternated. Elections are held every second year, as the terms of office expires for existing Council members who have served their 4 year term.

c) The term of office for Council members commences thirty (30) days following the public declaration of the Election results by the Electoral Officer and subject to any vacancy arising under these regulations, expires 30 days following the subsequent election for their office, at eleven fifty-nine (11:59) p.m.

### **10) ELIGIBILITY OF ELECTORS**

In order to be entitled to vote in an Election, Members must have achieved the full age of eighteen (18) years on or before the date of the Election and be included on the Electors' List.

### **11) ELIGIBILITY OF CANDIDATES**

a) Any candidate for the office of Councillor must:

i) qualify as an Elector;

ii) be nominated for that office, in accordance with the procedures set out in these regulations;

iii) normally reside in Canada, within 50 kilometers of Creston IR#1; and

iv) not have been convicted of an indictable offense within five (5) years prior to their nomination.

Subsection iv above does not apply to members whose offence involved defending their aboriginal rights and title.



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v) not have been removed from office pursuant to section 29 in the last 5 years.

b) In the event that a Council position becomes vacant for reasons other than the Council member's term is up; a by-election will be held to fill the vacant position. The successful candidate in the by-election will serve only the time left on the term of the vacated position.

For greater certainty, if the position of Chief becomes vacant, the remaining Councilors cannot resign to run for the Chief position but must serve their full term as promised in their Oath of Office.

### **12) APPOINTMENT OF ELECTORAL OFFICER AND ARBITRATOR**

a) Council shall, at least sixty (60) days prior to the date on which the Election is to be held appoint an Electoral Officer and Deputy Electoral Officer (if desired) and Arbitrator.

b) If an Electoral Officer and Arbitrator have not been appointed within the time set out in these regulations, the Electoral Officer and Arbitrator shall be appointed by the Chief Operating Officer as soon as possible.

c) The Electoral Officer shall not be a Member or employee of Lower Kootenay or holder of other contracts for services with Lower Kootenay, and not be a resident of the Lower Kootenay Community, or married to or living common-law with, a Member of the Lower Kootenay Band.

d) Every Electoral Officer shall sign an oath of office swearing to:

- i. uphold and comply with these regulations and all related Lower Kootenay regulations;
- ii. fulfill the duties and responsibilities of their office under these regulations;
- iii. carry out their duties faithfully, honestly, impartially and to the best of their abilities;
- iv. keep confidential, both during and after their term of office, any matter or information which, under these regulations, other law or policy, is considered confidential; and
- v. always act in the best interests of Lower Kootenay in carrying out their duties.

e) The Electoral Officer shall file the signed oath of office with the Chief Operating Officer before assuming their office.

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f) The Electoral Officer may issue such instructions consistent with the provisions of these regulations as may from time to time be deemed necessary for the effective administration of the Election.

g) Upon his or her appointment, the Electoral Officer will receive an orientation from the Chief Operating Officer, including a review of the current Election regulations, a review of the current Electors' List and any other related documents.

### **13) CONTACT ADDRESSES**

- a. The Chief Operating Officer shall, within seven (7) days of the Electoral Officer assuming office, provide the Electoral Officer with the name and contact address of Members who will have attained the age of eighteen (18) on or before the date of the Election.
- b. The contact address may be either a mailing address, or e-mailing address.
- c. The contact address shall be used only for the purposes of providing notices, mail-in ballots or other documents to Electors who are entitled to receive them under these regulations.
- d. Electors shall be responsible for providing the Chief Operating Officer or the Electoral Officer with current contact addresses.
- e. A document shall be considered properly provided if it was mailed or delivered to the contact address of the Elector.

### **14) ELECTORS' LIST**

- a) Prior to the Nomination Meeting, the Electoral Officer shall, in consultation with the Lower Kootenay Band Membership Clerk, prepare an Electors' List, which will be the official record of Electors for the next Election. The Electoral Officer shall ensure that all Electors are notified of the Nomination Meeting.
- b) The Electors' List will be available at the Nomination Meeting and Members may review their personal information contained in the Electors' List for accuracy at that time.
- c) Members who are unable to attend the Nomination Meeting may contact the Electoral Officer to verify their inclusion on the Electors' List.

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- d) 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, may no later than ten (10) days prior to the Election date, apply in writing to have their name added to the List.
- e) The Electoral Officer will determine whether a Member is entitled to be included on the Electors' List and will add and/or delete Members from the list, based on their eligibility.
- f) Members may be required to provide documents in support of their application.
- g) The Electoral Officer will provide the person whose name has been added or deleted from the list, with a written notice of the decision, at least five (5) days prior to the date of the Election.
- h) Between Elections, a copy of the Electors' List will be held in trust by the Lower Kootenay Band Membership Clerk and Electors can confirm their inclusion on the list during regular business hours.
- i) Amendments to the Electors' List can only be made by the Electoral Officer.

### **15) NOTICE OF NOMINATION MEETING and ENTITLEMENT TO VOTE BY MAIL-IN BALLOT**

- a) The Electoral Officer shall, at least fifty (50) days prior to the Election date, publish a notice or forward to Electors at their contact address, a notice advising them of the nomination meeting and setting out the conditions for voting by mail-in ballot.
- b) The Notice shall include:
  - i. the date, time and location of the nomination meeting;
  - ii. a reminder that copies of these regulations may be obtained from the Lower Kootenay Band Administration;
  - iii. methods through which to confirm inclusion on the Electors' List;
  - iv. a statement indicating that Members may vote by mail-in ballot and a description of the process through which this is managed;
  - v. the contact address and telephone number of the Electoral Officer; and
  - vi. the date of the notice.

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c) The Notice will:

- i. be posted in public places on the Lower Kootenay Band reserve;
- ii. be delivered to households on reserve; and
- iii. be sent to the contact address of Eligible Voters not normally residing in the Lower Kootenay Community.

d) The nomination meeting will be held from 6:00 pm to 7:00 pm (local time) on the date set.

e) An Elector requesting a mail-in ballot package shall provide the Electoral Officer with a current mailing address.

f) The Electoral Officer shall, at least twenty (20) days prior to the date on which the Election is to be held, mail to every Elector who is not ordinarily a resident in the Lower Kootenay Community, and whose application for a mail-in ballot has been received, a mail-in ballot package consisting of:

- i. an official ballot initialed by the Electoral Officer;
- ii. an inner postage-paid return envelope, pre-addressed to the Electoral Officer;
- iii. a second inner envelope marked "ballot" for insertion of the completed ballot;
- iv. an Electoral declaration form which shall set out:
  - a. the name and membership number of the Elector; and
  - b. the name, address and telephone number of the witness to the signature of the Elector.
- v. a letter of instruction regarding the voting by mail-in ballot; and
- vi. a statement advising the Elector that they may vote in person on the day of the Election if they return their mail-in ballot to the Electoral Officer at the polling station, and the location of the polling station.

## **16) NOMINATION MEETING AND PROCESS**

a) The Electoral Officer will oversee the nomination process.

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- b) Nominations shall be open for not less than one (1) hour after the commencement of the nomination meeting.
- c) An Elector may propose or second a nomination for any qualified candidate for Council.
- d) To be nominated, a person must be in attendance at the nomination meeting.
- e) If, after one (1) hour of the commencement of a Nomination Meeting to nominate only Band Councillor(s), the number of person(s) nominated does not exceed the number of vacancies, the Electoral Officer shall declare the nominees duly elected by way of acclamation.
- f) If, after one (1) hour of the commencement of a Nomination Meeting to nominate candidates for Chief and Council, the number of persons nominated does not exceed the number of vacancies, an election will be held to decide who will hold the Chief position.
- g) Where the number of qualified candidates exceeds the number of vacancies, the Electoral Officer shall declare that a poll will be held.
- h) Elections will be held within forty-five (45) days of the Nomination Meeting.
- i) Employees of Lower Kootenay Indian Band, must take an unpaid leave of absence or resign from their employment for the period during which they are a Council member.
- j) The requirement to take an unpaid leave of absence under section 16.i shall be determined in respect of each term of office for which they are elected, provided that no employee shall take an unpaid leave of absence for two consecutive terms of office.
- k) The Electoral Officer will, during the course of the Nomination Meeting, ask for Electors to volunteer as witnesses for ballot counting and will record their names in the meeting proceedings.
- l) The Electoral Officer will call for a close to Nominations one (1) hour after the commencement of nominations.
- m) Upon the close of nominations, the Electoral Officer shall, as soon as possible, contact each person nominated and require them to sign an acceptance of nomination, confirming their eligibility as a candidate.
- n) A nominee may file the acceptance of nomination with the Electoral Officer in person or by mail or facsimile.

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o) Any nominee who fails to file the document required under subsection 16(m) within seven (7) days of the nomination meeting shall have their name removed as a nominee.

### **17) NOTICE OF FINAL LIST OF CANDIDATES**

a) The Electoral Officer will prepare a final list of candidates who have complied with subsection 16(m) and at least thirty-five (35) days prior to the Election date, will ensure that the list is:

- i. posted in public places on the Lower Kootenay Band reserve and posted on LKB website;
- ii. delivered to households on reserve; and
- iii. sent to the contact address of Eligible Voters not normally residing in the Lower Kootenay Community.

### **18) NOTICE OF POLLS**

a) When a poll is required, the Electoral Officer shall, at least thirty-five (35) days prior to the Election date, prepare a notice of polls and will ensure that the notice is:

- i. posted in public places on the Lower Kootenay Band reserve;
- ii. delivered to households on reserve; and
- iii. sent to the contact address of Eligible Voters not normally residing in the Lower Kootenay Community.

b) The notice of polls shall include:

- i. the date of the Election;
- ii. the time that the polling stations open and close;
- iii. the location of polling stations;
- iv. the date, time and location of advance poll;
- v. a statement that the Electors' List is prepared and that Members can confirm their inclusion on the list by contacting the Electoral Officer; and

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- vi. the contact address and telephone number of the Electoral Officer.

### **19) PREPARATION OF BALLOTS**

- a) The Electoral Officer shall prepare ballots setting out the names of the candidates nominated for election in alphabetical order.
- b) The ballot may, at the request of the candidate, include the candidate's commonly used nickname.
- c) The ballot shall indicate that the Elector is to signify his or her choice of candidate(s) by clearly marking an "X" in the appropriate space opposite the name of the candidate.

### **20) ALL CANDIDATES FORUM**

- a. All persons who have accepted nomination for Council must participate in an All Candidates Forum, at a time and place to be determined by the Electoral Officer.
- b. Notice of the All Candidates Forum will be posted at the Band Administration Office at least 7 days prior to the forum. The Forum shall take place prior to the date of the Advance Poll.
- c. Candidates who do not participate in the Forum will give up their candidacy, unless they can justify their absence. Just cause will include validated illness or injury to the candidate or within their immediate family.
- d. The Forum will be facilitated by the Electoral Officer who will determine the format and guidelines for the Forum.

### **21) VOTING AT POLLING STATION**

- a) The Polls shall remain open from ten o'clock (10:00) in the morning until seven o'clock (7:00) in the evening, local time, on the day on which the Election is to be held.
- b) Prior to the opening of the polling station, the Electoral Officer will ensure that the polling station has been supplied with:
  - i. ballot boxes;

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- ii. a sufficient number of ballots;
  - iii. the final Electors' List;
  - iv. the necessary materials for marking ballots; and
  - v. a ballot tally sheet to identify the number of confirmed votes and the number of rejected ballots.
- c) The Electoral Officer shall provide a voting compartment at the polling station where Electors can mark their ballots free from observation; voting shall be by secret ballot.
- d) Only those ballots that have been prepared by the Electoral Officer and provided for the Election will be counted.
- e) Each ballot must be clearly marked by the Elector with his or her choice of candidate(s) by clearly marking an "X" in the appropriate space opposite the name of the candidate(s).
- f) Any Ballot marked so as to not be legible or has been marked with more marks than there are candidates, will constitute a spoiled ballot and such a ballot shall not be counted.
- g) Where a candidate wishes to authorize a scrutineer, he or she shall provide a letter of authorization to the Electoral Officer on or before the opening of the polling station, in which the candidate names the scrutineer.
- h) Immediately prior to the opening of the poll, the Electoral Officer shall:
- i. open the ballot box and, in the presence of any scrutineers, confirm that it is empty and complete a written statement to that effect;
  - ii. lock and properly seal the ballot box in a manner preventing it from being opened without breaking the seal; and
  - iii) place the ballot box in public view for the reception of the ballots.
- i) Each person presenting themselves at a polling station for the purpose of voting shall present to the Electoral Officer, proof of identity.
- j) Where a person does not have proof of identity, they shall be deemed to be properly identified if two scrutineers sign a declaration in the presence of the Electoral Officer, confirming their identity.
- k) Where a person is identified as an Elector, he or she will sign the sign-in sheet presented by the Electoral Officer. Upon signing in, the Elector shall receive a ballot initialed by the Electoral Officer.



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- l) The Electoral Officer shall place in the proper column of the Electors' List, a mark opposite the name of every Elector receiving a ballot.
- m) When asked to do so, the Electoral Officer shall explain the method of voting to the Elector.
- n) Voting at all Elections shall be by secret ballot; no one other than the Elector in the process of voting, or in the case of the elderly or physically disabled person, their attendant, is permitted inside the voting compartment at one time.
- o) No Elector may vote by proxy or authorize another person to vote on his or her behalf.
- p) Notwithstanding subsection 21(o) any Elector who requires assistance may request that the Electoral Officer mark the ballot for them for candidates of the Elector's choice, in their presence.
- q) In the event that the Electoral Officer assists an Elector with marking of his or her ballot, the event and the reason shall be noted in the Electors' List in the remarks column.
- r) Upon receiving the ballot, each Elector shall:
  - i) proceed directly to the voting compartment and mark their ballot, clearly indicating their choice of candidate(s) in the appropriate space opposite the candidate's name;
  - ii) fold the ballot so that their choice is concealed and only the Electoral Officer's initials are exposed; and
  - iii) have the Electoral Officer verify his or her initials, and deposit the ballot in the ballot box immediately, in the presence of the Electoral Officer and all scrutineers present at the polling station.
- s) An Elector who accidentally spoils their ballot may return it to the Electoral Officer in order to obtain another ballot; the Electoral Officer shall write the word "cancelled" upon the spoiled ballot, deposit it in an envelope for cancelled and declined ballots and provide the Elector with a new ballot initialed by the Electoral Officer.
- t) An Elector who receives a ballot and then decides not to vote must return the ballot to the Electoral Officer who shall mark the word "declined" upon the ballot and deposit it in the envelope for cancelled and declined ballots.
- u) After receiving a ballot, an Elector cannot leave the polling station without first delivering the ballot to the Electoral Officer otherwise they forfeit his or her right to vote.

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- v) Any Elector who is inside the polling station at the time fixed for the closing of the poll shall be entitled to vote.
- w) Each candidate shall be entitled to have two (2) scrutineers at a polling station at any one time.
- x) The Electoral Officer may request or appoint security to remove any person from the polling station who is:
  - i. distributing Election related materials other than those authorized by the Electoral Officer;
  - ii. interfering with or attempting to influence any Elector;
  - iii. disrupting, or attempting to disrupt, the voting process.

### **22) ABSENTEE VOTING**

- a) An Elector may vote by mail-in ballot by:
  - i. clearly marking the ballot with an "X" in the appropriate space opposite the name of the candidate(s) of his or her choice;
  - ii. folding the ballot in a manner so as to conceal their choices, but exposing the Electoral Officer's initials on the back;
  - iii. placing the ballot in the inner envelope marked "ballot" and sealing the envelope;
  - iv. completing and signing the Elector declaration form in the presence of a witness who is at least eighteen (18) years of age, and having the witness sign the declaration form;
  - v. placing the inner envelope and the completed, signed (in ink) and witnessed declaration form in the postage-paid, return envelope pre-addressed to the Electoral Officer; and
  - vi. delivering to, or otherwise ensuring receipt of the envelope by, the Electoral Officer before the time at which the polls close on the day of the Election.
- b) Mail-in ballots that are not received by the Electoral Officer before the time at which the polls close on the day of the Election shall not be counted.
- c) The Electoral Officer shall place the ballot in its sealed envelope into the ballot box after complying with 21(h).

## LOWER KOOTENAY ELECTION REGULATIONS

- d) The ballot in the envelope shall be recorded and counted during the counting of ballots after the polls close.
- e) An Elector who has received a mail-in ballot may vote in person at a polling station if they return the mail-in ballot to the Electoral Officer.

### **23) ADVANCE POLL**

- a) Electors may vote in an Advance Poll.
- b) The Advance Poll shall be held one week prior to the date on which the Election is to be held, at a time and place chosen by the Electoral Officer and confirmed in the notice of poll.
- c) The Advance Poll shall be open from twelve o'clock (12:00) noon to six o'clock (6:00) in the evening on the date so chosen.
- d) Electors who choose to vote in the advance poll will be provided with a mail-in ballot package described in section 15.f.
- f) Electors at the Advance Poll will cast their vote in accordance with the same procedure as for mail-in ballots, described in subsection 22(a) where applicable.

### **24) PROCEDURE FOR THE CLOSE OF POLLS**

- a) Immediately following the close of polls, the Electoral Officer shall, in the presence of the candidates, scrutineers and any Electors who choose to be present, open each envelope containing a mail-in ballot that was received before the close of polls and without unfolding the ballot:
  - i) set aside the ballot if:
    - 1) it was not accompanied by a signed Elector declaration form;
    - 2) the name of the person set out in the Elector declaration form is not on the Electors' List; or
    - 3) the Electors' List shows that the Elector has already voted; and
  - ii) deposit all remaining ballots in the ballot box and place a mark on the final Electors' List opposite the name of the Elector.

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b) As soon as all valid mail-in ballots have been deposited in the ballot box, the Electoral Officer shall open the ballot box and examine the ballots and reject all ballots that:

- i. have not been initialed by the Electoral Officer or Deputy Electoral Officer;
- ii. contain more votes than are candidates to be elected;
- iii. are marked in such a way that the Elector can be identified; are marked in such a way that the Elector's choice cannot clearly or unambiguously be determined.

c) Any rejected ballot shall not be counted as a vote cast.

d) The Electoral Officer shall report in writing the reasons for rejection of each ballot and attach that report to the rejected ballot.

e) The rejected ballot and the written report shall be held by the Electoral Officer until the expiration of any appeal period provided for in these regulations.

f) The Electoral Officer shall:

- i. show the ballots to be counted to any scrutineers present;
- ii. count the votes given for each candidate from the ballots not rejected in the presence of at least five (5) Electors, in addition to all scrutineers so appointed by the candidates; and
- iii. at the conclusion of the count complete and sign a ballot tally sheet setting out the number of confirmed votes for each candidate and the number of rejected ballots.

g) Immediately after the completion of the counting of the votes, the Electoral Officer shall publicly declare the candidates with the highest number of votes to be elected for the vacant Council positions.

h) Where a tie for the position of Chief or for the last available Councilor position occurs, the Electoral Officer shall declare the Election for that office a tie and a new Election for that office shall be held within twenty-one (21) days.

When the tie was for the Chief position, the person with the most votes becomes Chief and the other candidate takes the first Councilor position. The remaining positions for Councilor will be adjusted according to the number of votes received.

i) The final Electors' List for the new Election shall be the final Electors' List from the Election which resulted in the tie.

## LOWER KOOTENAY ELECTION REGULATIONS

- j) The candidates for office to be determined in the new Election shall be the candidates who received an equal number of votes for that office in the original Election.
- k) The term of office for the successful candidate in the new Election shall be deemed to have commenced 30 days after the day of the Election which resulted in the tie.
- l) Sections 14, 15 and 16 do not apply to the new Election.

### **25) NOTIFICATION OF ELECTION RESULTS**

- a) The Electoral Officer shall:
  - i. (within three (3) days of the date on which the Election is held post in a public area of the Lower Kootenay Administration building and in other conspicuous place or places on Lower Kootenay Lands, as may be determined by the Electoral Officer, a written statement signed by the Electoral Officer, showing the number of votes cast for each candidate and the number of rejected ballots; and
  - ii. publish, in either the Lower Kootenay newsletter or in a separate written notice mailed or delivered to Electors, a statement showing the number of votes cast for each candidate and the number of rejected ballots.

### **26) DISPOSAL OF BALLOTS**

- a) The Electoral Officer shall deposit the ballots used in the voting and the cancelled and declined ballots in a sealed envelope and retain it in a safe place for a period of thirty (30) days after the close of the polls, or until a decision on an appeal is rendered, whichever date is later, after which time the Electoral Officer may, destroy the Ballots in the presence of two (2) witnesses and sign a declaration confirming their destruction.

### **27) OATH OF OFFICE**

- a) All candidates who have been elected to office shall sign an oath of office before the Electoral Officer and Lower Kootenay Members, swearing to:
  - i. uphold and comply with Lower Kootenay by-laws; carry out their duties faithfully, honestly, impartially and to the best of their ability;

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- ii. fulfill the responsibilities of their office and serve the full year term unless they have reasonable cause to vacate the position;
  - iii. keep confidential, both during and after their term of office, any matter or information which, under regulation or policy, is considered confidential; and
  - iv. always act in the best interest of the entire Lower Kootenay Community when carrying out their duties.
- b) No person elected shall be permitted to assume their office until they have sworn and filed with the Electoral Officer the oath of office required under subsection 27 (a).
- c) Where a person elected to office fails to file the sworn oath of office with the Electoral Officer within fifteen (15) days of being declared elected, the Electoral Officer shall declare the office vacant
- d) Where a candidate elected cannot because of illness or other valid reason swear the oath of office within the time prescribed in Section 27 they, or an Elector acting on their behalf, may within that time file a Petition with the Electoral Officer for an extension of the time to swear the oath of office.
- e) The Electoral Officer shall determine whether the circumstances justify an extension of the time to swear the oath of office and shall provide the candidate making the request written notice of the decision together with reasons.
- f) The Electoral Officer shall give notice in writing to the candidate elected whose office is declared vacant under subsection 27(b).
- g) A candidate whose office is declared vacant as a result of the Electoral Officer's decision made under subsection 27(c) may appeal the decision by filing a notice of appeal together with supporting documents with the Chief Operating Officer within fifteen (15) days of the date notice of the Electoral Officer's decision was sent.
- h) Where an appeal has been filed under subsection 27(g) no by-election shall be called unless the Arbitrator's decision confirms the vacancy.

## **28) ELECTION APPEALS**

- a) Any candidate or Elector may file a notice of appeal with the Arbitrator, requesting that the election of a candidate be declared invalid, based on one or more of the following grounds:
- i. the person declared elected was not qualified as a candidate;
  - ii. the person declared elected was not nominated in accordance with the procedures set out;

## LOWER KOOTENAY ELECTION REGULATIONS

- iii. there was a violation of any provision of these regulations in the conduct of the Election that might have affected the result of the Election; or
- iv. there was corrupt or fraudulent practice in relation to the Election.
- b) Every notice of appeal shall:
  - i. identify the office being appealed;
  - ii. set out in an affidavit sworn before a notary public or duly appointed commissioner for taking oaths the facts substantiating the appeal;
  - iii. be accompanied by any supporting documentation; and
  - iv. be filed with the Chief Operating Officer within twenty (20) days from the date upon which the Council member was declared elected together with a nonrefundable filing fee of twenty-five dollars (\$25). A receipt will be provided.
- c) The Arbitrator will, in the event of an appeal, receive an orientation from Electoral Officer prior to carrying out their duties.

## **29) COUNCIL MEMBERS REMOVAL FROM OFFICE**

- a) A Council member may be removed from office on one or more of the following grounds:
  - i. he or she has violated these regulations or other Lower Kootenay law; or
  - ii. he or she has breached their oath of office; or
  - iii. he or she has lost the confidence of the Band as evidenced by the filing of a petition under subsection 29 (b); or
  - iv. he or she has been convicted on an indictable offence since taking office.
- b) Proceedings to remove a Council member shall be commenced by a Petition filed with the Arbitrator and signed by a minimum of 30 or more of the Electors determined as of the date the Petition is filed.
- c) The Petition referred to in subsection 29(b) shall also set out the facts substantiating the grounds for removal from office of a Chief or Councillor and shall be accompanied by any supporting documentation.
- d) Upon receipt of a Petition, the Arbitrator shall request Council to call a hearing meeting at which:

## LOWER KOOTENAY ELECTION REGULATIONS

- i. the person or persons who initiated the Petition shall explain the reason for the Petition
  - ii. the Councillor who is the subject of the petition shall be allowed to present their case
  - iii. all persons who signed the Petition shall confirm their understanding of the Petition
- e) The Arbitrator shall make a decision within 15 days of the meeting.

### **30) VACANCIES**

- a) The office of a Council member shall become vacant when the person who holds that office:
- i. dies;
  - ii. resigns from office;
  - iii. has been convicted of an criminal offence in Canada since their election and all appeals are completed;
  - iv. has transferred his or her membership to another Band;
  - v. has his or her election declared invalid by the Arbitrator and no other person has been declared by the Arbitrator as duly elected, or
  - vi. has been removed from office by declaration of the Arbitrator.
- b) The office of a Council member shall become vacant if the person:
- i. has been unable to perform the functions of his or her office for more than six (6) months due to illness or other incapacity; or
  - ii. has missed three (3) Council or Membership meetings, which may include a combination thereof, within a period of twelve (12) months, without just cause.
- c) Whether just cause exists for a Council member missing a meeting shall be determined after each absence by a Majority vote of other Council members present at a Council meeting and the decision shall be recorded in the minutes of that meeting.
- d) The Council member whose absence from a meeting is being considered shall be deemed in conflict of interest and shall leave the room prior to any



## LOWER KOOTENAY ELECTION REGULATIONS

debate on the question, not be counted in determining whether there is a quorum, nor participate in the vote determining whether the absence was with just cause.

e) The Council member who missed a meeting shall be notified in writing by the Council whether his or her absence has been determined under subsection 30(c) to be without just cause.

f) The Council shall determine whether an office of Council becomes vacant under subsection 30(b)(ii) and shall give written notice to the Council member affected.

g) If a candidate has been removed from office for just cause, he/she shall not be eligible for Nomination or Election to Band Council for a period of five (5) years from the date of dismissal.

h) The Council member whose office has been declared vacant under subsection 30(b)(ii) or in the case of illness or incapacity of the Council member, an Elector acting on his or her behalf, may appeal the Council decision by filing a notice of appeal with the Arbitrator within fifteen (15) days of the date notice of the decision was sent together with supporting documents.

i) Where an appeal has been filed under subsection 30(h) no by-election shall be called unless the Arbitrator's decision confirms the vacancy.

j) Should a by-election be necessary, Council shall immediately, by way of a Band Council Resolution, appoint an Electoral Officer to oversee the by-election.

k) A by-election shall be held within forty-five (45) days of a vacancy being declared.

l) By-elections will follow the same procedures as General Elections.

m) If a vacancy occurs within 120 days of the next General Election, no by-election will be held and the vacancy will be filled during the next General Election.

n) A candidate elected in a by-election will assume office after a 20 day appeal period has passed with no appeal being filed.

### **31) PROCEDURE ON ELECTION APPEALS, PETITIONS FOR REMOVAL FROM OFFICE AND APPEALS FROM VACANCY**

a) Where no Arbitrator has been appointed an appeal or Petition shall be filed with the Chief Operating Officer who shall upon receipt, request Council to appoint an Arbitrator.

b) If Council has not appointed an Arbitrator within ten (10) days of the request of the Chief Operating Officer under subsection 31(a) the Chief Operating Officer shall appoint an Arbitrator.

c) The Arbitrator may, at his or her discretion, give directions for:

- i. fixing the date, time and place for the hearing of the Petition or appeal;
- ii. designating the method of taking evidence, either by sworn declaration or written testimony, or both;
- iii. designating what persons are to be notified and how they are to be served; and
- iv. dealing with any matter or other thing not otherwise provided for in this section.

d) A copy of the notice of appeal or Petition and any documents relied upon shall be delivered to the Council member whose election is being appealed or the Council member whose removal is sought or the person whose office is being declared vacant.

e) In the case of an appeal under subsection 27(g) or section 28 the notice of appeal and supporting documentation shall be delivered to the Electoral Officer at least fourteen (14) days prior to the date of the hearing.

f) In the case of an appeal by an Elector under section 28 the notice of appeal and supporting documentation shall be delivered to the Council member whose election is being appealed at least fourteen (14) days prior to the date of the hearing.

g) In the case of an appeal under subsection 30(h) the notice of appeal and supporting documentation shall be delivered to the Chief Operating Officer at least fourteen (14) days prior to the date of the hearing.

h) The Council member whose election is being appealed, the Chief Operating Officer in an appeal under subsection 30(h) or the Electoral Officer in an appeal under subsection 27(g) or section 28 as the case may be, may file a written reply with the Arbitrator at least four (4) days prior to the date of the hearing.

## LOWER KOOTENAY ELECTION REGULATIONS

- i) No witness shall be required to divulge whom he or she voted for in the Election.
- j) The Arbitrator shall issue a written decision together with reasons in every appeal or Petition.
- k) In the case of an Election appeal under section 28 the Arbitrator may:
  - i. confirm the election of the Council member; or
  - ii. invalidate the election of the Council member.
- l) If the election of a Council member 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 take office upon their swearing the oath of office described in section 27 within three (3) days of the making of the order.
- m) The election of a Council member shall not be declared invalid by reason only of an irregularity or non-compliance with the rules set out in these regulations if it appears to the Arbitrator that the Election was conducted in good faith unless the non-compliance, irregularity or mistake materially affected the result of the Election.
- n) In an appeal of the decision of the Electoral Officer under subsection 27(g) the Arbitrator may:
  - i. confirm the decision of the Electoral Officer and declare the office vacant; or
  - ii. reverse the decision of the Electoral Officer and allow the candidate elected a specified time within which to sign the oath of office.
- o) In an appeal of the decision of the Council under subsection 30(h) the Arbitrator may:
  - i. confirm the decision of the Council and declare the office vacant; or
  - ii. reverse the decision of the Council and declare the Council member entitled to remain in office.
- p) If the Petition is for removal of a Council member under section 29 the Arbitrator may:
  - i. confirm the Council member in their office; or
  - ii. remove the Council member from office and declare the office vacant.

## LOWER KOOTENAY ELECTION REGULATIONS

- q) The Arbitrator may in his or her discretion order by whom, to whom and in what manner costs shall be paid.
- r) The Arbitrator shall provide a copy of the decision to the Council and to any party to an appeal or Petition.
- s) The Arbitrator's decision shall be:
  - i. published in the Lower Kootenay newsletter mailed to Electors or in a separate written notice delivered or mailed to Electors; and
  - ii. posted in a public area of the Lower Kootenay administration building.
- t) The decision of the Arbitrator is final and not subject to appeal.

## **32) REVIEW AND AMENDMENT OF ELECTION REGULATIONS**

- a) Any Council member or Elector may request to hold an election regulation review meeting by filing a written request with the Council, stating what sections are to be discussed. Subject to 32 (b), Council shall set a meeting date within 30 days of the request. A Council member shall chair the meeting.
- b) Election regulations will be reviewed not more than once every four (4) years and not within 120 days of the next election.
- c) Notice of an election regulation amendment meeting must be posted in a public place at the Lower Kootenay Band Administration office and delivered to members resident on the Reserve at least seven (7) days prior to the proposed meeting date.
- d) The meeting notice shall state specifically what sections of the election regulations are to be discussed and indicate the date, place and time for the review meeting.
- e) Those Electors in attendance at the election regulation review meeting may draft recommended amendments to the regulations. These recommendations will be forwarded to the Lower Kootenay Band Council.
- f) Within 72 hours of the recommended amendments being drafted, the details of the proposed amendments will be sent to the contact address of Eligible Voters, along with a notice of the date, time and place of the final meeting to discuss and approve amendment recommendations to election regulations. All minutes of meetings held to review election regulations will be distributed with the draft amendments.

## **LIST OF FNFMB SAMPLE POLICIES**

FMB 02 – Delegated and Assigned Responsibilities

FMB 03 – Policies, Procedures and Directions

FMB 04 – Reporting of Compensation, Benefits and Contracts Policy

FMB 05 –First Nations Committees Policy

FMB 06 – Finance and Audit Committee Policy

FMB 07 – Appointment of Lower Kootenay Band Officers Policy

FMB 08 – Organizational Chart Policy

FMB 09 – Human Resources Records Management Policy

FMB 10 – Hiring Policy and Procedures

FMB 11 – Progressive Disciplinary and Dismissal Policy and Procedures

FMB 12 – Employee Evaluation and Planning Policy

FMB 13 – Conduct Expectations Policy

FMB 14 – Integrated Planning Policy

FMB 15 – Financial Institution Account Policy

FMB 16 – Expenditures Policy

FMB 17 – Debt Policy

FMB 18 – Procurement Policy

FMB 19 – Risk Management Policy

FMB 20 – Loans, Guarantees and Indemnities

FMB 21 – Investment Policy

FMB 22 – Insurance Policy

FMB 23 – Emergencies Policy

FMB 24 – Financial and Operational Reporting Policy

FMB 25 – Information Technology Policy

FMB 26 – Audit Policy

FMB 27 – Records and Information Policy

FMB 28 – Tangible Capital Assets Policy

FMB 29 – Financial Administration System Improvement Policy

FMB 30 – Whistleblower Policy

FMB – 31 Local Revenue Policy

## LOWER KOOTENAY ELECTION REGULATIONS

- g) The meeting to approve regulation amendments shall be held 14 days following the distribution date. In the event that the proposed approval meeting date falls on a statutory holiday, the meeting will be held the next business day.
- h) Electors may comment on the proposed amendments prior to the amendment recommendation meeting by submitting written comments to the Chief Operating Officer.
- i) In the event that there are comments received from Electors, copies of these comments will be circulated to those persons that were in attendance at the initial regulation review meeting and to all persons who attend the final meeting to approve election regulation amendments.
- j) If no comments are received from Electors within 14 days after the draft amendments being circulated, those persons in attendance at the final regulation review meeting will draft the final recommendations for presentation to Council.
- k) Recommendations for amendments to this election by-law must be approved by 75 % of the Electors present at the final meeting.
- l) A special meeting will be held by Council within 72 hours of the meeting referred to in subsection (j) to consider ratifying the amendments.
- m) No additional changes will be made to the election regulations by Council, without the knowledge and consent of the eligible voters.
- n) Upon the receipt of a written request, a copy of the ratified amended election regulations will be sent to an Elector.

RATIFIED THIS 22<sup>nd</sup> DAY OF May, 2012.

SIGNED BY THE COUNCIL

M. Jason Louis

Print Name

M. Jason Louis

Signature

Mary Basil

Print Name

Mary Basil

Signature

LOWER KOOTENAY ELECTION REGULATIONS

Anne Jimmie

Print Name

Anne Jimmie

Signature

Sandra Luke

Print Name

Sandra Luke

Signature

Arlene Basil

Print Name

Arlene Basil

Signature