

COMMUNITY ENGAGEMENT MEETING

NADLEH WHUT'EN DRAFT ELECTION AND REFERENDUM CODE

Date: **February 22 and 23, 2023**

Presenter: **Elisa Penn**

Organizer: **Nadleh Whut'en**

Overview

- Introduction
- Background
- Why a Custom Code?
- Where we are going
- Progress to date
- Review of the Draft Code
- Next steps

Background

- Currently, Nadleh Whut'en selects its Chief and Council under the Indian Act and pursuant to the Indian Band Election Regulations
- Options for leadership selection:
 - Continue under the Indian Act (section 74)
 - Opt into the First Nations Elections Act
 - Custom Election Code

Why a Custom Code?

- Leadership selection process reflect Nadleh
Whut'en values and priorities:
 - Longer term of office
 - Staggered terms
 - Candidate requirements
 - Electronic Voting

Where We are Going

- Working towards Custom Election Code
- Repeal of order under section 74 of the Indian Act

Requirements

- Indigenous Services Canada has some requirements:
 - Clear written format
 - Appeal provisions
 - Fair, impartial, consistent with the Charter
 - Has been reviewed by Indigenous Services Canada
 - Has received the support of the community

Progress to Date

- Have Developed a DRAFT Nadleh Whut'en First Nation Election and Referendum Code
- The DRAFT Code has been reviewed by Council multiple times with revisions being made based on feedback
- The DRAFT Code is now in the stage of development where Council is comfortable bringing it to the community

community input is key

Council and Staggered Terms (s.6 & 7)

- Council will consist of 1 Chief and 5 Councillors
- Terms will be 4 years long
- Staggered terms of Council:
 - First Election under the DRAFT Code, Chief and 2 Councillors will serve a 4-year term, 3 Councillors will serve a 2-year term
 - For each subsequent Election, everyone who is elected will serve a full 4-year term

Term of Office and Election Date (s. 8)

- The term of office for each member of Council will be 4 years
- Election will be held every two years in the first week of April for the members of Council whose terms expire during that year

Community Engagement

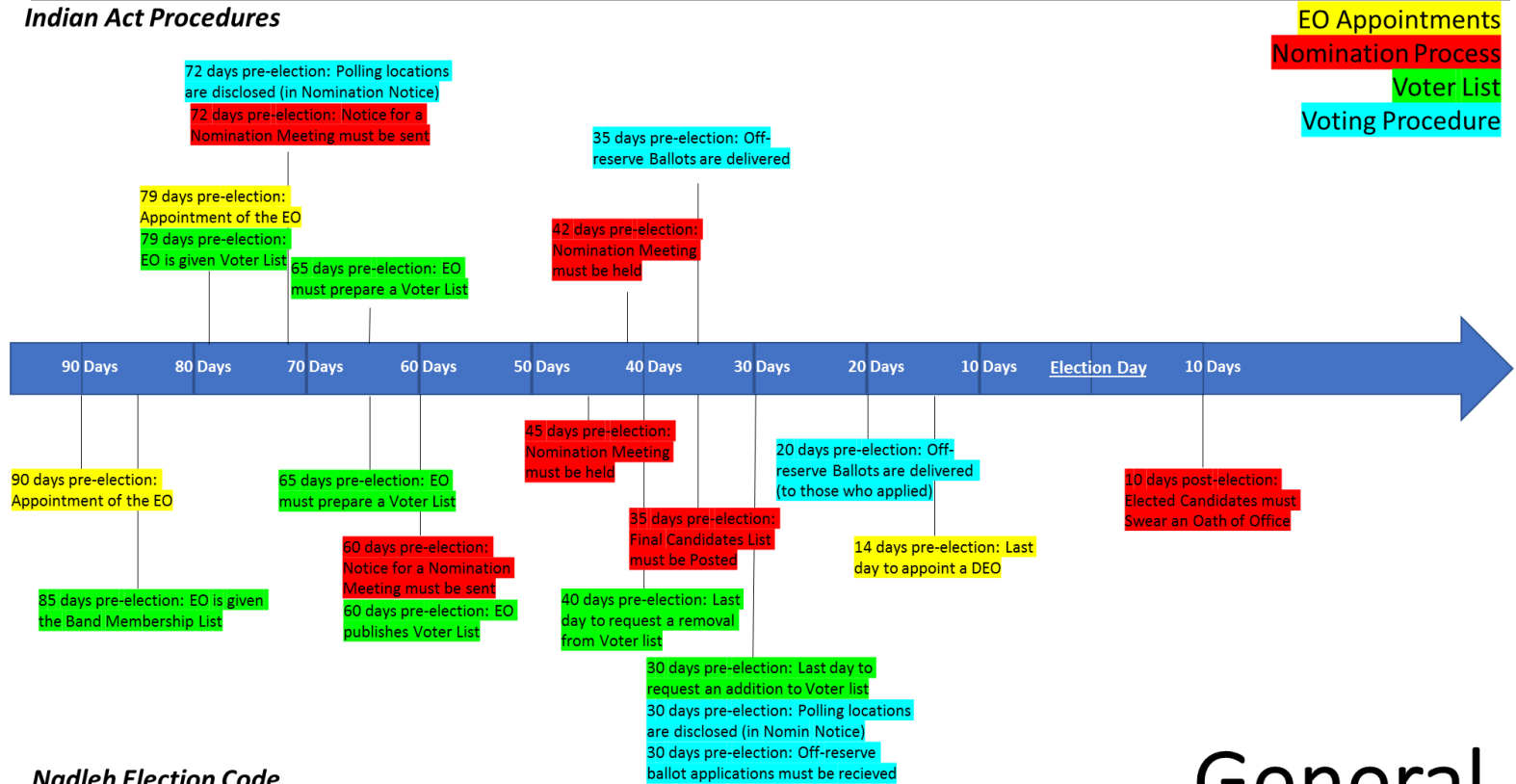
- ***Do you agree with 5 Councillors and 1 Chief?***
- ***Do you agree with 4-year term?***
- ***Do you agree with staggered elections?***

Pre-Election Appointments (s. 9)

- Council will, at least 60 days prior to the date on which a Poll is to be held:
 - Appoint an Electoral Officer
 - Appoint an Appeal Committee
 - In the case of a Referendum, determine the question(s)
- If Council fails to appoint Electoral Officer, Senior Manager will appoint

Timeline Comparison

Indian Act Procedures



Nadleh Election Code Procedures

General

Electoral Officer (s. 9)

- Electoral Officer required to not be
 - a Member
 - salaried employee of Nadleh Whut'en or
 - hold other contracts for services with Nadleh Whut'en at the time of the Poll
- Electoral Officer may appoint a Deputy Electoral Officer(s)
- Electoral Officer and Deputy Electoral Officers will be removed from office by Council in certain circumstances

Community Engagement

- ***Do you agree that EO should not be a Member?***
- ***Do you agree that EO should not be an employee or have other contract?***
- ***Are there other requirements/limits for being an EO?***

Voter Contact Information (s. 10)

- Voters responsible for providing current contact information
- Voter information can only be used for:
 - Providing notices
 - Mail-in ballots
 - Electronic ballots
 - Other documents Voters are entitled to
- Voter information cannot be disclosed without the Voter's consent

Voters List (s. 11)

- Within 25 days of their appointment, the Electoral Officer will prepare a Voters List
- Electoral Officer will post the Voters List in a public area of the Administration Building, and publish it electronically, no later than 60 days prior to the Poll

Voters List ctn (s. 11)

- A person whose name does not appear on the Voters List may apply to the Electoral Officer to have that corrected 30 days prior to Election
- A Voter who believed a person's name should not be included on the Voter's List may apply to the Electoral Officer to have that person's name removed 40 days prior to Election

Voters List ctn (s. 11)

- If a person's eligibility to vote is challenged, they will have the opportunity to respond
- Considering all information the Electoral Officer will amend names on, add names to, or remove names from the Voters List
- The Electoral Officer must post a copy of their decision publicly and electronically
- Electoral Officer will, at least 10 days prior to the date on which the Poll is to be held, post a final Voters List publicly and electronically

Community Engagement

- ***Do you agree with timelines for changing voters list?***
 - ***40 days to have a person removed***
 - ***30 days to have a person added***

Notice of Nomination Meeting (s. 12)

- At least 60 days prior to the date on which the Election is to be held, the Electoral Officer will post notice of the Nomination Meeting which must include various information
- The Nomination Meeting will be held on a Nadleh Whut'en Reserve at least 45 days prior to the date of the Election

Nomination Meeting (s. 13)

- A Voter must be proposed for nomination and have that nomination seconded to be a nominee
- A Voter may only be a nominee for one of the offices of Chief or Councillor
- A Voter may nominate or second one person to serve as Chief and up to two persons to serve as Councillors

Community Engagement

- ***Do you agree Voter can only nominate***
 - ***One person for Chief***
 - ***Two persons for Councillor***

Nomination Meeting Cont'd

- No person will on the day the Nomination Meeting is held on the premises:
 - Distribute any printed materials
 - Interfere with or influence any Voter in nominating or seconding a nominee
 - Disrupt, or attempt to disrupt, the nomination process
- The Electoral Officer may request appointed security to remove any person from a Nomination Meeting

Acceptance of Nomination (s. 14)

- To be confirmed as a Candidate a nominee must, within one week of their nomination:
 - Sign and deliver the Notice of Acceptance of Nomination to the Electoral Officer
 - Deliver a Criminal Record Check to the Electoral Officer
 - Deliver a \$100 non-refundable fee to the Electoral Officer

Community Engagement

- ***Do you agree with candidate fees?***
- ***Do you agree with Criminal record check***

Candidate Requirements

“Candidate” means a person who:

- (a) qualifies as a Voter,
- (b) is nominated in accordance with the procedures set out in this Code,
- (c) is not serving a sentence of imprisonment during the Election period,
- (d) within 10 years prior to their nomination, has not been convicted of:
 - (i) an Indictable Offence, or
 - (ii) a Summary Offence that involves physical or sexual violence toward another person unless a record suspension has been granted for the offence,
- (e) has not been removed or resigned from Council office in the last four years,
- (f) is in Good Financial Standing, and
- (g) complies with all relevant requirements set out in this Code;

- If the Electoral Officer determines that any confirmed Candidate is or becomes ineligible, they will remove that person’s name from the list of Candidates

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- ***Do you agree with the Candidate requirements?***
 - Serving a sentence
 - 10 years indictable offence
 - 10 your physical or sexual violent
 - Removed from Council
 - Good Financial Standing

Notice of Poll (s. 15)

- Notice posted 60 days before Election
- Voters who are Ordinarily Resident on Reserve and unable to vote in person may vote by mail-in ballot or electronic ballot where available if request remote ballot 30 days before Election Day
- Voters not Ordinarily Resident on Reserve may vote in person

Mail in Ballots and Preparation of Ballots (s. 16)

- Sent to all Voters who are not Ordinarily resident reserve
- Where electronic voting is in place, mail-in ballot package will include instructions for voting by electronic ballot
- Ballot will set out candidate names or referendum question

Voting by Mail-in Ballots (s. 18)

- Voting by mail in ballot process includes
 - marking ballot,
 - placing ballot in an inner envelope,
 - completing and signing the Voter Declaration Form with a witness and
 - returning the package before the end of say when the polls close

Voting by Electronic Ballot (s. 19)

- Only if Electoral Officer decides to use electronic voting
- Must be submitted prior to opening of Polls

Voting at the Poling Station (s. 20)

- Open 9:00 am until 8:00 pm
- Poling station on reserve
- Each candidate may have up to 2 scrutineers
- Must present government issued identification
- If no government id, can have two Voters sign a declaration
- No proxy vote
- Voter assistance available

Community Engagement

- ***Any concerns about voting process outlined above?***

Procedure after close of Polls (s. 21)

- Mail in ballot verification
- Ballot verification
- Document rejected ballots
- Create report of ballots

Recounts and Ties (s. 22 and 23)

- If difference of 5 votes or less, will conduct a recount
- After recount, declare results
- If tie in Election, then By-Election for the Council position limited to those candidates who ties
- If tie in referendum, question does not pass
- Electoral Officer announce result and complete reporting

Community Engagement

- *Do you agree with By-Election in the case of a tie?*

Requirements after Poll (s. 24)

- Swear Oath of Office
- Complied with requirements of Council Policy

Disposal of Ballots (s. 25)

- Retain ballots for 120 days after poll and then dispose of ballots

Appeal Committee (s. 26)

- 3 persons who
 - are not Members,
 - are Indigenous and
 - have legal or other experience relevant to work of the Appeal Committee
- Swear Oath of Office
- Will select a Chair
- Can be replaced by BCR of Council

Community Engagement

- ***Do you agree with requirements of Appeal Committee?***

Appeal Committee (s. 26)

- Appeal Committee may
 - Set process for appeal
 - Determine if additional people need to be notified
 - Seek and obtain legal advice where needed
 - compel Electoral Officer to produce documents
 - Determine relevant matters not provided in the Code

Appeals (s. 27)

- Conducted in writing
- Notice of appeal delivered to Senior Manager setting out grounds:
 - Person declared elected was not eligible candidate
 - Person elected was not properly nominated
 - Violation of Code that could reasonable have affected the result of the Election
 - Corrupt or fraudulent practice

Notice of Appeal

- Notice of appeal includes
 - Sworn affidavit setting out facts substantiating the appeal
 - Supporting documentation
 - Filing fee \$100
- Must be submitted 30 days from the Election

Appeal Process

- Copy of notice of appeal circulated within 10 days of receipt
- Opportunity for written reply
- Within 45 days of receipt of appeal make decision and provide written reasons
- Until decision made, Council position remains vacant

Community Engagement

- ***Do you agree with set out appeal process?***
 - ***Fee for appeal***
 - ***Grounds for appeal***
 - ***In writing***
 - ***Opportunity to respond***
 - ***Final decision 45 days after receipt of appeal***

Removal From Office by BCR (s. 28)

A member of Council will be removed from office by BCR if the member of Council

- (a) ceases to be eligible to be a member of Council pursuant to this Code;
- (b) has been absent from 3 consecutive duly convened Council meetings without being authorized by Council to do so;
- (c) has had their election into their position on Council successfully appealed; or
- (d) has received three written warnings from Council for breaches of their obligations under the Council Member Oath of Office.

Community Engagement

- *Do you agree with this process for removal from office?*

Vacancies (s. 28)

The office of Chief or Councillor will become vacant when the person who holds that office:

- (a) is removed;
- (b) dies; or
- (c) resigns from their office by providing Council with a written letter of resignation.

By-Elections (s. 29)

- The procedures for every By-Election will be governed by those for Elections set out under this Code.
- No by-election with less than 6 month remaining in Term of Office
- Where more than two vacant seats, an Election of all Council will be held when third Council set becomes vacant even if less than 6 months remaining in the term
- No sitting Councillor is eligible to be a Candidate for Chief in a By-Election unless they resign from Council prior to the date for nominations in the relevant By-Election.

Community Engagement

- ***Do you agree with process for triggering a By-Election?***

THANK YOU

Elisa Penn

elisa@mandellpinder.com