

MICMACS
OF
GESGAPEGIAG

FIRST NATION



ELECTION CODE

2nd Draft

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ELECTION CODE

TITLE:

1.- This Law shall be known as Micmacs of Gesgapegiag First Nation Election code.

DEFINITIONS:

2.- In this code, the following definitions apply:

- a) **“First Nation Government”** means those members elected pursuant to this code and who are empowered to act on behalf First Nation.
- b) **“By election”** means the election of Chief or councilor to fill a vacancy arising during the term of office.
- c) **“Candidate”** means:
 - (i) an elector who is eighteen (18) years of age or older, on or before election day; and
 - (ii) a member of the First Nation Government whose name has appeared on the membership list for a period no less than twelve (12) months immediately preceding the election; and
 - (iii) an elector who is ordinarily resident and who has resided on one of the First Nation’s reserves or on lands owned or controlled by the First Nation for a period of not less than **six (6) months** immediately preceding the election; and
 - (iv) an elector who as been nominated pursuant to this code;
- d) **“Code”** means the Micmacs of Gesgapegiag First Nation Election Code.
- e) **“Elected”** means a candidate who is proclaimed by the electoral officer as being successful.
- f) **“Election”** means a First Nation election held pursuant to the provisions of this code.

- g) **“Elector”** means a person who:
- (i) has his/her name appearing on the First Nation membership list for a period of not less than twelve (12) months immediately preceding the election; and
 - (ii) is the full age of eighteen (18) on or before nomination day for the purpose of nominations; and
 - (iii) is ordinarily resident and has resided on one the First Nation’s reserves or on lands owned or controlled by the First Nations for a period of not less than **six (6) months** immediately preceding the election;
- h) **“Electoral officer”** means a person selected and appointed by the Micmacs of Gesgapegiag First Nation for the purpose of directing an election, a by-election or a referendum;
- (i) **“Nominator”** means an elector for an election or by-election, who nominates a candidate;
- j) **“Ordinarily resident”** means the usual place of living of a person or elector and shall be determined by the facts in each case, and without limiting the foregoing, factors to be considered are:
- (i) the place a person or elector normally sleeps;
 - (ii) the place a person or elector receives mail;
 - (iii) the residence of the immediate family;
 - (iv) place of employment and,
 - (v) the reason for being absent from the First Nation reserves and lands;
- (k) **“Deputy electoral officer”** means a person appointed by the electoral officer to assist him or her in directing an election, by-election or a referendum;

- (l) **“Polling station”** means that building, hall or room which is selected to be the site for the voting to take place.
- (m) **“Referendum”** submitting to the vote of the electors a question or questions proposed by the Micmacs of Gesgapegiag First Nation’s.
- (n) **“Seconder”** means an elector for an election or by-election who seconds the nomination of a candidate;

GENERAL PROVISIONS:

- 3.- The Micmacs of Gesgapegiag First Nation shall comprise of one (1) Chief and eight (8) councilors;
- 4.- The candidate for the position of Chief who receives the highest number of votes shall be declared elected;
- 5.- The candidates for the position of **eight (8)** councilor who receives the highest number of votes shall be declared elected;
- 6a) In order that the results of a referendum be legally binding, at least 50% + 1 of the electors **on and off** reserve whose name appear on the elector’s list have to vote;
- 6b) In the case of a referendum, the issue is resolved by determining which answer received the highest number of votes 50% + 1;
- 7.- The Chief shall preside over all general meetings of the Council;

COMPUTATION OF DELAYS

- 8.- In computing an delay fixed by this code including the delays for appeal, the day which marks the start of the delay is not counted, but the terminal day is counted;

LANGUAGE

- 9.- A Mi’gmaq translation of this Code shall be prepared;

TERM OF OFFICE:

- 10.- The Chief and Council members shall hold public office for **two (2), three (3) or four (4)** years from the date of their election;
- 11.- The Chief and council members shall remain in office until their successors are elected;
- 12.- The office of Chief or councilor shall become vacant if the person who holds that office:
 - (iv) has been found guilty of an indictable offense under the Criminal Code, punishable by an imprisonment for a term of five (5) years or more, which is not being appealed, or
 - (v) dies or resigns his or her office, or
 - (vi) is or becomes ineligible to hold office by virtue of this Code, or
 - (vii) has been absent from three (3) consecutive duly convened meetings of the First Nation Government without being authorized to do so, or
 - (viii) is found to be mentally incompetent by a Court;
- 13.- Anyone who ceases to hold office by virtue of subparagraph 12(a) shall be ineligible to be a candidate for the position of Chief or councilor of the Micmacs of Gesgapegiag First Nation Government for a period not exceeding six (6) years;
- 14.- Where the office of Chief or councilor becomes vacant less than twelve (12) months before the date when another election would ordinarily be held, **no** by-election may be held;
- 15.- Where the office of Chief or councilor becomes vacant more than twelve (12) months before the date when another election would ordinarily be held, a by-election shall be held;
- 16.- A person elected to the Micmacs of Gesgapegiag First Nation Government in a by-election shall hold office only until the next general election;

- 17.- A general election for the office of Chief and **eight (8)** Councilors shall be held every **two (2), three (3) or four (4)** years, on the last Friday of July for that election year;

NOMINATION PROCEDURE:

- 18.- The electoral officer shall be appointed not less than **ninety (90)** days before the date determined for an election, by-election or referendum.
- 19.- The electoral officer shall be appointed by Band Council Resolution which will contain his/her full name, the date and time of nomination and mention the type of election, by-election or referendum, which is to be conducted, as well as any special instructions given;
- 20.- The electoral officer shall prepare an elector's list, in alphabetical order of all electors and Band members according to the list provided by the Membership and Land clerk of the Micmacs of Gesgapegiag First Nation Government.
- 21.- The electoral officer shall establish an election file and place on file copies of all correspondence associated with the up-coming election and that file shall remain open until such time as the delay of appeal of **thirty (30) or ninety (90) days** has expired. The file shall then be closed and become the property of the new First Nation Government;
- 22.- The electoral officer shall appoint polling officers and interpreters as he deems necessary and shall document the details of these appointments on the election file.
- 23.- The electoral officer may appoint one or more deputy electoral officers to assist him in his duties;
- 24.- The electoral officer shall, at least have **fourteen (14)** days before the date of the election or by-election draft and post a notice of nomination;

- 25.- The notice of nomination shall contain and set out:
- a) a list of eligible elector's, as of the date of the election;
 - b) time, date, place and process for the nominations;
 - c) the position or positions open for election;
 - d) a copy of this code.
- 26.- The notice of nomination shall be posted in all public places as the electoral officer deems necessary;

NOMINATION ELIGIBILITY:

- 27.- Only electors may nominate or second the nomination of a candidate:
- 28.- No one person can nominate or second more than two candidates;
- 29.- A candidate may run for one position only, either Chief or Councilor;
- 30.- An elector who has been nominated must appear before the electoral officer prior to the close of the nomination meeting to accept or decline his nomination;

NOMINATION MEETING:

- 31.- A nomination meeting shall be held no later than seven (7) days before the date of an election or by-election;
- 32.- The electoral officer shall declare the meeting open for the purpose of receiving the nomination of candidates for the position advertised;

- 33.- **The electoral officer will keep the nomination meeting open from 1:00 p.m. to 4:00 p.m.**
- 34.- The electoral officer, the assistance of the Gesgapegiag Police Force, shall maintain order at all times during the nomination meeting and may cause to be removed any person who, in his/her opinion, is disrupting or otherwise interfering with the meeting;
- 35.- The electoral officer shall record the name of the candidate, the nominator and the seconder and confirm to the meeting that the proposed candidate is eligible to be elected to the position of Chief or Councilor of the First Nation Government.

ELECTION PROCEDURE:

- 36.- At the closure of the meeting, the electoral officer shall , if the number of nominations does not exceed the number of positions open, declare such candidates elected by acclamation;
- 37.- If the number of candidates exceeds the number of positions open, the electoral officer will announce the date of the election;
- 38.- The electoral officer or the deputy electoral officer, shall without undue delay, post a notice of election setting out the time and place and date for voting. Such notice shall be posted in the Band Office and other public places as deemed necessary. In any case, the notice shall be posted not less than seven (7) days prior to the date scheduled for the election;
- 39.- There will be established one (1) polling station at a local determined by the electoral officer and no off reserve polling station will be established;
- 40.- The electoral officer or the deputy electoral officer shall have prepared distinct ballot papers for the position of chief and councilor, in the form prescribed, with the full and complete names, listed in alphabetical order, of all the candidates for Chief and for Councilors;
- 41.- The electoral officer or the deputy electoral officer shall obtain such ballot boxes, procure a sufficient number of ballot papers for the purpose of the election, materials for marking, a sufficient number of directions-for-voting as may be required and all other equipment as necessary to establish voting locations;

- 42.- The electoral officer or the deputy electoral officer shall construct or erect polling booths in such a way that the privacy of the voter is maintained;
- 43.- The electoral officer or the deputy electoral officer, where necessary and when requested, appoints an interpreter, who will be a member of the Band (**another member of a Mi'gmaq community**), for any voter who is unable to read or is incapacitated by blindness or other physical cause from voting in the manner prescribed by this code and shall assist such 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;
- 44.- Any candidate who has been nominated may withdraw, at any time, but no later than two hours before the opening of the polls, his/her nomination, this shall be done by filing with the electoral officer a written withdrawal of the nomination, signed by the candidate personally in the presence of the electoral officer, or the deputy electoral officer and any votes cast for any withdrawn candidate shall be null and void. The withdrawal is effective at the time the electoral officer or the deputy electoral officer is in receipt of the written document;

ELECTION POLL:

- 45.- The electoral officer and the deputy electoral officers that are deemed necessary shall be in attendance at the time and place as is set out in the notice of poll;
- 46.- The electoral officer and the deputy electoral officer must maintain total impartiality during an election, by-election or referendum;
- 47.- The electoral officer or the deputy electoral officer shall immediately before the commencement of the poll open the ballot box(es) and call such persons as may be present to witness that it is empty; he shall then lock the box to prevent it from being opened and shall place it in view for the reception of the ballots and the box shall not be unlocked during the time appointed for taking the poll;
- 48.- The electoral officer or the deputy electoral officer shall hold the polling booth(s) open from 9:00 a.m. to 6:00 p.m. (Local time);

- 49.- The electoral officer or the deputy electoral officer, with the assistance of the Gesgapegiag Police Force, shall maintain order at all times in the polling station and may cause to be removed any person who in anyway interferes, disrupts or attempts to influence the orderly conduct of the poll;
- 50.- Persons presenting themselves for the purpose of voting shall, upon being confirmed by the electoral officer or the deputy electoral officer, as an elector, be given one (1) ballot, upon which to register his/her votes;
- 51.- All candidates shall be entitled to not more than two (2) agents in a polling place, at any one time, to witness voting operations;
- 52.- The electoral officer or the deputy electoral officer shall initial each ballot upon giving it to the elector;
- 53.- **Each elector receiving a ballot shall proceed directly to the place provided for marking ballots and shall mark his/her ballots by placing any mark** opposite the name of the candidate(s) for whom he/she desires to vote and shall then deposit the ballot in the ballot box supplied;
- 54.- The electoral officer, or the deputy electoral officer, shall note upon the voter's list any irregularity in connection with voting and shall specifically note any ballots marked by the electoral officer and the deputy electoral officer at the request of an elector, but shall not note the candidate for whom the ballot was cast;
- 55.- A voter who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used, shall return it to the electoral officer or the deputy electoral officer who shall write the word cancelled upon the spoiled ballot paper and preserve it, and deliver another ballot paper to the voter;
- 56.- Any person who has received a ballot paper and who leaves the polling place without delivering it to the electoral officer or the deputy electoral officer, in the manner provided, or after receiving the ballot paper, refuse to vote, shall forfeit his right to vote at the election, and the electoral officer or the deputy electoral officer shall make an entry in the voter's 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; in which case the electoral officer or the deputy electoral officer shall mark upon the face of the ballot paper the word declined and all ballot papers so marked shall be preserved;

- 57.- Any elector, whose name does not appear on the voter's list, may present identification to be verified by the electoral officer or the deputy electoral officer for eligibility, and by filing a statutory declaration, may be allowed to vote at the polling station;
- 58.- All electors who are in the polling station at the closure of the poll, will be allowed to vote;

ELECTION TABULATION:

- 59.- Immediately following the close of the poll, the electoral officer or the deputy electoral officer shall, in the presence of such candidates and /or their agents, open the ballot box or boxes and :
- a) examine the ballots and reject any that are not initialed by the electoral officer or the deputy electoral officer or any other ballots that, in his/her opinion, do not give clear indication of the voter's preference. If any ballot has more votes than there are vacancies for that position, that ballot is rejected. All rejected ballot papers shall be preserved;
 - b) reject any ballot papers upon which anything appears by which the voter can be identified;
 - c) subject to review on recount or on an election appeal, take note of any objections made by any candidate or his agent to any of the ballot papers found in the ballot box and decide any questions arising out of the objection;
 - d) count the votes given for each candidate from the ballot papers not rejected and make a written statement of the number of votes given each candidate and of the number of ballot papers rejected and not counted by him, which statement shall be then signed by him and other persons authorized to be present as may desire to sign the same and;
 - e) number such objections 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 initials;
- 60.- After tabulation, the electoral officer shall announce the names of the candidates that receive the highest number of votes and publicly declare these candidates officially elected;

- 61.- The electoral officer or the deputy electoral officer following the announcement shall post in some conspicuous place, a statement signed by him showing the number of votes cast for each candidate;
- 62.- Following the election announcement, the electoral officer shall complete and sign an election report, in triplicate, which shall contain:
- a) Total number of ballots printed;
 - b) Total of number of ballots casted and counted for Chief;
 - c) Total of number of ballots casted and counted for Councilors;
 - d) Number of ballots cast and rejected;
 - e) Number of ballots declined / cancelled;
 - f) Number of ballots unused;
 - g) Number of voters that required assistance or an interpreter;
- 63.- The electoral officer shall forward:
- a) one copy to the Region, Department of Indian Affairs; and,
 - b) one copy to the Band's Manager/Administrator;
- 64.- Where it appears that two or more candidates have an equal number of votes, the electoral officer shall give a casting vote for one or more of such candidates, but the electoral officer shall not otherwise be entitled to vote;

ELECTION APPEALS

APPEAL BOARD:

- 65.- An Appeal Board shall mean an election Appeal Board, appointed by the Department of Indian Affairs.
- 66.- The Appeal Board shall supervise and administer all election appeals, in accordance with the rules of this code;

- 67.- The Appeal Board shall be made up of other aboriginal electoral officers, impartial aboriginal community members and members of other aboriginal communities, in any case of no more than five (5) member, nor less than three (3). The appeal board may consult a legal adviser during the appeal process;
- 68.- The members of the Appeal Board shall hold office until all appeals have been determined. No member of the Election Appeal Board shall be at the same time a member of the First Nation Government or a candidate for Council office;

APPEAL PROCEDURE:

- 69.- Any candidate at the election or any elector who gave or tendered his vote at the election may, within fifteen (15) working days of the poll, no later from 4:00 p.m. of the last day, appeal the election if he/she has reasonable and probable grounds for believing that:
- a) an error or violation was made in the interpretation or application of this Code that might have affected the outcome of the election;
 - b) a candidate who ran in the election was ineligible to so do as per this Code;
- or
- c) there was a corrupt practice in connection with the election;
- 70.- An appeal may be lodged by forwarding by registered mail to the electoral officer a written notice of appeal, duly supported by affidavit, outlining the grounds for the appeal received within the delay stipulated in section 69;
- 71.- The Appeal Board shall within seven (7) days of the receipt of the appeal, forward a copy of the appeal together with supporting documents by registered mail to all the candidates, the Council members and eligible voters who are directly affected by the appeal;
- 72.- At the hearing of the appeal, all persons directly affected by the appeal must be allowed to be heard and respond to the allegations of the appellant;
- 73.- Whenever possible, the Appeal Board will render decisions by consensus. Otherwise, decisions are rendered by the majority;

- 74.- The Appeal Board shall, within twenty-one (21) days of the receiving of the appeal, make the following decisions:
- (i) deny the appeal on the grounds that evidence presented did not indicate an infraction to the Code;
 - (ii) uphold the appeal but allow the election to stand, as the infraction did not affect the results of the election: or
 - (iii) uphold the appeal and call for new election or by-election within twenty-one (21) days of the determination of the appeal for all or some of the positions which were contested, giving instructions such that the reason for the original appeal is corrected. The nomination procedure of the Code, adapted as required, will then apply;
- 75.- Then written decision will be given to the electoral officer and a copy of the decision will be posted in all public places;
- 76.- The decision of the Appeal Board is final and binding;

OATH OF OFFICE:

- 77.- A compulsory public Oath of Office shall be taken by each newly elected Chief and Councilor, within a delay of seven (7) days from the election. **Occupation of elected office will not be considered official until the Oath of Office has been signed.**

AMEMDMENT FORMULA:

- 78.- Any amendments to this Code will require those proposed amendments to be mailed out to all households on and off reserve three (3) months prior to their adoption. **The referendum process must approve the proposed amendments.** Anyone having reason to contest these amendments must do so in writing, to the First Nation Government, attention to Chief and Council, within a three (3) month period.