

# **LOWERNICOLA INDIAN BAND**



## **Custom Election Rules**

Effective Date: June 28, 2022

Council Resolution: 06-28-2022-17

# 1. Custom Election Rules Amendment Tracking Sheet

Law: Custom Election Rules

Law Adopted: Septemer 12, 1994, Resolution unknown

Date of Amendment	Council Resolution #	Amends Section(s)	Replace Page(s)	Distributed by:
05-10-1995				
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28-06-2022	06-28-2022-17	Online Voting Process		Sondra Tom

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# Lower Nicola Indian Band

## Council Resolution

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TEL.: 250-378-5157 FAX: 250-378-6188

Resolution #: 06-28-2022-17

### Special Band Meeting to Amend Custom Election Rules

**WHEREAS** the Lower Nicola Indian Band operates under the authority of Chief and Council;

**WHEREAS:**



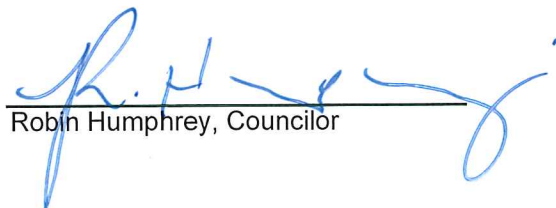
- A. Chief and Council of LNIB adopted Custom Election Rules in 1994 which were subsequently amended in 1998 and 2013 and are known as the Custom Election Rules of the Lower Nicola Indian Band (the "**Custom Election Rules**");
- B. Chief and Council have determined that it is in the best interests of LNIB to introduce online voting for LNIB elections and by-elections to ensure greater accessibility, engagement, and safety for LNIB members;
- C. Chief and Council have been presented with proposed amendments to the Custom Election Rules that would introduce online voting for LNIB elections and by-elections (the "**Proposed Amendments**");
- D. Section 32 to 34 of the Custom Election Rules require that any amendment to the Custom Election Rules be approved by a two thirds majority of LNIB Electors at a Special Band Meeting;
- E. Chief and Council previously passed a Band Council Resolution to convene a Special Band Meeting to approve the Proposed Amendments;
- F. Chief and Council held a Special Information Meeting on June 23, 2022, to review the Original Proposed Amendments with LNIB members, as required by section 33 of the Custom Election Rules (the "**Special Information Meeting**");
- G. At the Special Information Meeting, LNIB members and officials proposed and supported certain changes to the Proposed Amendments;
- H. Chief and Council have been presented with updates to the Proposed Amendments that reflect the changes proposed by LNIB members and officials at the Special Information Meeting (the "**Updated Amendments**");
- I. A Special Band Meeting was previously scheduled for July 23, 2022 so that LNIB members may vote on the Proposed Amendments;
- J. Chief and Council intend to hold, in accordance with section 33 of the Custom Election Rules, an additional special information meeting so that LNIB membership may review the Updated Amendments prior to voting on them at the July 23, 2022 Special Band Meeting; and
- K. Chief and Council wish to continue the process of amending the Custom Election Rules to introduce online voting for LNIB elections and by-election by bringing the Updated Amendments before LNIB members for approval.

**NOW THEREFORE BE IT RESOLVED** by the Chief and Council of the LNIB that:

1. That a Special Information Meeting be held so that the Updated Amendments can be presented to LNIB membership for review;
2. The Updated Amendments proceed to a vote of the membership at the Special Band Meeting scheduled for July 23, 2022; and
3. That OneFeather Mobile Technologies Ltd. be engaged to oversee the vote on the Updated Amendments.

This resolution is supported by the undersigned and passed this 28<sup>th</sup> of June 2022.

**Quorum of Council: 5**

  
\_\_\_\_\_  
Stuart Jackson, Councilor  
\_\_\_\_\_  
Connie Joe, Councilor  
\_\_\_\_\_  
Bill Bose, Councilor  
\_\_\_\_\_  
William Sandy, Councilor  
\_\_\_\_\_  
Spence Coutlee, Councilor  
\_\_\_\_\_  
Lucinda Seward, Councilor  
\_\_\_\_\_  
Robin Humphrey, Councilor  
\_\_\_\_\_  
Aaron Sumexheltza, Councilor

**SCHEDULE "A"**  
**CUSTOM ELECTION RULES**

## NOW BE IT THEREFORE RESOLVED:

- A. THAT the Band hereby approves and accepts the following Custom Election Rules (the "**Rules**").

## Definitions

In these Rules:

**"Band"** means the Lower Nicola Indian Band.

**"Corrupt Election Practice"** means, directly or indirectly, offering or accepting a bribe, or threatening, coercing, or intimidating an Elector with respect to an election.

**"Council Member"** means a Chief or a Councillor of the Lower Nicola Indian Band.

**"Election"** means a general election of the Band held under the provisions of these Rules.

**"Electoral Officer"** means a person, appointed by a Band Council Resolution before each Election, who has the responsibility of conducting the nomination period, the Election, and the post-election procedures.

**"Electronic Voting Platform"** means computer software that directs a computer to perform and monitor the required tasks for a person to either register to vote or vote in an Election or By-Election using an electronic device, such as a computer or mobile phone.

**"Lower Nicola Band Entity"** means NAIK Development Corporation, NAIK Development Limited Partnership, Shulus Forest Enterprises Incorporated, Shulus Cattle Company Ltd., LNIB Construction Ltd. or any other business operated or controlled by the Lower Nicola Band.

**"Mail-in Ballot"** means a ballot in an Election completed by an Elector and mailed to the Electoral Officer in accordance with Section 13 of these Rules.

**"Online Voting"** means voting in an Election or By-Election using an Electronic Voting Platform in accordance with Sections 25 to 34 of these Rules.

**"Polling Station"** means a building, hall, or room, which is selected as the site at which voting takes place.

**"VIN"** means a unique voter identification number that is issued to each Elector for use during Online Voting.

## Chief and Council

1. Council shall consist of one Chief, and as well one Councillor for every one hundred members of the Band, but the number of Councillors shall not be less than two nor more than seven. The number of Councillors shall be confirmed before each Election in the Band Council Resolution described in Section 4 below.

## Electors

2. Any Band Member having reached the age of majority on or before a current election day as

determined pursuant to Section 12 below (the "**Election Day**") shall be an Elector for the purposes of these Rules. The age of majority is 18 years.

## Eligibility

3. Any Elector except as prohibited in Section 3(a), 3(b), 3(c) or 3(d), shall be eligible to be nominated for the position of Chief or Councillor, but not both. No Elector shall be eligible to be nominated if he or she:
  - (a) within five years of a then current Election Day, has been convicted of:
    - i. an indictable offence other than one of a political nature relating to the exercise or defence of aboriginal rights or title;
    - ii. any sexual assault; or
    - iii. any non-sexual assault other than one of a political nature relating to the exercise or defence of aboriginal rights or title;
  - (b) has been found to have committed a Corrupt Election Practice or has been deemed ineligible by order of an Arbitrator pursuant to these Rules;
  - (c) is a current employee of the Band or a Lower Nicola Band Entity, unless they are willing to resign from their positions immediately following a successful declaration, subject to Section 10 or 23, to the position of Chief or Councillor; or
  - (d) subject to Sections 8 and 9 of these Rules, is in arrears on any established legal indebtedness to the Band or a Lower Nicola Band Entity.

## Electoral Officer, Electors List and Nominations

4. All nominations and election proceedings shall be conducted pursuant to these Rules by an Electoral Officer who is not a member of the Band, and who shall be appointed for that purpose by Band Council Resolution no later than 90 days before an Election Day. The term of appointment of the Electoral Officer shall conclude 90 days after an Election Day, and he may appoint an agent or agents to assist him in the conducting of an Election pursuant to these Rules.
5. From a list of Band Members and dates of birth provided by the Membership Administrator of the Band, the Electoral Officer shall prepare a list of Electors (the "**Electors List**") containing the names of all Electors in alphabetical order and shall post that list in the Band Office at least 30 days before a Nominations Meeting.
6. Any Band Member may apply to the Electoral Officer to have the Electors List revised on the ground that the name of an Elector is not included or is incorrectly set out, or the name of a person who is not an Elector is wrongly included and the Electoral Officer shall make the correction forthwith if he is satisfied that the correction should be made.
7. Nominations for the positions of Chief or Councillor shall be made by an approved mail-in process or at a meeting convened for that purpose by the Electoral Officer at the Band Hall, or other suitable location, at least 49 days before an Election Day. Notices of the time and



date of the Nominations Meeting shall be posted at least 30 days before a Nominations Meeting at the Band Office and in at least two conspicuous places on all Band Reserves where Electors reside and shall be mailed by the Electoral Officer to each Elector not residing on a Band Reserve, where such information is available, together with instructions on how an Elector may, by a mail-in process or at the Nominations Meeting, nominate or second a nomination for a position on Band Council.

8. No Elector shall be a candidate unless his or her nomination has been moved by an Elector and seconded by another Elector either by a mail-in form approved of by the Electoral Officer or at the Nominations Meeting and, within 13 days after the Nominations Meeting, he or she has caused to be delivered to the Electoral Officer:
  - (a) written acceptance of the nomination for Chief or Councillor, but not both;
  - (b) a completed criminal record check;
  - (c) written confirmation from the Finance Manager of the Band that the Elector is not in arrears on any indebtedness to the Band or a Lower Nicola Band Entity.
9. If, within 10 days after the Nominations Meeting, a nominee who was, at the time of the Nominations Meeting, in arrears on any indebtedness to the Band or a Lower Nicola Band Entity pays his or her arrears in full, the Finance Manager of the Band shall provide written confirmation in accordance with subsection 8(c).
10. If 14 days after the commencement of a Nominations Meeting the number of Electors nominated for Chief or Councillor does not exceed the number required pursuant to Section 1 above, the Electoral Officer shall declare the Electors so nominated to be duly elected for a term of three years.
11. In the event the number of Electors nominated for the positions of Chief or Councillor exceeds the number required pursuant to Section 1 above, the Electoral Officer shall declare that a poll will be taken on Election Day.

## Election Day and Voting

12. Elections will be held every three years on the first Saturday in October. The incumbent Chief and Council remain in office until a new Chief and Council are declared by the Electoral Officer pursuant to these Rules. Following this declaration, all Chief and Council shall resign their positions regardless of the remaining terms of their office.
13. At least 32 days before the Election Day, the Electoral Officer shall:
  - (a) post notices including the time and date of the Election Day, the location of the Polling Station and a list of candidates for the offices of Chief and Councillor at the Band Office and in at least two conspicuous places on all Band Reserves where Electors reside;
  - (b) mail to each Elector not residing on a Band Reserve for whom he has a mailing address: a Mail-in Ballot package consisting of the election notice described in subsection 13(a), Mail-in Ballots, a Voter Declaration Form, voting instructions and such further materials as may be required to ensure that all Electors have a fair opportunity to vote in the Election; and

- (c) provide to each Elector, by mail, electronic communication, or other method that the Electoral Officer deems appropriate, Online Voting instructions and such further materials as may be required to ensure that all Electors have a fair opportunity to vote in the Election.
14. The Electoral Officer shall provide an appropriate Polling Station for Elections and an appropriate number of private booths so that voting can be accomplished in person by secret ballot and the place of Elections shall be kept open from 9AM to 8PM for the purposes of voting on Election Day.
  15. The Electoral Officer shall seal an empty ballot box in the presence of Band Members and that seal shall not be broken during the times set out in Section 14 above. Each candidate may have one scrutineer present at the place of Elections to observe all the voting procedures.
  16. The Electoral Officer shall prepare sufficient and appropriate ballots which shall set out separately and in alphabetical order the names of each candidate for the position of Chief and the names of each candidate for the positions of Councillor, or only the latter, as the case may be, and upon which an Elector may register his vote.
  17. After having satisfied himself that a person presenting himself to vote is an Elector, the Electoral Officer or his agent shall deliver one ballot to that Elector and mark a line through that Elector's name on the Electors List.
  18. An Elector shall mark his ballot by placing a cross (x) or other mark that clearly indicates the Elector's choice but does not identify the Elector opposite the name of the Candidate for whom the Elector wishes to vote and deliver that ballot to the Electoral Officer or his agent, who shall initial the ballot without looking at the candidates selected and deposit the ballot in the sealed ballot box. An Elector may place crosses or other marks opposite as many candidates for the position of Councillor as there are positions available.
  19. On application of an Elector who is not able to read or who is incapacitated by blindness or other physical cause, the Electoral Officer or his agent shall assist that Elector in marking his ballot in the manner directed by the Elector and shall place that ballot in the sealed ballot box.
  20. Whenever the Electoral Officer does not speak the language spoken by an Elector, he shall appoint an interpreter who shall be the means of communication between the Elector and the Electoral Officer or his agent.

## Advance Poll

21. On the Saturday preceding Election Day, the Electoral Officer shall hold an advance poll in the same manner as prescribed in Sections 14 to 20 and 27 to 34 except that the poll shall open at 11 AM and close at 5 PM. At the close of the Advance Poll, the Electoral Officer shall, in the presence of scrutineers or other witnesses, lock the sealed ballot boxes in such a manner to prevent tampering and take them to a secure location pending the tallying of the votes described in Section 22.

## Election Results

22. Immediately after the close of the poll as described in Section 14 above, the Electoral Officer shall open each Mail-in Ballot package and, for each Mail-in Ballot for which there is a completed Voter Declaration Form from an Elector who has not otherwise voted in the Election, mark a line through that Elector's name on the Electors List, initial the ballot without looking at the candidates selected and deposit the ballot in the sealed ballot box. The Electoral Officer shall then open the sealed ballot box in the presence of such candidates or their scrutineers as may be present and, with the assistance of any agents he may have appointed pursuant to Section 4 above;
- (a) shall set aside all spoiled ballots which shall include but not be limited to ballots that identify the Elector or ballots with too many votes; and
  - (b) shall count the votes each candidate has received from the unspoiled ballots, including any unspoiled ballots cast through the Online Voting process and sign a written statement of those results and the number of spoiled ballots. For clarity, in the event that an Elector has cast a ballot using multiple voting methods, the Electoral Officer will determine in his or her discretion, acting in a manner that would not reasonably be expected to have a material negative impact on the integrity of the Election, which ballot, if any, will be counted.
23. Subject to Section 24 below, immediately after completing the written statement referred to in Section 22(b) above, the Electoral Officer shall publicly declare that the candidates receiving the highest number of votes for the positions of Chief and Council have been elected for a term of three years.
24. In the case of a tie for any position, the Electoral Officer shall determine the successful candidate by the drawing of lots.

## Electronic Voting Platform Requirements

25. Any Electronic Voting Platform implementing Online Voting for use in respect of an Election must:
- (a) be provided by an independent third-party service provider;
  - (b) at a minimum, require the same verification declaration as is used for Mail-in Ballots and the use of a unique VIN for each Elector;
  - (c) keep Online Voting results secret at all times and encrypt them in a manner in which they can never be revealed except to the Electoral Officer or their agents;
  - (d) generate and provide automated notifications in real-time to the Electoral Officer or their agents of voting completion by Electors and any incomplete or failed vote or incomplete or failed registration of an Elector with the Electronic Voting Platform;
  - (e) receive notifications in real time from the Electoral Officer or their agents on the day of Election indicating that an Elector has voted in person; and
  - (f) generate and provide activity reports to the Electoral Officer and their agents on a daily basis and upon request.

## Online Voting Process

26. The Band may use Online Voting as a method of voting, and Sections 27 – 34 will govern the Online Voting process.
27. Prior to the opening of online polls, the Electronic Voting Platform must be populated with the Electors List. The Electronic Voting Platform must allow the Electors List to be updated in real time such that once an Elector has voted in person they are not permitted to vote electronically.
28. Online Voting must begin and close at the hour and date specified in an election notice described in Section 13(a) and, as applicable, the hour and date specified for Advance Polling in Section 21.
29. Immediately after an Elector's vote is recorded in the Electronic Voting Platform, the provider of the Electronic Voting Platform must:
  - (a) record and provide the Electoral Officer and their agents with the person's name, and the date and time their online ballot has been received; and
  - (b) provide notice to the Elector that their vote has been received.
30. Upon receipt of notification under Section 29(a), the Electoral Officer will:
  - (a) confirm that the Elector is an eligible voter;
  - (b) confirm that the Elector has not already voted either by the Electronic Voting Platform, in-person, or by Mail-in Ballot;
  - (c) record the date and time when the vote was received; and
  - (d) mark a line through that Elector's name on the Electors List.
31. Once an Elector has voted either electronically or in person at a Polling Station:
  - (a) the Electronic Voting Platform must not allow the person to vote again; and
  - (b) the Electoral Officer and their agents must not allow that Elector to vote in any other manner except as described in Section 32.
32. If the Electoral Officer or their agents are notified of an incomplete or failed vote or Elector registration as contemplated in Section 25(d), the Electoral Officer or their agents will immediately contact that Elector with alternative voting solutions, including voting in person.
33. After the close of polls, an Electronic Voting Platform must:
  - (a) remove the option to vote electronically; and
  - (b) provide the electronic voting results to the Electoral Officer and their agents.
34. The Electoral Officer may, in his or her discretion acting reasonably, make exceptions to the Online Voting requirements and procedures set out herein provided that any such exception would not be reasonably expected to have a material negative impact on the integrity of the Election.

## By-elections

35. Should a position for Chief or Councillor become vacant one year or more before the next scheduled Election, there shall be a by-election held within 90 days of the vacancy to fill that

position for the balance of that term. In every other respect the by-election shall be conducted in accordance with these Rules.

## Appeal

36. Within 15 calendar days of an election any Elector may appeal the results of the Election, on the grounds that, there had been a Corrupt Election Practice or a violation of these Rules, by obtaining the signature of 30% of electors on the prescribed form and submitting it to the Electoral Officer along with a \$1,500 non-refundable filing fee. The appeal shall be in writing and shall clearly set out the grounds for the appeal and a summary of the evidence upon which it is based.
37. Upon receipt of an appeal or appeals the Electoral Officer shall, immediately after the 15-day period described in Section 36 above, instruct the BC Arbitration and Mediation Institute ("**BCAMI**") or similar professional organization to appoint an Arbitrator with experience in First Nations issues to adjudicate the appeal and shall forward to it the required administrative filing fee, the appeal, and any supporting documents. The Electoral Officer shall also provide each candidate in that election with a copy of the appeal or appeals. A copy of the appeal or appeals shall also be posted in the Band Office.
38. The Arbitrator shall convene a hearing of the appeal or appeals in consultation with the parties but in any event within 30 days of his or her appointment unless a later date is agreed upon by the parties. The Arbitrator may receive submissions from any source he or she deems appropriate. The hearing of an appeal or appeals shall be in accordance with the principles of natural justice and procedural fairness.
39. The Arbitrator shall render his or her decision in writing within 21 days of the end of the hearing by delivering a copy of that decision to the Electoral Officer, who shall forthwith implement that decision, which shall be final and binding on the parties. The Electoral Officer shall concurrently post a copy of the decision in the Band Office and deliver a copy of the decision to each candidate and each appellant.
40. The Arbitrator may make such order regarding costs of the appeal as he or she deems appropriate. The Arbitrator's fee and all reasonable expenses shall be the responsibility of the Band unless otherwise ordered by the Arbitrator.
41. The Arbitrator's decision is final and binding on all parties.

## Amendments

42. These Rules may be amended by the passing of a Band Council Resolution calling for a special Band meeting to be held for that purpose no later than 60 days after the date of that resolution, which resolution must be issued forthwith upon a Council passing a motion at a duly convened Council meeting or being presented with a written petition setting out the proposed amendment along with the signatures of at least 30% of the Electors shown on the most recent Electors List.
43. A special information meeting of the Band to review the proposed amendments shall be held within 30 days of the issuance of the Band Council Resolution identified in Section 42. Notices of the information meeting shall be posted in at least two conspicuous places and shall set

out the proposed amendment.

44. An amendment proposed pursuant to Section 42 above must be approved by a two thirds majority of those Electors voting by Mail-in Ballot, by Online Voting, or in person at the special Band meeting convened for that purpose.

## Impeachment

45. A Council Member may be removed from office and be ineligible to stand for election to Council for a period of up to 6 years if he or she:
- (a) from the time of nomination until the end of his or her term of office:
    - (i) commits a Corrupt Election Practice;
    - (ii) is convicted of an offence as described in subsection 3(a) of these Rules;
    - (iii) engages in such conduct as may be determined by Council to be of such a serious nature that the removal is necessary and appropriate.
  - (b) from the time of election until the end of his or her term of office:
    - (i) violates the Council Oath of Office or refuses or fails to take the Council Oath of Office;
    - (ii) violates these Rules, the Lower Nicola Band Chief and Council Policy or Conflict of Interest Policy;
    - (iii) fails to attend three consecutive regular meetings of Council without being reasonably excused from attendance by the Council;
    - (iv) accepts or offers a bribe, forges a council document or otherwise acts dishonestly in his or her role;
    - (v) misuses Band funds or the funds of a Lower Nicola Band Entity; or
    - (vi) encourages others to commit any of the above acts or omissions.
46. A petition for the impeachment of a Council Member, may be commenced by:
- (a) any Elector, by obtaining the signature of 30% of Electors on the prescribed form and submitting it to the Electoral Officer along with a \$1,500 non-refundable filing fee; or
  - (b) Band Council upon the passing of a Band Council Resolution endorsed by a majority of all Council Members.
47. A petition for the impeachment of a Council Member shall be in writing, clearly set out the grounds for the petition and a summary of the evidence upon which it is based, and shall be submitted to the Executive Director.
48. Immediately upon receipt of a petition the Executive Director shall instruct the BC Arbitration and Mediation Institute ("BCAMI") or similar professional organization to appoint an Arbitrator with experience in First Nations issues to adjudicate the petition and shall forward to it the required administrative filing fee, the appeal and any supporting documents. The Executive Director shall also provide a copy of the petition to the Council Member in respect of whom

the petition is brought and post a further copy of the petition in the Band Office.

49. The Arbitrator shall within 30 days of receipt of a petition for the impeachment of a Council Member convene a hearing of the petition unless a later date is agreed upon by the parties.
50. The hearing of a petition for the impeachment of a Council Member shall be in accordance with the principles of natural justice and procedural fairness.
51. The decision of the Arbitrator shall include an order that:
  - (a) the petition is denied; or
  - (b) the petition is granted, and the Council Member is forthwith removed from office and ineligible to stand for election to Council for a specified period of up to six years.
52. The Arbitrator shall make such order regarding costs of the petition as he or she deems appropriate. The Arbitrator's fee and all reasonable expenses shall be the responsibility of the Band unless otherwise ordered by the Arbitrator.
53. The Arbitrator's reasoned decision on the petition shall be in writing and shall be provided to the Executive Director, Band Council, the petitioner and the Council Member in respect of whom the Petition was brought within 21 days of the end of the hearing.
54. The Arbitrator's decision is final and binding on all parties.