



TSESHAHT FIRST NATION CUSTOM ELECTION CODE

Preamble

With the continuing determination of the Tseshaht First Nation, to achieve and practise Self Government, there must be laws and regulations to address the diversity of Self-Government.

Included shall be regulations providing for the election, formulation, term in office and other issues relevant to the Tseshaht First Nation elected Council.

TITLE

1. This set of laws shall be cited as the *Tseshaht First Nation Custom Election Code*.

INTERPRETATION

2. In this Code:

“Appeal Board” means a committee appointed by the Electoral Officer, consisting of three (3) people, as follows:

- a) One Elder of the Tseshaht First Nation who is familiar with the traditions, values and language of the Tseshaht First Nation;
- b) One person who is not a member of the Tseshaht First Nation, who is over 18 years of age, of good character and reputation, and who does not have a vested interest in the outcome of the election; and
- c) One Tseshaht First Nation member who is familiar with the traditions, values and language of the Tseshaht First Nation.

“Ballot” means a document in use at the poll to determine an elector’s selection for the Tseshaht Council;

“Candidate” means a Tseshaht member who:

- a) Is at least 18 years of age on the date of the nomination meeting; and
- b) Has been nominated to be a candidate pursuant to the provisions of this Code.

“Code” means this *Tseshaht First Nation Custom Election Code*;

“Conflict of Interest” means any situation when a member in office may benefit individually by their decision on an issue. It means any situation when members in office have a vested interest or their immediate families have a vested interest in the business or financial affairs of the First Nation;

“Criminal Conviction” means a conviction pursuant to the *Criminal Code* of Canada;

“Deputy Electoral Officer” means any person appointed by the Electoral Officer for the purposes of a Tseshaht First Nation custom election;

“Elder” means a Tseshaht First Nation member who is at least 60 years of age;

“Elders Council” means all Tseshaht First Nation members 60 years and older;

“Election” means a Tseshaht First Nation custom election held pursuant to the provisions of this Code;

“Elector” means a person who:

- a) Is a member of the Tseshaht First Nation;
- b) Is 16 years of age; and,
- c) Does not suffer from mental infirmity.

“Electoral Officer” means a person who is not a member of the Tseshaht First Nation, who is over 18 years of age, of good character and reputation, and who does not have a vested interest in the outcome of the election;

“Just Cause” means an absence that has been duly noted at the administration office;

“Majority” means a minimum of 51% of the votes at a duly convened meeting or the most votes at the polls;

“Member” means any person who is registered on the membership list of Tseshaht First Nation;

“Membership List” means a listing of all those persons that are registered as a member of Tseshaht First Nation;

“Mitigating Circumstances” means any situation or incident that may result in the disruption of a scheduled activity/event, e.g. funeral, natural disaster, conflicting event;

“Nominee” means a member of Tseshaht First Nation that has been nominated for office;

“Scrutineer” means a person who examines the electoral process, on the polling day, for purposes of ensuring the procedure has been complied with;

“Tseshaht Council” means those persons elected to the position of Councillor pursuant to a duly conducted election, and a Youth appointed as an ex officio member of Council;

“Voters List” means a current listing of all eligible electors of the Tseshaht First Nation;

“Youth” means a Tseshaht First Nation member between the ages of 16 and 25.

TSESHAHT COUNCIL

3. For the good government of Tseshaht First Nation, the Tseshaht Council shall consist of one Councillor per 100 members with a maximum of nine (9) Councillors.

4. The elected Councillors shall appoint, from amongst themselves, a Chief Councillor at the first scheduled Tseshaht Council meeting after the election.
5. Any person elected to the Tseshaht Council shall resign her employment with the Tseshaht First Nation.
6. Each person on the Tseshaht Council shall agree to conduct themselves at all times in the best interest of the Tseshaht First Nation and in compliance with the *Tseshaht Community Code of Conduct*.
7. The Councillors shall be elected by the majority of votes cast by the electors on the polling day.

TERMS OF OFFICE

8. Subject to Section 10 of this set of laws, the term in office for Tseshaht Council shall be for four (4) years and shall commence with the election following the ratification of this Code by the members.
9. Upon election to the Tseshaht Council, a current criminal record check will be provided by each Councillor.
10. If the Councillor has a criminal conviction that Councillor shall be disqualified and a vacancy of office shall result.
11. If a vacancy occurs on the Tseshaht Council and there is more than three (3) months remaining in the Tseshaht Council's term of office, then there may be a by-election held in accordance with the provisions of this Code for the vacant position. A person filling such a vacancy shall, subject to the provisions of this Code, serve until the four-year term of the Tseshaht Council expires.
12. A vacancy of office shall result if:
 - a) A person dies;
 - b) Resigns in writing, to the Tseshaht Council;
 - c) Has a Criminal Conviction, either prior to or while in office;
 - d) That without just cause is absent from three consecutive duly convened council meetings;
 - e) The person holding office has, by petition of fifty-one percent (51%) of the electors, been presented for recall;
 - f) The person holding office becomes incapacitate or incapable of fulfilling the duties of office beyond one (1) year, and;
 - g) The person holding office is appointed a position in the Tseshaht First Nation Administration.

RECALL PROCEDURE

13. Upon receipt of a complaint by way of a petition by any one hundred (100) electors of the Tseshaht First Nation, the Electoral Officer will request that a special band meeting be convened for the purpose of deciding whether the office of the council member should be declared vacant. If at least fifty-one percent of the electors of the First Nation, voting on the question, decide that the office should be declared vacant, that office, thereupon, becomes vacant.
14. If the position is declared vacant, the Councillor in question will be disqualified from being a candidate at the next election. However, the resignation of council members will not disqualify them from being candidates in the upcoming election.

ELEIGIBLE VOTERS

15. All electors of the Tseshaht First Nation are eligible to vote in an election or a by-election for the Tseshaht Council and members that have attained the age of 16 years before the polling day and are not disqualified from voting are eligible to be on the Voter's List.

ELECTORAL OFFICER

16. The Electoral Officer shall be appointed by the Tseshaht Council. The Electoral Officer shall be appointed by a Band Council Resolution which will contain her full name, the full date and time of the nomination meeting, the type of election which is to be held (general or by-election), as well as any special instructions.
17. The Electoral Officer shall be appointed not less than thirty (30) days before the nomination meeting is held.
18. If there is no Tseshaht First Nation Council, the Electoral Officer shall be appointed by a special meeting of the electors specifically held for that purpose. The electors will nominate candidates and the successful person shall be chosen by majority vote.
19. In case of a general election, the date of the nomination meeting shall be within the 45-day period before the end of the term of the Tseshaht First Nation Council.
20. The Electoral Officer shall be at least eighteen (18) years of age and shall not be a member of the Tseshaht First Nation. The person(s) appointed should have prior experience with conducting First Nation elections.
21. The Electoral Officer shall chair all nominations meetings.
22. The Electoral Officer shall be responsible for:

- a) Supervising deputy electoral officer(s);
 - b) Determining eligibility of electors in accordance with list;
 - c) Contacting all nominees within a 24-hour period;
 - d) Establish polling stations;
 - e) Printing of ballots and counting of ballots;
 - f) Posting of results of the poll and submitting results to the appropriate locations (agencies or offices);
 - g) Supervision of scrutineers;
 - h) Any other matter relevant to proper conduct at each polling station;
 - i) Assistant Tseshaht Council on days of nomination meetings and poll; and
 - j) Other issues that are pertinent for the election.
23. The failure of the Electoral Officer to immediately post or forward the results of the poll shall not render the results void.

PRE-NOMINATION PROCEDURE

24. The Electoral Officer shall prepare a Voter's List containing the names of all the electors in alphabetical order.
25. The Electoral Officer shall establish an election file and place on this file copies of all documentation associated with the election, and that file shall remain open until such time as the appeal period of fourteen (14) days has expired. The file shall then be closed and kept at the Tseshaht First Nation Administration Office.
26. The Electoral Officer shall appoint deputies and interpreters as she deems necessary and shall document the details of this on the election file, subject to section 53.
27. The Electoral Officer shall, at least fourteen (14) days prior to the date of the nomination meeting, post a notice of the nomination meeting.
28. The notice of the nomination meeting shall contain and set out:
- a) The Voter's List;
 - b) The criteria to be candidates;
 - c) The time, date and place of the nomination meeting;
 - d) The position or positions open for election; and
 - e) A copy of this Code.
29. The notice of the nomination meeting shall be posted in the Tseshaht First Nation Administration Office and other public places as the Electoral Officer deems necessary.

NOMINATION ELIGIBILITY

30. Only electors may nominate or second a nomination of a candidate.
31. Only electors who meet the requirements of a “Candidate” as set out in this Code may be nominated as a candidate.
32. No elector can nominate or second more than two candidates.
33. Those electors nominated for the office of Councillor shall indicate their decision, in writing, and deliver it to the Electoral Officer within four (4) clear days (96 hours) after the nomination meeting.
34. All candidates who accept their nomination must provide the Electoral Officer, within seven (7) days, a short one-page profile that will be made available to the electors.

NOMINATION MEETING

35. At the time and place advertised, the Electoral Officer shall declare the nomination meeting open for the purpose of receiving nominations of candidates for the positions advertised.
36. The Electoral Officer shall open the nomination meeting for a minimum of two hours or until such time as all nominations from electors present have been received, which ever shall last occur and, thereafter, the meeting may be closed at the direction of the Electoral Officer.
37. Mail-in or faxed nominations must be received one day prior to the nomination meeting and must include the person(s) (maximum of two (2) nominees) being nominated and signed by a nominator and seconder.
38. The Electoral Officer shall maintain order at all times during the nomination meeting and may remove any person who, in her opinion, is disrupting or otherwise interfering with the meeting.
39. Any elector may propose or second a nomination of any qualified person to serve as Councillor. The Electoral Officer shall record the name of the candidate, the nominator and the seconder and shall confirm to the meeting that the proposed candidate is eligible to be elected to the position of Councillor of the Tseshaht First Nation.
40. In the event that the number of nominees equals the number of seats, the Electoral Officer shall declare those nominees to be elected by acclamation and recording accordingly.
41. In the event there are insufficient nominees, another nomination meeting shall be conducted prior to polling day.

42. If the number of nominees exceeds the number of positions open for election, the Electoral Officer will announce the date of the election.

PRE-ELECTION PROCEDURES

43. The Electoral Officer or Deputy Electoral Officer, shall, without undue delay, post a notice setting out the date, time and place for voting. Such notice shall be posted in Tseshaht First Nation Administration Office and other conspicuous places deemed necessary by the Electoral officer. This notice shall be posted not less than fourteen (14) days prior to the date selected for the election.
44. There will be established at least one (1) polling station, at the location clearly set out on the notice.
45. The Electoral Officer may, with the advice of the Tseshaht Council, establish polling stations at locations other than the reserve of the Tseshaht First Nation, including but not limited to Victoria, Vancouver, Nanaimo and Port Alberni.
46. The Electoral Officer or her deputy shall have ballot papers prepared in the form prescribed and place on the ballot papers full and complete names, listed in Alphabetical order of all candidates for Tseshaht Council.
47. The Electoral Officer or her deputy shall obtain sufficient ballot boxes, a sufficient number of ballot papers for the purpose of the election, instruments for marking, a sufficient number of directions for voting as may be required, and all other equipment as necessary to establish and equip the voting location.
48. The Electoral Officer or her deputy shall construct or erect polling booths at the location set out in the notice, and the polling booths shall be such that the privacy of the voter is maintained.
49. The Electoral Officer or her deputy shall, where necessary and when requested, appoint an interpreter, who will be a member of the Tseshaht First Nation, for all voters who are unable to read or are unable because of blindness or other physical cause, vote in the manner prescribed by section 64, and the interpreter shall assist such voter in the presence of the Electoral Officer or Deputy in the polling place and of no other person, and shall place the marked ballot in the ballot box.

ADVANCE POLL

50. An advance poll may, when required, be ordered as part of special instructions given to the Electoral Officer upon her appointment by Tseshaht Council and shall take place as follows:

- a) The advance poll shall be held within 15 days after the nomination meeting and shall follow all procedures prescribed for the regular poll;
- b) All ballots from the advance poll shall be kept in a sealed box and the sealed box shall only be opened and the ballots therein counted during the ballot count for the regular election;
- c) The advance poll shall be opened not less than two (2) hours and not more than three (3) hours;
- d) Mail-in votes shall be allowed but must be received prior to election day and must be kept sealed until the vote count on election day;
- e) One person shall be appointed by the Electoral Officer to receive, stamp and log all faxed, mail-in and hand delivered ballots.

POLLING DAY

- 51. On the polling day, each polling station shall be open from 9:00 am and remain open until 8:00 pm of the same day.
- 52. All polling stations shall be determined by the Electoral Officer and further announce in the notice of the nomination meeting.
- 53. The Electoral Officer, with such appointed deputies as she deems necessary, shall be in attendance at the time and place as is set out in the notice of poll. Neither the Electoral Officer or any of her deputies shall be allowed to vote in the election.
- 54. The Electoral Officer shall, immediately before the commencement of the poll, open the ballot box and call such persons as may be present, to witness that it is empty. She 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.
- 55. Each polling station shall be under the supervision of the Electoral Officer or the deputy electoral officer(s). They may remove any person who in any way interferes, disrupts or attempts to influence the orderly conduct of the poll.
- 56. Each polling station shall have an approved Voter's List posted in a conspicuous location.
- 57. Each elector who presents themselves at a polling station for the purpose of voting, after being confirmed by the Electoral Officer or her deputies as an elector, shall be issued one ballot paper on which is contained a ballot for the candidates for Councillors, if the number of candidates for Councillors can be placed on one piece of paper, and have their name marked on the Voter's List.
- 58. All electors are entitled to cast their ballot at only one of the polling stations.

59. The Electoral Officer or deputy shall initial the back of each ballot upon giving it to the elector.
60. Each elector, after receiving the ballot, shall proceed to the place provided for marking ballots and mark her ballot by placing a cross (X) or other mark that clearly indicates the elector's choices in the space provided on each ballot opposite the name of the candidate, and shall then deposit the ballot in the ballot box supplied. While an elector is in the place provided for marking ballots, no other person, except as provided in section 53, shall be allowed in the same compartment or be in any position from where they can see how the elector is voting.
61. The Electoral Officer or a deputy shall note upon the Voter's List any irregularity in connection with voting and shall, specifically, note on the Voter's List any ballot marked by the Electoral Officer or the deputy at the request of an elector, pursuant to section 53, but shall not note the candidate for whom the ballot was cast.
62. A voter who has inadvertently dealt with her ballot paper(s) in such a manner that it cannot be conveniently used shall return it to the Electoral Officer or a deputy who shall write the word "cancelled" upon the ballot paper(s) and preserve it.
63. Any person who has received the ballots and who leaves the polling place without delivering the same to the Electoral Officer or a deputy in the manner provided, or after receiving the ballots, refuses to vote, shall forfeit his right to vote at the election, and the Electoral Officer or a deputy 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 ballots and declined to vote; in which case the Electoral Officer or a deputy shall mark upon the face of the ballot the word "declined" and all such ballots shall be preserved.
64. Any person who is a Tseshaht First Nation member who is at least 16 years of age but whose name does not appear on the Voter's List, may present identification and evidence of membership to be verified by the Electoral Officer or a deputy, and if the Electoral Officer or a deputy is satisfied that the person is eligible to vote pursuant to the Code, the person's name shall be added to the Voter's List and allowed to vote at the polling station.
65. Every elector who is in the polling place at 8:00 pm shall be entitled to vote before the poll is closed.
66. Each nominee on the ballot will be entitled to appoint one (1) Scrutineer to be an observer for the duration of the poll being open. However, they shall not intervene or observe the marking of a ballot by an elector at the polling station.

ELECTION TABULATION

67. All ballots shall be counted at the time that the polling station is closed and the results posted within a 24-hour period.
68. Immediately following the close of the poll, the Electoral Officer shall, in the presence of such candidates or their agents, and any elector as may be present, open the ballot box or boxes and:
- a) Examine the ballots and reject any that are not initialled by the Electoral Officer or a deputy, or any other ballots that, in the Electoral Officer's opinion, do not give a clear indication of the voter's preference. If any of the ballots have more votes than there are vacancies for the position, those ballots shall be 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 the recount or on an election appeal, take a note of any objections made by any candidate or his agent to any of the ballots found in the ballot box and decide any questions arising out of the objections;
 - d) 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 her initials; and
 - e) Count the votes given for each candidate from the ballots not rejected and make a written statement of the number of votes given to each candidate and of the number of ballots 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.
69. In the event of a tie vote for a Council position, a recount shall be held by the Electoral Officer immediately and this recount shall be final, subject to a successful appeal.
70. After a tie vote has been declared the Electoral Officer shall then immediately announce that another vote will be conducted one week from the date on which the tie vote was declared. Only those candidates who had the tie vote will be eligible to have their name on the ballot of the subsequent election.
71. After tabulation, the Electoral Officer shall announce the names of the candidates that received the highest number of votes and publicly declare these candidates elected.
72. Following the announcement, the Electoral Officer shall post, in conspicuous places, a statement signed by her showing the number of votes cast for each candidate.
73. Following the election announcement, the Electoral Officer shall complete and sign an election report, in triplicate, which shall contain:

- a) A list of all candidates;
- b) The number of ballots cast;
- c) The number of votes cast for each candidate;
- d) The number of spoiled ballots;
- e) The number of rejected ballots; and,
- f) The number of assisted or interpreted voters.

74. The Electoral Officer shall forward a copy of the report to:

- a) The Council of the Tseshaht First Nation; and,
- b) The Tseshaht First Nation Chief Executive Officer [Executive Director].

75. An Oath of Office (Appendix I) shall be taken by each newly elected Councillor at the next regularly scheduled band meeting.

APPEAL PROCESS

76. Two weeks prior to the election, the Electoral Officer shall appoint an Appeal Board.

77. The Appeal Board shall supervise and administer only those appeals in writing and address to the Electoral Officer in accordance with the provisions of this “Code”. This Appeal Board will serve only during that particular appeal and will be disbanded upon completion of the appeal.

78. Any candidate in the election, or any elector who gave or tendered his vote at the election may, within fourteen (14) days of the poll, appeal the election if she has grounds for believing that there was an error or violation of this Code during the election process that might have affected the outcome of the election.

79. An appeal of a Tseshaht First Nation election may be launched by a notice of appeal in writing, containing reasons for the appeal. This notice shall be forwarded to the Appeal Board.

80. Grounds for an appeal may include the following:

- a) Fraudulent practice in connection with the election;
- b) Undue influence during the election process;
- c) Double voting;
- d) Tampering with the ballots and or the ballot box; or,
- e) Interfering with the election process.

81. When appeals are received by the Appeal Board may:

- a) The Appeal Board shall, within seven (7) days of the receipt of the appeal, send a copy of the appeal, with supporting documentation, to all candidates in the election and the Electoral Officer;
- b) Any candidate of the Electoral Officer may within fourteen (14) days of receipt of the appeal, forward to the Appeal Board a written response to the appeal allegations, together with any supporting documentation; and
- c) The Appeal Board may conduct or authorize such further investigation as it deems appropriate or necessary.

82. After a review of all the evidence that it has received, the Appeal Board may:

- a) Deny the appeal on the grounds that the evidence presented did not reveal an infraction of this Code, or on the grounds that an infraction of this Code was revealed but the infraction did not affect the results of the election; or,
- b) Uphold the appeal, and call for a new election for the positions affected. This new election shall take place within thirty (30) days and shall be conducted pursuant to the provisions of this Code. The Appeal Board shall, if necessary, give instructions to the Electoral Officer on how the problems identified in the appeal can be corrected.

83. The decision of the Appeal Board is final and binding.

NEW GENERAL ELECTION

84. After an appeal if there is a new general election held in accordance with this Code, a newly elected council will commence a four (4) year term of office following the election.

AMENDMENTS

85. The Tseshaht Council may propose any changes to the Code. The changes must be posted in at least two conspicuous places in the community and upon request; the Tseshaht Council must provide a copy to Tseshaht First Nation members.

86. If a challenge is received, regarding the proposed changes, the Tseshaht Council must address these concerns prior to presenting the proposed changes to the general membership for approval.

87. The Tseshaht Council shall hold a meeting of the membership, seeking approval for the proposed changes.

88. Notice of this meeting, seeking approval of the proposed changes, must be posted in the Tseshaht First Nation Administration Office and at other conspicuous places in the community, at least fourteen (14) days prior to the meetings.

89. To take effect, the proposed changes must be approved by a simple majority of the Tseshaht First Nation members. Any amendments to this Code shall be recorded and filed in a safe place.
90. A reference to the plural of a specific gender in any of the provisions of this Code, shall be deemed to include the entire membership of the Tseshaht First Nation.

GENERAL

91. Words importing the singular number include the plural and vice versa and words importing gender includes the masculine, feminine and neuter genders.
92. If any provision of this Code, or the application thereof to any circumstances, shall be held to be invalid or unenforceable, then the remaining provisions of this Code, or the application thereof to other circumstances, shall not be affected thereby and shall be held valid and enforceable to the full extent permitted by law.

**Appendix I
Oath of Office**

I _____, Councillor of the Tseshaht First Nation, do hereby declare that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed to me by the members of the Tseshaht First Nation.

**Appendix II
Tseshaht Community Code of Conduct**

Each council member will ensure that the decision-making process central to the core functions of the council of the Tseshaht First Nation is open and transparent;

Each council member will ensure that information on administrative policies and standards are readily obtainable by members of the Tseshaht First Nation;

Each council member will ensure administrative and financial accountability to members of the Tseshaht First Nation;

Each council member will be responsible to the members of Tseshaht First Nation at all times and will refer to the members as the people they represent;

Each council member will ensure that their “professional and personal actions,” at all times and in all places, shall be above reproach; and

Each council member shall be aware of all policies of the Tseshaht First Nation and declare a conflict of interest when required.

**Application of
Tseshaht First Nation Custom Election Code**

For the good government of the Tseshaht First Nation we, the members of the Tseshaht First Nation, do hereby declare, that each Councillor shall be selected in accordance with the election procedures as set forth in the *Tseshaht First Nation Custom Election Code*, and abide by the requirements and conditions as set out in it.

And whereas we, the members of the Tseshaht First Nation, also require, that upon selection, each Councillor, shall take an *Oath of Office* and declare that they shall abide by the *Community Code of Conduct*, particularly, the behaviour expectations of Councillors.