

## ELECTION CODE OF KANAKA BAR INDIAN BAND

This Election Code of Kanaka Bar Indian Band ("**Election Code**") was approved by membership and came into full force and effect on January 24, 2013. This Election Code was last amended on March 21, 2015.

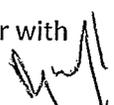
### WHEREAS

- A. The *T'eqt'aqtn'mux* (crossing place people) are an Nlaka'pamux Nation community with indigenous rights, responsibility and authority over its people, land and resource use within their community caretaker area. Today, the *T'eqt'aqtn'mux* are known as the Kanaka Bar Indian Band ("**Kanaka Bar**");
- B. The Kanaka Bar has the inherent authority to adopt, by way of custom, a method for choosing its Chief and Council;
- C. This Election Code has been put into place to ensure a clear, fair, and consistent process for electing the Chief and Council of Kanaka Bar;
- D. This Election Code has been developed by balancing Kanaka Bar custom with the interests of off-reserve members of Kanaka Bar; and
- E. Kanaka Bar is committed to transparency of its rules and policies both within and outside of its Membership and intends for this Election Code to be made widely available for public review.

**NOW THEREFORE** we set forth here the custom of Kanaka Bar as to the Election of Chief and Council, constituting the Election Code of Kanaka Bar.

### ARTICLE 1 INTERPRETATION

#### 1.1 Definitions. In this Election Code:

- (a) "**Band Office**" means the office of Kanaka Bar from time to time;
- (b) "**Candidate**" means a candidate for Chief or Councilor who was nominated according to the requirements set out in this Election Code;
- (c) "**Clear Days**" means a series of days exclusive of the first and exclusive of the last day;
- (d) "**Community Bulletin Board**" means the bulletin board for Kanaka Bar currently located adjacent from, but not restricted to, the Band Office;
- (e) "**Controlled Substance Test**" means a controlled substance test to detect Schedule I, II and III prohibited substances under the *Controlled Drugs and Substances Act* (S.C. 1996 c. 19) carried out pursuant to section 5.3;
- (f) "**Debt Repayment Plan**" means a debt repayment plan agreement, in the form approved by Kanaka Bar from time to time, between a Member and Kanaka Bar with respect to the repayment of outstanding debt of such Member [2015-03-21]; 
- (g) "**Council Meeting**" has the same meaning as found in the Kanaka Bar Governance Code;

- (h) **“Election”** means an election for one or more positions of Chief and Councilor;
- (i) **“Election Day”** is the day scheduled for an Election;
- (j) **“Election Period”** is the time between the calling of the Election and Election Day;
- (k) **“Elector”** means a person who meets the Elector Eligibility Requirements;
- (l) **“Elector Eligibility Requirements”** has the meaning set forth in section 6.1;
- (m) **“Electoral Officer”** means the person appointed in accordance with the procedures set out in this Election Code to carry out and oversee Election processes;
- (n) **“General Assembly”** has the same meaning as found in the Kanaka Bar Governance Code;
- (o) **“Kanaka Bar Code of Conduct”** has the meaning set forth in Article 10;
- (p) **“Member”** means Member as defined in the Kanaka Bar Membership Rules;
- (q) **“Membership List”** has the same meaning as in the Kanaka Bar Membership Rules;
- (r) **“Ordinarily Resident”** means that a person’s usual, permanent place of residence is on Kanaka Bar Territory;
- (s) **“Poll”** means the casting and recording of votes in accordance with this Election Code;
- (t) **“Prohibited Substances”** means those substances listed in Schedule I, II and III of the *Controlled Drugs and Substances Act* (S.C. 1996 c. 19) from time to time; and
- (u) **“Territory”** means the community caretaker area of Kanaka Bar.

## 1.2 Application.

- (a) This Election Code will apply to all Elections for the positions of Chief and Councilor for Kanaka Bar.
- (b) When the word “including” is used in this Election Code, it must not be construed as limited to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not language such as “without limitation” or “but not limited to” is used with reference thereto.
- (c) The definitions in the Kanaka Bar Governance Code and Membership Rules shall have the same meaning when used in this Election Code. In the event of a conflict between the Governance Code, Membership Rules and this Election Code, the following priority shall govern: (1) Membership Rules; (2) Election Code; and (3) Governance Code.
- (d) This Election Code hereby overrides sections 74, 75, 76, 77, 78 and 79 of the *Indian Act*, R.S.C. 1985, c. I-5, and its predecessor, the *Indian Act*, R.S.C. 1970, c. I-6, respecting the Band Elections of Chiefs and Band Councils. These provisions do not and will not apply to Kanaka Bar.

1.3 **Affirmation of Existing Chief and Council.** Current Chief and Council are hereby affirmed until such time as an Election is called in accordance with this Election Code.

## **ARTICLE 2 COUNCIL**

2.1 **Composition.** The Council of Kanaka Bar will consist of one (1) Chief and four (4) Councilors.

2.2 **Eligibility for Chief or Councilor.** To be eligible to stand for Election to hold the position of Chief or Councilor, a person must:

- (a) be nineteen (19) years of age or older on Election Day;
- (b) meet the Elector Eligibility Requirements;
- (c) not have any outstanding debts over the amount of \$5000 with Kanaka Bar or its subsidiaries, unless such person is in compliance with a Debt Repayment Plan with respect to such outstanding debt [2015-03-21];
- (d) not be a member of the Appeals Committee or a member of the electoral staff;
- (e) not be serving a sentence for an indictable offence or have served a sentence for an indictable offence within the last three (3) years;
- (f) have attended at least four (4) General Assemblies in the preceding 12 months or, if at least 12 General Assemblies have not been held in the preceding 12 months, have attended at least 1/3 of the General Assemblies held in the preceding 12 months; and
- (g) pass a Controlled Substance Test.

2.3 **Employment while on Council.** Any Kanaka Bar employee who is elected Chief must immediately resign his/her current position or take unpaid leave of absence from that position during his/her term of office. A Councilor is not required to resign or take unpaid leave of absence from his/her employment with Kanaka Bar during his/her term of office.

## **ARTICLE 3 TERM OF OFFICE**

3.1 **Term of Office.** Once elected, the term of office for a Chief or Councilor will continue until the:

- (a) office is declared vacant by Council pursuant to section 3.2; or
- (b) Members call for an Election to be held in respect of the office pursuant to section 3.6.  
(the "Term")

3.2 **Declaration of Vacancy.** Council may declare a vacancy on Council when a Councilor or Chief:

- (a) resigns his/her office;
- (b) is unable to continue his/her duties due to illness, disability, or death;

- (c) misses three (3) consecutive Council Meetings without reasonable justification;
- (d) is convicted of an indictable offence while in office; or
- (e) after having an opportunity to be heard, is determined by Council to have breached the Kanaka Code of Conduct.

Council must not declare a vacancy under section 3.2 (c) or (e) unless the person whose office is being declared vacant has received at least two (2) written notices stating that their conduct is unacceptable and may lead to a declaration of vacancy if left uncorrected.

3.3 **By-Election.** In the event that a vacancy on Council is declared, a By-Election will be held in accordance with Article 4 to fill such vacancy.

3.4 **Recall Provisions.** If, at a General Assembly at which more than 10% of the Electors are present, more than half of the attendees entitled to vote on the matter vote in favour of calling an Election in respect of one or more positions on Council (including Chief), a recall meeting ("**Recall Meeting**") will be held not less than thirty (30) and not more than sixty (60) days following such vote.

3.5 **Notice of Recall Meeting.** The CEO or, if there is no CEO, the manager of Kanaka Bar will post a notice of the Recall Meeting at least thirty (30) days before such meeting in the Band Office and on the Community Bulletin Board.

3.6 **Election Trigger.** If, at the Recall Meeting, more than 25% of the Electors are present and more than 50% of the Electors present vote in favour of holding an Election in respect of one or more positions on Council (including Chief), an Election will be triggered and the procedures outlined in Article 4 of this Election Code shall govern.

#### **ARTICLE 4 ELECTIONS**

4.1 **Election Resolution.** No later than seven (7) days after an Election is triggered pursuant to section 3.3 or section 3.6, a Band Council resolution ("**Election Resolution**") must be passed to:

- (a) establish the date for the Election, such date must be at least fifty-five (55) days and not more than sixty-five (65) days from the date on which the Election Resolution is passed;
- (b) approve a working budget for the Election; and
- (c) appoint an Electoral Officer.

If Council does not pass an Election Resolution within seven (7) days after an Election is triggered, the CEO will be responsible for fulfilling the requirements in section 4.1 as soon as practicable.

4.2 **Appointment of Electoral Officer.** The Electoral Officer must not be a Member of Kanaka Bar on the Election Day. The appointed Electoral Officer will hold such position until the ballots of the Election have been destroyed in compliance with section 8.4 which will normally be eight (8) weeks after the Election Day.

4.3 **Duties of Electoral Officer.** The Electoral Officer will carry out all tasks necessary to ensure a fair Election process and will address all Election issues as they arise including:

- (a) advertising the Election Day, polling hours, and polling station(s);
- (b) establishing and advertising the opening and closing of nominations;
- (c) supervising the nomination, balloting, and appeal processes, according to the terms of this Election Code and other standard election practices;
- (d) appointing and supervising any electoral staff, as required and within budgetary limitations; and
- (e) preparing, finalizing and posting a list of eligible Kanaka Bar Electors ("**Electors List**").

4.4 **Electors List.** The Electors List will be prepared by the Electoral Officer based upon the Membership List, taking into account the Elector Eligibility Requirements. The Electors List will contain:

- (a) for Electors who are Ordinarily Resident, the names, addresses and associated telephone numbers, and where applicable email addresses, of all eligible Electors; and
- (b) for Electors who are not Ordinarily Resident, the names, addresses and associated telephone numbers, and where applicable email addresses, of eligible Electors who have indicated their wish to be included on the Electors List.

At least fifty (50) days before Election Day, the Electoral Officer will post one or more copies of the Electors List in the Band Office and on the Community Bulletin Board.

4.5 **Confidentiality.** The Electors List is a confidential document and will not be disclosed unless required by this Election Code, law or Kanaka Bar custom.

4.6 **Revision to Electors List.** It is the responsibility of each Member to ensure that the Band administration has up-to-date contact information for them. Any Member may apply to the Electoral Officer in person or by telephone, courier, regular mail, e-mail or fax, to revise the Electors List on the grounds that it incorrectly sets out the name or contact information of an Elector or otherwise fails to accurately list and record the names of all eligible Electors. If satisfied that the Electors List should be corrected, the Electoral Officer will make the needed corrections and the list as corrected shall be the Electors List on Election Day.

4.7 **Appointment of Appeals Committee.** The current Council, in consultation with the Electoral Officer, will appoint a volunteer Appeals Committee at least fifty (50) days before the Election is held. The Appeals Committee will consist of three (3) Members. The Appeals Committee will review and make final decisions regarding all appeals initiated under this Election Code.

## ARTICLE 5 CANDIDATES

5.1 **Nominations.** The Electoral Officer will set and publish dates and times for the opening and closing of nominations (the "**Nomination Period**"). The Nomination Period must remain open for at least seven (7) days, beginning with the posting of the Electors List and ending at least thirty (30) days before the date of the Election. Nominations must be:

- (a) in writing on a nomination form;

- (b) signed by the person being nominated;
- (c) signed by two nominators who meet the Elector Eligibility Requirements; and
- (d) submitted to the Electoral Officer or designated electoral staff before the nomination period closes.

Nomination forms will be available from the Electoral Officer or the Band Office.

**5.2 No Concurrent Nominations.** For greater certainty, a person cannot run for the office of both Chief and Councilor at the same time. Any person submitting a nomination for both Chief and Councilor will be required to choose one position to be nominated for before the Nomination Period closes.

**5.3 Controlled Substance Test.** After a person has submitted their nomination form to the Electoral Officer or designated electoral staff, the Electoral Officer will, as soon as practicable and before such person is verified as a Candidate pursuant to section 5.4, administer a Controlled Substance Test. The Controlled Substance Test will be paid for and supplied by Kanaka Bar. If a person tests positive for a Prohibited Substance which they do not have the lawful right to possess then they cannot run as a Candidate in the Election. All results from the Controlled Substance Test are confidential and will only be viewed by the Electoral Officer and communicated to the person affected by such test.

**5.4 Verification of Candidates.** Upon the close of the Nomination Period the Electoral Officer will verify the validity of the Candidates in accordance with this Election Code. Where eligibility of a Candidate is uncertain, the Electoral Officer may consult with the Appeals Committee to help resolve the matter.

**5.5 Withdrawal of Candidates.** Candidates wishing to withdraw from the Election must submit a written statement to that effect to the Electoral Officer no later than forty-eight (48) hours after the close of nominations.

**5.6 Declared Elected by Acclamation.** In the event that only one (1) candidate is nominated for the position of Chief by the close of the Nomination Period, no Election for Chief will be held and the Electoral Officer will declare the Candidate duly elected as Chief. In the event the number of Candidates who have been nominated for Council does not exceed the number of positions to be contested for Council, no Election for Councilors will be held and the Electoral Officer will declare the Candidate(s) duly elected as Councilor(s).

**5.7 Notice of Election.** As soon as practicable after the Candidates are verified, the Electoral Officer will post a notice of election ("**Notice of Election**") in the form prescribed by Council in the Band Office and on the Community Bulletin Board. Such postings must be posted at least twenty five (25) Clear Days before Election Day. The Notice of Election will contain, at a minimum the:

- (a) date, time and location of the advance Poll(s), if any, and the Election Poll;
- (b) Electors List or instructions as to how to get or view a copy of it;
- (c) name of the Electoral Officer and the telephone and fax number, e-mail address and mailing address of the Electoral Officer;
- (d) names of the Candidates and the position which each is contesting; and

- (e) names of those acclaimed, if any.

## **ARTICLE 6 VOTING REQUIREMENTS**

6.1 **Eligibility to Vote.** To be eligible to vote, a person:

- (a) must have reached the age of 18 years on or before Election Day;
- (b) must be a Member of Kanaka Bar;
- (c) must attend at least one (1) General Assembly in the preceding twelve (12) months; and
- (d) must appear on the Electors List.

(collectively, the “**Elector Eligibility Requirements**”).

Where a person’s name does not appear on the Electors List, the person may register to vote at the voting station by proving they otherwise meet the Elector Eligibility Requirements, notwithstanding that they are not listed on the Electors List.

6.2 **Methods of Voting.** An Elector may vote once for the positions of Chief and Councilors by mail-in ballot (if not Ordinarily Resident) or in person by secret ballot during the hours and at the place designated in the Notice of Election. One (1) advance Poll will be held at least three (3) Clear Days prior to Election Day and the ballots from this Poll will remain sealed at a secure site until the closing of the Election Day Poll. Voting hours will normally be from 3:00 p.m. to 6:00 p.m. for the advance Poll and from 7:00 a.m. to 7:00 p.m. on Election Day.

6.3 **Incapacitated Electors.** Where an Elector is elderly, disabled, hospitalized, or otherwise infirm and is unable to come to the voting station, and the Electoral Officer has been notified in advance of the Election Day, the Electoral Officer may make provisions for the use of proxy balloting. A proxy ballot must be signed by the infirm Elector and a copy of the infirm Electors identification must accompany the ballot.

6.4 **Mail-in Ballots Procedure.** The Electoral Officer will ensure that, at least twenty five (25) Clear Days before Election Day, a mail-in voting package is mailed to every Elector not Ordinarily Resident who requests one before 9:00 a.m. on that day which will consist of the following:

- (a) voting Instructions;
- (b) declaration of identity in a form approved by the Electoral Officer;
- (c) return envelope with postage prepaid;
- (d) ballot initialed by the Electoral Officer; and
- (e) a ballot envelope.

6.5 **Mail-In Ballot Deadline.** The Electoral Officer is not required to count any mail-in ballots that do not arrive before 7:00 p.m. on Election Day.

6.6 **In-Person Voting Procedure.** Before opening the voting station(s) the Electoral Officer will empty, close, and seal all required ballot boxes. During polling hours, designated electoral staff will:

- (a) explain the voting procedures;
- (b) provide each Elector with an initialed ballot;
- (c) verify the Electors initial upon return of the ballot;
- (d) mark the ballot as returned on the Electors List; and
- (e) indicate if any special help was required.

6.7 **Elector's Responsibilities.** Each Elector will:

- (f) mark and fold his/her ballot in a private voting booth;
- (g) return the folded ballot for verification to the electoral staff; and
- (h) deposit the folded ballot in the ballot box.

## **ARTICLE 7 ELECTION MATTERS**

7.1 **Preparation for Election Day.** On the day before the advance Poll and Election Day, the Electoral Officer will:

- (a) appoint or swear in any persons necessary to provide assistance during the hours of voting including a polling clerk, and/or interpreters;
- (b) prepare the final Electors List; and
- (c) ensure the facilities, supplies, and equipment for voting are in place.

7.2 **No Campaigning in Polling Stations.** During polling hours, no Candidates or supporters of Candidates are to carry out any campaigning or any other activities in the polling station that may interfere with or influence Electors. For greater certainty, a Candidate representative approved in advance by the Electoral Officer may observe but not interfere with the voting process.

7.3 **Ballot Count.** After the Polls have closed and all the Electors have left the voting station the Electoral Officer will:

- (a) invite Candidates' representatives (if any) to witness the ballot count;
- (b) open the ballot boxes, including advance Poll ballot boxes;
- (c) supervise the counting and tallying of the ballots; and
- (d) announce the preliminary results, with the vote count for each candidate.

7.4 **Determination of Outcome.** In any Election, the candidate for Chief (if any) with the highest number of votes cast for them will be duly elected, and the number of Candidates equal to the number of Councilor vacancies receiving the highest number of votes will be elected as Councilors.

7.5 **Recount Provisions.** Any candidate whose margin of loss is less than three percent (3%) of the total number of votes cast is entitled to an administrative recount which will be conducted, upon request, by the Electoral Officer immediately following the recording of votes.

7.6 **Event of Tie.** Where two or more Candidates have received an equal number of votes in an Election, an automatic administrative recount will be conducted as soon as practicable. If after the recount the tie has not been resolved, the tie shall be resolved at the first Council Meeting following an Election. Each member of Council, excluding those who have tied, shall have one vote to cast by secret ballot for the purpose of breaking the tie.

7.7 **Declaration of Elected.** As soon as the votes have been counted and the outcome of any tie-breaking, where needed, has taken place, the Electoral Officer will publicly declare the names of those Candidates who have been elected and their positions and shall also post in the Band Office and on the Community Bulletin Board, a statement signed by him or her showing the number of votes cast for each Candidate.

## **ARTICLE 8 POST-ELECTION PROCEDURE**

8.1 **Election Appeals.** Within seven (7) days after an Election, any Candidate or other Elector who voted in the Election and who has reasonable grounds for believing that there was:

- (a) corrupt practice in connection with the Election; or
- (b) a violation of this Election Code that might have affected the result of the Election,

may lodge an appeal by forwarding the particulars of their complaint, to the Electoral Officer. The Electoral Officer must consult with the Appeals Committee and reply to the appeal, in writing, within seven (7) days of receipt of such appeal. If the Appeals Committee determines that the Election Code was violated and that such violation may have affected the outcome of the Election, the Appeals Committee can declare the Chief and/or Councilor Election results null and void and order a new Election within sixty (60) days. Any decision of the Appeals Committee is final. Where a new Election is ordered, the previous Chief and/or Councilor(s) will return to office until the new Election is completed.

8.2 **Assuming Office.** Within fourteen (14) days following an Election, the newly-elected Candidate(s) will sign the Kanaka Bar Code of Conduct and will formally assume office. Where an appeal is being heard, the officer will assume office once granted approval by the Appeals Committee. Upon the first Council Meeting after an Election, Council will ratify the results of the Election through a Band Council resolution and forward copies of this resolution to the federal government, banks and other financial institutions, and other appropriate agencies.

8.3 **Transition.** When a person holding the position of Chief or Councilor is replaced in accordance with this Election Code, such person will provide for the orderly transition of their office to the new elected Candidate.

8.4 **Destruction of Ballots.** Eight (8) weeks following the conclusion of the Election, the Electoral Officer will destroy all the ballots in front of at least two witnesses appointed by the Appeals Committee.

**ARTICLE 9  
GENERAL**

9.1 **Postponement of Meeting, Election or Amendment Vote.** The Electoral Officer may, during the Election Period, or Council may for a Amendment Meeting outside an Election Period, postpone any meeting, Poll or vote in the event that:

- (a) the Election Day is on the same day as a funeral or memorial service for a Member, in which case the Election will be postponed to the day after the funeral or memorial service, or to another appropriate day not to exceed seven (7) days from the original Election Day; or
- (b) weather conditions pose a risk to Electors, in which case the Election will be postponed to the next day on which conditions are no longer considered to create an undue risk; and

in either case the relevant authority (normally the Electoral Officer, but in the case of an Amendment Vote outside an Election Period, the Council) shall make every reasonable effort to ensure that Electors are advised of the change and the new date.

9.2 **Amendment Procedure.** This Election Code may be amended if one third (1/3) of Electors sign a petition ("**Amendment Petition**") and present it to Council which outlines the reasons for the proposed amendment, or if Council unanimously resolve to propose an amendment to the Electors ("**Amendment Resolution**"). Council shall, as soon as practicable after passing an Amendment Resolution, or within seven (7) days of receipt of the Amendment Petition, provide notice posted in the Band Office and on the Community Bulletin Board informing Electors of their right to vote on the proposed amendment ("**Amendment Meeting**"). The Amendment Meeting must take place no earlier than thirty (30) days and no later than forty-five (45) days from receipt of the Amendment Petition from the Electors. Notice of the Amendment Meeting must include the text of the proposed amendment.

9.3 **Amendment Vote.** If the proposed amendment receives approval of a majority of Electors at the Amendment Meeting the proposed amendment will be adopted.

9.4 **By-Laws.** Council may make by-laws under this Election Code to fulfill the objectives provided herein.

**ARTICLE 10  
KANAKA BAR CODE OF CONDUCT**

10.1 **Kanaka Bar Code of Conduct.** Once elected, the Chief and Councilors must sign and adhere to the following Code of Conduct:

"As a member of the Kanaka Bar Indian Band Council, I hereby swear to:

- (a) uphold and respect Kanaka Bar traditions and values;
- (b) work cooperatively to serve the membership of Kanaka Bar to the best of my ability;
- (c) act as a role model by maintaining a healthy lifestyle;
- (d) follow all organizational policies and procedures;

- (e) exercise special care while dealing with the financial affairs of Kanaka Bar to ensure that money is spent wisely;
- (f) demonstrate respect for all Members of the community and other agencies;
- (g) maintain confidentiality regarding personal or private Council business;
- (h) make every effort to attend and participate fully in all Council meetings;
- (i) consult regularly with elders, youth, and other Members to ensure that Council decisions represent the best interests of the membership; and
- (j) declare a Conflict of Interest where I or my immediate family might benefit, or be negatively impacted by, a Council decision.”

## ELECTION CODE OF KANAKA BAR INDIAN BAND

### TABLE OF CHANGES

#### Abbreviations:

am	=	amended
eff	=	effect(ive)
en	=	enacted
per	=	under, pursuant to
re-en	=	re-enacted (repealed and replaced)
rep	=	repealed

#### CHANGES NOT IN FORCE

Section	Change	Details	Effective Date
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#### CHANGES IN FORCE

Section	Change	Details	Effective Date
1.1(f)	en	(f) "Debt Repayment Plan" means a debt repayment plan agreement, in the form approved by Kanaka Bar from time to time, between a Member and Kanaka Bar with respect to the repayment of outstanding debt of such Member;	2015-03-21  (Per majority vote of Electors (as defined in the Election Code) present at an Amendment Meeting held in Kanaka on 2015-03-21)
2.2(c)	am	(c) not have any outstanding debts over the amount of \$5000 with Kanaka Bar or its subsidiaries, unless such person is in compliance with a Debt Repayment Plan with respect to such outstanding debt;	2015-03-21  (Per majority vote of Electors (as defined in the Election Code) present at an Amendment Meeting held in Kanaka on 2015-03-21)