

DATE: February 07, 2023

CERTIFIED COPY

"I certify that I have seen the original documentation and this copy is a complete and accurate copy of that original."

Patricia Bernard

Patricia Bernard
A Commissioner of Oaths
Being a Solicitor and Member of the Law Society of New Brunswick

MADAWASKA MALISEET FIRST NATION COMMUNITY ELECTION CODE

Dated for Reference: NOVEMBER 28, 2022



Verified & Approved:

<i>Karen McGill</i>	<i>Patricia Bernard</i>	<i>Donna Wallace-Bourgeault</i>	<i>Diane Pelletier</i>
Ratification Officer	Chief	Councillor	Councillor
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**Madawaska Maliseet First Nation
Community Election Code**

Assented to (December 16, 2022)
insert date of ratification

A Code respecting the election and term of office of the Chief and Councillors of the Madawaska Maliseet First Nation and the composition of its Council.

Madawaska Maliseet First Nation continues to assert its jurisdiction for matters which are integral to the community’s right to self-determination. The current election system does not meet the needs of the community, and in an effort to have a governance process that is more community-owned, inclusive, efficient, and responsive, Madawaska Maliseet First Nation has developed its own *Community Election Code* for community engagement, and if warranted, Ratification in accordance with the *Madawaska Maliseet First Nation Community Election Code Ratification Process*.

Madawaska Maliseet First Nation hereby enacts the following *Community Election Code*:

Part I: Preliminary Matters & Interpretation

1. TITLE

1.1 The title of this Code is the *Madawaska Maliseet First Nation Community Election Code*.

1.2 This Code may be cited as the *MMFN Community Election Code*.

2. COMING INTO FORCE

2.1 This Code shall come into force upon the declaration of the Ratification Officer of successful Ratification in accordance with the *Madawaska Maliseet First Nation Community Election Code Ratification Process*.

2.2 This Code shall be approved by way of a Ratification Vote whereby:

- (a) a Majority of the Eligible Voters vote; and
- (b) a Majority of the Eligible Voters who cast votes voted “YES”.


3. DEFINITIONS

3.1 The following definitions apply in this Code:


- (a) “**Band Council Resolution**” means a decision of the Council of Madawaska Maliseet First Nation approved by a Quorum of Council at a duly convened meeting;
- (b) “**Candidate**” means a Member of the Madawaska Maliseet First Nation who

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has been nominated pursuant to this Code, specifically in accordance with Section 9 "Candidate Eligibility" and Section 10 "Nomination";

- (c) **"Chief"** means the duly elected Chief of the Madawaska Maliseet First Nation;
- (d) **"Council"** means the duly elected, pursuant to this Code, Chief and Councillors of the Madawaska Maliseet First Nation;
- (e) **"Councillor"** means a member of Council and includes the Chief;
- (f) **"Day"** means one (1) calendar day;
- (g) **"Deputy Electoral Officer"** means the person or persons appointed by the Electoral Officer pursuant to the *Madawaska Maliseet First Nation Community Election Code Regulations* for the purpose of assisting the Electoral Officer in the election process;
- (h) **"Electoral Officer"** means the person appointed by Council pursuant to the *Madawaska Maliseet First Nation Community Election Code Regulations* who holds the responsibility to govern the election procedures, including pre-election, election, and post-election procedures;
- (i) **"Electronic Voting"** means casting a ballot via a telephone and/or internet-based platform;
- (j) **"Hand-delivering"** means, when referencing document delivery, an informal delivery of a physical document with no formal record of the delivery;
- (k) **"Mail"** means, when referencing document delivery, a formal delivery of a document with a formal record, involving a third-party verification, of the sending either by the post or by a courier;
- (l) **"Majority"** means fifty percent (50%) plus one (1);
- (m) **"Member"** means a person whose name appears on the Madawaska Maliseet First Nation Membership List pursuant to the *Madawaska Maliseet First Nation Membership Code*;
- (n) **"MMFN"** means Madawaska Maliseet First Nation and its Members;
- (o) **"Nomination Meeting"** means a meeting held for the purpose of nominating Candidates for an Election in accordance with the *Madawaska Maliseet First Nation Community Election Code Regulations*;
- (p) **"Quorum"** means the Majority of the total number of Council members elected, including the Chief;
- (q) **"Ratification"** or **"Ratification Vote"** means the vote held in accordance with the *Madawaska Maliseet First Nation Community Election Code Ratification Process* for the purpose of ratifying this Code or an amendment to this Code; and

- (r) **“Voter”** means a person whose name appears on the Madawaska Maliseet First Nation Membership List pursuant to the *Madawaska Maliseet First Nation Membership Code*, and:
 - (i) in relation to voting, is 18 years of age or older by the final voting day;
 - (ii) in relation to a petition to remove from office a Chief or Councillor pursuant to Subsection 20.1(f) of this Code, was 18 years of age or older on the day of the election of that Chief or Councillor; or
 - (iii) in relation to a nomination referred to in Section 10 “Nomination” of this Code, is 18 years of age or older on the day of the nomination.
- 3.2 Unless otherwise provided, words defined in the *Madawaska Maliseet First Nation Community Election Code Regulations* have the same meaning in this Code.
- 3.3 Words in the singular include the plural and words in the plural include the singular, as the context may require.


Part II: General

4. PROHIBITION - GENERAL ELECTORAL CONDUCT

- 4.1 In connection with an election, a person must not:
 - (a) by intimidation or duress, attempt to influence another person to:
 - (i) nominate or refrain from nominating a particular Candidate;
 - (ii) accept or decline a nomination; or
 - (iii) withdraw as a Candidate;
 - (b) knowingly publish a false statement that a Candidate is withdrawing or has withdrawn their candidacy;
 - (c) threaten the maintenance of order at the Nomination Meeting;
 - (d) threaten the maintenance of order at the polling station;
 - (e) intentionally obstruct the Electoral Officer or Deputy Electoral Officer in the performance of their duties; or
 - (f) in a manner that this Code does not otherwise prohibit, act, or incite another person to act, in a disorderly manner, with the intention of disrupting or obstructing the conduct of an election.
- 4.2 If the Electoral Officer believes that a person has committed an offence pursuant to Subsection 4.1(a), 4.1(b), 4.1(c), 4.1(e), or 4.1(f) of this Code, they may order the person to leave the Nomination Meeting.

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- 4.3 If the Electoral Officer believes that a person has committed an offence pursuant to Subsection 4.1(a), 4.1(b), 4.1(d), 4.1(e), or 4.1(f) of this Code, they may order the person to leave the polling station.
- 4.4 If the Electoral Officer has reasonable proof that a Candidate has committed an offence pursuant to Subsection 4.1 of this Code, the Candidate shall have their candidacy withdrawn.
- 4.5 If a person has received an order to leave under Subsections 4.2 or 4.3 of this Code, they must obey it without delay.

5. TERMS OF OFFICE

- 5.1 The current Council will continue in office to the end of the current term of office following the approval by Ratification of this *MMFN Community Election Code*.
- 5.2 The first election held pursuant to this Code will be held on or before the expiry of the term of office of the current Council.
- 5.3 A Council elected in accordance with this Code will take office immediately after the end of the term of the previous Council's term of office.
- 5.4 Excluding by-elections held in accordance with Section 16 "By-elections" of this Code, the Chief and Councillors will hold office for four (4) years commencing at the expiry of the term of office of the Chief and Councillors that they replace.

6. ELECTION DATES

- 6.1 The date of the first election held pursuant to this Code must not be later than thirty (30) Days before the day on which the term of office of the incumbent Council expires.
- 6.2 Subsequent elections held pursuant to this Code will be held within a reasonable amount of time prior to the expiration of the term of office of the incumbent Council.

7. COUNCIL COMPOSITION

- 7.1 Council will consist of one (1) Chief and not less than two (2) or more than twelve (12) Councillors.
- 7.2 Council may, by Band Council Resolution, increase or decrease the number of Councillors in accordance with Subsection 7.1 of this Code. Such an increase or decrease is applicable as of the next election that is not a by-election.
- 7.3 The Quorum of Council is set as the Majority of the total number of Council members elected, including the Chief.

8. COUNCIL MEETINGS

- 8.1 The first meeting of a Council shall be held within sixty (60) days of an election.
- 8.2 For greater certainty, Council may make rules, regulations, standards, codes, and policies for Council meetings.

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Part III: Candidacy

9. CANDIDATE ELIGIBILITY

9.1 Only a Voter who is at least twenty-five (25) years of age is eligible to be nominated as a Candidate for the position of Chief or Councillor.

10. NOMINATION

10.1 A Voter becomes a Candidate only if:

- (a) their nomination is moved and seconded, in the manner prescribed by the *MMFN Community Election Code Regulations*, by other electors; and
- (b) they complete and sign the Declaration of Candidacy form in accordance with the *MMFN Community Election Code Regulations*, providing their written consent to be a Candidate.

10.2 A Voter must not move or second a nomination for more than one Candidate for each position to be filled.

10.3 A person must not, in connection with an election, consent to be a Candidate knowing that they are not eligible to be a Candidate.

10.4 A Voter is not to be nominated as a Candidate for the position of Chief and the position of Councillor in the same election. In the event that a Voter is nominated for both the position of Chief and the position of Councillor in the same election, the Voter can accept only one nomination of the two positions, not both.

Part IV: Orderly Voting

11. VOTER ENTITLED TO VOTE

11.1 Subject to Subsection 11.2 of this Code, only an eligible Voter is entitled to vote in an election in accordance with this Code.

11.2 A person who is appointed as the Electoral Officer in respect of an election is not entitled to vote in that election notwithstanding the breaking of a tie in accordance with Section 14 "Tied Vote" of this Code.


12. SECRECY OF VOTING

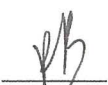
12.1 Voting at an election is to be conducted by secure Electronic Voting and secret paper ballot, as may be appropriate.


13. AWARDING OF POSITIONS

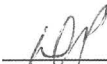
13.1 The Chief and Councillor positions are awarded to the Candidates for those positions who receive the highest number of votes.

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14. TIED VOTE

14.1 If it is not possible to award a position under Subsection 13.1 of this Code because there are two or more Candidates with the same number of votes, the Electoral Officer must break the tie in the following manner:

- (a) in the event of a tie between one incumbent and one or more non-incumbents, the Electoral Officer shall vote for the incumbent;
- (b) in the event of a tie between two or more incumbents, the Electoral Officer shall conduct a draw to break the tie; or
- (c) in the event of a tie between two or more incumbents and one or more non-incumbents, the Electoral Officer shall conduct a draw between the incumbents only to break the tie.


15. PROHIBITION – VOTING

15.1 A person must not, in connection with an election:

- (a) provide a false name in order to obtain a ballot or Electronic Voter identification number, Voters are required to use their name as it appears on the Madawaska Maliseet First Nation Membership List;
- (b) knowingly possess a ballot or Electronic Voter identification number that was not provided to them in accordance with the *MMFN Community Election Code Regulations*;
- (c) print or reproduce a ballot unless that person is authorized to do so under the *MMFN Community Election Code Regulations*;
- (d) vote or attempt to vote knowing that they are not entitled to vote;
- (e) attempt to influence another person to vote knowing that the other person is not entitled to do so;
- (f) knowingly use a forged ballot;
- (g) knowingly sell or buy a ballot, including Electronic Voting ballots;
- (h) put a ballot into a ballot box knowing that they are not authorized to do so under the *MMFN Community Election Code Regulations*;
- (i) by intimidation, duress, or coercion, attempt to influence a Voter to vote or refrain from voting or to vote or refrain from voting for a particular Candidate;
- (j) offer money, goods, employment or other valuable consideration in an attempt to influence a Voter to vote or refrain from voting or to vote or refrain from voting for a particular Candidate;
- (k) post or display in, on, or around a polling station any campaign literature or other material that promotes or opposes:

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- (i) voting for a particular Candidate; or
 - (ii) the election of a particular Candidate.
- (l) within hearing distance of a polling station, orally promote or oppose the voting for or election of a Candidate;
 - (m) in a polling station, attempt to influence a Voter to vote or refrain from voting or to vote or refrain from voting for a particular Candidate; or
 - (n) act, or incite another person to act, in a disorderly manner with the intention of disrupting the conduct of the vote in a polling station.
- 15.2 A Voter must not, in connection with an election:
- (a) intentionally vote more than once in respect of any given position of Chief or Councillor;
 - (b) accept or agree to accept money, goods, employment, or other valuable consideration to vote or refrain from voting or to vote or refrain from voting for a particular Candidate; or
 - (c) show their ballot, when marked, to reveal the name of the Candidate for whom the Voter has voted, other than in accordance with the *MMFN Community Election Code Regulations*.
- 15.3 A person must not, in connection with an election, destroy, take, open, or otherwise interfere with a ballot box knowing that they are not authorized to do so under the *MMFN Community Election Code Regulations*.

Part V: By-elections and Vacancy

16. BY-ELECTIONS

- 16.1 If the Chief or a Councillor ceases to hold office more than six (6) months before the day on which their term of office would have expired, Council may direct that a by-election be held for that position, in accordance with this Code.
- 16.2 A Chief or Councillor who is elected in a by-election holds office commencing on the date of their election for the remainder of the term of office that they were elected to fill.

17. VACANCY

- 17.1 A Chief or Councillor ceases to hold office and their position on Council becomes vacant if, while in office:
 - (a) they resign from office;
 - (b) they are convicted of an indictable offence;
 - (c) they are guilty of an offence under this Code;

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- (d) they die;
- (e) they are declared as mentally incompetent to carry out the necessary activities required for their position in office by two separate medical physicians;
- (f) they cease to be a Member;
- (g) an Appeal Tribunal sets aside their election; or
- (h) they are removed from office in accordance with the *MMFN Community Election Code Regulations*.

Part VI: Offences

18. OFFENCES

18.1 Every person is guilty of an offence who contravenes Section 4 "Prohibition – General Electoral Conduct" or Section 15 "Prohibition – Voting" of this Code.

18.2 Pursuant to Subsection 18.1 of this Code, any guilty person:

- (a) is not eligible to be a nominee, Candidate, or elected in the position of Chief or Councillor;
- (b) if already elected, will immediately be removed from office;
- (c) will be banned from running for any Council position for a period of ten (10) years; and
- (d) may be fined up to five thousand dollars (\$5000.00).

19. INELIGIBLE CANDIDATES

19.1 If at any time it is known that a Candidate is ineligible to be considered to run in the election, the Electoral Officer must:

- (a) if prior to the printing of the ballots, remove the name of the ineligible Candidate from the ballots as soon as possible; or
- (b) if after the printing of the ballots, do everything in their power to notify Voters regarding the removal of the ineligible Candidate. This shall include, but is not limited to:
 - (i) posting a notice at the MMFN administration office, on MMFN social media sites, and other locations where it may be read by Members;
 - (ii) posting a notice at the polling station;
 - (iii) changing the information displayed on the Electronic Voting platform;
 - (iv) Mailing a notice to Members; or

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- (v) Hand-delivering a memo to on-Reserve Members.

19.2 In the case where the Electoral Officer does not have enough time to remove the name of an ineligible Candidate from the ballots, any votes toward an ineligible Candidate will not be counted during the counting of the vote. Should the Electoral Officer be notified after an ineligible Candidate is declared elected in the position of Chief or Councillor, and:

- (a) if it is within fourteen (14) Days after the announcement of the elected Candidates, the Candidate with the next highest number of votes will be elected in the position; or
- (b) if it is not within fourteen (14) Days after the announcement of the elected Candidates, it is at the reasonable discretion of the previous or newly appointed Electoral Officer to either:
 - (i) follow the procedures for removal of a Chief or Councillor and call a by-election;
 - (ii) declare the Candidate with the next highest number of votes to be appointed for the position; or
 - (iii) another solution that they see fit.

Part VII: Regulations


20. REGULATIONS

20.1 Council may make regulations pursuant to this Code with respect to elections, including regulations respecting:

- (a) the appointment, powers, duties, and removal of Electoral Officers and Deputy Electoral Officers;
- (b) the requirement that Electoral Officers be certified, the certification process, and the grounds for withdrawing certification;
- (c) the manner of identifying Voters;
- (d) the manner in which Candidates may be nominated;
- (e) the manner in which voting is to be carried out, including:
 - (i) permitting the Electoral Officer to establish polling stations and advance polling stations;
 - (ii) procedures for Electronic Voting;
 - (iii) the counting of votes;
- (f) the removal from office of a Chief or Councillor by means of a petition,

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including:

- (i) the percentage of electors who must sign that petition; and
- (ii) the period during which that petition is to be filed;
- (g) the holding of by-elections; and
- (h) anything else that by this Code is to be prescribed.

Part VIII: Amendments

21. AMENDMENT

21.1 Unless otherwise provided for in this Code, amendments to this Code must be made by Ratification Vote of the MMFN Voters. The *Madawaska Maliseet First Nation Community Election Code Ratification Process* will serve as the guide for any such amendment.

22. AMENDMENT PROPOSAL

22.1 The process for development and passage of amendment to this Code may be initiated by:

- (a) a petition presented to Council, signed by a Majority of all Voters and setting out the specific area in this Code proposed for amendment; or
- (b) a Band Council Resolution.

22.2 If an amendment is proposed pursuant to Subsection 22.1 of this Code, Council shall mail to all Members 18 years of age or older at their last known address:


- (a) a summary of the proposed amendment of this Code;
- (b) a statement that the full copy of the proposed amendment can be obtained at the MMFN administration office;
- (c) a description of the amendment process; and
- (d) notice of a thirty (30) Day period to provide any comments on the proposed amendment.

23. THRESHOLD REQUIRED FOR PASSING THE AMENDMENT

23.1 A Majority of Voters who vote in the Ratification Vote on a proposed amendment held pursuant to Subsection 21.1 of this Code is the required ratio for passing the amendment. For greater clarity, a simple Majority vote is required for all amendments.

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24. AMENDMENT RATIFICATION NOTICE

24.1 The notice of amendment Ratification Vote and results held pursuant to Subsection 21.1 of this Code will be posted on the MMFN website and social media sites, at the MMFN administration office, and any other locations deemed necessary by the Ratification Officer or Council.

25. MINOR REVISIONS

25.1 An amending Ratification Vote pursuant to Subsection 21.1 of this Code is not required for revisions made to this Code that do not change the substance of this Code. Council may, from time to time, arrange and revise this Code. Revisions may be made as a result of, but are not limited to:

- (a) a reference in this Code to a clause in another code or document that was amended and resulted in a change in title or clause renumbering;
- (b) a reference in this Code to another code or document or parts thereof that have expired, have been repealed, or suspended;
- (c) changes in this Code as are required to reconcile seeming inconsistencies with another code or document;
- (d) minor improvements in the language as may be required to bring out more clearly the intention of the Madawaska Maliseet First Nation without changing the substance of this Code; and
- (e) correcting editing, grammatical, or typographical errors.

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