

# **TOBACCO PLAINS INDIAN BAND**

## **MEMBERSHIP CODE**

**(CODE: SET OF STANDARDS SET FORTH AND ENFORCED  
BY A LOCAL GOVERNMENT AGENCY)**

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**SEPTEMBER 2015**

AS APPROVED BY COUNCIL FEBRUARY 01, 2016

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## **PREAMBLE**

**WHEREAS** we, the people of the Tobacco Plains Indian Band of the Ktunaxa Nation, in order that our rights and freedoms, including inherent and Aboriginal rights, be fully protected, exercised and preserved, to ensure justice and our security, to maintain Ktunaxa traditions and customs, to maintain our political integrity, to promote harmony and our common good, do therefore ordain and establish this Custom Membership Code.

**WHEREAS** we, the people of the Tobacco Plains Indian Band, assert our sovereign status as a Nation and inherent Aboriginal, constitutional, human and other rights, as confirmed by our forefathers through the exercise of such rights, and we recognize the protection accorded such rights by sections 35 and 25 of the *Constitution Act, 1982* from any abrogation or derogation.

**Now THEREFORE**, the Tobacco Plains Indian Band repeals and replaces the Tobacco Plains Indian Band Membership Code, 1999 and enacts the following:

### **1. DEFINITIONS AND INTERPRETATION**

1.1 In this Code, unless otherwise provided elsewhere in this Code:

**“Adopted”** means a Child adopted under laws recognized in Canada and in British Columbia.

**“Band Council Resolution”** means written decision made by a majority of the Band Council.

**“Band Council”** means the Chief and Council elected in accordance with the Tobacco Plains Indian Band Custom Election Code.

**“Child”** means a person who is under the age of 19 and includes a Dependent and a Child who is Adopted.

**“Dependent”** means any person over the age of 19 but who by reason of disability, illness or other cause, is in the care or custody, whether in law or in fact, of a Member.

**“General Membership Meeting”** means a meeting called to present and discuss any issues arising under this Code, including proposed amendments to this Code.

**“Indian Status”** means registered as a status Indian under the *Indian Act*, (R.S.C., 1985, c. I-5).

**“Ktunaxa Nation Descent”** means being of Ktunaxa Nation descent, not through marriage or transfer into a Ktunaxa Nation.

**“Member”** means a member of the Tobacco Plains Indian Band whose name appears on the Band List maintained in accordance with this Code.

**“Membership Administrator”** means a person appointed by Band Council pursuant to Section 11.

**“Membership Committee”** means the Committee appointed pursuant to Section 12.

**“Membership List”** means the list of all persons who are Members pursuant to this Code.

**“Public Notice”** means notice that is required to be posted publicly for any decision or meeting that is related to membership issues pursuant to this Code and Tobacco Plains Indian Band Membership Regulations.

**“Registered”** means registered as a status Indian under the *Indian Act*, (R.S.C., 1985, c. I-5).

**“Special Membership Meeting”** means a meeting held in order to vote on proposed amendments of this Code and to vote on any appeals made under this Code.

**“Regulations” means** the Tobacco Plains Indian Band Membership Code Regulations enacted by Band Council pursuant to this Code.

**“Voter”** means a Member who is at least eighteen years of age.

- 1.2 Any defined term will be read as having an appropriate corresponding meaning if referred to in the singular, plural, verb, or noun form.
- 1.3 Unless otherwise noted, all Section references refer to Sections in this Code.

## **2. REGULATIONS**

- 2.1 Band Council may make regulations with respect to membership applications and this Code, and without restricting the generality of the foregoing, may make regulations with respect to:
  - a. Appeals (**refer to Section 4 of the Regulations, page 2**);
  - b. Public Notice of decisions and information (**refer to Section 7 of the Regulations, page 7**);
  - c. loss/revocation of membership (**refer to Section 5 of the Regulations, page 4**); and
  - d. the Membership Committee (**refer to Section 6 of the Regulation, page 6**).

## **3. MEMBERSHIP**

- 3.1 Subject to Section 7 of this Code, on the date this Code comes into force, the names on the Membership List maintained by Tobacco Plains Indian Band shall constitute the names on the Membership List.
- 3.2 Unless otherwise prohibited by this Code, a person is entitled to be a Member if he or she can provide satisfactory proof that:

- a. they are of Ktunaxa Nation Descent; and
- b. they are Registered or entitled to be Registered as a status Indian under the *Indian Act*.

3.3 A former Member, who meets the criteria in Section 3.2 of this Code but who at one time voluntarily requested removal from the Membership List may reapply for membership by submitting a completed "Adult Application Form" (attached as Appendix A) but must also provide a written explanation for wanting to return to the Band and meet with the Membership Committee to discuss their application.

3.4 All applications for membership under this section must be made by submitting either a completed "Adult Application Form" (attached as Appendix A) or "Child Application Form" (attached as Appendix B) to the Membership Administrator.

#### **4. TRANSFER APPLICATION**

4.1 At the discretion of the Membership Committee, unless otherwise prohibited by this Code, a person is eligible to apply to transfer into Tobacco Plains Indian Band if he or she is:

- a. eighteen (18) years of age or older;
- b. a Registered status Indian;

by submitting a completed "Transfer Application Form" (attached as Appendix C) to the Membership Administrator.

4.2 A person making an application to transfer into the Tobacco Plains Indian Band must include a current criminal record check, which is to be completed at the applicant's expense. Applications under this Section will not be processed without a current criminal record check. See Appendix "F" for instructions on obtaining a criminal record check.

4.3 The Membership Committee will consider all transfer applications as set out in Section 3 (**refer to page 1 of Regulations**), and determine the applicant's eligibility for membership after consideration of the following factors:

- a. the extent of the applicant's family or spousal connections to a current Member, or person entitled to be a Member;
- b. whether the applicant can make a valuable contribution to the Tobacco Plains Indian Band;
- c. whether the applicant can demonstrate a strong connection to the Tobacco Plains Indian Band such as, but not limited to, knowledge of Tobacco Plains Indian Band language, traditions and custom;
- d. consideration of the limited housing and land capacity of the Tobacco Plains Indian Band; and
- e. whether the applicant has a criminal record.

4.4 For the purposes of Section 4.3e) the Membership Committee may:

- a. determine that a criminal record does not automatically disqualify an applicant from membership; and
- b. permit an applicant with a criminal record to provide evidence of his or her good character.

4.5 A person seeking to transfer into the Tobacco Plains Indian Band may include his or her Child in their application.

4.6 If the transfer application is approved by the Membership Committee, the applicant must complete either:

- a. The "Statement of Consent for Transfer of Adult" (attached as Appendix D);
- b. The "Statement of Consent for Transfer of a Minor" (attached as Appendix E); and
- c. If the applicant is transferring out of a First Nation whose membership is governed by section 11 of the *Indian Act*, before the applicant can transfer into the Tobacco Plains Indian Band and be added to the Membership List, the applicant must provide the Membership Administrator with confirmation from the First Nation that he or she is transferring out of, confirming that he or she has been released from the membership list of that First Nation, before they can be registered on the Membership List.

## **5. PERSONS NOT ENTITLED TO BE MEMBERS**

5.1 For greater certainty, and notwithstanding any other provisions of this Code, as of the effective date of this Code, the following persons are not entitled to be enrolled as Members:

- a. any person who is not, or is not entitled to be, a Registered status Indian under the *Indian Act*,
- b. a Child or person who has one parent who gained Indian Status and membership prior to April 17, 1985, solely through marriage, and that Child or person's other parent is not a Registered Indian; and
- c. any person who is a member of another First Nation in Canada.

## **6. VOLUNTARY LOSS OF MEMBERSHIP**

6.1 Membership will be revoked and a Member's name will be removed from the Membership List when he or she provides a signed written request to the Membership Administrator that he or she wishes to give up his or her membership in Tobacco Plains Indian Band.

6.2 A Member who has requested removal from the Band List shall reapply for membership pursuant to Section 3.3 of this code.

## **7. REVOCATION OF MEMBERSHIP**

7.1 Pursuant to the Regulations, membership may be revoked and a Member's name may be removed from the Membership List if:

- a. the Membership Committee determines that the person is maintaining memberships in two First Nations in Canada at the same time (**refer to Section 5.5 – 5.8 of the Regulations, page 4 - 5**);
- b. the Membership Committee determines that the person became a Member as a result of an error, or on the basis of false or inaccurate information (**refer to Section 5.9 of the Regulations, page 5**);
- c. the Membership Committee determines that the Member, who gained Indian Status solely through marriage to a Registered Indian, has divorced or separated for longer than one year from her Member spouse and no longer maintains a substantial connection to the Tobacco Plains Indian Band community and/or Tobacco Plains Indian Band land, either traditionally, culturally, or through familial connections (**refer to Section 5.10 of the Regulations, page 5**);
- d. the Membership Committee determines that a Member is not a Registered status Indian, unless the Member can show proof of obtaining Indian Status within two (2) years of this Code coming into force (**refer to Section 5.11 of the Regulations, page 5**); or
- e. the Membership Committee determines that a Member, who does not possess any Ktunaxa Nation blood, no longer maintains a substantial connection to the Tobacco Plains Indian Band community and/or Tobacco Plains Indian Band land, either traditionally, culturally, or through familial connections.

## **8. APPLICATIONS FOR MEMBERSHIP**

- 8.1 Pursuant to Section 3 (**refer to Section 3 of the Regulations, page 1**), a person wishing to become a Member must submit an application for membership on the prescribed Application Form, together with all supporting documentation, to the Membership Administrator.
- 8.2 An application for membership on behalf of a Child will be submitted by the parent(s) or legal guardian(s) of the Child.

## **9. APPEALS**

- 9.1 Pursuant to Section 4 of the Regulations, all decisions made under this Code may be appealed.

## **10. EFFECTIVE DATE OF MEMBERSHIP OR REVOCATION OF MEMBERSHIP**

- 10.1 Where a Member wishes to surrender his or her membership under Section 6, his or her membership will be terminated effective from the date that the Membership Administrator receives the written request from the Member, pursuant to Section 6.1.
- 10.2 If no appeal is submitted, a person's membership is effective, or revoked, thirty (30) days after the decision was posted pursuant to Section 7 of the Regulations (refer to page 7).

10.3 If an appeal is submitted, a person's membership is effective, or revoked, on the day the Members' decision is posted pursuant to Section 4.18 of the Regulations.

## **11. MEMBERSHIP ADMINISTRATOR**

11.1 The Membership Administrator will be appointed by Band Council and shall be responsible for the following:

- a. maintaining an accurate and up-to-date Membership List;
- b. receiving and processing applications for membership;
- c. rendering decisions on applications for membership in accordance with Section 3;
- d. providing information concerning membership;
- e. maintaining all copies of this Code and any amendments thereto;
- f. attending all Membership Committee meetings to take minutes and produce written decisions based on the Membership Committee decisions;
  - i. providing quarterly written reports about membership to the Members;
  - ii. reporting to the Band Council after each of the Membership Committee meetings;
- g. providing an annual written report to the Band Council;
- h. generally, carrying out all other duties as may be required for the proper administration of this Code; and
- i. carrying out any additional duties that may be required by this Code.

## **12. MEMBERSHIP COMMITTEE**

12.1 The Membership Committee shall be comprised of two (2) representatives of each of the family grouping, one of whom will be designated as an alternate.

12.2 If, for any reason, there is no family member who is willing to volunteer to be on the Membership Committee, the Members who attend the next General Band Meeting will nominate a person to sit on the Membership Committee.

12.3 The Membership Committee may make rules or procedures that are consistent with this Code and Section 6 of the Regulations.

## **13. THE MEMBERSHIP LIST**

13.1 The Membership List will be maintained by the Membership Administrator in the administration offices of Tobacco Plains Indian Band and will record, among other information:

- a. the name,
- b. address,
- c. birth date,
- d. date of death (if applicable); and

- e. whether the person is of Ktunaxa Nation Descent or not, for every person listed on the Membership List.

13.2 No disclosure or use of the information contained in the Membership List will be made for any purpose other than:

- a. for the purposes of Tobacco Plains Indian Band as determined by Band Council; or,
- b. for the purposes of confirming the membership of a person upon request by that person or his or her legal guardian or representative.

13.3 Subject to Section 7, on the date this Code comes into force, the names currently on the Membership List maintained by Tobacco Plains Indian Band will constitute the names on the Membership List.

13.4 The Membership Administrator is responsible for keeping the Membership List current and up to date and each Member has the responsibility:

- a. to provide the Membership Administrator with a copy of a death certificate if a family member passes away; and
- b. to notify the Membership Administrator if there has been a change to their contact information.

13.5 The Membership Administrator shall, as soon as practicable after a person becomes a Member, add the name of that person to the Membership List.

13.6 The Membership Administrator shall, as soon as practicable, after a person ceases to be a Member, delete the name of that person from the Membership List.

13.7 The Membership List shall indicate the date on which a person becomes or ceases to be a Member.

#### **14. PUBLIC NOTICE**

14.1 Public Notice of any decision made under this Code regarding the rejection, addition, or deletion of membership is required in accordance with Section 7 of the Regulations.

#### **15. AMENDMENT PROCESS**

15.1 Amendments to this Code may be initiated by a Band Council Resolution, or a request that is signed by at least 25% of the Voters.

##### **Consent of Voters Required to Amend**

15.2 Once enacted, this Code may be amended with the consent of a majority of Voters, who vote on the proposed amendments in person, or by mail-in-ballot or phone-in-ballot requested from the Membership Administrator.

## **Meetings Required Before Amendment Vote**

- 15.3 At least sixty (60) days before the date of the amendment vote, the Membership Administrator will post a Public Notice of the Special Membership Meeting which will indicate the time that voting will occur at the Special Membership Meeting. The Membership Administrator will make available copies of the text of the amendment.
- 15.4 Prior to the Special Membership Meeting, the Membership Administrator will convene at least one (1) General Membership Meeting at which the proposed amendments to this Code are discussed and Members are provided the opportunity to make submissions and ask questions.

## **16. COMING INTO FORCE**

- 16.1 This Code, which repeals and replaces the Tobacco Plains Indian Band Membership Code, 1999, shall come into force and be enacted on the day on which the majority of the Voters give their consent to this Code.
- 16.2 On and after the day this Code comes into force, the Membership List will be maintained by the Membership Administrator under the direction and supervision of Band Council, and only those persons whose names are included therein, or who are entitled to have his or her name entered therein pursuant to this Code, shall be Members of the Tobacco Plains Indian Band.

## **17. CALCULATION OF TIME**

- 17.1 Where there is a reference to a number of days or a number of days in between two events within this Code, in calculating the number of days, the days on which the events happen are excluded and Saturdays and Sundays are included.
- 17.2 Where the time limited for the doing of an act under this Code expires or falls on a Saturday or Sunday or a federal or provincial holiday, the act may be done on the next day that is not a Saturday, Sunday or holiday.
- 17.3 If the time for doing an act under this Code is with respect to an act required in a business office, and falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open during regular business hours.

## **18. GENERAL**

- 18.1 Words importing the singular number include the plural and vice versa and words importing gender include the masculine, feminine and neutral genders.

## **19. SEVERABILITY**

- 19.1 Each Section of this Code must be interpreted in a way that is valid under applicable law. If any Section is held invalid, the rest of this Code will remain in full effect.

## **20. DISCRETIONARY POWER**

20.1 Each discretionary power Band Council confers upon anyone, including the Membership Administrator, under this Code, will be exercised in good faith, without discrimination on the basis of sex or religion, in accordance with his or her best judgment, and in the best interests and welfare of the Tobacco Plains Indian Band.

## **21. CONFIDENTIALITY**

21.1 All information received by the Membership Administrator, Membership Committee or Band Council with respect to an application for membership will be treated as confidential and will not be disclosed to a third party without the written consent of the person concerned, except where disclosure is required by law or deemed necessary for Tobacco Plains Indian Band to carry out any duties under this Code.

## **22. SAVING FROM LIABILITY**

22.1 No claim will lie against the Tobacco Plains Indian Band, Band Council, Membership Administrator, Membership Committee, Tobacco Plains Indian Band employees or any Member, or their heirs, executors, administrators or successors, in relation to any omission or deletion of a person from the Membership List.

## **APPENDICES**