
WESTBANK FIRST NATION CONSTITUTION

CONSOLIDATED VERSION

Including amendments approved by
Referendum, July 19, 2007

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PART I – Principles

1. General

- 1.1 These principles shall provide a vision and foundation to guide the social, economic, political and community development of Westbank.
- 1.2 These principles shall be used to assist the interpretation of this Constitution.

2. Aboriginal Rights and Title

- 2.1 Westbank is part of the Okanagan Nation which has occupied and benefited from Okanagan traditional territory since time immemorial.
- 2.2 Westbank has never ceded, surrendered, or in any way relinquished aboriginal title and will continue to assert its interests and exercise its aboriginal rights over the traditional territory.
- 2.3 Westbank is committed to protect the aboriginal rights of Westbank and its Members.
- 2.4 Through this Constitution, the Members of Westbank exercise their inherent right of self-government and provide for governance that is accessible, stable, effective, accountable and transparent.

3. Preservation of Land, Resources and Culture for Future Generations

- 3.1 Westbank shall work to promote a healthy and prosperous future to ensure the continued existence of Westbank as a strong political, social and cultural community.
- 3.2 Westbank honours its connection to the land, resources and elements of the natural world that provide for its Members' physical and spiritual needs.
- 3.3 Westbank recognizes its responsibility to protect the land and her resources for future generations.
- 3.4 Westbank Members value the need to respect, protect and promote their heritage, culture and traditions understanding that their traditions and practices change and that they continue to develop contemporary expressions of those traditions and practices.

PART II – Definitions and Interpretation

4. Interpretation

4.1 In this Constitution,

“Allotment” means an interest in Westbank Lands granting a Member lawful possession of a part of Westbank Lands under Part XI of this Constitution or, prior to the date this Constitution comes into force granted pursuant to section 20 of the *Indian Act*;

“Arbitrator” means an independent third party appointed under this Constitution to hear appeals, Petitions or other matters to be determined by an Arbitrator;

“Budget” means the consolidated annual budget prepared and adopted under Part X of this Constitution;

“Business Interest” means ownership or partial ownership of a business, shares of a corporation or other financial involvement, including any financial obligation from, or financial obligation to, any individual, business or corporation;

“Certificate of Possession” means documentary evidence of a Member’s Allotment of part of Westbank Lands described thereon;

“Chief” means the candidate elected to Council as Chief, under Part VI of this Constitution;

“Community Lands” means any Westbank Lands in which no Allotment to a Member has been made or no Member has lawful possession on the date this Constitution comes into force;

“Community Purpose” means a purpose which is intended to provide a facility, benefit or support for the Members or persons residing on Westbank Lands, and is limited to transportation and utility corridors and requirements related to transportation and utility corridors;

“Council” means the governing body of Westbank elected under Part VI of this Constitution;

“Councillor” means a candidate elected to Council as a Councillor, under Part VI of this Constitution;

“Department” means a division of Westbank government administration responsible for management of a program, service or activity;

“Devise” means the gift or disposition of an interest in Westbank Lands by a will;

“Director of Finance” means the person appointed by Resolution under section 19.1;

“Director of Lands” means the person appointed by Resolution under section 19.1;

“Director of Operations” means the person appointed by Resolution under section 19.1 to hold the principal, non-political management position for Westbank;

“Easement” means an interest in Westbank Lands granted under Part XI of this Constitution or, prior to the date this Constitution comes into force, granted pursuant to the provisions of the *Indian Act*, giving one person (the “grantee”) the right to use the land of another (the “grantor”) for a right of way or to provide utility or other services to the land of the grantee. An Easement does not confer any right of exclusive possession in the land and does not restrict the rights of the grantor of the Easement beyond that required to give effect to the Easement granted;

“Election” means an Election or by-election held under Part VI of this Constitution;

“Elector” means a person who is eligible to vote in Elections or by-elections under Part VI of this Constitution;

“Electoral Officer” means the person appointed under this Constitution to conduct Elections held under Part VI of this Constitution and referendums held under Part XII of this Constitution;

“Electors’ List” means an alphabetical list of Electors, indicating the name, business address, e-mail address, business telephone and facsimile number of the Electoral Officer and the location of the polling stations where Electors may vote;

“Emergency” means exceptional circumstances, including but not limited to circumstances relating to health, safety and socio-economic issues which were not reasonably foreseeable;

“Expropriation” means a taking of an interest or all interests in Westbank Lands for a Community Purpose through a process established by Westbank Law in accordance with section 116;

“General Membership Meeting” means a meeting held for Council to update the Membership on its activities and for Members to raise matters of interest or concern;

“Immediate Family” means a spouse (including a common-law spouse), parent, grandparent, child (including adopted children or those living with you as your child), grandchild or sibling. Immediate Family also includes the spouse (including common-law spouse) of an Immediate Family member;

“Jurisdiction” means law-making authority;

“Land Use Plan” means a plan addressing housing, transportation, parks, economic development, infrastructure, social, cultural, environment and other needs in the use and development of Westbank Lands;

“Lease” means a written contract setting out terms and conditions of a Leasehold;

“Leasehold” means an interest in Westbank Lands granted under Part XI of this Constitution or, prior to the date this Constitution comes into force, granted pursuant to the provisions of the *Indian Act*, including a Sub-lease, giving a person the exclusive right of use and possession of the lands, upon agreed conditions, for a specified time of one (1) year or longer, calculated by including any renewal or extension period;

“Legislation” means an act of Parliament which confirms and implements and gives effect to the Self-Government Agreement.

“Licence” means an interest in Westbank Lands granted under Part XI of this Constitution, giving one person the right to use, develop or extract the Natural Resources on or under the land of another or on or under Community Lands;

“Local Revenues” means money raised under a Local Revenue Law;

“Local Revenue Law” means a Westbank Law that provides for the:

- i) taxation of interests in Westbank Lands for local purposes or for the provision of local services;
- ii) the levying and collection of user fees, development cost charges and development permit fees to provide for public works, community infrastructure and local services on Westbank Lands;
- iii) the issuance of licenses or permits for a fee; and
- iv) expenditure of Local Revenues.

“Long-term Debt Liability” means a loan, guarantee, bond, debenture or other form of financial obligation that exceeds five (5) years;

“Majority” means fifty per cent plus one (50%+1);

“Member” means a person registered on the Membership Roll under Part III of this Constitution;

“Membership” means the group of persons who constitute the Members of Westbank;

“Membership Administrator” means the person appointed by Resolution under section 19.1;

“Membership Roll” means the list containing the names of Members maintained under Part III of this Constitution;

“Minister” means the Minister of Indian Affairs and Northern Development;

“Mortgage” means an interest in Westbank Lands granted under Part XI of this Constitution or, prior to the date this Constitution comes into force, granted pursuant to the provisions of the *Indian Act*, in which a person with a registered Allotment, Leasehold or Licence, (the “mortgagor”) transfers their interest to another person (the “mortgagee”), as security for a debt on conditions set out in a written mortgage agreement including a condition that if the debt is repaid by a specified time the transfer becomes void and the interest returns to the mortgagor;

“Natural Resources” means any materials on or under the land in their natural state which when extracted have economic value;

“Ordinarily Resident” means the place, where in the settled routine of a person’s life, that person regularly, normally or customarily lives;

“Permit” means an interest in Westbank Lands other than a Leasehold, Easement or Licence, granted under Part XI of this Constitution or, prior to the date this Constitution comes into force, granted pursuant to the provisions of the *Indian Act*, giving one person the right to use the land of another for a specified purpose. A Permit does not convey any right of exclusive possession in the land and does not restrict the rights of the grantor of the Permit beyond that required to give effect to the Permit granted;

“Petition” means a formal, signed, written request;

“Polling Site” means the building in which the polling station is located;

“Provisional Budget” means an interim or preliminary budget projecting revenues and expenditures anticipated to be required for the next budget year prepared and adopted under Part X of this Constitution;

“Resolution” means a formal motion moved by a Council member, seconded by another Council member and passed by Council under Part VII of this Constitution;

“Scrutineer” means a person appointed in writing by a candidate to observe voting and counting procedures for an Election;

“Self-Government Agreement” means the Westbank First Nation Self-Government Agreement entered into between Her Majesty the Queen in Right of Canada and Westbank First Nation dated July 6, 2000 and amendments thereto;

“Short-Term Capital Debt” means a debt payable no later than the lesser of:

- i) five (5) years from the date on which the debt was incurred; or
- ii) the reasonable life expectancy of the capital asset for which the debt was contracted;

“Special Membership Meeting” means a meeting held as required for Members to consider a specific issue or issues or Westbank Laws;

“Sub-Lease” means a Leasehold in which the person transferring the interest is the lessee in a prior existing Lease;

“Westbank” means the Westbank First Nation;

“Westbank First Nation” means the body of people who comprise the entity formerly known as the Westbank Band of Indians under the *Indian Act* and for whose use and benefit in common Westbank Lands have been set apart by Her Majesty the Queen;

“Westbank Lands” means;

- (a) the following Westbank Indian Reserves:
 - i) Mission Creek Indian Reserve No. 8 in British Columbia,
 - ii) Tsinstikeptum Indian Reserve No. 9 in British Columbia,
 - iii) Tsinstikeptum Indian Reserve No. 10 in British Columbia,

- iv) Medicine Hill Indian Reserve No. 11 in British Columbia, and
- v) Medicine Creek Indian Reserve No. 12 in British Columbia;
- (b) lands set apart by Canada in the future as lands reserved for the use and benefit of Westbank, within the meaning of subsection 91(24) of the *Constitution Act, 1867* and section 2(1) of the *Indian Act*;

“Westbank Lands Office” means the Department established to assist in the management and administration of Westbank Lands;

“Westbank Lands Register” means the register of Westbank Lands established by Canada and held in Ottawa, Ontario;

“Westbank Law” means a law of Westbank in force at the time this Constitution comes into effect, and any law of Westbank enacted under Part VIII of this Constitution:

“Written Instrument” means an instrument in writing, either in the approved form prepared by the Westbank Lands Office or such other form as may be agreed to by the Westbank Lands Office, which purports to create, grant, assign or transfer an interest in Westbank Lands or affect Westbank Lands;

- 4.2 Where the time limited for the doing of an act 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.
- 4.3 Where the time limited for the doing of an act in the Westbank administration building falls on a day when the office is not open during regular business hours, the act may be done on the next day that the office is open.
- 4.4 Where there is a reference to a number of days or a number of days between two events, in calculating that number of days, the days on which the events happen are excluded.
- 4.5 Except as otherwise provided in this Constitution, in the event of a conflict between this Constitution and a Westbank Law, this Constitution shall prevail to the extent of the conflict.
- 4.6 Wherever the singular, or masculine or the term “person” is used in this Constitution, it shall be deemed to include the plural, feminine, body corporate, Westbank First Nation or other entity where the context so requires.

PART III – Membership Rules

5. Purpose

- 5.1 Except with respect to section 13 concerning transfers of membership from another Band or First Nation, the purpose of this Part is to maintain the criteria to become a Member existing on the date this Constitution comes into force.
- 5.2 This Part shall be interpreted in a manner consistent with the intent of section 5.1.
- 5.3 *[repealed, July 19, 2007]*

6. Membership Administrator

- 6.1 The Membership Administrator shall be responsible for the following:
- (a) maintaining an accurate and up-to-date Membership Roll;
 - (b) receiving and processing applications for membership;
 - (c) rendering decisions on applications for membership in accordance with this Part;
 - (d) providing information concerning membership;
 - (e) generally carrying out all other duties as may be required for the proper administration of this Part; and
 - (f) carrying out any additional duties that may be required by this Constitution.

[amended, July 19, 2007]

7. Membership Roll

- 7.1 There shall be maintained in the administration offices of Westbank a Membership Roll in which shall be recorded, among other information, the name, address and birth date of every person who is a Member. *[amended, July 19, 2007]*
- 7.2 No disclosure or use of the information contained in the Membership Roll shall be made for any purpose other than:
- (a) for the purposes of Westbank;
 - (b) as may be required by law or pursuant to an agreement between Westbank and a government body; or
 - (c) for the purposes of confirming the membership status of a person upon request by that person or his or her legal guardian or representative.
- 7.3 On the date this Constitution comes into force, the names on the Band List maintained by Indian and Northern Affairs Canada for Westbank shall constitute the names on the Membership Roll.

- 7.4 After the date this Constitution comes into force, the Membership Administrator shall, as soon as practicable after a person becomes a Member, add the name of that person to the Membership Roll.
- 7.5 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 Roll.
- 7.6 The Membership Roll shall indicate the date on which a person becomes or ceases to be a Member.

8. Persons Entitled to Membership

- 8.1 A person is entitled to be a Member and be included on the Membership Roll if he or she was registered as an Indian under the *Indian Act*, and:
- (a) at least one of his or her parents is a Member or entitled to be a Member; or
 - (b) his or her transfer to become a Member has been approved under section 13 of this Part.
- 8.2 Notwithstanding 8.1(a) a person who is a member of another Band or First Nation who wishes to transfer to become a member of Westbank must have their transfer approved under section 13 of this Part. [*new, July 19, 2007*]

9. Application for Membership

- 9.1 A person wishing to become a Member must submit an application for membership to the Membership Administrator setting out the grounds on which the application is based, together with all supporting documentation.
- 9.2 An application for membership on behalf of a person under the age of eighteen (18) shall be submitted by the parents or legal guardian of that person.
- 9.3 The Membership Administrator shall determine a person's entitlement to be a Member under section 8 of this Part.
- 9.4 The Membership Administrator shall provide the applicant notice in writing of the decision on the application for membership.
- 9.5 The decision of the Membership Administrator shall be posted in a public area of the Westbank administration building.

10. Revocation of Membership

- 10.1 A person's entitlement to be a Member ceases when:
- (a) he or she applies for membership in another Band or First Nation and his or her application for membership is accepted; or
 - (b) a final determination made under section 10.3 or section 11 has been made that the person became a Member as a result of an error or on the basis of false or inaccurate information.

- 10.2 Where the Membership Administrator determines that a person became a Member as a result of an error or on the basis of false or inaccurate information, the Membership Administrator shall advise the Member in writing of the error or inaccurate information and allow the Member thirty (30) days from the date the notice was given within which to provide additional information.
- 10.3 Upon expiration of the time limit referred to in section 10.2, the Membership Administrator shall consider the original information and any information received from the Member, and shall render a decision in writing together with reasons.
- 10.4 The decision of the Membership Administrator made under section 10.3 shall be posted in a public area of the Westbank administration building.
- 10.5 The Membership Administrator shall provide notice in writing of the decision together with reasons to the Member affected.

11. Appeal to Arbitrator

- 11.1 A decision of the Membership Administrator made under section 9 or section 10 of this Part may be appealed by an Elector, the applicant for membership or the person whose membership has been revoked.
- 11.2 An appeal under section 11.1 shall be made in writing, stating the basis for the appeal, together with any supporting documentation, hand delivered, faxed or mailed to the Director of Operations within thirty (30) days from the date the decision of the Membership Administrator was posted in a public area of the Westbank administration building.
- 11.3 The notice of appeal shall include a deposit of two hundred and fifty dollars (\$250) as security for costs deposited with the Director of Operations.
- 11.4 The Director of Operations upon receipt of an appeal shall request the Council to appoint an Arbitrator.
- 11.5 If Council has not appointed an Arbitrator within ten (10) days of the request the Director of Operations shall appoint an Arbitrator.
- 11.6 Upon the appointment of an Arbitrator the Director of Operations shall, as soon as possible, provide the Arbitrator with the notice of appeal and supporting documentation.
- 11.7 Upon receipt of the notice of appeal and supporting documentation, the Arbitrator shall hold a hearing within sixty (60) days.
- 11.8 The onus of proof in an appeal shall be on the person appealing.
- 11.9 A copy of the notice of appeal and any documents relied upon shall be delivered to the Membership Administrator at least fourteen (14) days prior to the hearing.
- 11.10 The Membership Administrator may file a reply with the Arbitrator at least four (4) days prior to the hearing.
- 11.11 A copy of any reply filed by the Membership Administrator shall be provided to the person appealing at least two (2) days prior to the hearing.

- 11.12 The Arbitrator may, at his or her discretion, give directions for:
- (a) fixing the date, time and place for the hearing of the appeal;
 - (b) designating the method of taking evidence, either by sworn declaration or written testimony, or both;
 - (c) designating what persons are to be notified and how they are to be served; and
 - (d) dealing with any matter or other thing not otherwise provided for in this section.
- 11.13 The Arbitrator shall issue a written decision together with reasons:
- (a) confirming the decision of the Membership Administrator; or
 - (b) reversing the decision of the Membership Administrator and making any order or entry on the Membership Roll that the Membership Administrator could have made.
- 11.14 The Arbitrator may in his or her discretion order by whom, to whom, and in what manner the costs of the appeal shall be paid and shall make a disposition of the security for costs in accordance with his or her order.
- 11.15 The Arbitrator shall provide a copy of the decision to the person appealing and the Membership Administrator.
- 11.16 The Membership Administrator shall post a copy of the Arbitrator's decision in a public area of the Westbank administration building.
- 11.17 Where the Arbitrator renders a decision to reverse the decision of the Membership Administrator made under section 10, the person shall be deemed to have never ceased to be a Member.
- 11.18 The determination of the Arbitrator under this section is final and not subject to appeal.

12. Confidentiality

- 12.1 All information received by the Membership Administrator on an application, or by the Director of Operations or the Arbitrator on an appeal, shall be treated as confidential and shall 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 the Membership Administrator, Director of Operations or Arbitrator to carry out their duties under this Part.

13. Transfer of Membership to Westbank

- 13.1 No person may transfer to become a Member except under this Part.
- 13.2 A person who is registered as an Indian under the *Indian Act* may apply in writing to the Membership Administrator for a transfer to become a Member.
- 13.3 An application for a transfer to become a Member by a person who is under the age of eighteen (18) shall be made on their behalf by their parent or legal guardian.

- 13.4 Council shall from time to time schedule a Special Membership Meeting for the purpose of considering applications for transfers to become a Member.
- 13.5 Notice of the Special Membership Meeting required under section 13.4 shall be provided to the Membership at least twenty (20) days before the meeting and shall include:
- (a) the name of the person applying to transfer to become a Member;
 - (b) notification that there will be a vote by secret ballot of the Electors present at the Special Membership Meeting to make a decision on whether or not to approve the transfer; and
 - (c) the date, time and place of the Special Membership Meeting also specifying the time period during which voting will take place.
- 13.6 Notice of the Special Membership Meeting shall be provided to the Membership by:
- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and
 - (b) posting of the notice in a public area of the Westbank administration building.
- 13.7 At the Special Membership Meeting the Membership Administrator shall explain the background to each transfer application and Members present shall be entitled to ask questions concerning the application.
- 13.8 Upon completion of the discussion the Electors, including Council members, present at the Special Membership Meeting shall vote by secret ballot on whether or not to approve the transfer.
- 13.9 The application for transfer shall be accepted if a Majority of Electors voting by secret ballot at the Special Membership Meeting approve the transfer. *[amended, July 19, 2007]*
- 13.10 The decision at the Special Membership Meeting shall be recorded in the minutes, and the Membership Roll shall be amended to reflect the decision.
- 13.11 The Membership Administrator shall post a copy of the decision on the application for transfer in a public area of the Westbank administration building.

14. Effective Date of Membership

- 14.1 A person becomes a Member on the date that his or her application for membership or for transfer to become a Member is approved in accordance with this Part.
- 14.2 A person ceases to be a Member on the date of the decision of the Membership Administrator under section 10, or in the case of an appeal, on the date of the decision of the Arbitrator.

Part IV – Duties and Responsibilities of the Council

15. Role of the Council

- 15.1 There shall be a Council democratically elected by the Electors under Part VI of this Constitution.
- 15.2 Council shall represent Westbank and exercise all of its powers, including but not limited to the passing of Westbank Laws, overseeing the financial management and administration of Westbank and maintaining an administration for the affairs of Westbank, in accordance with this Constitution.
- 15.3 Council shall act in the best interests of Westbank honestly, impartially and in good faith.
- 15.4 Council shall be accountable to the Membership and shall conduct its business in an open and transparent manner.
- 15.5 Council shall demonstrate leadership, with an emphasis on community independence, the needs of future generations, and the principles described in Part I of this Constitution.
- 15.6 In fulfilling its responsibilities, Council shall adhere to:
- (a) this Constitution; and
 - (b) Westbank Laws.

16. Duties and Responsibilities of the Chief

- 16.1 The duties and responsibilities of the Chief shall include, but are not limited to, the following:
- (a) meeting with governments, private industry, aboriginal organizations and other bodies;
 - (b) acting as team leader for negotiations;
 - (c) acting as spokesperson for Council when dealing with government, private industry, aboriginal organizations and councils, other organizations, media, and the general public;
 - (d) consulting with Members on a continuing basis to determine the needs and direction sought by the Membership;
 - (e) acting as chairperson during Council and Membership meetings;
 - (f) regularly reporting to Council and the Membership on the activities of Council;
 - (g) participating as an ex-officio member of all committees of Council or the community;

- (h) acting as a liaison with Westbank elders;
- (i) faithfully and conscientiously complying with and enforcing provisions of this Constitution; and
- (j) carrying out such other duties and responsibilities as may be assigned by Council or the Membership, consistent with this Constitution.

17. Duties and Responsibilities of Councillors

17.1 The duties and responsibilities of Councillors shall include, but are not limited to the following:

- (a) working with the Chief in carrying out negotiations, lobbying and meeting with government, private industry, business, aboriginal organizations or other bodies;
- (b) participating on committees, boards or other institutions to which they have been assigned by Resolution;
- (c) acting as a team participant in all matters concerning funding or development of new or ongoing programs;
- (d) acting as spokesperson for Council when so authorized by Council;
- (e) acting as chairperson for Council and Membership meetings when so authorized in the absence of the Chief;
- (f) consulting with Members on a continuing basis to determine the needs and direction sought by the Membership;
- (g) regularly reporting to Council and the Membership on their activities;
- (h) faithfully and conscientiously complying with and enforcing provisions of this Constitution; and
- (i) carrying out such other duties and responsibilities as may be assigned by Council or the Membership consistent with this Constitution.

Part V – Officers and Employees

18. General

18.1 Council shall provide for the appointment of officers and the hiring of other employees to administer the affairs of Westbank in an effective and fiscally responsible manner in accordance with this Constitution and Westbank Law.

19. Appointment of Officers

19.1 There shall be the following officers appointed by Resolution:

- (a) Director of Operations;
- (b) Director of Finance;
- (c) Director of Lands; and
- (d) Membership Administrator.

19.2 Westbank may, by Westbank Law, establish other officer positions with titles and responsibilities it considers appropriate and may by Resolution appoint persons to those positions.

19.3 For greater certainty,

- (a) Council may assign to an officer position powers, duties and functions in addition to those required to be assigned by this Constitution or Westbank Law; and
- (b) the same person may be appointed to two (2) or more officer positions.

20. Affirmative Action

20.1 Subject to 18.1, Council shall establish employment policies that reflect the principle of giving preference to qualified Members in the appointment of officers and the hiring of other employees.

PART VI – Elections

21. Election of Council

- 21.1 Westbank Council shall consist of four (4) Councillors and one Chief.
- 21.2 The offices of Chief and Councillor shall be determined by a vote by secret ballot of Electors in an Election, or in the event of a vacancy on Council, in a by-election.
- 21.3 Elections after the date this Constitution comes into force shall be held in accordance with this Part.
- 21.4 By-elections shall be held on the date set by the Electoral Officer in accordance with section 45.

22. First Election

- 22.1 The first Election for Council after the date this Constitution comes into force shall be held on Friday, August 27, 2004 provided that a by-election under this Part may be held prior to that date if there is a vacancy on Council.
- 22.2 The Council in office on the date this Constitution comes into force shall, subject to any by-election, continue in office until the first Election for Council.

23. Term of Office

- 23.1 The term of office for Chief and Councillors shall be three (3) years.
- 23.2 Except with respect to a by-election held in accordance with section 45 the Election for Chief and Councillors shall be held on the last Friday of August in the year their term of office expires.
- 23.3 The term of office for Chief and Councillors commences when the Electoral Officer publicly declares the results of the Election under section 37.7, and subject to any vacancy arising under this Constitution, expires at eleven fifty-nine (11:59) p.m. on the day preceding the next Election.

24. Eligibility of Electors

- 24.1 In order to be entitled to vote in an Election, a person must, as of the date of the Election:
- (a) have attained the age of eighteen (18);
 - (b) be listed on the Membership Roll; and
 - (c) be included on the Electors' List.

25. Eligibility of Candidates

- 25.1 Any candidate for the office of Chief or Councillor must:
- (a) qualify as an Elector;
 - (b) be nominated for that office, in accordance with the procedures set out in this Part; and
 - (c) not have been convicted of an indictable offence in Canada or a felony in the United States within ten (10) years prior to their nomination provided that conviction of an offence relating to the assertion or exercise of aboriginal rights or title shall be deemed not to be a conviction for the purposes of this section.
- 25.2 A person may only be a candidate for one of the offices of Chief or Councillor in any Election.

26. Appointment of Electoral Officer, Deputy Electoral Officers and Arbitrator

- 26.1 Council shall, at least ninety (90) days prior to the date on which the Election is to be held appoint an Electoral Officer and Arbitrator.
- 26.2 If an Electoral Officer and Arbitrator have not been appointed within the time set out in section 26.1, the Electoral Officer and Arbitrator shall be appointed by the Director of Operations as soon as possible.
- 26.3 A Deputy Electoral Officer or Officers shall be appointed by the Electoral Officer within fourteen (14) days of the appointment of the Electoral Officer and shall work under the direction of the Electoral Officer.
- 26.4 The Deputy Electoral Officers shall have such powers as described in this Part and those powers of the Electoral Officer as are delegated to them by the Electoral Officer.
- 26.5 The Deputy Electoral Officer shall not be a member of Council or a candidate in an Election.
- 26.6 The Electoral Officer shall not be a Member or salaried employee of Westbank or holder of other contracts of services with Westbank.
- 26.7 Every Electoral Officer and Deputy Electoral Officer shall swear an oath of office before a justice of the peace, notary public or duly appointed commissioner for swearing oaths of office swearing to:
- (a) uphold and comply with this Constitution and all Westbank Laws;
 - (b) fulfill the duties and responsibilities of their office under this Constitution;
 - (c) carry out their duties faithfully, honestly, impartially and to the best of their abilities;
 - (d) keep confidential, both during and after their term of office, any matter or information which, under this Constitution, Westbank Law or policy, is considered confidential; and

- (e) always act in the best interests of Westbank in carrying out their duties.
- 26.8 The Electoral Officer and Deputy Electoral Officers shall file sworn oaths of office with the Director of Operations before assuming their office.
- 26.9 The Electoral Officer may make such order and issue such instructions consistent with the provisions of this Part as he or she may from time to time deem necessary for the effective administration of the Election.

27. Contact Addresses

- 27.1 The Membership Administrator shall, within seven (7) days of the Electoral Officer assuming office, provide the Electoral Officer with the names and contact addresses of Members who will have attained the age of eighteen (18) as of the date of the Election. *[amended, July 19, 2007]*
- 27.2 The contact address shall take the form of a mailing address.
- 27.3 The contact address shall be used only for the purposes of providing notices, mail-in ballots or other documents to Electors who are entitled to receive them under this Part or Part XII of this Constitution. Except for these purposes, the contact address shall not be disclosed by the Electoral Officer without the consent of the Elector.
- 27.4 Electors shall be responsible for providing the Membership Administrator or the Electoral Officer with current contact addresses. *[amended, July 19, 2007]*
- 27.5 A document shall be considered properly provided if it was mailed or delivered to the contact address of the Elector.

28. Electors' List

- 28.1 The Electoral Officer shall prepare an Electors' List within thirty (30) days of assuming office. The Electors' List will be the official record of Electors for the next Election.
- 28.2 The Electoral Officer shall post the Electors' List in a public area of the Westbank administration building and in other conspicuous place or places on Westbank Lands, as may be determined by the Electoral Officer, no later than sixty (60) days prior to the date on which the Election is to be held.
- 28.3 A person whose name does not appear or does not correctly appear on the Electors' List and who believes they are eligible to be an Elector, or an Elector acting on their behalf, may no later than ten (10) days prior to the date on which the Election is to be held, apply in writing to the Electoral Officer to have their name added to the Electors' List.
- 28.4 The application made under section 28.3 shall set out the reasons why the person's name should be added to the Electors' List, together with any documents supporting the application.
- 28.5 Where the Electoral Officer believes or has information that a person whose name is on the Electors' List is not an Elector, or where an Elector applies in writing to the Electoral Officer to have another person's name removed from the Electors' List because that person does not qualify as an Elector, the Electoral Officer shall give written notice to the

person whose eligibility is challenged at least twenty (20) days prior to the date on which the Election is to be held.

- 28.6 The application by an Elector made under section 28.5 shall set out the reasons why a person's name should be removed from the Electors' List together with any documents supporting the application and must be received by the Electoral Officer no later than twenty-one (21) days prior to the date on which the Election is to be held.
- 28.7 The notice given under section 28.5, shall include the reasons for seeking removal of a name from the Electors List and any supporting documents, and shall, provide notice that a written reply may be sent to the Electoral Officer which must be received no later than ten (10) days prior to the date on which the Election is to be held.
- 28.8 After consideration of all information and representations relating to amendments to the Electors' List the Electoral Officer shall add or delete names to the Electors' List based on whether persons qualify as Electors.
- 28.9 The Electoral Officer shall give a person whose name has been added to or deleted from the Electors' List written notice of the decision and shall post the decision in a public area of the Westbank administration building and in other conspicuous place or places on Westbank Lands as may be determined by the Electoral Officer at least five (5) days prior to the date on which the Election is to be held.
- 28.10 The decision of the Electoral Officer under 28.8 is final and not subject to appeal.
- 28.11 The Electoral Officer shall, at least five (5) days prior to the date on which the Election is to be held, post a final Electors' List in a public area of the Westbank administration building and in other conspicuous place or places on Westbank Lands as may be determined by the Electoral Officer.
- 28.12 Any person whose name does not appear on the final Electors' List shall not be entitled to vote in the Election.

29. Notice of Nomination Meeting and Entitlement to Vote by Mail-in Ballot

- 29.1 At least sixty (60) days prior to the date on which the Election is to be held, the Electoral Officer shall publish a notice in the Westbank newsletter sent to Electors or shall forward to Electors at their contact address a notice advising of the nomination meeting and setting out the conditions for voting by mail-in ballot.
- 29.2 The notice shall include:
- (a) the date, time and location of the nomination meeting and a statement that Electors may attend and nominate candidates;
 - (b) notification that a copy of this Constitution can be obtained at the Westbank administration building;
 - (c) the places where copies of the Electors' List shall be posted;
 - (d) a statement that Electors Ordinarily Resident on Westbank Lands who are unable to vote in person on the date of the Election may at least fifteen (15) days prior to

- the date on which the Election is to be held, apply to the Electoral Officer to vote by mail-in ballot;
- (e) a statement that Electors who are not Ordinarily Resident on Westbank Lands are entitled to vote by mail-in ballot and that a mail-in ballot will be sent to them unless they advise the Electoral Officer in writing that they do not want to receive a mail-in ballot at least forty (40) days prior to the date on which the Election is to be held;
 - (f) the business address, telephone and facsimile number of the Electoral Officer; and
 - (g) the date of the notice.
- 29.3 Any Elector who is Ordinarily Resident on Westbank Lands and who is unable to vote in person on the date on which the Election is to be held may, at least fifteen (15) days prior to the date on which the Election is to be held, apply to the Electoral Officer to vote by mail-in ballot.
- 29.4 Any Elector who is not Ordinarily Resident on Westbank Lands and who has not been sent a mail-in ballot package in accordance with section 29.6 may, at least fifteen (15) days prior to the date on which the Election is to be held, apply to the Electoral Officer to vote by mail-in ballot.
- 29.5 An Elector requesting a mail-in ballot package shall provide the Electoral Officer with a current mailing address.
- 29.6 The Electoral Officer shall, at least thirty-five (35) days prior to the date on which the Election is to be held, mail to every Elector who is not Ordinarily Resident on Westbank Lands and to every Elector who is Ordinarily Resident on Westbank Lands whose application to vote by mail-in ballot has been received, a mail-in ballot package consisting of:
- (a) a ballot initialed on the back by the Electoral Officer;
 - (b) an inner postage-paid return envelope, pre-addressed to the Electoral Officer;
 - (c) a second inner envelope marked "ballot" for insertion of the completed ballot;
 - (d) an Elector declaration form which shall set out:
 - i) the name of the Elector;
 - ii) the membership number of the Elector; and
 - iii) the name, address and telephone number of the witness to the signature of the Elector.
 - (e) a letter of instruction regarding voting by mail-in ballot; and
 - (f) a statement identifying the location of all polling places, advising the Elector that they may vote in person at any polling station on the day of the Election if they return their mail-in ballot to the Electoral Officer at the polling station or swear a written declaration before the Electoral Officer, a justice of the peace, notary

public or duly appointed commissioner for taking oaths that they have lost the mail-in ballot.

29.7 Upon receipt of an application to vote by mail-in ballot under sections 29.3 and 29.4, the Electoral Officer shall mail a mail-in ballot package described in section 29.6 to the Elector whose name appears on the application. [*amended, July 19, 2007*]

30. Nomination Process

30.1 The nomination meeting shall be held at least forty-five (45) days prior to the date on which the Election is to be held.

30.2 The Electoral Officer shall post notice of the nomination meeting in a public area of the Westbank administration building and other conspicuous places on Westbank Lands as may be determined by the Electoral Officer.

30.3 The notice of the nomination meeting shall include:

- (a) the date, time and place of the nomination meeting;
- (b) notification that a copy of this Constitution can be obtained at the Westbank administration building;
- (c) the places where copies of the Electors' List shall be posted; and
- (d) the business address, business telephone and facsimile number of the Electoral Officer.

30.4 At the time and place specified in the notice of the nomination meeting, the Electoral Officer shall declare the nomination meeting open for the purpose of receiving nominations.

30.5 The nomination meeting shall remain open for not less than two (2) hours from when it commenced.

30.6 Any person who is an Elector may propose or second a nomination of any qualified candidate to serve as Chief or Councillor.

30.7 If only one qualified candidate is nominated for the office of Chief, the Electoral Officer shall declare that candidate to be elected.

30.8 Where the number of qualified candidates nominated for the office of Councillor does not exceed the number of positions available, the Electoral Officer shall declare such candidates to be elected.

30.9 In the event that more than the required number of persons are nominated for the offices of Chief and Councillor, the Electoral Officer shall declare that a poll will be held.

30.10 Within forty-eight (48) hours of the close of the nominations, the Electoral Officer shall post in a public area of the Westbank administration building and in other conspicuous place or places on Westbank Lands as may be determined by the Electoral Officer, a list of nominees and the offices for which they are nominated.

- 30.11 Upon the close of nominations the Electoral Officer shall, as soon as possible, contact each person nominated and require him or her to sign the following documents:
- (a) a notice of acceptance of nomination; and [*amended, July 19, 2007*]
 - (b) a sworn declaration confirming their eligibility as a candidate. [*amended, July 19, 2007*]
 - (c) [*repealed, July 19, 2007*]
- 30.12 A nominee may file the documents required under section 30.11 with the Electoral Officer by mail, facsimile transmission or in person.
- 30.13 Any nominee who fails to file the documents required under section 30.11 with the Electoral Officer within seven (7) days of the nomination meeting shall have their name removed as a nominee.

31. [*repealed and replaced, July 19, 2007*]

31.1 [*repealed and replaced, July 19, 2007*]

31.2 [*repealed and replaced, July 19, 2007*]

32. Notice of Final List of Candidates

- 32.1 The final list of candidates shall be composed of nominees who have complied with section 30 of this Part.
- 32.2 The Electoral Officer shall, no earlier than the eighth (8) day after the date of the nomination meeting and no later than thirty (30) days prior to the date on which the Election is to be held:
- (a) post the final list of candidates and the offices for which they are nominated in a public area of the Westbank administration building and in other conspicuous place or places on Westbank Lands, as may be determined by the Electoral Officer; and
 - (b) publish the list of candidates and the offices for which they are nominated in the Westbank newsletter mailed to Electors, or in a separate written notice delivered or mailed to Electors.

33. Notice of Polls

- 33.1 Whenever a poll is required, the Electoral Officer shall, at least thirty (30) days prior to the date on which the Election is to be held, post a notice of polls in a public area of the Westbank administration building and in other conspicuous place or places on Westbank Lands as may be determined by the Electoral Officer.
- 33.2 The notice of polls shall include:
- (a) the date of the Election;

- (b) the time the polling stations will be open and closed;
- (c) the location of the polling stations; and
- (d) a statement that the Electors' List is posted in a public area of the Westbank administration building.

34. Preparation of Ballots

34.1 The Electoral Officer shall prepare ballots setting out:

- (a) the names of the candidates nominated for election as Chief in alphabetical order; and
- (b) the names of the candidates nominated for election as Councillors in alphabetical order.

34.2 The ballot may, at the request of the candidate, include a candidate's commonly used nickname.

34.3 The ballot shall indicate that the Elector is to signify his or her choice of candidate(s) by clearly marking an "X" or other mark in the appropriate space opposite the name of the candidate(s).

35. Voting by Mail-in Ballot

35.1 An Elector shall vote by mail-in ballot by:

- (a) clearly marking the ballot with an "X" or other mark in the appropriate space opposite the name of the candidates of his or her choice;
- (b) folding the ballot in a manner so as to conceal their choices, but exposing the Electoral Officer's initials on the back;
- (c) placing the ballot in the inner envelope marked "ballot" and sealing the envelope;
- (d) completing and signing the Elector declaration form in the presence of a witness who is at least eighteen (18) years of age;
- (e) placing the inner envelope and the completed, signed and witnessed declaration form in the postage-paid, return envelope pre-addressed to the Electoral Officer; and
- (f) delivering to, or otherwise ensuring receipt of the envelope by, the Electoral Officer before the time at which polls close on the day of the Election.

35.2 Mail-in ballots that are not received by the Electoral Officer before the time at which the polls close on the day of the Election shall not be counted.

35.3 An Elector to whom a mail-in ballot was mailed or delivered may vote in person at a polling station if:

- (a) the Elector returns the mail-in ballot to the Electoral Officer or Deputy Electoral Officer; or
- (b) where the Elector has lost the mail-in ballot, the Elector provides the Electoral Officer or Deputy Electoral Officer with a written affirmation of loss signed by the Elector in the presence of either the Electoral Officer, Deputy Electoral Officer, justice of the peace, notary public or commissioner for taking oaths.

36. Voting at a Polling Station

- 36.1 The polling station shall be open from eight o'clock (8:00) in the morning until eight o'clock (8:00) in the evening on the day on which the Election is to be held.
- 36.2 The Electoral Officer shall, before the polling station is open, supply the polling station with:
- (a) ballot boxes;
 - (b) a sufficient number of ballots;
 - (c) the final Electors' List;
 - (d) the necessary materials for marking ballots; and
 - (e) a ballot tally sheet to identify the number of confirmed votes and the number of rejected ballots.
- 36.3 The Electoral Officer shall provide a voting compartment in the polling station where the Electors can mark their ballots free from observation and the Electoral Officer may appoint security to maintain order at the Polling Site.
- 36.4 Where a candidate wishes to authorize a scrutineer he or she shall provide a letter of authorization to the Electoral Officer or Deputy Electoral Officer on or before the opening of the polling station, in which the candidate names the scrutineer.
- 36.5 The Electoral Officer and Deputy Electoral Officer shall immediately before the commencement of the poll:
- (a) open the ballot box and, in the presence of any scrutineers, appointed security and other Deputy Electoral Officers present, confirm that it is empty and complete a written statement to that effect;
 - (b) lock and properly seal the ballot box in a manner preventing it from being opened without breaking the seal; and
 - (c) place the ballot box in public view for the reception of the ballots.
- 36.6 Each person presenting themselves at a polling station for the purpose of voting shall present to the Electoral Officer or Deputy Electoral Officer identification issued by the federal or provincial government or by Westbank.
- 36.7 Where a person does not have identification described in section 36.6 they shall be deemed to be properly identified if two scrutineers sign a sworn declaration in the

- presence of the Electoral Officer or Deputy Electoral officer, confirming the identity of the person.
- 36.8 Where a person is properly identified as an Elector, he or she shall sign the sign-in sheet presented by the Electoral Officer or Deputy Electoral Officer and list their membership number on the sign-in sheet.
- 36.9 Upon signing the sign-in sheet, the Elector shall receive a ballot initialed by the Electoral Officer or Deputy Electoral Officer.
- 36.10 The Electoral Officer or Deputy Electoral Officer shall place in the proper column of the Electors' List, a mark opposite the name of every Elector receiving a ballot.
- 36.11 The Electoral Officer or Deputy Electoral Officer shall, when requested to do so, explain the method of voting to the Elector.
- 36.12 Voting at all Elections shall be by secret ballot.
- 36.13 No Elector may vote by proxy or authorize another person to vote on his or her behalf.
- 36.14 Notwithstanding section 36.13 and 36.17, any Elector who requires assistance may request that the Electoral Officer or a Deputy Electoral Officer mark the ballot for them for candidates of the Elector's choice in their presence.
- 36.15 In the event that an Elector votes in the manner described in section 36.14, the Electoral Officer or Deputy Electoral Officer shall note on the Electors' List in the column for remarks opposite the name of such Elector, the fact that the ballot was marked by him or her in the presence of the Elector and the reasons therefore.
- 36.16 Except as in the manner provided in section 36.14, the Electoral Officer or Deputy Electoral Officer shall ensure the Elector's privacy while in the voting compartment.
- 36.17 Upon receiving the ballot, each Elector shall:
- (a) immediately proceed to the voting compartment and clearly place an "X" or other mark in the appropriate space opposite the name of the candidates of their choice;
 - (b) fold the ballot, so as to conceal their choice in such a manner that only exposes the initials of the Electoral Officer or Deputy Electoral Officer; and
 - (c) without unfolding the ballot, have the Electoral Officer or Deputy Electoral Officer verify his or her initials and at once deposit the ballot into the ballot box in the presence of the Electoral Officer or Deputy Electoral Officer and any scrutineers present in the polling station.
- 36.18 An Elector who inadvertently spoils his or her ballot may return it to the Electoral Officer or Deputy Electoral Officer in order to obtain another ballot, and the Electoral Officer or Deputy Electoral Officer shall write the word "cancelled" upon the spoiled ballot, deposit it in an envelope for cancelled and declined ballots and provide the Elector with a new ballot initialed by the Electoral Officer or Deputy Electoral Officer.
- 36.19 An Elector who has received a ballot and subsequently decides not to vote, must return the ballot to the Electoral Officer or Deputy Electoral Officer, who shall mark the word

“declined” on the face of the ballot and deposit it in an envelope for cancelled and declined ballots.

- 36.20 An Elector forfeits his or her right to vote at the Election after being provided a ballot by the Electoral Officer or Deputy Electoral Officer if that person leaves the polling station without delivering the ballot to the Electoral Officer or the Deputy Electoral Officer.
- 36.21 Any Elector who is inside the polling station at the time fixed for closing the poll shall be entitled to vote.
- 36.22 Each candidate shall be entitled to have two (2) scrutineers at a polling station at any one time.
- 36.23 No one other than Electors who are in the process of voting, or in the case of an elderly or physically incapacitated person, their attendant, are permitted to be inside the voting compartment. *[amended, July 19, 2007]*
- 36.24 No person shall, on the day the Election is held, on the premises of the polling site:
- (a) distribute any Election related printed materials except such materials as may be distributed by the Electoral Officer or Deputy Electoral Officer for the purpose of conducting the Election;
 - (b) interfere with or influence, or attempt to interfere with or influence, any Elector in marking his or her ballot;
 - (c) obtain, or attempt to obtain, information as to how an Elector is about to vote or has voted; or
 - (d) disrupt, or attempt to disrupt, the voting process.
- [amended July 19, 2007]*
- 36.25 The Electoral Officer may request appointed security to remove any person from the Polling Site who is in violation of section 36.24.

37. Procedures for the Close of Polls

- 37.1 Immediately after the close of the polls, the Electoral Officer shall in the presence of the Deputy Electoral Officers, candidates, scrutineers and any Electors who choose to be present, open each envelope containing a mail-in ballot that was received before the close of the polls and without unfolding the ballot:
- (a) set aside the ballot if:
 - i) it was not accompanied by an Elector declaration form or the Elector declaration form is not signed or witnessed; or
 - ii) the name of the person set out in the Elector declaration form is not on the Electors' List; or
 - iii) the Electors' List shows that the Elector has already voted; and

- (b) deposit all remaining ballots in the ballot box and place a mark on the final Electors' List opposite the name of the Elector.
- 37.2 Immediately after all valid mail-in ballots have been deposited in the ballot box, the Electoral Officer shall open the ballot box and examine the ballots and reject all ballots that:
 - (a) have not been initialled by the Electoral Officer or Deputy Electoral Officer;
 - (b) contain more votes than are candidates to be elected;
 - (c) are marked in such a way that the Elector can be identified; or
 - (d) are marked in such a way that the Elector's choice cannot clearly or unambiguously be determined.
- 37.3 Any rejected ballot shall not be counted as a vote cast.
- 37.4 The Electoral Officer shall report in writing the reasons for rejection of each ballot and attach that report to the rejected ballot.
- 37.5 The rejected ballot and the written report shall be held by the Electoral Officer until the expiration of any appeal period provided for in this Constitution.
- 37.6 The Electoral Officer shall:
 - (a) show the ballots to be counted to any scrutineers present;
 - (b) count the votes given for each candidate from the ballots not rejected; and
 - (c) at the conclusion of the count complete and sign a ballot tally sheet setting out the number of confirmed votes for each candidate and the number of rejected ballots.
- 37.7 Immediately after the completion of the counting of the votes, the Electoral Officer shall publicly declare:
 - (a) the candidate for Chief with the highest number of votes to be elected; and
 - (b) the four (4) candidates for Councillor with the highest number of votes to be elected.
- 37.8 Subject to section 38.1 where two or more candidates have an equal number of votes for Chief or for the fourth highest vote total for the office of Councillor, the Electoral Officer shall declare the Election for that office a tie and a new Election for that office shall be held within sixty (60) days of the declaration of the Electoral Officer;
- 37.9 The Electoral Officer shall:
 - (a) within three (3) days of the date on which the Election is held post in a public area of the Westbank administration building and in other conspicuous place or places on Westbank Lands, as may be determined by the Electoral Officer, a written statement signed by the Electoral Officer, showing the number of votes cast for each candidate and the number of rejected ballots; and

- (b) publish a written statement, showing the number of votes cast for each candidate and the number of rejected ballots in the Westbank newsletter mailed to Electors or in a separate written notice delivered or mailed to Electors.

38. Ties

- 38.1 In the event there is an appeal of an Election result where there is a tie, a new Election for that office will only be held where the Arbitrator considering the appeal confirms that two or more candidates had the same number of votes for that office.
- 38.2 Where a new Election for an office is required to break a tie, all the provisions of this Part shall apply to the Election, provided:
- (a) the final Electors' List for the new Election shall be the final Electors' List from the Election which resulted in the tie;
 - (b) the candidates for office to be determined in the new Election shall be the candidates who received an equal number of votes for that office in the original Election;
 - (c) sections 28, 29.2(a) and 30 shall not apply to the new Election required to break the tie; and
 - (d) the term of office for the successful candidate in the new election shall be deemed to have commenced on the day of the Election which resulted in the tie.

39. Disposal of Ballots

- 39.1 The Electoral Officer shall deposit the ballots used in the voting and the cancelled and declined ballots in a sealed envelope and retain it for one hundred and twenty (120) days after the date on which the Election is held or until a decision on an appeal is rendered, whichever date is later, after which time the Electoral Officer may, unless directed otherwise by the Council, destroy them in the presence of two witnesses.

40. Oath of Office and Criminal Record Search [amended July 19, 2007]

- 40.1 A candidate who has been elected Chief or Councillor shall swear an oath of office before either a justice of the peace, notary public or duly appointed commissioner for taking oaths, swearing to:
- (a) uphold and comply with this Constitution and all Westbank Laws;
 - (b) fulfill the duties and responsibilities of their office under this Constitution and all Westbank Laws;
 - (c) carry out their duties faithfully, honestly, impartially and to the best of their abilities;
 - (d) keep confidential, both during and after their term of office, any matter or information which, under this Constitution, Westbank Law or policy, is considered confidential; and

- (e) always act in the best interests of Westbank in carrying out their duties.
- 40.1.1 A candidate who has been elected Chief or Councillor shall provide to the Director of Operations a written consent to a criminal record search in a form that may be required by law enforcement agencies in Canada or the United States. [*new, July 19, 2007*]
- 40.2 No person elected as Chief or Councillor shall be permitted to assume their office until they have sworn and filed with the Electoral Officer the oath of office required under section 40.1 and provided to the Director of Operations the consent to a criminal record search required under section 40.1.1. [*amended, July 19, 2007*]
- 40.3 Subject to section 40.4, if a person elected as Chief or Councillor fails to file the sworn oath of office with the Electoral Officer on or before the first Monday after being declared elected, the Electoral Officer shall declare the office vacant.
- 40.4 (a) Where a candidate elected as Chief or Councillor cannot because of illness or other valid reason swear the oath of office within the time prescribed in Section 40.3 they, or an Elector acting on their behalf, may within that time file a Petition with the Electoral Officer for an extension of the time to swear the oath of office.
- (b) The Electoral Officer shall determine whether the circumstances justify an extension of the time to swear the oath of office and shall provide the candidate making the request written notice of the decision together with reasons.
- 40.5 The Electoral Officer shall give notice in writing to the candidate elected as Chief or Councillor whose office is declared vacant under section 40.3. [*amended, July 19, 2007*]
- 40.6 A candidate elected as Chief or Councillor whose office is declared vacant as a result of the Electoral Officer's decision made under section 40.3 may appeal the decision by filing a notice of appeal together with supporting documents and a non-refundable filing fee of seventy-five dollars (\$75) with the Arbitrator within fifteen (15) days of the date notice of the Electoral Officer's decision was sent.
- 40.7 Where an appeal has been filed under section 40.6 no by-election shall be called unless the Arbitrator's decision confirms the vacancy.
- 40.8 The Director of Operations will cause a criminal record search to be conducted in Canada and the United States for each elected candidate who has assumed office. [*new, July 19, 2007*]
- 40.9 The information received by the Director of Operations as a result of any criminal record search shall remain confidential and only be used for the purpose of confirming the qualifications of each elected candidate who has assumed office. [*new, July 19, 2007*]

41. Election Appeals

- 41.1 Any candidate or Elector may file a notice of appeal with the Arbitrator, requesting that the election of the Chief or a Councillor be declared invalid, based on one or more of the following grounds:
- (a) the person declared elected was not qualified as a candidate;

- (b) the person declared elected was not nominated in accordance with the procedures set out in this Part;
- (c) there was a violation of any provision of this Part in the conduct of the Election that might have affected the result of the Election; or
- (d) there was corrupt or fraudulent practice in relation to the Election.

41.2 Every notice of appeal shall:

- (a) identify the offices being appealed;
- (b) set out in an affidavit sworn before a notary public or duly appointed commissioner for taking oaths the facts substantiating the appeal;
- (c) be accompanied by any supporting documentation.; and
- (d) be filed with the Arbitrator within thirty (30) days from the date upon which the Council member was declared elected together with a non-refundable filing fee of seventy-five dollars (\$75).

[amended, July 19, 2007]

41.3 *[repealed and replaced, July 19, 2007]*

42. Removal from Office of Council Members

42.1 A Council member may be removed from office on one or more of the following grounds:

- (a) he or she has violated this Constitution; or
- (b) he or she has breached their oath of office.

42.2 Proceedings to remove a Council member shall be commenced by a Petition filed with the Arbitrator and signed by twenty percent (20%) or more of the Electors determined as of the date the Petition is filed.

42.3 The Petition referred to in section 42.2 shall:

- (a) identify the Council member sought to be removed;
- (b) set out the facts substantiating the grounds for removal from office of a Chief or Councillor; and
- (c) be accompanied by any supporting documentation and a non-refundable filing fee of seventy-five dollars (\$75).

[amended, July 19, 2007]

43. Vacancies

43.1 The office of Chief or Councillor shall become vacant when the person who holds that office:

- (a) dies;
 - (b) resigns from office;
 - (c) has been convicted of an indictable offence in Canada or a felony in the United States since their election and all appeals are completed, provided that conviction of an offence relating to the assertion or exercise of aboriginal rights or title shall be deemed not to be a conviction for the purposes of this section;
 - (d) has his or her election declared invalid by the Arbitrator and no other person has been declared by the Arbitrator as duly elected, or
 - (e) has been removed from office by declaration of the Arbitrator.
- 43.2 The office of Chief or Councillor shall become vacant if:
- (a) the person has been unable to perform the functions of his or her office for more than six (6) months due to illness or other incapacity;
 - (b) the person has missed three (3) Council or Membership meetings, which may include a combination thereof, within a period of twelve (12) months, without just cause; or
 - (c) the criminal record check conducted under section 40.8 reveals that the person who holds that office has been convicted of an indictable offence in Canada or a felony in the United States within (10) years prior to their nomination, provided that conviction of an offence relating to the assertion or exercise of aboriginal rights or title shall be deemed not to be a conviction for the purposes of this section.
- [amended, July 19, 2007]*
- 43.3 Whether just cause exists for a Council member missing a meeting shall be determined after each absence by a Majority vote of other Council members present at a Council meeting and the decision shall be recorded in the minutes of that meeting.
- 43.4 The Council member whose absence from a meeting is being considered shall be deemed in conflict of interest and shall leave the room prior to any debate on the question, not be counted in determining whether there is a quorum, nor participate in the vote determining whether the absence was with just cause.
- 43.5 The Council member who missed a meeting shall be notified in writing by the Director of Operations whether his or her absence has been determined under section 43.3 to be without just cause. The failure to notify a Council member shall not invalidate Council's decision on whether just cause for the absence exists.
- 43.6 The Director of Operations shall determine whether an office of Chief or Councillor becomes vacant under section 43.2 and shall give written notice to the Council member affected.
- 43.7 The Council member whose office has been declared vacant under section 43.2, or in the case of illness or incapacity of the Council member, an Elector acting on his or her behalf, may appeal the Director of Operation's decision by filing a notice of appeal

together with supporting documents and a non-refundable filing fee of seventy-five dollars (\$75) with the Arbitrator within fifteen (15) days of the date notice of the decision was sent.

- 43.8 Where an appeal has been filed under section 43.7 no by-election shall be called unless the Arbitrator's decision confirms the vacancy.

44. Procedure on Election Appeals, Petitions for Removal from Office and Appeals from Declaration of Vacancy

- 44.1 Where no Arbitrator has been appointed an appeal or Petition shall be filed with the Director of Operations who shall upon receipt request Council to appoint an Arbitrator.

- 44.2 If Council has not appointed an Arbitrator within ten (10) days of the request of the Director of Operations under section 44.1 the Director of Operations shall appoint an Arbitrator.

- 44.3 In the case of an Election appeal, the security of costs shall be five hundred dollars (\$500) for each position appealed.

- 44.4 In the case of an appeal from the decision of the Director of Operations or the Electoral Officer that an office is vacant, the security for costs shall be five hundred dollars (\$500).

- 44.5 In the case of a Petition for the removal of a Council member or members, security for costs shall be two thousand dollars (\$2,000).

- 44.6 The security for costs shall be deposited with the Director of Operations.

- 44.7 Upon deposit of the required security for costs, the Director of Operations shall forward the appeal or Petition and all supporting documents to the Arbitrator.

- 44.8 The Arbitrator may, at his or her discretion, give directions for:

- (a) fixing the date, time and place for the hearing of the Petition or appeal;
- (b) designating the method of taking evidence, either by sworn declaration or written testimony, or both;
- (c) designating what persons are to be notified and how they are to be served; and
- (d) dealing with any matter or other thing not otherwise provided for in this section.

- 44.9 A copy of the notice of appeal or Petition and any documents relied upon shall be delivered to the Council member whose election is being appealed or the Council member whose removal is sought or the person whose office is being declared vacant.

- 44.10 In the case of an appeal under section 40.6 or 41 the notice of appeal and supporting documentation shall be delivered to the Electoral Officer at least fourteen (14) days prior to the date of the hearing.

- 44.11 In the case of an appeal by an Elector under section 41 the notice of appeal and supporting documentation shall be delivered to the Council member whose election is being appealed at least fourteen (14) days prior to the date of the hearing.

- 44.12 In the case of an appeal under section 43.7 the notice of appeal and supporting documentation shall be delivered to the Director of Operations at least fourteen (14) days prior to the date of the hearing.
- 44.13 The Council member whose election is being appealed, the Director of Operations in an appeal under section 43.7, or the Electoral Officer in an appeal under section 40.6 or section 41, as the case may be, may file a written reply with the Arbitrator at least four (4) days prior to the date of the hearing.
- 44.14 No witness shall be required to divulge whom he or she voted for in the Election.
- 44.15 The Arbitrator shall issue a written decision together with reasons in every appeal or Petition.
- 44.16 In the case of an Election appeal under section 41 the Arbitrator may:
- (a) confirm the election of the Council member; or
 - (b) invalidate the election of the Council member.
- 44.17 If the election of a Council member is declared invalid, the Arbitrator shall order that any person found not to have been duly elected shall be removed from office and if it is adjudged that some other person was duly elected, the Arbitrator shall order that such person take office upon their swearing the oath of office described in section 40.1 within three (3) days of the making of the order.
- 44.18 The election of a Council member shall not be declared invalid by reason only of an irregularity or non-compliance with the rules set out in this Part if it appears to the Arbitrator that the Election was conducted in good faith unless the non-compliance, irregularity or mistake materially affected the result of the Election.
- 44.19 In an appeal of the decision of the Electoral Officer under section 40.6 the Arbitrator may:
- (a) confirm the decision of the Electoral Officer and declare the office vacant; or
 - (b) reverse the decision of the Electoral Officer and allow the candidate elected as Chief or Councillor a specified time within which to sign the oath of office.
- 44.20 In an appeal of the decision of the Director of Operations under section 43.7, the Arbitrator may:
- (a) confirm the decision of the Director of Operations and declare the office vacant; or
 - (b) reverse the decision of the Director of Operations and declare the Council member entitled to remain in office.
- 44.21 If the Petition is for removal of a Council member under section 42 the Arbitrator may:
- (a) confirm the Council member in their office; or
 - (b) remove the Council member from office and declare the office vacant.

- 44.22 The Arbitrator may in his or her discretion order by whom, to whom and in what manner costs shall be paid. The Arbitrator shall make disposition of the security for costs in accordance with their order.
- 44.23 The Arbitrator shall provide a copy of the decision to the Director of Operations and to any party to an appeal or Petition.
- 44.24 The Arbitrator's decision shall be:
- (a) published in the Westbank newsletter mailed to Electors or in a separate written notice delivered or mailed to Electors; and
 - (b) posted in a public area of the Westbank administration building.
- 44.25 The decision of the Arbitrator is final and not subject to appeal.

45. By-elections

- 45.1 Unless otherwise provided in this Part, in the event that the office of Chief or Councillor becomes vacant, a by-election shall be held within ninety (90) days on a date set by the Electoral Officer.
- 45.2 No by-election shall be held if there are less than six (6) months remaining in the term of the Council member whose office has become vacant, except where a by-election is necessary to have sufficient Council members to maintain a quorum.
- 45.3 No sitting Council member is eligible to be a candidate in a by-election.
- 45.4 If a Council member wishes to be a candidate in a by-election, he or she must resign from Council prior to the date for nominations in the by-election.
- 45.5 The successful candidate in the by-election shall hold office for the remainder of the original term of the Chief or Councillor whom he or she is elected to replace.
- 45.6 Except as expressly provided otherwise, the rules and procedures in this Part shall apply to by-elections.

46. General

- 46.1 Employees of Westbank or of any corporation wholly owned by Westbank, who are elected to Council, shall be entitled to take an unpaid leave of absence from their employment for the period during which they are a Council member.
- 46.2 Employees elected to Council wishing to take an unpaid leave of absence under section 46.1 shall file a written request with the Director of Operations prior to taking office.
- 46.3 The right of an employee to take an unpaid leave of absence under section 46.1 shall be determined in respect of each term of office for which they are elected, provided that no employee shall be entitled to take an unpaid leave of absence for two consecutive terms of office.

47. Penalty

- 47.1 In addition to any other penalty or liability, any person who violates any provision of this Part is guilty of an offence and liable upon summary conviction to a fine not exceeding ten thousand dollars (\$10,000).
- 47.2 A Council member whose office is declared vacant under section 43.2(c):
- (a) is personally liable to Westbank for any monies that he or she received for serving as a member of Council from the time he or she assumed office to the time his or her office is declared vacant;
 - (b) is personally liable to Westbank for the costs of the by-election resulting from his or her office being declared vacant, to a maximum of ten thousand dollars (\$10,000); and
 - (c) is disqualified from holding elected office for ten (10) years from the date his or her office is declared vacant.

[new, July 19, 2007]

PART VII – Council Procedures and Meetings

48. Meetings of Council

- 48.1 The first Council meeting shall be held on the first Tuesday after the oath of office has been sworn and filed by a sufficient number of Council members to establish a quorum under section 51.
- 48.2 After the first Council meeting held under section 48.1 Council shall hold regular Council meetings on such days and at such times and places as may be necessary to carry out their responsibilities, provided that Council shall meet at least once every month.
- 48.3 Council, in conjunction with the Director of Operations, shall prepare an agenda for each Council meeting. The agenda shall include a list of items to be discussed, reports to be presented, Resolutions and Westbank Laws to be considered.
- 48.4 The Director of Operations shall post a notice setting out the day, time, place and agenda of Council meetings. The notice shall be posted in a public area of the Westbank administration building at least one (1) working day before the meeting.
- 48.5 The Director of Operations shall provide each Council member with a copy of the notice of the meeting, agenda, minutes of the previous regular Council meeting and any background material at least one (1) working day before the meeting.
- 48.6 Any Elector may, by written request to the Director of Operations, at least two (2) working days before a Council meeting, ask that a matter be placed on the agenda of the meeting.
- 48.7 If the requested matter is placed on the agenda, the Director of Operations shall by telephone, in person or by written reply advise the Elector of the date, time and place where the matter will be considered by Council and shall provide the Elector with an opportunity to address the matter at the Council meeting.
- 48.8 If the requested matter is not placed on the agenda, the Director of Operations shall notify the Elector in writing of the reason why the matter was not placed on the agenda.
- 48.9 The Chief or a Majority of Council members may call a special Council meeting to consider any matter of an urgent nature.
- 48.10 The Director of Operations shall, as soon as practicable, advise each Council member in person, by telephone or by written notice, of the date, time, place and subject matter of the special Council meeting.
- 48.11 Where the Director of Operations has used all reasonable efforts to notify Council members of the special Council meeting, the Council members present may hold the special Council meeting notwithstanding the failure of a Council member to receive the required notice.
- 48.12 Except where a special Council meeting is required to address an Emergency, all Council meetings shall take place on Westbank Lands.

- 48.13 A Council member may participate in a Council meeting by means of telephone or other communications facilities which permit all persons in the meeting to hear each other, and in such case shall be deemed to be present at the meeting.
- 48.14 The accidental omission to give notice of a Council meeting or the non-receipt of any such notice by a Council member, or the failure to post a notice within the time required, shall not invalidate any proceedings at a Council meeting.

49. Order of Business

- 49.1 Unless otherwise determined by Council, the order of business at each Council meeting other than a special Council meeting held under section 48.9 shall be as follows:
- (a) call to order and opening by chairperson;
 - (b) acceptance of agenda;
 - (c) readings of, correction to and adoption of minutes of previous Council meeting;
 - (d) completion of unfinished business from previous Council meeting;
 - (e) presentation and reading of correspondence and Petitions;
 - (f) presentation of financial reports;
 - (g) consideration of other reports;
 - (h) consideration of Resolutions;
 - (i) consideration of Westbank Laws;
 - (j) discussion of any new business; and
 - (k) adjournment.

50. Membership Meetings

- 50.1 Membership meetings shall either be General Membership Meetings or Special Membership Meetings.
- 50.2 A General Membership Meeting shall be held at least once every three (3) months.
- 50.3 A Special Membership Meeting shall be held:
- (a) where called by Resolution; or
 - (b) upon request set out in a Petition signed by forty (40) Electors, presented to Council and the Director of Operations; or
 - (c) as required under this Constitution.
- 50.4 The date, time and place for a General Membership Meeting or a Special Membership Meeting shall be determined by Council.

- 50.5 If a General Membership Meeting is not held within the three (3) month period, or if a Special Membership Meeting has not been called by Council within seven (7) days of the receipt of a Petition calling for a Special Membership Meeting, the Director of Operations shall set the date, time and place for the Membership meeting.
- 50.6 Notice of the date, time, place and subject matter of the Membership meeting shall be provided to each Council member and posted by the Director of Operations in a public area of the Westbank administration building, at least five (5) days before the meeting.
- 50.7 All Membership meetings shall take place on Westbank Lands.
- 50.8 A quorum of Council is not required for Membership meetings.

51. Quorum

- 51.1 A quorum is required for all Council meetings.
- 51.2 A quorum of Council shall be a Majority of the Council members.
- 51.3 In the event of a vacancy on Council quorum shall be a Majority of Council members in office.
- 51.4 Where, as a result of a conflict of interest, a quorum of Council under section 51.2 cannot be established, then two (2) Council members shall constitute a quorum for determining the matter under consideration.
- 51.5 Where a quorum of Council can never be established because of a conflict of interest, sections 67.10 to 67.13 shall apply to determine the matter or issue.
- 51.6 If no quorum is present within one (1) hour after the time appointed for the Council meeting, the secretary shall take the names of the Council members then present and Council shall adjourn until the next meeting.
- 51.7 The Chief or Councillor acting as chairperson of a Council meeting shall be counted in determining quorum unless precluded by the conflict of interest rules under Part IX of this Constitution.
- 51.8 Where the Director of Operations acts as chairperson, he or she shall not be counted in determining quorum.

52. Attendance of Council Members at Meetings

- 52.1 Council members shall attend all Council and Membership meetings unless they have just cause for being absent.
- 52.2 A Council member shall notify Council at a Council meeting or notify the Director of Operations of any anticipated absence and the reasons for such absence.
- 52.3 Where notification under section 52.2 is given to the Director of Operations the Director of Operations shall inform the other Council members of the absence and reasons.

52.4 If the Council member is absent from a Membership meeting, the chairperson shall, if requested by an Elector, inform the meeting of the reason for the Council member's absence.

53. Voting

53.1 All matters before Council for decision require a quorum and shall be decided by a Majority vote of Council members present.

53.2 The Chief or Councillor acting as chairperson shall be entitled to vote, unless precluded from voting because of a conflict of interest, under Part IX of this Constitution.

53.3 Where the Director of Operations acts as chairperson, the chairperson shall not be entitled to vote.

53.4 Where a Council member is precluded from voting under conflict of interest rules set out in Part IX of this Constitution, they shall disclose the reason for the conflict of interest, leave the room prior to any debate on the question, and not be counted in the quorum or vote considering the question before Council.

53.5 A Council member participating in a Council meeting under section 48.13 is deemed to be present at a Council meeting and may vote.

53.6 All Council members shall vote either in favour of, or against a matter being considered. No abstentions are permitted on a vote.

53.7 The results of the vote shall be recorded in the minutes by the secretary.

54. Attendance at Meetings

54.1 Council meetings shall be open to Members. Non-Members may attend all or part of a Council meeting where permitted by a vote of Council members present or by Westbank Law. [*amended, July 19, 2007*]

54.2 The chairperson may request that a person, other than a Council member, leave a Council meeting where the chairperson deems his or her conduct is improper.

54.3 Persons, other than Council members, whose attendance is permitted at a Council meeting, shall attend only as observers, and may only address the Council if their matter is on the agenda or if he or she receives permission from the chairperson.

54.4 Council members present may, by vote, determine that a Council meeting is closed to all persons, other than members of the Council, the Director of Operations and the secretary, if the subject matter relates to or is one or more of the following:

- (a) law enforcement, if Council considers that disclosure could reasonably be expected to harm the conduct of an investigation under law or the enforcement of law;
- (b) litigation or potential litigation;
- (c) security of property located on Westbank Lands;

- (d) the receipt of advice that is subject to solicitor/client privilege, including communications necessary for that purpose;
- (e) personal information about an identifiable individual where Council considers that release of such information would be inappropriate;
- (f) information which is, or information that would be, prohibited from disclosure under applicable law; or
- (g) consideration of whether a Council meeting should be closed.

[amended, July 19, 2007]

54.4.1 If all or part of a Council meeting is closed, then Council may:

- (a) allow a representative or employee of Westbank to attend to provide assistance or information as it considers appropriate; or
- (b) allow a person other than a representative or employee of Westbank to attend, if:
 - (i) the person already has knowledge of the confidential information; or
 - (ii) the person is a lawyer attending to provide legal advice in relation to the matter; or
 - (iii) Council deems the person's attendance necessary. *[new, July 19, 2007]*

54.5 Council may, at a Council meeting prior to a Membership meeting, by vote of Council members present, determine that in the community interest a Membership meeting shall only be open to Members and to employees of Westbank whose attendance is requested by Council to inform the Membership on a specific matter.

54.6 Unless otherwise permitted by Council, only Members, non-Member spouses (including common-law spouses), and employees of Westbank whose attendance is requested by Council may attend Membership meetings.

54.7 Where Council determines a Membership meeting is only open to Members and employees of Westbank requested to present information at the meeting, this shall be set out in the notice of the Membership meeting.

55. Chairperson

55.1 Unless otherwise provided in this Constitution the Chief is the chairperson of all meetings.

55.2 In the absence of the Chief from a meeting, the Councillors present shall, by vote, select a chairperson from amongst themselves, or appoint the Director of Operations as chairperson.

55.3 At the time appointed for the meeting, the chairperson shall take the chair and call the meeting to order.

55.4 The chairperson shall maintain order and decide all questions of procedure, subject to an appeal to those Council members present.

55.5 A Council member may appeal the decision of a chairperson on points of procedure, and all such appeals shall be decided by a vote of Council members present.

55.6 A chairperson wishing to speak on an issue shall temporarily excuse himself or herself from the chair and shall appoint an interim chairperson. Upon completion of the chairperson's participation in the discussion they shall resume the chair.

56. Secretary

56.1 Council shall appoint a secretary.

56.2 The secretary shall attend all Council and Membership meetings and shall, without limiting the generality of the following:

- (a) take attendance of Council members present;
- (b) record minutes of the meeting;
- (c) record decisions and votes; and
- (d) carry out such further duties as required by Council.

57. Minutes of Meetings

57.1 The minutes of Council meetings shall be legibly recorded by the secretary in a Council meeting minute book.

57.2 The minutes of a Council meeting, once adopted by Council, shall be signed by all Council members who participated in the meeting.

57.3 The failure or refusal by a Council member to sign the minutes of a Council meeting does not invalidate the adoption of the minutes.

57.4 The minutes of Membership meetings shall be legibly recorded by the secretary in a Membership meeting minute book.

57.5 The minutes of Membership meetings do not have to be adopted by Council or signed by members of Council.

57.6 The Director of Operations shall retain the electronic recordings of Membership meetings in a secure place.

57.7 Any Member may, at any reasonable time, inspect the minutes of any open meeting and may make copies of the minutes upon payment of a reasonable copying fee.

58. Resolutions

58.1 Resolutions may be presented and considered at Council meetings.

58.2 The chairperson shall present and read each proposed Resolution and, upon the Resolution being moved by one Council member and seconded by another Council member, shall open discussion on the Resolution.

- 58.3 The chairperson shall call for a vote upon completion of discussion on the proposed Resolution.
- 58.4 Unless otherwise specified in the Resolution, the Resolution shall come into effect on the date the Resolution was passed.
- 58.5 No passed Resolution shall be deemed invalid only by reason of a refusal or omission of a Council member to sign a passed Resolution.
- 58.6 The Director of Operations shall cause a copy of all passed Resolutions to be recorded and maintained in chronological order.
- 58.7 A passed Resolution may be amended or rescinded by a subsequent passed Resolution, which:
- (a) specifically rescinds or amends the earlier Resolution; or
 - (b) deals with the same matter in a different or contradictory way.
- 58.8 Where two passed Resolutions deal with the same matter in a contradictory way, the earlier Resolution, or parts of the earlier Resolution affected shall be deemed amended to the extent necessary to resolve the contradiction.

59. Adjournments

- 59.1 Meetings shall be adjourned by motion moved by one Council member and seconded by another Council member and approved by a vote of Council members present.
- 59.2 A meeting shall be deemed adjourned where there is no longer a quorum.

PART VIII – Law Enactment Procedures

60. Development of Westbank Laws

- 60.1 Council shall enact Westbank Laws in accordance with this Part consistent with this Constitution.
- 60.2 The process for development of a Westbank Law may be initiated by:
- (a) a Resolution, setting out the specific subject matter of the proposed law; or
 - (b) a Petition presented to Council signed by forty (40) Electors, setting out the request for development of a Westbank Law addressing a specific subject matter or issue.
- 60.3 Upon initiation of a proposed law, Council shall provide notice to the Membership of the subject matter of the proposed law and the general nature of provisions to be included in the proposed law.
- 60.4 Notice shall be provided to the Membership by:
- (a) publication of a notice in the Westbank newsletter mailed to Electors or by separate written notice, delivered or mailed to Electors; and
 - (b) posting of the notice in a public area of the Westbank administration building.
- 60.5 The notice shall request written comments from Members on the subject matter and content of the proposed law, and shall specify a date at least twenty (20) days from the date of the notice for Members to respond to Council.
- 60.6 Upon expiration of the time for submitting comments, Council shall take into consideration the comments received, the needs of the community and other relevant matters and shall prepare a draft law.
- 60.7 Prior the introduction of any proposed tax which will make Members subject to taxation, the proposed tax shall be approved in a referendum held under Part XII of this Constitution before a Westbank Law for the tax is initiated.
- 60.8 All Westbank laws shall be developed and considered under procedures set out in this Part.
- 60.9 Notwithstanding section 60.8, sections 60.2(b), 60.3 to 60.6, 62, 63.1, 63.3(d)(e)(f) and 63.5 to 63.15 do not apply to the enactment of a Local Revenue Law in respect to taxation of interests in Westbank Lands for local purposes or for the provision of local services or a Local Revenue Law in respect to expenditures.
- 60.10 Where a Westbank Law is enacted pursuant to federal legislation other than the Legislation before such law comes into effect all procedures and approvals required by the federal legislation must be satisfied.

61. First Reading: Acceptance in Principle

- 61.1 Upon completion of the draft law, Council shall table the draft law at a regular meeting of Council.
- 61.2 After considering the draft law at the Council meeting, Council shall, by Resolution:
- (a) accept the draft law in principle;
 - (b) reject the draft law; or
 - (c) request further work on the draft law and decide to re-table the draft law at a future Council meeting.
- 61.3 Upon the request of any Elector, Council shall explain the reasons for rejecting a draft law.

62. Second Reading: Special Membership Meeting

- 62.1 Where Council has accepted the draft law in principle, it shall schedule a Special Membership Meeting for the purpose of considering the draft law, and shall provide notice to the Membership at least twenty (20) days before the date of the meeting.
- 62.2 The notice required under section 62.1 shall include:
- (a) the date, time and place of the Special Membership Meeting;
 - (b) a summary of the draft law; and
 - (c) notification that a full copy of the draft law can be obtained by Members at the Westbank administration building.
- 62.3 Notice shall be provided to the Membership by:
- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and
 - (b) posting of the notice in a public area of the Westbank administration building.
- 62.4 Copies of the draft law shall be made available to Members attending the Special Membership Meeting.
- 62.5 At the Special Membership Meeting, Council or its designate shall explain the purpose and provisions of the draft law, and Members may ask questions and provide comments.
- 62.6 After the Special Membership Meeting, Council shall consider the comments received from Members, the needs of the community and other relevant matters, and shall prepare a Second Reading draft law that will be considered at a Council meeting held within thirty (30) days of the Special Membership Meeting. [*new, July 19, 2007*]
- 62.7 Notice of the Council meeting where the Second Reading draft law will be considered shall be posted at least ten (10) days before the meeting in a public area of the Westbank administration building and shall include:

- (a) a summary of the Second Reading draft law;
- (b) notification that a full copy of the Second Reading draft law can be obtained by Members at the Westbank administration building; and
- (c) the date, time and place of the Council meeting.

[*new, July 19, 2007*]

62.8 At the Council meeting, Council shall consider the Second Reading draft law and, by Resolution:

- (a) accept the Second Reading draft law;
- (b) subject to section 62.9, make changes to and accept the Second Reading draft law; or
- (c) decide to hold another Special Membership Meeting for further comment on the Second Reading draft law.

[*new, July 19, 2007*]

62.9 Where Council decides to make substantive changes to the Second Reading draft law at the Council meeting, Council shall schedule a further Special Membership Meeting to consider the revised Second Reading draft law and the procedure set out in this section shall be followed. [*new, July 19, 2007*]

63. Third Reading: Enactment of the Law

63.1 Council shall hold Third Reading of the law at a Council meeting to be held within thirty (30) days of the acceptance of the law at Second Reading. [*amended, July 19, 2007*]

63.2 Notice of the Council meeting where the law will be considered for Third Reading shall be posted at least ten (10) days before the meeting in a public area of the Westbank administration building and shall include:

- (a) a summary of the law;
- (b) notification that a full copy of the law can be obtained by Members at the Westbank administration building;
- (c) a statement that the law will be considered for enactment at the Council meeting; and
- (d) the date, time and place of the Council meeting. [*amended, July 19, 2007*]

63.3 At the Council meeting, Council shall consider the law and, by Resolution:

- (a) enact the law as a Westbank Law;
- (b) [*repealed, July 19, 2007*]
- (c) reject the law;

- (d) *[repealed, July 19, 2007]*
- (e) refer the law to a Special Membership Meeting for enactment by Electors; or
- (f) require a referendum, to be held in accordance with Part XII of this Constitution to enact the law.

[amended, July 19, 2007]

63.4 Council shall post notice in a public place of the Westbank administration building, setting out the decision reached by Council concerning the law. *[amended, July 19, 2007]*

63.5 *[repealed, July 19, 2007]*

63.6 Where Council decides to refer the law to a Special Membership Meeting for enactment by Electors present at such meeting, Council shall schedule a date for the Special Membership Meeting. *[amended, July 19, 2007]*

63.7 Notice of the Special Membership Meeting where the law will be considered for enactment shall be given to the Membership at least twenty (20) days before the meeting and shall include:

- (a) a summary of the law;
- (b) notification that a full copy of the law can be obtained by Members at the Westbank administration building;
- (c) a statement that there will be a vote by secret ballot of the Electors present at the Special Membership Meeting to make a decision on whether or not to enact the law; and
- (d) the date, time and place of the Special Membership Meeting also specifying the time period during which voting will take place.

[amended, July 19, 2007]

63.8 Notice of the Special Membership Meeting shall be provided to the Membership by:

- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and
- (b) posting of the notice in a public area of the Westbank administration building.

63.9 At the Special Membership Meeting, copies of the law shall be made available to Members in attendance. *[amended, July 19, 2007]*

63.10 At the Special Membership Meeting, the purpose and provisions of the law shall be explained to the Members present at the meeting, and Members shall be entitled to ask questions and provide comments. *[amended, July 19, 2007]*

63.11 Upon completion of discussion on the law the Electors, including Council members, present at the Special Membership Meeting shall vote by secret ballot on the law. *[amended, July 19, 2007]*

- 63.12 The law shall be deemed enacted if a Majority of Electors voting at the Special Membership Meeting approve the law. [*amended, July 19, 2007*]
- 63.13 The decision at the Special Membership Meeting shall be recorded in the minutes and shall have the same effect as a Resolution enacting a Westbank Law.
- 63.14 The result of a referendum shall have the same effect as a Resolution enacting a Westbank Law.
- 63.15 A Westbank Law concerning the assumption of a Long-Term Debt Liability or giving of guarantees shall be referred to a Special Membership Meeting called to consider enactment of the Law and may only be enacted in accordance with the procedure set out in sections 63.7 to 63.13.

64. Procedures Upon Enactment of a Westbank Law

- 64.1 A Westbank Law enacted by Resolution, under section 63.3(a), shall be signed by the Council members signing the Resolution enacting the Westbank Law.
- 64.2 A Westbank Law enacted by vote of Electors at a Special Membership Meeting or enacted by referendum shall be signed by all Council members.
- 64.3 A Westbank Law enacted by Resolution shall come into effect on the date the Resolution was passed or on such date specified in the Resolution.
- 64.4 A Westbank Law enacted by vote of Electors at a Special Membership Meeting or enacted by a referendum shall come into effect on the date of the Special Membership Meeting or on the date of the referendum.
- 64.5 Notice of the enactment of a Westbank Law shall be posted in a public area of the Westbank administration building within seven (7) days of its enactment.
- 64.6 Where a Westbank Law has been enacted original copies of the Westbank Law shall be deposited in the register of Westbank Laws.
- 64.7 The register of Westbank Laws shall be accessible to the public.
- 64.8 A true copy of all Westbank Laws shall be kept in the Westbank administration building.
- 64.9 Copies of Westbank Laws shall be provided to Members and other persons, upon payment of a reasonable copying fee.
- 64.10 No Westbank Law shall be set aside or be declared invalid by reason only that a Council member at the time of the enactment of the Westbank Law subsequently ceases to be a member of Council.
- 64.11 The failure of a Council member to sign a validly enacted Westbank Law does not invalidate the enactment of the Westbank Law.

65. Amendment

- 65.1 Any Westbank Law may be repealed or amended by following the procedure set out in this Part under which the Westbank Law was enacted.

PART IX – Conflict of Interest

66. General Duties and Definitions

- 66.1 Council members shall avoid a conflict of interest or the appearance of a conflict of interest and shall not be involved in any transaction or matter where they are in a conflict of interest or appear to be in a conflict of interest.
- 66.2 A conflict of interest arises in any situation where a Council member or person in their Immediate Family has a personal or Business Interest in a transaction or matter under consideration by Council.
- 66.3 No conflict of interest or appearance of a conflict of interest arises where:
- (a) the only benefit derived by an Immediate Family member is as an employee of a person or business entering into a transaction with, or having a matter determined by, Council;
 - (b) the Council member or his or her Immediate Family member is a beneficiary or shareholder of a corporation, society or other entity owned or controlled by Westbank entering into a transaction with Council or having a matter determined by Council;
 - (c) the Council member or his or her Immediate Family holds an interest in the same manner and under the same conditions as other Members of Westbank;
 - (d) a Council member guarantees repayment of or otherwise assumes liability to repay a loan made to Council or Westbank;
 - (e) Council enacts a Westbank Law setting reasonable remuneration, holidays, sick leave and benefits for services of Council members as elected officials of Westbank; or
 - (f) Council agrees to indemnify or reimburse the Council member for expenses or liabilities reasonably incurred in their duties or arranges for insurance against risks undertaken in the carrying out of their duties.
- 66.4 A transaction which may give rise to a conflict of interest or the appearance of a conflict of interest may be approved by Resolution in accordance with this Part.

67. Procedure where there is a Conflict of Interest or Appearance of a Conflict of Interest

- 67.1 A Council member who has, or believes that he or she has, a conflict of interest shall disclose the nature and extent of the conflict at the first Council meeting after the conflict becomes known to the Council member. The disclosure must be made when the conflict first becomes known to the individual, whether or not the transaction or matter in question has already been concluded.
- 67.2 Where the interest of a Council member has not been disclosed as required by section 67.1 by reason of his or her absence from the meeting at which the matter was first

- raised, the Council member shall disclose the interest and comply with this Part at the next meeting of Council.
- 67.3 If a Council member is in doubt whether he or she is in a conflict of interest, he or she may request a decision of Council on where there is a conflict of interest.
- 67.4 After declaring the conflict of interest, the Council member shall leave the meeting where the matter is being considered, not be counted in the quorum, nor participate in the discussion or vote on the matter in question.
- 67.5 A Council member who has a conflict of interest, shall not attempt in any way, whether before or after the Council meeting, to influence the discussion or vote on the matter in question.
- 67.6 Every declaration of a conflict of interest and the general nature thereof shall be recorded in the minutes of the Council meeting.
- 67.7 Notwithstanding section 66.1, Council may approve a transaction by Resolution where:
- (a) the Council member has complied with sections 67.1 to 67.5 of this Part; and
 - (b) Council determines the transaction is fair and reasonable.
- 67.8 The failure of a Council member to provide Council with sufficient information to assess the nature of an interest involved in the transaction invalidates any authorization given under this section.
- 67.9 Any Resolution authorizing a transaction may make the authorization conditional upon the affected Council member taking steps or following procedures that may be necessary to protect the interests of Council or Westbank or to safeguard the community's trust in the conduct of Council's activities.
- 67.10 Where as a result of a conflict of interest a quorum of Council can never be established, the matter shall be brought before a Membership meeting.
- 67.11 Notice of the Membership meeting required under section 67.10 shall be provided to the Membership at least twenty (20) days before the meeting and shall include:
- (a) the date, time and place of the Membership meeting;
 - (b) a summary of the proposed transaction and the conflict of interest to be considered at the Membership meeting;
 - (c) notification that a full copy of a report on the transaction and conflict of interest can be obtained at the Westbank administration building; and
 - (d) a statement that a determination of how to proceed on the proposed transaction will be made by a vote of Electors present at the Membership meeting.
- 67.12 Notice of the Membership meeting required under section 67.10 shall be provided by:
- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and

- (b) posting of the notice in a public area of the Westbank administration building.
- 67.13 At the Membership meeting Council shall explain the report on the transaction and conflict of interest and Members may ask questions and provide comments.
- 67.14 Upon completion of the discussion, the Electors, including Council members, present at the Membership meeting shall vote on whether to approve the transaction with or without conditions, reject the transaction or make such other decision as may be appropriate in the circumstances.
- 67.15 The decision of the Majority of Electors voting at the Membership meeting shall be recorded in the minutes and shall have the same effect as a Resolution, where no conflict of interest had existed. If a Resolution is required for the transaction in question, a Resolution may be passed as if no conflict of interest had existed. [*amended, July 19, 2007*]

68. Competition with Westbank Owned Businesses

- 68.1 No Council member shall, during the term of his or her office, engage either directly or indirectly in any manner as a partner, officer, director, shareholder, advisor, employee, or in any other capacity, in any business similar to one carried on by Westbank, without first:
- (a) complying with the provisions of this Part; and
 - (b) obtaining a Resolution, in accordance with this Part, approving their participation in the business or activity that is similar to the one carried on by Westbank.

69. Use of Council Property or Information

- 69.1 A Council member shall not use property owned by Westbank for personal or business purposes nor purchase property owned by Westbank, unless such purposes or purchases are equally available to all Members, and the transaction is approved in accordance with section 67.
- 69.2 A Council member shall not take personal advantage of an opportunity available to Council, unless Council clearly has decided against pursuing the opportunity and the opportunity is subsequently made equally available to all Members.
- 69.3 A Council member shall not use his or her position for their personal or business benefit of themselves or an Immediate Family member. This duty does not prevent a Council member or their Immediate Family members from transacting business with others who do business with Council, provided there is compliance with this Part.
- 69.4 A Council member shall not make use in any way of information received as a consequence of, or in the course of, his or her position as a Council member for their personal or business benefit or for the personal or business benefit of any Immediate Family member.

70. Gifts

- 70.1 A Council member shall not solicit, receive or accept a gift or service where such action could reasonably be inferred to influence a Council member in the discharge of their duties.
- 70.2 Where a gift is given to a Council member in their capacity as a Council member, he or she shall advise Council and the gift shall become the property of Westbank.
- 70.3 Notwithstanding sections 70.1 and 70.2, gift giving or receiving is permitted in recognition of a Council member's service to the community or to aboriginal causes or institutions.

71. Liability for Violation of Conflict of Interest Provisions

- 71.1 In addition to any other penalty or remedy a Council member is liable to Westbank for any personal or business benefit to themselves or an Immediate Family member resulting from a violation of this Part.

PART X – Financial Management and Accountability

72. Duties of Council

- 72.1 Council shall be responsible for the preservation and protection of Westbank assets and the prudent financial management and administration of Westbank funds, with due accountability to the Membership.
- 72.2 Council may, by Resolution, approve agreements with federal or provincial governments or with any other party for funding to Westbank, its Departments, agencies or other Westbank entities.
- 72.3 Council shall develop Westbank Laws and policies, consistent with this Constitution, regarding financial management and accountability.
- 72.4 Without limiting the generality of Council's responsibilities, Council shall, consistent with this Constitution and Westbank Law:
- (a) establish and maintain a Department of Finance;
 - (b) manage and control the receipt and expenditure of Westbank revenues;
 - (c) select appropriate financial institutions for the deposit of Westbank revenues;
 - (d) develop and implement policies for financial administration;
 - (e) develop and implement policies for financial accountability and reporting to Members;
 - (f) adopt a financial plan;
 - (g) adopt the Provisional Budget and Budget for Westbank;
 - (h) monitor the tendering of contracts;
 - (i) hold periodic meetings to report to Members on the financial affairs of Westbank;
 - (j) appoint the Auditor; and
 - (k) develop policies and procedures for Members to access financial records, financial reports, Provisional Budgets, Budgets and Council minutes concerning the financial management of Westbank.

73. Remuneration of Council

- 73.1 Council members shall be entitled to receive:
- (a) reasonable remuneration, holidays, leave and benefits in accordance with Westbank Law for their services as elected officials of Westbank; and

- (b) reimbursement for approved expenses incurred by the Council member in carrying out his or her duties.

74. Reporting of Council Members' Remuneration and Expenses

- 74.1 Prior to the end of each budget year, Council shall prepare a report separately listing the following for each Council Member:
- (a) the yearly amount of remuneration paid to the Council member, including any amount specified as an allowed expense;
 - (b) the total amount of payments made to the Council member as reimbursement for expenses incurred by the Council member or as an allowance that is not reported under paragraph (a); and
 - (c) the total amount of any benefits, including insurance policies and policies for medical or dental services, provided to the Council member by Westbank.

75. Department of Finance

- 75.1 The Department of Finance shall assist and support Council in carrying out its duties and responsibilities under this Part.
- 75.2 The Director of Finance shall oversee the day-to-day operations of the Department of Finance and perform such duties and responsibilities, consistent with this Constitution and Westbank Law, as are required under this Part or Westbank Law.
- 75.3 Without limiting the generality of the duties and responsibilities of the Department of Finance, the Department of Finance shall:
- (a) develop and maintain internal financial controls;
 - (b) maintain financial records of revenues and expenditures of Westbank in accordance with Canadian generally accepted accounting principles;
 - (c) prepare and present regular financial reports for Council;
 - (d) prepare the financial plan for consideration by Council;
 - (e) prepare the Provisional Budget and Budget for consideration by Council;
 - (f) collect monies owing to Westbank;
 - (g) ensure the safekeeping of all revenues, securities and investments of Westbank;
 - (h) deposit monies received by Westbank in the financial institution designated by Council;
 - (i) make payments for all monies owed by Westbank;
 - (j) monitor adherence to funding agreements entered into by Westbank;
 - (k) provide technical support to Council and other Departments;

- (l) provide financial information to Members; and
- (m) carry out such other duties and responsibilities as required by Council.

76. Financial Plan

- 76.1 Council shall, by Resolution, adopt a financial plan annually before the Budget is adopted.
- 76.1.1 The financial plan shall guide the development of the Provisional Budget and Budget for each budget year. [*new, July 19, 2007*]
- 76.2 The planning period described in a financial plan is five (5) years, being the year in which the financial plan is specified to come into force and the following four (4) years.
- 76.3 The financial plan must set out the following for each year of the planning period:
- (a) the proposed expenditures;
 - (b) the proposed funding sources;
 - (c) the proposed transfers between funds; and
 - (d) any major capital projects proposed to take place on Community Lands.
- [*amended, July 19, 2007*]
- 76.4 The proposed expenditures must set out separate amounts for each of the following as applicable:
- (a) the amount required to pay interest and principal on debt;
 - (b) the amount required for capital purposes; and
 - (c) the amount required for other purposes.
- 76.5 The proposed funding sources must set out separate amounts for each of the following as applicable:
- (a) Local Revenues
 - (b) transfers from other governments;
 - (c) revenue from other sources; and
 - (d) proceeds from borrowing, other than borrowing under section 93.
- 76.6 Council shall annually schedule a Membership meeting to present the draft financial plan to the Membership.
- 76.7 Notice of the Membership meeting required under section 76.6 shall be provided to the Membership at least twenty (20) days before the meeting and shall include:
- (a) the date, time and place of the Membership meeting; and

- (b) notification that the draft financial plan can be obtained at the Westbank administration building.
- 76.8 Notice of the Membership meeting required under section 76.6 shall be provided by:
- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and
 - (b) posting of the notice in a public area of the Westbank administration building.
- 76.9 At the Membership meeting copies of the draft financial plan shall be made available to Members in attendance.
- 76.10 At the Membership meeting, the draft financial plan shall be presented by Council or its designate and Members may ask questions and provide comments.
- 76.11 Council shall take into consideration the comments received from Members, the needs of the community and other relevant matters in finalizing and adopting the financial plan.

77. Local Revenues

- 77.1 Local Revenues shall be placed in a Local Revenue account, separate from other moneys of Westbank and shall be administered and expended in accordance with a Local Revenue Law.
- 77.2 The Local Revenue account shall be audited at least once each calendar year and reported on separately from other accounts.
- 77.3 For greater certainty, notwithstanding section 77.2 Local Revenues shall be included in the consolidated financial statement of Westbank.
- 77.4 Local Revenues may only be expended under the authority of a Local Revenue Law.
- 77.5 Expenditures provided for in a Local Revenue Law under section 77.4 shall not exceed the Local Revenue estimated for the year in which those expenditures are to be made, less any deficit accumulated from prior years.
- 77.6 Notwithstanding sections 80.11 to 80.14, 81.2, 82.3(b), 82.3(d) and 82.6 to 82.8 expenditures of Local Revenues shall be made in accordance with a Local Revenue Law provided for in section 77.4.
- 77.7 For greater certainty, expenditures of Local Revenues described in the Budget may be made notwithstanding that the Budget has not been adopted under sections 80.11 to 80.14.
- 77.8 For greater certainty expenditures of Local Revenues involving a capital expenditure over five hundred thousand dollars (\$500,000) do not require the approval by Electors referred to in sections 82.6 to 82.8.

78. Receipts and Deposits

- 78.1 All monies received by Westbank shall be fully deposited, without delay, in the financial institution designated by Council.

78.2 The monies held in trust by Council on behalf of Westbank shall be deposited in a separate Westbank trust account designated for that purpose.

79. Authorizing Officers

79.1 Council shall, by Resolution, designate officers of Westbank to authorize payments and sign cheques on behalf of Westbank.

79.2 The officers authorized shall consist of no fewer than two (2) Council members and such other officers of Westbank as designated by Resolution.

79.3 All payments to be made on behalf of Westbank, or cheques to be issued on behalf of Westbank, shall be authorized or signed by at least two (2) authorized officers, one of whom shall be a member of Council, provided that if there are no members of Council, cheques may be authorized or signed by two (2) other authorized officers. [*amended, July 19, 2007*]

80. Budget

80.1 The budget year for Westbank shall begin on April 1 and end on March 31 of the following year.

80.2 Council shall adopt a Provisional Budget and Budget for each budget year.

80.3 The Provisional Budget and Budget shall describe all operations of Westbank for which Council is responsible and shall include, but not be limited to, the following:

- (a) all proposed expenditures;
- (b) all sources of revenue;
- (c) transfers between Departments; and
- (d) repayment on account of debt.

80.4 The Budget shall be based on the principle of a balanced budget with no deficit, provided that where a deficit is anticipated in the Budget approval for the deficit must be approved in accordance with section 80.11.

80.5 Council shall, by Resolution, no later than December 15 of each year, adopt a Provisional Budget for the next budget year.

80.6 Council shall, on or before March 1 of each year, schedule a Membership meeting to present the Provisional Budget and any proposed changes, to the Membership.

80.7 Notice of the Membership meeting required under section 80.6 shall be provided to the Membership at least twenty (20) days before the Membership meeting and shall include:

- (a) the date, time and place of the Membership meeting;
- (b) notification that the Provisional Budget and proposed changes can be obtained at the Westbank administration building; and

- (c) notification that where there is a deficit proposed in the Budget there will be a vote by secret ballot of Electors present at the Membership meeting to make a decision whether or not to approve the proposed deficit.
- 80.8 Notice of the Membership meeting required under section 80.6 shall be provided by:
- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and
 - (b) posting of the notice in a public area of the Westbank administration building.
- 80.9 At the Membership meeting copies of the Provisional Budget and proposed changes shall be made available to Members in attendance.
- 80.10 At the Membership meeting, the Budget shall be presented by Council or its designate and Members may ask questions and provide comments.
- 80.11 Where a deficit is proposed in the Budget the Electors, including Council members, present at the Membership meeting shall vote by secret ballot on whether or not to approve the proposed deficit.
- 80.12 Where the vote by Electors at the Membership meeting held under section 80.11 does not approve the proposed deficit, the budget shall be revised to not include a deficit.
- 80.13 Council shall take into consideration the comments received from Members, the needs of the community and other relevant matters in preparing the Budget.
- 80.14 Council shall, by Resolution, no later than March 31 of each year adopt a Budget for the next budget year.
- 80.15 Notice of the Council meeting where the Budget will be presented for adoption shall be posted at least ten (10) days prior to the Membership meeting in a public area of the Westbank administration building.
- 80.16 Subject to section 80.15, where there is a substantial change in forecasted revenues, the Budget may be amended by Resolution at any time prior to June 30 of each year provided that any amendment of the Budget must be identified and explained in the periodic reports required to be presented under section 83.2.
- 80.17 Where a proposed amendment to the Budget would create or increase a deficit in the Budget the amendment must be approved by Electors in the same manner as under sections 80.7 to 80.11.
- 80.18 The Provisional Budget and Budget shall be made available during regular working hours for inspection by any Member, and copies shall be provided to any Member upon written request to the Department of Finance and upon payment of a reasonable copying fee.

81. Expenditures

- 81.1 Westbank revenues shall be used for the payment of Westbank expenditures under this Constitution, the Provisional Budget, the Budget or a Westbank Law provided for in this Part.

- 81.2 Council may approve an expenditure for an Emergency purpose not contemplated in the Provisional Budget or Budget.
- 81.3 Before the Budget is adopted, it is not lawful to make an expenditure unless the expenditure is authorized by the Provisional Budget, this Constitution or a Westbank Law provided for in this Part.

82. Capital Expenditures over Five Hundred Thousand (\$500,000) Dollars

- 82.1 Council shall not make a capital expenditure over five hundred thousand dollars (\$500,000), unless such expenditure is approved in accordance with this section.
- 82.2 Where Council proposes to authorize a capital expenditure over five hundred thousand dollars (\$500,000), Council shall schedule a Special Membership Meeting to consider the expenditure.
- 82.3 Notice of the Special Membership Meeting required under section 82.2 shall be given to the Membership at least twenty (20) days before the meeting and shall include:
- (a) a summary of the proposed expenditure;
 - (b) provision that there will be a vote by secret ballot of Electors present at the Special Membership Meeting to make a decision on whether or not to approve the proposed expenditure;
 - (c) the date, time and place of the Special Membership Meeting; and
 - (d) the time period during the Special Membership Meeting when voting will take place.
- 82.4 Notice shall be provided to the Membership by:
- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and
 - (b) posting of the notice in a public area of the Westbank administration building.
- 82.5 At the Special Membership Meeting, Council or its designate shall explain the purpose and provisions of the proposed expenditure and the Members may ask questions and provide comments.
- 82.6 Upon completion of discussion, the Electors, including Council members, present at the Special Membership Meeting shall vote by secret ballot on whether or not to approve the proposed expenditure.
- 82.7 The proposed expenditure shall be deemed authorized if a Majority of Electors voting at the Special Membership Meeting approve the proposed expenditure. [*amended, July 19, 2007*]
- 82.8 The decision at the Special Membership Meeting shall be recorded in the minutes and shall have the same effect as a Resolution.

83. Periodic Reporting

83.1 The Director of Finance shall present to Council each month, a written financial report prepared in accordance with Canadian generally accepted accounting principles. The report shall include, at a minimum:

- (a) a report on bank balances and investments;
- (b) an income statement by Department showing revenues and expenses compared to prior and current year Budgets;
- (c) statements showing total revenue and expenses for all Departments;
- (d) any proposed amendments to the Budget;
- (e) explanatory notes; and
- (f) recommendations.

[amended, July 19, 2007]

83.2 Council or its designate shall, at each General Membership Meeting, provide a financial update to Members.

84. Financial Statements

84.1 The Department of Finance shall, in accordance with Canadian generally accepted accounting principles, prepare consolidated financial statements for Westbank for each Budget year.

85. Appointment of Auditor

85.1 Council shall, by Resolution, appoint an auditor to audit the financial statements, records and inventories of Westbank at least once each year, prior to the commencement of each Budget year.

85.2 The auditor shall be a member in good standing or in a partnership whose partners are members in good standing with the Canadian Institute of Chartered Accountants or the Certified General Accountants' Association of British Columbia.

86. Access to Information by Auditors

86.1 In exercising his or her duties and responsibilities, the auditor shall conduct all examinations necessary to prepare the reports described in section 87.

86.2 In carrying out his or her duties and responsibilities, the auditor shall have a right of access at all reasonable times to:

- (a) the records of Council, Departments and Westbank;
- (b) the records of any other body that exercises the powers of Westbank; and

- (c) any computer, other data processing equipment and software that are owned or leased by Westbank or other body and used for financial recording or reporting purposes.

86.3 Upon request, Council members, Westbank officers, employees and agents, and other persons shall provide the auditor with information, reports or explanations the auditor deems necessary to carry out his or her duties and responsibilities.

86.4 An auditor shall abide by all applicable laws restricting the disclosure of information.

87. Auditor's Reports

87.1 The auditor shall:

- (a) perform, in accordance with Canadian generally accepted auditing standards, a general review of accounting procedures and such tests of accounting records as he or she considers necessary under the circumstances;
- (b) state in a report whether the consolidated financial statements present fairly the financial position of Westbank at the end of its Budget year, and the results of its operations for the year then ended;
- (c) report whether the financial operations are in compliance with this Constitution and Westbank Laws; and
- (d) make recommendations in the report for more effective financial management.

87.2 The auditor's report shall be prepared in accordance with the form and reporting standards recommended by the Canadian Institute of Chartered Accountants.

87.3 The auditor shall present the audit report to Council on or before June 30 for the budget year ending the preceding March 31.

87.4 The auditor's report and audited consolidated financial statement of Westbank shall be reviewed by Council and approved by Resolution.

87.5 Upon acceptance by Resolution, the audited consolidated financial statement shall be signed by the Chief and the Director of Operations and be recorded in the Council minutes as reviewed and approved.

87.6 Council shall ensure that, where appropriate, recommendations made by the auditor are implemented and that the audit report and any other relevant accounting records are made available to as required under funding agreement and to any other person designated by Council.

88. Annual Reporting on Westbank Finances to Members

88.1 No later than July 30 of each year, Council shall schedule a Special Membership Meeting to present the audited financial statements of the preceding year.

88.2 Notice of the Special Membership Meeting shall be provided to the Membership at least twenty (20) days before the date of the meeting and shall:

- (a) specify the date, time and place of the Special Membership Meeting; and
 - (b) include a statement that the audited consolidated financial statements and any reports to be presented are available for inspection at the Westbank administration building.
- 88.3 The notice required under section 88.2 shall be provided to the Membership by:
- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and
 - (b) posting a notice in a public area of the Westbank administration building.
- 88.4 The most recent audited financial statements and reports shall be available for inspection by Members at the Westbank administration building during its regular office hours.
- 88.5 Copies of the most recent financial statements and reports shall be provided to Members upon payment of a reasonable copying fee.

89. Local Revenue Account Reporting

- 89.1 In addition to any requirement under section 88 the separate the separate audit report of the Local Revenue account shall be made available to:
- (a) Members;
 - (b) any other person who has an interest in, or the right to occupy, possess or use, Westbank Lands; and
 - (c) other persons as required by applicable law.

90. Right of Elector to File a Complaint

- 90.1 A complaint may be filed if an Elector believes that:
- (a) a disbursement, expenditure, liability or other transaction is not authorized by or under this Constitution or a Westbank Law provided for; or
 - (b) there has been a theft, misuse, misappropriation, or irregularity in the funds, accounts, assets, liabilities and financial obligations of Westbank or one of its Departments.
- 90.2 If a written complaint concerning the matters under section 90.1 is filed with a Council member, it shall be forwarded immediately to the Director of Operations.
- 90.3 The Director of Operations shall forward a copy of the complaint to the Director of Finance, to Council and to the auditor.
- 90.4 The Director of Finance shall review the complaint and prepare a report concerning matters raised and provide a copy of his or her report to:
- (a) the Director of Operations;

- (b) Council; and
 - (c) the auditor.
- 90.5 After review of the Director of Finance's report Council shall send a written response to the Elector filing the complaint.

91. Investment of Westbank Funds

- 91.1 Funds held by Westbank that are not immediately required may only be invested or re-invested by Council in one or more of the following:
- (a) securities of Canada or of a Province;
 - (b) securities guaranteed for principal and interest by Canada or by a Province;
 - (c) deposits in a savings institution;
 - (d) investments guaranteed by a chartered bank or trust company;
 - (e) pooled investment funds of First Nations financial institutions;
 - (f) investment grade securities of First Nations financial institutions; and
 - (g) securities issued by a company incorporated under the laws of Canada or of a Province, the securities of which are rated in the highest rating category by at least two (2) recognized security rating institutions.

92. Borrowing

- 92.1 Westbank shall not borrow money or provide monetary guarantees except in accordance with this Constitution.

93. Borrowing Against Identified Revenues

- 93.1 Westbank may, by Resolution, borrow money that may be necessary to meet current Westbank expenditures authorized in the Provisional Budget, Budget or budget provided for in a Local Revenue Law, provided that the debt incurred does not exceed the total of the money remaining due from transfers from other governments and monies owing to Westbank which can reasonably be expected to be collected in the current year.

94. Short-Term Capital Borrowing

- 94.1 Westbank may, by Resolution, incur Short-Term Capital Debt, provided that the borrowing does not cause the total Short-Term Capital Debt to exceed five hundred thousand dollars (\$500,000).
- 94.2 The Resolution authorizing the borrowing must set out:
- (a) the amount of the debt intended to be assumed;
 - (b) in brief and general terms, the capital purpose of the proposed borrowing; and

- (c) the total short-term capital debt after the proposed borrowing.

95. Long-Term Debt Liability and Guarantees

95.1 Westbank may incur Long-Term Debt Liability in accordance with a Westbank Law which Law shall, at a minimum, set out:

- (a) the purposes for which Long-Term Debt Liability may be assumed;
- (b) the maximum cumulative Long-Term Debt Liability Westbank can hold at any time;
- (c) the maximum term allowable for repayment;
- (d) the mechanism for repayment;
- (e) restrictions on the use of money borrowed or guaranteed;
- (f) the currency of the borrowing;
- (g) the process by which the Membership will be informed concerning the proposed Long-Term Debt Liability; and
- (h) the approval process for incurring Long-Term Debt Liability.

95.2 The approval of a Long-Term Debt Liability by a Westbank Law enacted under section 63.15 shall be deemed to include approval of any capital purposes authorized by the Law and further approval under section 77 is not required.

95.3 Westbank may provide guarantees in accordance with a Westbank Law which Law shall, at a minimum, set out:

- (a) the permitted purposes for guarantees;
- (b) persons or entities for whom a guarantee may be provided;
- (c) conditions for granting a guarantee; and
- (d) requirements for reporting to the Membership.

96. Restrictions on the Use of Monies Borrowed

96.1 Money borrowed by Westbank must not be used for a purpose other than that specified in the Resolution or the Westbank Law authorizing the borrowing.

96.2 If some of the money borrowed for a specified purpose remains unused after payment of the costs related to that purpose, Council shall apply the unused money to reduce or retire the debt owing.

97. Liabilities for Use of Money Contrary to the Constitution

97.1 A Council member who votes for a Westbank Law or Resolution authorizing the expenditure, investment or other use of money contrary to this Constitution is personally

liable to Westbank for the amount unless the Council member relied on information provided by an employee and the employee was guilty of dishonesty, gross negligence or malicious or willful misconduct in relation to the provision of the information.

97.2 In addition to any other penalty to which the person may be liable, a Council member who is liable to Westbank under section 97.1 is disqualified from holding elected office for ten (10) years from the date of the vote authorizing the expenditure.

97.3 Money due to Westbank under this section may be recovered for Westbank by:

- (a) Westbank,;
- (b) an Elector; or
- (c) a person who holds a security under a borrowing made by Westbank.

PART XI – Land Rules

98. General

- 98.1 The purpose of this Part is to set out the principles, rules and administrative structures pursuant to which Westbank will exercise authority and jurisdiction over Westbank Lands.
- 98.2 Westbank Lands are “lands reserved for the Indians” under subsection 91(24) of the *Constitution Act, 1867*, and are reserves set apart by Her Majesty the Queen in Right of Canada for the use and benefit of Westbank First Nation.
- 98.3 Title to all Westbank Lands shall continue to be held in the name of Her Majesty the Queen in Right of Canada for the use and benefit of Westbank.
- 98.4 The use and development of Westbank Lands is subject to this Constitution, Westbank Law and other applicable laws.
- 98.5 (a) any instrument purporting to create, grant, assign or transfer an interest in Westbank Lands which restricts the application of, or is, in violation of Westbank Law or other applicable law, is void.
- (b) notwithstanding section 98.5(a) should an offending provision be capable of being severed from the instrument the remaining provisions shall not in any way be affected or impaired.
- 98.6 Council shall develop Westbank Laws, consistent with this Constitution, regarding the management, administration, use and protection of Westbank Lands.
- 98.7 Council shall, within two (2) years of the date this Constitution comes into force, refer a final draft Westbank Law to adopt a Land Use Plan to a Special Membership Meeting for enactment by Electors in accordance with section 63.3(e) of the Constitution.

99. Westbank Lands Office

- 99.1 The Westbank Lands Office shall carry out duties and responsibilities delegated or assigned to it under this Part or by Westbank Law.
- 99.2 Without limiting the generality of the duties and responsibilities of the Westbank Lands Office, it shall:
- (a) administer Westbank Lands in accordance with this Part and Westbank Law;
- (b) prepare forms of Written Instruments for use in registering interests in Westbank Lands where deemed necessary and advisable by the Westbank Lands Office;
- (c) prepare forms of Written Instruments for use in registering or recording instruments which affect, or purport to affect, Westbank Lands where deemed necessary and advisable by the Westbank Lands Office;

- (d) receive and review Written Instruments which affect, or purport to affect, Westbank Lands;
- (e) *[repealed, July 19, 2007]*
- (f) arrange for the execution of Written Instruments and related documentation on behalf of Westbank, the Minister and Her Majesty the Queen in Right of Canada;
- (g) where requested by one of the parties to a Written Instrument, act as representative for that party in forwarding the Written Instrument for registration or recording;
- (h) maintain and protect records in relation to Westbank Lands;
- (i) prepare and present regular reports to Council; and
- (j) carry out such duties as are requested or required by Council consistent with this Constitution, Westbank Law and other applicable law.

[amended, July 19, 2007]

- 99.3 The Director of Lands shall oversee the day-to-day operations of the Westbank Lands Office and perform such duties and responsibilities consistent with this Constitution and Westbank Law as are required under this Part and Westbank Law.
- 99.4 Without limiting the generality of section 99.2 and 99.3, the Director of Lands or his or her designate appointed in writing shall:
- (a) manage the Westbank Lands Office;
 - (b) execute such Written Instruments and carry out any action required to be taken by and on behalf of the Minister or Her Majesty the Queen in Right of Canada in relation to an interest in Westbank Lands described in section 100.1; and
 - (c) carry out any action required to be taken by the Minister or Her Majesty the Queen in Right of Canada in relation to an interest described in section 100.1 after the date this Constitution comes into force; and
 - (d) carry out any action or responsibility delegated to the Director of Lands under section 118.1.
- 99.5 Neither the Westbank Lands Office nor the Director of Lands shall be responsible or liable for ensuring that a Written Instrument which affects, or purports to affect, Westbank Lands:
- (a) is validly made;
 - (b) complies with this Part;
 - (c) should be registered or recorded; or
 - (d) will be accepted by Canada for registration or recording.

[new, July 19, 2007]

100. Interests in Westbank Lands

- 100.1 Interests in Westbank Lands approved, created, granted or issued pursuant to the *Indian Act* and existing as of the date this Constitution comes into force shall continue to have effect in accordance with their terms and conditions.
- 100.2 Where an interest described in section 100.1 includes an action to be taken by the Minister or Her Majesty the Queen in Right of Canada the responsibility for such action after the date this Constitution comes into force shall be with the Director of Lands or his or her designate.
- 100.3 The types of interests in Westbank Lands are:
- (a) Allotments;
 - (b) Leaseholds;
 - (c) Easements;
 - (d) Permits;
 - (e) Licences; and
 - (f) Mortgages.

101. No Interest Created

- 101.1 Subject to section 100.1 an interest in Westbank Lands may only be created, granted, assigned or transferred by Written Instrument in accordance with this Part or a Westbank Law provided for in this Part.
- 101.2 No person may acquire an interest in Westbank Lands by use, occupation or any other means not authorized under this Part or a Westbank Law provided for in this Part.
- 101.3 A contract, instrument or agreement of any kind entered into after the date this Constitution comes into force, whether written or oral, by which a person purports to create, grant, assign or transfer an interest in Westbank Lands is void if it does not comply with this Part or a Westbank Law provided for in this Part.

102. Natural Resources

- 102.1 Subject to applicable law all Natural Resources on Westbank Lands belong to Westbank.
- 102.2 The use and development of Natural Resources on or under Westbank Lands will be subject to this Constitution, Westbank Law and other applicable laws.
- 102.3 To the extent that Westbank has ownership or rights over water as recognized by federal or provincial legislation or Order-in-Council, or by operation of law, Westbank retains ownership and has jurisdiction to manage and regulate water use.
- 102.4 Subject to this section, unless specifically excluded by the instrument granting an Allotment of Westbank Lands, the Allotment includes all Natural Resources on or under that land to the extent they are under Westbank jurisdiction.

103. Allotment

- 103.1 Only Members can hold or receive an Allotment.
- 103.2 Subject to section 103.4 no Allotment shall be granted until a Westbank Law has been enacted establishing policy, procedure and criteria for the granting of Allotments.
- 103.3 A Westbank Law referred to in section 103.2 shall be enacted by referendum under section 63.3(f) of this Constitution.
- 103.4 An Allotment may be granted by Resolution where the Allotment is required to fulfill an agreement lawfully entered into prior to the date this Constitution comes into force or to comply with an order of a court of competent jurisdiction.

104. Leasehold in Community Lands

- 104.1 A Leasehold in Community Lands for a term or possible term of fifteen (15) years or less, calculated by including any renewal or extension period, may be granted by Resolution.
- 104.2 Where Westbank proposes to grant a Leasehold in Community Lands for a term or possible term of more than fifteen (15) years, calculated by including any renewal or extension period, but not more than forty-nine (49) years, Council shall schedule a Special Membership Meeting to decide whether the Leasehold should be granted.
- 104.3 Notice of the Special Membership Meeting shall be given to the Membership at least twenty (20) days before the meeting and shall include:
- (a) a summary of the proposed Lease;
 - (b) notification that a full copy of the proposed Lease can be obtained by Members at the Westbank administration building;
 - (c) a statement that there will be a vote by secret ballot of the Electors present at the Special Membership Meeting to make a decision on whether or not to grant the proposed Leasehold; and
 - (d) the date, time and place of the Special Membership Meeting also specifying the time period during which voting will take place.
- 104.4 Notice of the Special Membership Meeting shall be provided to the Membership by:
- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and
 - (b) posting of the notice in a public area of the Westbank administration building.
- 104.5 At the Special Membership Meeting, Council or its designate shall explain the purpose and provisions of the proposed Lease and Members may ask questions and provide comments.
- 104.6 Upon completion of the discussion, the Electors, including Council members, present at the Special Membership Meeting shall vote by secret ballot on whether or not to grant the proposed Leasehold.

- 104.7 The granting of a Leasehold described in section 104.2 shall be deemed authorized if a Majority of Electors voting at the Special Membership Meeting approve the proposed Leasehold. [*amended, July 2007*]
- 104.8 The decision at the Special Membership Meeting shall be recorded in the minutes and shall be evidence of the approval for granting the proposed Leasehold or rejecting the granting of the proposed Leasehold.
- 104.9 Where the proposed Leasehold is for a term or possible term longer than forty-nine (49) years, calculated by including any renewal or extension period, the proposed Leasehold must be approved by referendum held under Part XII of this Constitution.
- 104.10 The granting of a Leasehold for a term, or possible term, longer than forty-nine (49) years shall be deemed authorized if approved by the referendum vote.
- 104.11 The results of the referendum held under section 104.9 shall be evidence of approval for granting the proposed Leasehold or rejection of the proposed Leasehold.
- 104.12 The granting of a Leasehold does not grant any interest in the Natural Resources on or under the land described in the Lease unless specifically included in the terms and conditions of the Lease.

105. Easements, Permits and Licences in Community Lands

- 105.1 Council may, by Resolution, grant Easements and Permits in Community Lands.
- 105.2 Where Westbank proposes to grant a Licence in Community Lands for a term, or possible term, of less than fifteen (15) years, calculated by including any renewal or extension period, Council shall schedule a Special Membership Meeting to consider whether the proposed Licence should be granted. [*amended, July 19, 2007*]
- 105.3 Notice of the Special Membership Meeting shall be given to the Membership at least twenty (20) days before the meeting and shall include:
- (a) a summary of the proposed Licence;
 - (b) notification that a full copy of the proposed Licence can be obtained by Members at the Westbank administration building;
 - (c) a statement that there will be a vote by secret ballot of the Electors present at the Special Membership Meeting to make a decision on whether or not to grant the proposed Licence; and
 - (d) the date, time and place of the Special Membership Meeting also specifying the time period during which voting will take place.
- 105.4 Notice of the Special Membership Meeting shall be provided to the Membership by:
- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and
 - (b) posting of the notice in a public area of the Westbank administration building.

- 105.5 At the Special Membership Meeting, Council, or its designate, shall explain the purpose and provisions of the proposed Licence and Members may ask questions and provide comments.
- 105.6 Upon completion of the discussion, the Electors, including Council members, present at the Special Membership Meeting shall vote by secret ballot on whether or not to grant the proposed Licence.
- 105.7 The granting of a Licence shall be deemed authorized if a Majority of Electors voting at the Special Membership Meeting approve the proposed Licence. [*amended, July 19, 2007*]
- 105.8 The decision at the Special Membership Meeting shall be recorded in the minutes and shall be evidence of approval for granting the proposed Licence or rejecting granting the proposed Licence.
- 105.9 Where the proposed Licence is for a term, or possible term, longer than fifteen (15) years, calculated by including any renewal or extension period, the proposed Licence must approved by referendum held under Part XII of this Constitution.
- 105.10 The granting of a Licence for a term, or possible term, longer than fifteen (15) years shall be deemed authorized if approved by the referendum vote.
- 105.11 The results of the referendum held under section 105.9 shall be evidence of approval for granting the proposed Licence or rejecting the proposed Licence.

106. Creation of Sub-interests in Allotted Westbank Lands

- 106.1 A Member holding an Allotment in Westbank Lands may grant a Leasehold, Easement, Permit or Licence in those lands by Written Instrument registered in the Westbank Lands Register provided that:
- (a) the Member is the sole lawful possessor of the land;
 - (b) there is a proper legal description of the lands, and, if required, the lands have been surveyed and the survey registered or recorded in the Westbank Lands Register; and
 - (c) the Member states in writing that the terms of the Written Instrument will not violate any agreement with a person who has, or will have, an interest in the lands affected, or any portion thereof, or the Member has obtained the written consent of the interest holder.

[*amended, July 19, 2007*]

- 106.1.1 A Member granting a Leasehold, Easement, Permit or Licence under section 106.1 may grant that interest to himself or herself in the same manner as to another person. [*new, July 19, 2007*]
- 106.2 Subject to 100.1 a person holding a Leasehold in Westbank Lands may grant a Sub-lease, Easement, Permit or License in those lands by Written Instrument registered in the Westbank Lands Register provided that:

- (a) the interest to be granted is permitted by the terms of the Lease;
- (b) there is a proper legal description of the lands and, if required, the lands have been surveyed and the survey registered or recorded in the Westbank Land Register; and
- (c) the term of the interest granted does not exceed the duration of the Leasehold.

[amended, July 19, 2007]

106.3 The granting of a Leasehold does not grant any interest in the Natural Resources on or under the lands described in the Lease unless specifically included in the terms and conditions of the Lease.

- 106.4 (a) In transactions under sections 106.1 and 106.2 neither the Westbank Lands Office nor the Director of Lands are obligated to undertake any investigations or due diligence and will not be responsible or liable for any breaches of those provisions or for any representation or warranty made by the person granting the interest.
- (b) For greater certainty, without restricting the generality of section 106.4(a), neither the Westbank Lands Office nor the Director of Lands shall be responsible for determining whether a Lease, Easement, Permit or Licence is in good standing or its terms have been complied with.

107. Mortgages

107.1 Subject to section 107.2 the holder of an Allotment, Leasehold or Licence may, in accordance with this section grant a Mortgage of that interest.

107.2 The holder of an Allotment may only grant a Mortgage of that interest to a Member or to Westbank.

107.2.1 For greater certainty:

- (a) the holder of an Allotment who has been granted a Leasehold pursuant to section 106.1.1 may grant a Mortgage of the Leasehold interest to any person;
- (b) A Leasehold Interest held by an Indian, as that term is defined in the *Indian Act*, in Westbank Lands, including allotted lands, is subject to charge, pledge, mortgage, attachment, levy, seizure, distress, and execution, and the mortgagee has all the same legal and equitable rights it would have if the Leasehold interest was held by a non-Indian; and
- (c) A Leasehold interest in Community Lands is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution by a mortgagee.

[new, July 19, 2007]

107.3 The holder of a Permit or Easement cannot grant a Mortgage.

107.4 A Mortgage may be granted by Written Instrument registered in the Westbank Lands Register provided that:

- (a) the land is in the sole lawful possession of the Member granting the Mortgage or, the Leaseholder or Licence holder granting the Mortgage holds the entire legal and beneficial interest in the Leasehold or Licence;
- (b) the granting of the Mortgage and the terms of the Mortgage are permitted by the provisions of the Allotment, Lease or Licence;
- (c) there is a proper legal description of lands that are to be subject to the Mortgage and, if required, the lands have been surveyed and the survey registered or recorded in the Westbank Lands Register; and
- (d) in the case of a Mortgage of a Leasehold or Licence, the Mortgage term does not exceed the duration of the Leasehold or Licence.

[amended, July 19, 2007]

107.5 Neither the Westbank Lands Office nor the Westbank Director of Lands shall be responsible or liable for ensuring that the Lease or Licence permits the interest in the land to be mortgaged or that the Lease or Licence is in good standing or its terms have been complied with.

107.6 Except as modified in this section, the provisions of Section 89 of the *Indian Act* continue to apply.

108. Transfer of Interests

108.1 Subject to section 108.2 and this Part, a Member may, by a Written Instrument registered in the Westbank Lands Register, transfer their Allotment.

108.2 A Member may only transfer their Allotment to another Member or Westbank.

108.3 Where an Allotment is transferred to Westbank other than in relation to the granting of a Mortgage, the Allotment and any Certificate of Possession issued are cancelled and the Westbank Lands described in the Allotment become Community Lands.

108.4 Subject to section 108.5 and this Part a person holding an interest in Westbank lands other than by way of Allotment may transfer, assign or devise their interest to any person or entity by a Written Instrument registered in the Westbank Lands Register.

108.5 A Member or Westbank holding a Mortgage of an Allotment can only transfer or assign that Mortgage to another Member or to Westbank.

109. Transfer on Death

109.1 Until Westbank exercises jurisdiction in relation to wills and estates pursuant to the Agreement, the provisions of the *Indian Act* dealing with wills and estates shall continue to apply with respect to interests in Westbank Lands.

109.2 A person who receives an interest in Westbank Lands by testamentary disposition or succession in accordance with a written decision of the Minister, or his or her designate, pursuant to the *Indian Act*, is entitled to have that interest registered in the Westbank Lands Register.

110. Ceasing to be a Member

110.1 A person who ceases to be a Member shall within one year of ceasing to be a Member transfer their Allotment to Westbank or another Member.

110.2 Where a Member does not transfer their Allotment in accordance with section 110.1 the Allotment and any Certificate of Possession issued shall, one year after the person ceases to be a Member, be cancelled and the Westbank Lands described in the Allotment become Community Lands.

110.3 Where an Allotment reverts to Westbank under section 110.2 the person ceasing to be a Member shall remain liable for any obligations or monies owing pursuant to any interest they granted prior to the date the Allotment reverts to Westbank.

111. Westbank Lands Register

111.1 Interests in, and instruments which affect, or purport to affect, Westbank Lands shall be registered or recorded in the Westbank Lands Register. [*amended, July 19, 2007*]

111.2 Notwithstanding section 111.1, the registration or recording of an instrument in the Westbank Land Register will not create, grant, assign or transfer an interest in Westbank Lands unless there is compliance with this Part. [*amended, July 19, 2007*]

111.2.1 For greater certainty, instruments which affect, or purport to affect, Westbank Lands shall be filed with the Westbank Lands Office prior to applying for registration or recording in the Westbank Lands Register. [*new, July 19, 2007*]

111.3 A copy of the Westbank Lands Register will be kept at the Westbank Lands Office.

111.3.1 The Westbank Lands Register will be administered in accordance with the Westbank First Nation Land Registry Regulation or any successor regulation made under the *Westbank First Nation Self-Government Act*. [*new, July 19, 2007*]

111.3.2 In the event of a conflict between the Westbank First Nation Land Registry Regulation and Westbank Law, the Regulation prevails to the extent of the conflict. [*new, July 19, 2007*]

111.4 Until the enactment of the Westbank First Nation Land Registry Regulation and subject to sections 111.1 through 111.11, the Westbank Land Register shall be administered in the same manner as the Reserve Land Register established under the *Indian Act*. [*amended, July 19, 2007*]

111.5 The Westbank Lands Register shall accommodate the registration of interests not accommodated specifically by the *Indian Act*, in accordance with criteria or procedures to be agreed upon by Canada and Westbank.

111.6 [*repealed and replaced, July 19, 2007*]

- 111.7 No instrument that requires a Council Resolution, approval of the Westbank Lands Office, approval by Electors at a Membership meeting or in a referendum may be registered or recorded unless evidence of that Resolution, approval or referendum result is attached to the instrument. *[amended, July 19, 2007]*
- 111.8 Surveys prepared in accordance with section 114 may, subject to Westbank Law and other applicable law, be registered or recorded in the Westbank Lands Register. *[amended, July 19, 2007]*
- 111.9 Subject to the Westbank First Nation Land Registry Regulation, financial claims or other assertions of right under Westbank Law or other applicable law which affect or purport to affect Westbank Lands may be registered or recorded in the Westbank Lands Register. *[amended, July 19, 2007]*
- 111.10 The types of instruments which may be registered or recorded in the Westbank Lands Register under section 111.9 include, but are not limited to, instruments relating to:
- (a) judgments;
 - (b) court orders;
 - (c) rights of first refusal;
 - (d) certificates of pending litigation;
 - (e) caveats;
 - (f) liens;
 - (g) assignments of rent;
 - (h) options to purchase;
 - (i) tax certificates; and
 - (j) written decisions of the Minister or his or her designate referred to in section 109.2.

[amended, July 19, 2007]

- 111.11 Registration under section 111.10 shall not be deemed to be support for the legal validity of any claims nor the ability to take execution or other proceedings as a result of registration.

112. Date of Grant or Transfer of Interests

- 112.1 The grant, transfer or other disposition of an interest in Westbank Lands shall be effective on the date the documents are registered in the Westbank Lands Register.
- 112.2 An interest in Westbank Lands is not enforceable unless it is registered in the Westbank Lands Register.

113. Cancellation or Forfeiture of Interests

- 113.1 Except as otherwise provided in this Constitution, Westbank Law or by operation of law no interest in Westbank Lands may be cancelled or forfeited unless:
- (a) all parties to the relevant Written Instrument have consented in writing to the cancellation or forfeiture as the case may be;
 - (b) a court of competent jurisdiction has ordered the cancellation or forfeiture of the interest and the time period for filing an appeal of the order has passed without an appeal having been taken; or
 - (c) an arbitrator or other person appointed to adjudicate a dispute pursuant to the Written Instrument in issue has ordered or declared the interest to be cancelled or forfeited and no appeal has been taken from that decision within the allotted time.
- 113.2 Notwithstanding section 113.1 no interest in Westbank Lands may be cancelled or forfeited if it will adversely affect:
- (a) an interest in those Westbank Lands held by a third party; or
 - (b) a claim against, or interest in, those Westbank Lands held by Westbank.
- 113.3 If an interest in Westbank Lands is cancelled or forfeited under section 113.1 the Westbank Land Register will be amended or rectified accordingly.

114. Surveys

- 114.1 Westbank may cause surveys to be made of Westbank Lands in accordance with the *Canada Lands Surveys Act* and the *Canada Lands Surveyors Act*.
- 114.2 The holder of an interest in Westbank Lands that is registered in the Westbank Lands Register may cause surveys to be made of those lands in accordance with the *Canada Lands Surveys Act* and the *Canada Lands Surveyors Act*. [amended, July 19, 2007]
- 114.3 All surveys of Westbank Lands prepared by the Surveyor General of Canada, or his or her designate, shall be deemed for all purposes to accurately describe and identify the boundaries of the lands covered by such survey.
- 114.4 All surveys respecting Westbank Lands only become effective upon registration in the Westbank Lands Register.

115. Exchange of Lands

- 115.1 Subject to federal expropriation, no part of Westbank Lands shall be sold so as to remove their status as Westbank Lands except for an exchange of lands in circumstances where:
- (a) Westbank receives land of greater or equivalent size or value in consideration for the exchange taking into account all of its interests involved;
 - (b) Canada is willing to set apart the lands received in exchange as a reserve as defined in section 2(1) under the *Indian Act* for the use and benefit of Westbank and as subsection 91(24) lands as set out in the *Constitution Act, 1867*;
 - (c) Council has made full disclosure to the Membership of all the circumstances surrounding the exchange. At least three Membership meetings shall be held where the proposed transactions are disclosed; and
 - (d) the exchange is approved in a referendum held under Part XII of this Constitution.
- [amended, July 19, 2007]

116. Expropriation for Community Purposes

- 116.1 Westbank may expropriate an interest in Westbank Lands for a Community Purpose provided that no expropriation may take place until the following conditions, in the order listed, have been met:
- (a) a Westbank Law has been enacted setting out:
 - i) a procedure governing the expropriation process;
 - ii) a method of determining fair compensation to be paid to the interest holder; and
 - iii) the procedure for an Arbitrator to resolve disputes regarding the amount of compensation to be paid to the interest holder.

- (b) written notice has been given to the interest holder specifying the interest that is being considered for expropriation;
- (c) Council has attempted in good faith to negotiate an agreement with the interest holder for the transfer of the interest that is being considered for expropriation but has failed to reach such an agreement; and
- (d) Council has issued a report to the Membership setting out the Community Purpose for which the proposed expropriation is required and the necessity for the proposed expropriation.

117. Dispute Resolution

117.1 Except as otherwise provided in this Part disputes in relation to Westbank Lands or interests in Westbank Lands shall be determined as follows:

- (a) the parties to the dispute may agree that the dispute may be determined by mediation, arbitration or other dispute resolution mechanism agreed to by the parties; or
- (b) if the parties to the dispute do not agree on a dispute resolution mechanism, the dispute shall be determined by a court of competent jurisdiction.

118. Delegation

118.1 Westbank may, by Resolution, delegate any authority under this Part to the Westbank Lands Office or the Director of Lands other than:

- (a) law making,
- (b) the adjudication of violations of Westbank Law; or
- (c) a matter required under this Part to be determined in a specific manner.

118.2 Westbank may, by Westbank Law, establish boards, tribunals, commissions or other bodies to carry out any duties or responsibility under this Part other than:

- (a) law-making;
- (b) adjudication of violations of Westbank Law; or
- (c) a matter required under this Part to be determined in a specific manner.

119. Treatment of Interests in Westbank Lands on Marriage Breakdown

119.1 Westbank shall enact a law within twelve months of the date this Constitution comes into force setting out rules and procedures applicable to use, occupancy and possession of Westbank Lands and the division of interests in these lands on the breakdown of a marriage involving at least one Member.

119.2 For greater certainty, the Westbank Laws described in section 119.1 shall not discriminate on the basis of sex but may distinguish as between Members and non-

Members for the purpose of determining what type of interest in Westbank Lands may be held by an individual.

120. Review

120.1 *[repealed, July 19, 2007]*

PART XII – Referendum Procedures

121. Holding a Referendum

- 121.1 Council shall hold a referendum by way of vote when so required by this Constitution or when it considers it advisable. A second referendum on any question cannot be held for at least one hundred and twenty (120) days after the first vote on that question.
- 121.2 Council shall, by Resolution at least ninety (90) days prior to the date on which the referendum is to be held:
- (a) set a date for the referendum;
 - (b) determine the question or questions to be asked in the referendum;
 - (c) appoint an Electoral Officer to conduct the referendum; and
 - (d) appoint an Arbitrator to hear and determine any appeals of the referendum.
- 121.3 Unless otherwise required by this Constitution, a question put to referendum shall be approved, if a Majority of the Electors who cast valid ballots vote “YES” to the question asked.
- 121.4 In order to be entitled to vote in a referendum, a person must be an Elector.

122. Electoral Officer and Deputy Electoral Officers

- 122.1 If an Electoral Officer and an Arbitrator have not been appointed within the time set out in section 121.2, the Electoral Officer and Arbitrator shall be appointed by the Director of Operations as soon as possible.
- 122.2 A Deputy Electoral Officer or Officers shall be appointed by the Electoral Officer within fourteen (14) days of the appointment of the Electoral Officer and shall work under the direction of the Electoral Officer.
- 122.3 The Deputy Electoral Officers shall have such powers as described in this Part and those powers of the Electoral Officer as are delegated to them by the Electoral Officer.
- 122.4 The Deputy Electoral Officer shall not be a member of Council.
- 122.5 The Electoral Officer shall not be a Member or salaried officer or employee of Westbank or holder of other contracts of services for Westbank.
- 122.6 Every Electoral Officer and Deputy Electoral Officer shall swear an oath of office before a justice of the peace, notary public or duly appointed commissioner for swearing oaths of office and shall file with the Director of Operations the sworn oath of office before assuming their office.

122.7 The Electoral Officer may make such order and issue such instructions consistent with the provisions of this Part, as he or she may from time to time deem necessary for the effective administration of the referendum.

123. Contact Addresses

123.1 The Membership Administrator shall, within seven (7) days of the Electoral Officer assuming office, provide the Electoral Officer with the names and contact addresses of Members who will have attained the age of eighteen (18) as of the date of the referendum. [*amended, July 19, 2007*]

123.2 The contact address shall take the form of a mailing address.

123.3 The contact address shall be used only for the purposes of providing notices, mail-in ballots or other documents to Electors who are entitled to receive them under this Part or Part VI of this Constitution. Except for these purposes, the contact address shall not be disclosed by the Electoral Officer without the consent of the Elector.

123.4 Electors shall be responsible for providing the Membership Administrator or the Electoral Officer with current contact addresses. [*amended, July 19, 2007*]

123.5 A document shall be considered properly provided if it was mailed or delivered to the contact address of the Elector.

124. Electors' List

124.1 The Electoral Officer shall prepare an Electors' List within thirty (30) days of assuming office. The Electors' List will be the official record of Electors for the referendum.

124.2 The Electoral Officer shall post the Electors' List in a public area of the Westbank administration building and in other conspicuous place or places on Westbank Lands, as may be determined by the Electoral Officer, no later than sixty (60) days prior to the date on which the referendum is to be held.

124.3 A person whose name does not appear or does not correctly appear on the Electors' List and who believes they are eligible to be an Elector, or an Elector acting on their behalf, may, no later than ten (10) days prior to the date on which the referendum is to be held, apply in writing to the Electoral Officer to have his or her name added to the Electors' List.

124.4 The application under section 124.3 shall set out the reasons why the person's name should be added to the Electors' List, together with any documents supporting the application.

124.5 Where the Electoral Officer believes or has information that a person whose name is on the Electors' List is not an Elector, or where an Elector applies in writing to the Electoral Officer to have another person's name removed from the Electors' List because that person does not qualify as an Elector, the Electoral Officer shall give written notice to the person whose eligibility is challenged at least twenty (20) days prior to the date on which the referendum is to be held.

- 124.6 The application by an Elector under section 124.5 shall set out the reasons why a person's name should be removed from the Electors' List together with any documents supporting the application and must be received by the Electoral Officer no later than twenty-one (21) days prior to the date on which the referendum is to be held.
- 124.7 The notice given under section 124.5, shall include the reasons for seeking removal of a name from the Electors List and any supporting documents, and shall, provide notice that a written reply may be sent to the Electoral Officer which must be received no later than ten (10) days prior to the date on which the referendum is to be held.
- 124.8 After consideration of all information and representations relating to amendments to the Electors' List, the Electoral Officer shall add or delete names to the Electors' List, based on whether persons qualify as Electors.
- 124.9 The Electoral Officer shall give a person whose name has been added to or deleted from the Electors' List written notice of the decision and shall post the decision in a public area of the Westbank administration building and in other conspicuous place or places on Westbank Lands as may be determined by the Electoral Officer at least five (5) days prior to the date on which the referendum is to be held.
- 124.10 The decision of the Electoral Officer under section 124.8 is final and not subject to appeal.
- 124.11 The Electoral Officer shall, at least five (5) days prior to the date on which the referendum is to be held, post a final Electors' List in a public area of the Westbank administration building and in other conspicuous place or places on Westbank Lands as may be determined by the Electoral Officer.
- 124.12 Any person whose name does not appear on the final Electors' List shall not be entitled to vote in the referendum.

125. Preparation of Ballots

- 125.1 The Electoral Officer shall prepare ballots setting out the question to be asked in the referendum.
- 125.2 The ballots shall indicate that the Elector is to signify his or her choice with an "X" or other mark under the word "YES" or "NO" in the appropriate space opposite each question stated on the ballot.

126. Entitlement to Vote by Mail-in Ballot

- 126.1 At least sixty (60) days prior to the date on which the referendum is to be held, the Electoral Officer shall publish a notice in the Westbank newsletter sent to Electors or shall forward to Electors at their contact address a notice setting out the conditions for voting by mail-in ballot.
- 126.2 The notice shall include:
- (a) notification that a copy of this Constitution can be obtained at the Westbank administration building;

- (b) the places where copies of the Electors' List shall be posted in a public area of the Westbank administration building;
 - (c) a statement that Electors Ordinarily Resident on Westbank Lands who are unable to vote in person on the date of the referendum may at least fifteen (15) days prior to the date on which the referendum is to be held, apply to the Electoral Officer to vote by mail-in ballot;
 - (d) a statement that Electors who are not Ordinarily Resident on Westbank Lands are entitled to vote by mail-in ballot and that a mail-in ballot will be sent to them unless they advise the Electoral Officer in writing that they do not want to receive a mail-in ballot at least forty (40) days prior to the date on which the referendum is to be held;
 - (e) the business address, telephone and facsimile number of the Electoral Officer; and
 - (f) the date of the notice.
- 126.3 Any Elector who is Ordinarily Resident on Westbank Lands and who is unable to vote in person on the date of the referendum is to be held may, at least fifteen (15) days prior to the date on which the referendum is to be held, apply to the Electoral Officer to vote by mail-in-ballot.
- 126.4 Any Elector who is not Ordinarily Resident on Westbank Lands and who has not been sent a mail-in ballot package in accordance with section 126.6 may, at least fifteen (15) days prior to the date on which the referendum is to be held, apply to the Electoral Officer to vote by mail-in ballot.
- 126.5 An Elector requesting a mail-in ballot package shall provide the Electoral Officer with a current mailing address.
- 126.6 The Electoral Officer shall, at least thirty-five (35) days prior the date on which the referendum is to be held, mail to every Elector who is not Ordinarily Resident on Westbank Lands and to every Elector who is Ordinarily Resident on Westbank Lands whose application to vote by mail-in ballot has been received, a mail-in ballot a package consisting of:
- (a) a ballot initialed on the back by the Electoral Officer;
 - (b) an inner postage-paid return envelope, pre-addressed to the Electoral Officer;
 - (c) a second inner envelope marked "ballot" for insertion of the completed ballot;
 - (d) an Elector declaration form which shall set out:
 - i) the name of the Elector;
 - ii) the membership number of the Elector; and
 - iii) the name, address and telephone number of the witness to the signature of the Elector.
 - (e) a letter of instruction regarding voting by mail-in ballot; and

- (f) a statement identifying the location of all polling places, advising the Elector that they may vote in person at any polling station on the day of the referendum if they return their mail-in ballot to the Electoral Officer at the polling station or swear a written declaration before the Electoral Officer, a justice of the peace, notary public or duly appointed commissioner for taking oaths that they have lost the mail-in ballot.

126.7 Upon receipt of an application to vote by mail-in ballot under sections 126.3 and 126.4, the Electoral Officer shall mail a mail-in ballot package described in section 126.6 to the Elector whose name appears on the application. [*amended, July 19, 2007*]

127. Notice of Polls

127.1 The Electoral Officer shall, at least thirty (30) days prior to the date on which the referendum is to be held, post a notice of polls in a public area of the Westbank administration building and in other conspicuous place or places on Westbank Lands, as may be determined by the Electoral Officer.

127.2 The notice of polls shall include:

- (a) the date of the referendum;
- (b) the time the polling stations will be open and closed;
- (c) the location of the polling stations;
- (d) the question or questions to be asked in the referendum; and
- (e) a statement that the Electors' List is posted in a public area of the Westbank administration building.

128. Voting by Mail-in Ballot

128.1 An Elector shall vote by mail-in ballot by:

- (a) clearly marking the ballot with an (X) or other mark that clearly indicates the Elector's choice under the word "YES" or "NO" in the appropriate space opposite each question stated on the ballot;
- (b) folding the ballot in a manner so as to conceal the mark or marks on the face of the paper but exposing the Electoral Officer's initials on the back;
- (c) placing the ballot in the inner envelope marked "ballot" and sealing the envelope;
- (d) completing and signing the Elector declaration form in the presence of a witness who is at least eighteen (18) years of age;
- (e) placing the inner envelope and the completed, signed and witnessed Elector declaration form in the postage-paid, return envelope, pre-addressed to the Electoral Officer; and
- (f) delivering to, or otherwise ensuring receipt of the envelope by the Electoral Officer before the time at which the polls close on the day of the referendum.

- 128.2 Mail-in ballots that are not received by the Electoral Officer before the time at which the polls close on the day of the referendum shall not be counted.
- 128.3 An Elector to whom a mail-in ballot was mailed or delivered may vote in person at a polling station if:
- (a) the Elector returns the mail-in ballot to the Electoral Officer or Deputy Electoral Officer; or
 - (b) where the Elector has lost the mail-in ballot, the Elector provides the Electoral Officer or Deputy Electoral Officer with a written affirmation of loss signed by the Elector in the presence of either the Electoral Officer, Deputy Electoral Officer, justice of the peace, notary public or commissioner for taking oaths.

129. Voting at a Polling Station

- 129.1 The polling station shall be open from eight o'clock (8:00) in the morning until eight o'clock (8:00) in the evening on the day on which the referendum is to be held.
- 129.2 The Electoral Officer shall, before the polling station is open, supply the polling station with:
- (a) ballot boxes;
 - (b) a sufficient number of ballots;
 - (c) the final Electors' List;
 - (d) the necessary materials for marking ballots; and
 - (e) a ballot tally sheet to identify the number of confirmed votes and the number of rejected ballots.
- 129.3 The Electoral Officer shall provide a voting compartment inside the polling station where the Electors can mark their ballots free from observation and the Electoral Officer may appoint security to maintain order at the Polling Site.
- 129.4 The Electoral Officer or Deputy Electoral Officer shall, immediately before the commencement of the poll:
- (a) open the ballot box and, in the presence of any appointed security and other Deputy Electoral Officers, confirm that it is empty and complete a written statement to that effect;
 - (b) lock and properly seal the ballot box in a manner preventing it from being opened without breaking the seal; and
 - (c) place the ballot box in public view for the reception of the ballots.
- 129.5 Each person presenting themselves at a polling station for the purpose of voting shall present to the Electoral Officer or Deputy Electoral Officer identification issued by the Federal or Provincial government or by Westbank.

- 129.6 Where a person does not have identification they shall be deemed to be properly identified if they are known to the Electoral Officer or Deputy Electoral Officer.
- 129.7 Where a person is properly identified as an Elector, he or she shall sign the sign-in sheet presented by the Electoral Officer or Deputy Electoral Officer and list their membership number on the sign-in sheet.
- 129.8 Upon signing the sign-in sheet, the Elector shall receive a ballot initialed by the Electoral Officer or Deputy Electoral Officer.
- 129.9 The Electoral Officer or Deputy Electoral Officer shall place in the proper column of the Electors' List, a mark opposite the name of every Elector receiving a ballot.
- 129.10 The Electoral Officer or Deputy Electoral Officer shall, when requested to do so, explain the method of voting to the Elector.
- 129.11 Voting at all referendums shall be by secret ballot.
- 129.12 No Elector may vote by proxy or authorize another person to vote on his or her behalf.
- 129.13 Notwithstanding section 129.12 and section 129.16 any Elector who requires assistance may request that the Electoral Officer or a Deputy Electoral Officer vote on their behalf in their presence in favour of, or against the question, as the Elector directs.
- 129.14 In the event that an Elector votes in the manner described in section 129.13, the Electoral Officer or Deputy Electoral Officer shall note on the Electors' List in the column for remarks opposite the name of such Elector, the fact that the ballot was marked by him or her in the presence of the Elector and the reasons therefore.
- 129.15 Except for voting in the manner provided in section 129.13, the Electoral Officer or Deputy Electoral Officer shall ensure the Elector's privacy while in the voting compartment.
- 129.16 Upon receiving the ballot, each Elector shall:
- (a) immediately proceed to the voting compartment and clearly mark the ballot with an (X) or other mark that clearly indicates the Elector's choice under the word "YES" or "NO" in the appropriate space opposite each question stated on the ballot;
 - (b) fold the ballot, so as to conceal their choice in such a manner that only exposes the initials of the Electoral Officer or Deputy Electoral Officer; and
 - (c) without unfolding the ballot, have the Electoral Officer or Deputy Electoral Officer verify his or her initials and at once deposit the ballot into the ballot box in the presence of the Deputy Electoral Officer in the polling station.
- 129.17 An Elector who inadvertently spoils his or her ballot may return it to the Electoral Officer or Deputy Electoral Officer in order to obtain another ballot, and the Electoral Officer or Deputy Electoral Officer shall write the word "cancelled" upon the spoiled ballot, deposit it in an envelope for cancelled and declined ballots and provide the Elector with a new ballot initialed by the Electoral Officer or Deputy Electoral Officer.

- 129.18 An Elector who has received a ballot and subsequently decides not to vote, must return the ballot to the Electoral Officer or Deputy Electoral Officer, who shall mark the word “declined” on the face of the ballot and deposit it in an envelope for cancelled and declined ballots.
- 129.19 An Elector forfeits his or her right to vote at the referendum after being provided a ballot by the Electoral Officer or Deputy Electoral Officer if that person leaves the polling station without delivering the ballot to the Electoral Officer or the Deputy Electoral Officer.
- 129.20 Any Elector who is inside the polling station at the time fixed for closing the poll shall be entitled to vote.
- 129.21 No one other than the Electors who are in the process of voting, or in the case of an elderly or physically incapacitated person, an attendant, is permitted to be inside the voting compartment. *[amended, July 19, 2007]*
- 129.22 No person shall, on the day the referendum is held, on the premises of the polling site:
- (a) distribute any printed materials except such materials as may be distributed by the Electoral Officer or Deputy Electoral Officer for the purposes of conducting the referendum;
 - (b) interfere with or influence, or attempt to interfere with or influence, any Elector in marking his or her ballot; or
 - (c) obtain, or attempt to obtain, information as to how an Elector is about to vote or has voted; or
 - (d) disrupt, or attempt to disrupt, the voting process.
- [amended, July 19, 2007]*
- 129.23 The Electoral Officer may request appointed security to remove any person from the Polling Site who is in violation of sections 129.22.

130. Procedures After the Close of the Polls

- 130.1 Immediately after the close of the polls, the Electoral Officer shall, in the presence of the Deputy Electoral Officer and any Electors who choose to be present, open each envelope containing a mail-in ballot that was received before the close of the polls and without unfolding the ballot:
- (a) set aside the ballot if:
 - i) it was not accompanied by an Elector declaration form or the Elector declaration form is not signed or witnessed,
 - ii) the name of the person set out in the Elector declaration form is not on the Electors’ List,
 - iii) the Electors’ List shows that the Elector has already voted; and

- (b) deposit all remaining ballots in the ballot box and place a mark on the final Electors' List.
- 130.2 Immediately after all valid mail-in ballots have been deposited in the ballot box, the Electoral Officer shall, examine the ballots and reject all ballots that:
- (a) have not been initialed by the Electoral Officer or Deputy Electoral Officer,
 - (b) are marked in such a way that the Elector can be identified; or
 - (c) are marked in such a way that the Elector's choice cannot clearly or unambiguously be determined;
- 130.3 Any rejected ballot shall not be counted as a vote cast.
- 130.4 The Electoral Officer shall report in writing the reasons for rejection of each ballot and attach that report to the rejected ballot.
- 130.5 The rejected ballot and the written report shall be held by the Electoral Officer until the expiration of any appeal period provided for in this Constitution.
- 130.6 The Electoral Officer shall:
- (a) count the votes given in favour of or against the question or questions submitted in the referendum; and
 - (b) prepare and sign a statement in writing of the number of votes so given and of the number of ballots rejected.
- 130.7 Immediately after the completion of the counting of the votes, the Electoral Officer shall:
- (a) publicly declare the results of the referendum;
 - (b) prepare a statement in duplicate signed by himself or herself indicating:
 - i) the number of Electors who voted,
 - ii) the number of votes cast in favour of and against the question or questions submitted in the referendum,
 - iii) the number of rejected ballots, and
 - (c) deliver a copy of the statement to Council.
- 130.8 The Electoral Officer shall:
- (a) within three (3) days of the date on which the referendum is held post in a public area of the Westbank administration building and in other conspicuous place or places on Westbank Lands, as may be determined by the Electoral Officer, a written statement signed by the Electoral Officer, showing the number of votes cast in favour of and against the question or questions submitted in the referendum and the number of rejected ballots; and
 - (b) publish a written statement, showing the number of votes cast in favour of and against the question or questions submitted in the referendum and the number of

rejected ballots, in the Westbank newsletter mailed to Electors or in a separate written notice delivered or mailed to Electors.

131. Disposal of Ballots

131.1 The Electoral Officer shall deposit the ballots used in the voting and the cancelled and declined ballots in a sealed envelope and retain it for one hundred and twenty (120) days after the date on which the referendum is held or until a decision on an appeal is rendered, whichever date is later, after which time the Electoral Officer may, unless directed otherwise by the Council, destroy them in the presence of two witnesses.

132. Appeals

132.1 Any Elector may file an appeal in writing to the Director of Operations requesting that the referendum be declared invalid on one or more of the following grounds:

- (a) there was a violation of any provision of this Part in the conduct of the referendum that might have affected the result of the referendum; or
- (b) there was a corrupt or fraudulent practice in connection with the referendum.

132.2 Every notice of appeal shall be filed with the Director of Operations within thirty (30) days from the date upon which the referendum was held together with a non-refundable filing fee of seventy-five dollars (\$75).

132.3 Every appeal shall also set out in an affidavit sworn before a notary public or a duly appointed commissioner for taking oaths the facts substantiating the grounds for declaring the referendum invalid and shall be accompanied by any documents relied on to support the appeal.

132.4 The Elector appealing the result of the referendum shall deposit with the Director of Operations, together with the appeal, security for costs in the amount of five hundred dollars (\$500).

132.5 Upon receipt of the referendum appeal, supporting documents and security for costs, the Director of Operations shall forward the appeal and supporting documents to Council.

132.6 Council shall have seven (7) days from the receipt of the material described in section 132.5 to file with the Director of Operations a written reply to the appeal.

132.7 Upon expiration of the time to file a reply, the Director of Operations shall forward the appeal, supporting documents and any reply to the Arbitrator to hear and determine the appeal.

132.8 The Arbitrator may, at his or her discretion, give directions for:

- (a) fixing the date, time and place for the hearing of the appeal;
- (b) designating the method of taking evidence, either by sworn declaration or written testimony or both;
- (c) designating what persons are to be notified and how they are to be served; and

- (d) dealing with any matter or other thing not otherwise provided for in this section.
- 132.9 No witness shall be required to divulge how he or she voted in the referendum.
- 132.10 The Arbitrator shall provide a written decision together with reasons, confirming or invalidating the referendum results.
- 132.11 The result in the referendum shall not be declared invalid by reason only of any irregularity or non-compliance with the referendum procedures, or any mistake in the use of forms, if it appears to the Arbitrator that the referendum was conducted in good faith unless the non-compliance, irregularity or mistake materially affected the result of the referendum.
- 132.12 The Arbitrator may in his or her discretion order by whom, to whom and in what manner costs of the appeal shall be paid. The Arbitrator shall make disposition of the security for costs furnished under this section, in accordance with their order.
- 132.13 The Arbitrator shall give the person appealing the referendum and Council written notice of the decision and shall post the decision in a public area of the Westbank administration building and other conspicuous place or places on Westbank Lands, as may be determined by the Arbitrator.
- 132.14 The determination of the Arbitrator is final and not subject to appeal.

133. Penalty

- 133.1 In addition to any other penalty or liability, any person who violates any provision of this Part is guilty of an offence and liable upon summary conviction to a fine not exceeding ten thousand dollars (\$10,000).

PART XIII - Amendment of Constitution

134. Procedure

- 134.1 The process for development and passage of amendments to this Constitution may be initiated by:
- (a) Resolution; or
 - (b) a Petition presented to Council by at least forty (40) Electors, setting out the specific area in this Constitution requested to be amended.
- 134.2 Upon receipt of the Petition or passage of the Resolution under section 134.1, Council shall develop proposed amendments to this Constitution.
- 134.3 Upon completion of the proposed amendments to this Constitution, Council shall schedule a Special Membership Meeting for the purpose of considering the proposed amendments and shall provide notice the Membership.
- 134.4 The notice of the Special Membership Meeting required under section 134.3 shall be provided to the Membership at least twenty (20) days before the meeting and shall include:
- (a) the date, time and place of the Special Membership Meeting;
 - (b) a summary of the proposed amendments to this Constitution; and
 - (c) notification that the full copy of the proposed amendments to this Constitution and this Constitution can be obtained at the Westbank administration building.
- 134.5 Notice shall be provided to the Membership by:
- (a) publication of the notice in the Westbank newsletter, delivered or mailed to Electors or by separate notice delivered or mailed to Electors; and
 - (b) posting of the notice in a public area of the Westbank administration building and such other places as Council may direct.
- 134.6 At the Special Membership Meeting, copies of the proposed amendments to this Constitution and this Constitution shall be available to Members present.
- 134.7 At the Special Membership Meeting, the purpose and provisions of the proposed amendments shall be explained by Council, and Members may ask questions and provide comments.
- 134.8 After the Special Membership Meeting held to consider the proposed amendments to this Constitution, Council shall, within sixty (60) days of the date on which the Special Membership Meeting was held, prepare a final draft of the proposed amendments, taking

into consideration the comments received from Members, the needs of the community and other relevant matters.

134.9 The proposed amendments to this Constitution must be approved by referendum held under Part XII of this Constitution.

134.10 Proposed amendments to this Constitution approved in accordance with this Part come into effect on the date of the referendum.

PART XIV – General

135. Liability

- 135.1 Westbank is not liable for anything done or omitted to be done by Canada or any person or body authorized by Canada in the exercise of any federal rights, powers or responsibilities prior to the date this Constitution comes into force.
- 135.2 The Self-Government Agreement and this Constitution are not, nor shall they be interpreted as being, a waiver by Westbank in regard to any liabilities, acts or omissions of Canada.

136. Coming into Force

- 136.1 The provisions of this Constitution come into force on the date that the act of Parliament which confirms, implements and gives effect to the Self-Government Agreement comes into force.