

Lax Kw'alaams Band Election Code



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LAX KW'ALAAMS BAND ELECTION CODE

PART 1 PREAMBLE & TITLE

- 1.1 This Code shall be called the “Lax Kw’alaams Election Code” of the Lax Kw’alaams Band.

PART 2 COMING INTO FORCE

- 2.1 This Code originally came into force upon the passing of a Ministerial Order. This Code was approved by Council on November 27, 2018, and if necessary will be ratified by way of referendum of the Electors in 2019. All provisions shall be effective as of the date the referendum passes.

PART 3 INTERPRETATION

- 3.1 In this Code:
- (a) “By-Election” means a special Election held between regular Elections to fill a vacancy.
 - (b) “Candidate” means a person who:
 - (i) is an eligible Elector and is at least 18 years of age on the day on which the nomination period is closed;
 - (ii) is a Lax Kw’alaams Band member for at least 12 months prior to the date of the Election or By-Election;
 - (iii) has been nominated to be a candidate for one of the positions of Mayor or On-Reserve councillor or Off-Reserve councillor in accordance with this Code;
 - (iv) has not been convicted of an indictable criminal offence within 5 years prior to the date of the nomination meeting or during the member of Council’s term in office, unless:
 - A. they have been granted a pardon; or
 - B. the conviction is directly related to the exercise of that person’s Aboriginal or treaty rights;
 - (v) has not been removed from a position on Council within the 8 years prior to the date of the nomination meeting;

- (vi) is not bankrupt, as that term is defined in the *Bankruptcy and Insolvency Act* (Canada), on the date of the nomination meeting or during the member of Council's term in office;
- (vii) if it is a By-Election, is not the person who resigns or is removed from their position on Council, prompting the holding of the By-Election;
- (viii) does not have a civil court judgment against them or a criminal conviction in respect of any matter involving theft, fraud or misuse of property either:
 - A. within the 5 years prior to the date of the nomination meeting, or
 - B. during the member of Council's current term in office;
- (ix) is not personally in arrears for any debt to the Lax Kw'alaams Band or a Lax Kw'alaams business entity, unless:
 - A. they have a debt repayment agreement that is entered into at least 6 months prior to Election day, and
 - B. they are in good standing in relation to their debt repayment agreement.
- (c) "Code" means the Lax Kw'alaams Election Code inclusive of Schedule A-Council Code of Conduct.
- (d) "Conduct Review Board" means the body appointed by the Electoral Officer in accordance with Part 15 of this Code to review and make decisions concerning removal from office and Election appeals and complaints.
- (e) "Consecutive Term" means a four- year term of office.
- (f) "Corrupt" includes, but is not limited to direct or indirect bribery, , or providing a financial or material incentive to an Elector, or exerting undue influence on an Elector in exchange for a voting or refraining from voting.
- (g) "Council" means the body composed of those persons selected to serve as Mayor and Councillors for the Lax Kw'alaams Band under this Code.
- (h) "Councillor" means an elected councillor of the Lax Kw'alaams Band.
- (i) "Council Code of Conduct" means the code of conduct attached as Schedule A to this Code.
- (j) "Deputy Electoral Officer(s)" means a person or persons appointed by the Electoral Officer to assist in the conduct of the Election process.
- (k) "Election" means a general Election, or if required a By-Election, of the Lax Kw'alaams Band held under the provisions of this Code.

- (l) “Election Appeal Board” means the body appointed by the Electoral Officer as set out in Part 12 of the Election Code to review Election appeals.
- (m) “Election Code of Conduct” means guidelines, general rules of behaviour and standards which governs the conduct of Candidates running for office and their supporters relating to their participation in the electoral process set out herein or issued by Council at least 180 days prior to an Election.
- (n) “Electoral Officer” means a person, appointed by a Resolution, who has the responsibility for conducting the nomination process, Elections and the post-Election procedures under this Code.
- (o) “Elector” means a person who:
 - (i) is a member of Lax Kw’alaams Band; and
 - (ii) is at least 18 years of age on the day on which the Election is held.
- (p) “Lax Kw’alaams Band Entity” means any entity legally owned or controlled by or on behalf of the Lax Kw’alaams Band.
- (q) “Legal Counsel” means the legal counsel selected by the Council for inclusion on the notice of nomination issued under section 5.2 or as determined by Council and posted in a conspicuous place at the Lax Kw’alaams Band office.
- (r) “Mail-in Ballot” means a ballot mailed or delivered as set out in this Code.
- (s) “Mayor” means the elected mayor of the Lax Kw’alaams Band.
- (t) “Membership Clerk” means the Lax Kw’alaams Band employee responsible for maintaining the Lax Kw’alaams Band membership list.
- (u) “On-Reserve” means for the purpose of this Code inside boundaries of Lax Kw’alaams Indian Reserve No.1.
- (v) “Off-Reserve” means for the purpose of this Code outside boundaries of Lax Kw’alaams Indian Reserve No.1.
- (w) “Petitioner” means an individual and “Petitioners” means the Council who submits a petition as set out in this Code;
- (x) “Polling Station” means a building, hall or room, which is selected by the Electoral Officer as the site at which voting takes place.
- (y) “Proof of Identity” means identification such as a Government of Canada or Provincial Government approved picture identification or Birth Certificate and medical card.

- (z) “Rejected Ballots” means those ballots that have been improperly marked and/or defaced by Elector(s), which are not included in the tally of valid ballots cast during the counting of the votes.
- (aa) “Resident” refers to the residential status of an Elector who is considered to have his or her ordinary residence in one given place. A person’s ordinary residence can be described as:
 - (i) the place the person normally eats and sleeps for 6 months prior to the Election; or
 - (ii) the place the person receives mail.

A person can only be ordinarily Resident in one place at a time, and a person is ordinarily Resident in that place until another place of ordinary residence is acquired.
- (bb) “Resolution” means a Council resolution adopted at a duly convened meeting of Council.
- (cc) “Scrutineer” means a person appointed by in writing by a Candidate to observe the counting of ballots in accordance with the Code provided the Electoral Officer has been provided with notice of such appointment.
- (dd) “Voter Declaration Form” means a paper or electronic document created by the Council, from time to time, that sets out, or provides for:
 - (i) the name of the Elector;
 - (ii) the Lax Kw’alaams Band membership or registry number of the Elector;
 - (iii) the date of birth of the Elector; and
 - (iv) the name, address, e-mail and telephone number of a witness to the signature of the eligible Elector.
- (ee) “Voters List” means the list of Lax Kw’alaams Band members eligible to vote in an Election as prepared under section 4.7.

PART 4 PRE-NOMINATION PROCEDURE

Appointment of an Electoral Officer

- 4.1 The Electoral Officer shall be appointed by a Resolution no less than 100 days before the expiration of the current Councils’ term of office.
- 4.2 The Resolution for the appointment of the Electoral Officer shall contain his or her full name and address, the date of the Election, the type of Election that is to be conducted as well as any special instructions.

- 4.3 The Electoral Officer must be a person who:
- (a) is at least 21 years of age; and
 - (b) has experience in the conduct of elections or has received appropriate training and has passed a reference check.
- 4.4 In the event that the Electoral Officer cannot fulfill his or her duties, an existing Deputy Electoral Officer shall be appointed by a Resolution, to take on the duties of the Electoral Officer. If there is no existing Deputy Electoral Officer, the Council shall appoint a new Electoral Officer.

Oath of Office

- 4.5 The Electoral Officer and Deputy Electoral Officer must swear a solemn oath (“Oath of Office”) to uphold the office and to:
- (a) uphold and comply with this Code, the Code of Conduct and all the laws of the community;
 - (b) fulfill the duties and responsibilities of his or her office under this Code;
 - (c) carry out the duties faithfully, honestly, impartially and to the best of his or her abilities;
 - (d) subject to requirements under this Code and all applicable privacy laws, keep confidential, both during and after his or her term of office, any matter or information which, under this Code, community law or policy, is considered confidential; and always act in the best interests of the community in carrying out his or her duties.

Responsibilities and Ethics

- 4.6 The Electoral Officer is responsible for managing and executing all pre-electoral, electoral and post-electoral processes and procedures included in this Code. The Electoral Officer must:
- (a) uphold and abide by the rules and regulations established in this Code;
 - (b) remain neutral and professional in the conduct of the duties of his or her office, and refrain from providing any preferential treatment or expressing support for or opposition to any Candidate;
 - (c) not pressure or intimidate other officials or personnel to favour a certain Candidate; and
 - (d) avoid conflicts of interest, or the appearance of conflicts of interest, by abstaining from decision-making where the Electoral Officer has a personal or private interest in the matter at issue.

Voters List

- 4.7 At least 79 days before the day on which an Election is to be held, the Electoral Officer shall obtain the names of Lax Kw'alaams Band members, membership numbers and dates of birth of all Lax Kw'alaams Band members who will have reached the age of 18 years on the date on which the Election is to be held and last known addresses for Electors who do not reside in Lax Kw'alaams from the Membership Clerk.
- 4.8 To register to vote Electors are responsible for providing the Membership Clerk with their current addresses and for requesting a Mail-in Ballot voting package from the Electoral Officer no later than 10 days prior to the Election date.
- 4.9 Upon request, nomination papers and/or a mail-in voting package will be mailed to an Elector who does not live near the place where a Polling Station is stationed or is unable to attend a Polling Station.
- 4.10 The Electoral Officer shall not disclose an Elector's address without the consent of the Elector.
- 4.11 A Candidate for Election as Mayor or Councillor may obtain from the Electoral Officer a list of the names and addresses of Electors who have agreed to have their addresses disclosed to Candidates.
- 4.12 At least 79 days before the day on which an Election is to be held, the Electoral Officer shall prepare a Voters List containing the names of all of the Electors in alphabetical order.
- 4.13 At least 72 days before the day on which an Election is to be held, the Electoral Officer shall post the Voters List in a public area of the Lax Kw'alaams Band office that he or she feels is appropriate.
- 4.14 On request, the Electoral Officer or Deputy Electoral Officer shall confirm whether the name of a person is on the Voters List.
- 4.15 After consideration of all information and representations relating to amendments of the Voters List, the Electoral Officer shall add or delete names from the Voters List based on whether persons qualify as Electors.
- 4.16 The decision of the Electoral Officer under section 4.15 of this Code is final and is not subject to appeal.

Appointment of Deputy Electoral Officers

- 4.17 The Electoral Officer shall appoint deputies as he or she deems necessary, which shall work under his or her direction.
- 4.18 The Deputy Electoral Officer shall have such powers as described in this Code as well as those powers of the Electoral Officer as delegated to the deputy by the Electoral Officer.

- 4.19 A Deputy Electoral Officer shall not be a member of Council or a Candidate in the Election.

PART 5 THE NOMINATION PROCESS

Notice of Nomination Process and Mail-in Procedures

- 5.1 On behalf of the Lax Kw'alaams Band membership the Electoral Officer shall, at least 30 days before the date on which the nomination period is to be closed:
- (a) post a notice of the nomination process in a conspicuous place On Reserve and on the Lax Kw'alaams Band website; and
 - (b) mail a notice of the nomination process to all addresses from the Membership Clerk;
- 5.2 A notice of nomination process shall contain at minimum:
- (a) the location for receipt of nomination papers;
 - (b) the date on which the nomination period will begin and the time and date the nomination period will close;
 - (c) a description of the manner in which an eligible Elector may become a Candidate under this Code;
 - (d) the statement that a Candidate's failure to comply with rules and procedures set out in this Code related to the nomination process will void the nomination of the Candidate;
 - (e) the date and location of the public posting of all the Candidates;
 - (f) the date on which the Election will be held, the location of each polling place and the times set for the opening and closing of the Polling Stations;
 - (g) the name and contact information for the Electoral Officer and the Legal Counsel;
 - (h) the statement that any Elector that has requested a mail-in package may vote by Mail-in Ballot;
 - (i) the statement that, if the Elector wants to receive information from Candidates, the Elector can agree to have his or her address and/or e-mail address released to the Candidates.

Nomination Period

- 5.3 The nomination period for any Election governed by this Code shall start on a date established by the Electoral Officer and shall close at 5:00 p.m. on the 42nd day before the date on which the Election is to be held.

5.4 The nomination period will not be less than 7 days.

Nomination Papers

5.5 Only the nomination papers of those persons who meet the requirements of a Candidate as set out in this Code shall be accepted by the Electoral Officer.

5.6 A person shall only submit nomination papers for one of the offices of the Mayor, On-Reserve Councillor, or Off-Reserve Councillor.

5.7 An Elector who wishes to run as a Candidate must submit to the Electoral Officer written nomination papers during the nomination period.

5.8 Written nomination papers shall include:

- (a) a declaration to include the name, signature, address, telephone and registry number of at least 25 eligible Electors supporting an individual as a Candidate for Election to the position on Council they are seeking;
- (b) a declaration signed by the Candidate attesting that he or she meets the eligibility requirements to be a Candidate as set out in this Code and with the 25 names as set out above; and
- (c) a statement by the prospective Candidate consenting to be a Candidate for Election to the position of Mayor or Councillor as so identified.

Requirements of Endorsers to a Candidate's Nomination

5.9 In order to be entitled to endorse a Candidate's nomination, an Elector must, on the day of endorsement:

- (a) be at least 18 years of age; and
- (b) be included on the Voters List.

5.10 The submission of a Candidate's nomination papers must be accompanied by a \$100.00 non-refundable fee in Canadian funds by certified cheque or money order made payable to the Lax Kw'alaams Band.

5.11 Any Elector may sign the nomination paper of:

- (a) one or more eligible person for the office of Mayor; and
- (b) one or more eligible person for the position of Councillor.

Candidate Deposit

5.12 All funds paid as Candidate subject only to section 6.7 deposit fees under this Code are non-refundable and shall be paid to the Lax Kw'alaams Band who shall issue a receipt to the Candidate.

- 5.13 An Elector who fails to submit nomination papers as described in section 5.7 to the Electoral Officer, and pay the deposit required under section 5.10 of this Code, to the Lax Kw'alaams Band by 5:00 p.m. on the 42nd day before the day on which the Election is to be held, will not be a Candidate in the Election.
- 5.14 On the second day following the close of the nomination period, the Electoral Officer shall prepare a list of Candidates whose nomination papers have been received and accepted in accordance with this Code and shall:
- (a) if nomination papers of only one Candidate for Mayor have been accepted, declare that person to be elected by acclamation;
 - (b) if the number of Candidates for Councillor whose nomination papers have been accepted does not exceed the number to be elected, declare those persons to be elected; and
 - (c) where more than the required number of persons are nominated for Election as Mayor or Councillors, announce that an Election will be held.
- 5.15 Within 3 days following the end of the nomination period, the Electoral Officer shall post, in at least one conspicuous place On Reserve, a list containing the names of the Candidates, the names of those Electors who have endorsed their nomination papers and the corresponding declarations and statements required under this Code.

PART 6 CANDIDACY

- 6.1 Only Electors who meet the requirements of a Candidate as set out in this Code may be nominated as a Candidate.
- 6.2 A person may only be a Candidate for one of the offices of Mayor, On-Reserve Councillor or Off-Reserve Councillor in any Election.

Eligibility

- 6.3 Except as prohibited in section 6.4, any Elector who meets the definition of Candidate shall be eligible to be nominated for the position of Mayor or Councillor, but not both.
- 6.4 No Elector shall be eligible to be nominated if he or she:
- (a) has been found to have committed a Corrupt election practice or has been deemed ineligible under section 15.1 and 15.2 of the Election Code; or
 - (b) is employed by a Lax Kw'alaams Band Entity, unless he or she is willing to resign or take a leave of absence from their position immediately following their Election to Council;

Withdrawal

- 6.5 A Candidate may withdraw his or her candidacy within five days of the end of the nomination period by submitting a written withdrawal of nomination to the Electoral Officer.
- 6.6 A Candidate who withdraws his or her candidacy shall forfeit his or her deposit.
- 6.7 A Candidate who dies before the close of the polls shall be considered to have withdrawn his or her candidacy and the \$100.00 deposit will be returned to the estate of that person.

PART 7 ELECTION CODE OF CONDUCT

- 7.1 Every person is in breach of the Election Code of Conduct who, directly or indirectly offers a bribe to influence an Elector to vote or refrain from voting for a particular Candidate, or during term of office, accepts or agrees to accept a bribe that is offered.
- 7.2 Every person is in breach of the Election Code of Conduct who, by intimidation, bullying or duress, compels a person to vote or refrain from voting for a particular Candidate in an Election.

PART 8 PRE-ELECTION PROCEDURE

Acclamation

- 8.1 Where the office of the Mayor and/or all offices of Councillor are filled without the need for an Election, the Electoral Officer shall post in at least one conspicuous place On-Reserve, and mail to every Elector who resides Off-Reserve and who has registered to vote with the Electoral Officer, a notice that sets out the names of the persons who have been acclaimed and states that an Election will not be held.

Online Voting

- 8.2 The Council may direct the Electoral Officer to permit voting by electronic means.

Ballots

- 8.3 The Electoral Officer shall prepare ballots setting out:
- (a) the names of the Candidates nominated for Election as Mayor, in alphabetical order by surname and residency; and
 - (b) the names of the Candidates nominated for election as On-Reserve Councillors and Off-Reserve Councillors, in alphabetical order by surname and residency.
- 8.4 Where two or more Candidates have the same name, the Electoral Officer shall add to the ballots additional information necessary to distinguish between those Candidates. The

ballot may, at the request of the Candidate, include a Candidate's commonly used nickname.

Notice of the Election

- 8.5 The Election shall be held at least 42 days after the end of the nomination period.
- 8.6 The Electoral Officer shall, within 3 days after the end of the nomination period, post a notice of Election in at least one conspicuous place On-Reserve and on the Lax Kw'alaams Band website.
- 8.7 The notice shall include:
- (a) the date of the Election;
 - (b) the times at which the Polling Station(s) will open and close;
 - (c) the location of the Polling Station(s);
 - (d) the time and location of the counting of the votes; and
 - (e) a statement that the Voters List is posted for public viewing and its location.

Mail-in Ballots

- 8.8 An Elector who wishes to obtain a mail-in voting package must complete and sign a request to vote by Mail-in Ballot and return it to the Electoral Officer along with Proof of Identity. If the Electoral Officer is in receipt of an Elector's request to vote by Mail-in Ballot and Proof of Identity at least 14 days before the day on which the Election is to be held, then the Electoral Officer shall between 35 days and 10 days before the day on which the Election is to be held mail or otherwise deliver a Mail-in Ballot package to the Elector who so requests consisting of:
- (a) ballot(s) for Mayor and On-Reserve and Off-Reserve Councillor 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 ballots;
 - (d) a Voter Declaration Form, which shall set out:
 - (i) the name of the Elector;
 - (ii) the membership number, date of birth, address and phone number of the Elector;
 - (iii) the name, address and telephone number of the witness to the signature of the Elector;

- (e) the notice of Election set out this Code; and
 - (f) a letter of instruction regarding voting by Mail-in Ballot which shall also include:
 - (i) a statement advising Electors 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; and
 - (ii) a list of the names of any Candidates who were acclaimed (if applicable).
- 8.9 An Elector who is ordinarily Resident of Lax Kw'alaams who is unable to vote in person on Election day may, at least 1 day prior to the day on which the Election is to be held, request a Mail-in Ballot package under section 8.8; the Electoral Officer or deputy shall hand deliver a Mail-in Ballot package described in section 8.8 to the Elector who so requests.
- 8.10 The Electoral Officer shall indicate on the Voters List that a ballot has been provided to each Elector to whom a Mail-in Ballot was mailed or otherwise provided and keep a record of the date on which, and the address to which, each Mail-in Ballot was mailed or otherwise provided.
- 8.11 An Elector shall vote by Mail-in Ballot by:
- (a) placing an "X" or other mark that clearly indicates the Elector's choice, but does not identify the Elector, opposite the name of the Candidate or Candidates for whom he or she desires to vote;
 - (b) folding the ballot in a manner that conceals the names of the Candidates or any marks but exposes the Electoral Officer's initials on the back;
 - (c) placing the ballot in the inner envelope and sealing the envelope;
 - (d) completing and signing the Voter Declaration Form in the presence of a witness who is at least 18 years of age;
 - (e) placing the inner envelope and the completed, signed and witnessed Voter Declaration Form in the postage-paid envelope; and
 - (f) delivering, mailing or otherwise ensuring receipt by the Electoral Officer of the envelope before the close of polls on the day of the Election.
- 8.12 Where an Elector is unable to vote in the manner set out in this Code, the Elector may enlist the assistance of another person to mark the ballot and complete and sign the Voter Declaration Form in accordance with that section.
- 8.13 Mail-in ballots that are not received by the Electoral Officer before the close of polls on the day of the Election shall not be counted.

Online Voting Platform Requirements

- 8.14 If the Council chooses to proceed with online voting any electronic voting platform must be approved for use by the Electoral Officer and:
- (a) be provided by an independent third party service provider;
 - (b) use a unique identification process for each eligible Elector;
 - (c) keep online voting results secret at all times and encrypt them in a manner in which they can only be revealed to the Electoral Officer;
 - (d) generate and provide automated e-mail notifications in real-time to the Electoral Officer upon online voting completion by Electors; and
 - (e) generate and provide detailed activity reports to the Electoral Officer on a regular basis and upon request.

Online Voting Processes

- 8.15 Prior to the opening of the online polls, the electronic voting platform must be populated with the Voters List.
- 8.16 Online voting must begin and close at the hour and date specified in the notice of Election for online voting.
- 8.17 The electronic voting platform must only allow an eligible Elector to vote one (1) time.
- 8.18 When a person signs into the electronic voting platform to vote the provider of the electronic voting platform must:
- (a) Record and provide the Electoral Officer with the Elector's name and the date and time their online ballot is received, and
 - (b) Place their online ballot in an electronic ballot box.
- 8.19 Once an eligible Elector has voted online:
- (a) The electronic voting platform must not allow a person to vote again electronically using that eligible Elector's unique identification process; and
 - (b) The Electoral Officer and polling clerks must not allow that eligible Elector to vote in any other manner.
- 8.20 The Electoral Officer may implement procedures he or she deems necessary to effectively administer online voting, provided such procedures are not inconsistent with this Code.
- 8.21 After the close of polls, the electronic voting platform must:

- (a) Seal the electronic ballot box;
- (b) Remove the option to vote online; and
- (c) Provide the online voting results to the Electoral Officer.

Equipment for the Election

8.22 The Electoral Officer shall, before the Polling Station is open, supply the Polling Station with:

- (a) sufficient ballot boxes;
- (b) a sufficient number of ballots;
- (c) a sufficient number of voting compartments enabling Electors to mark their ballots free from observation;
- (d) instruments for marking the ballots;
- (e) a sufficient number of voting instructions as may be required;
- (f) all other equipment necessary to establish and equip the Polling Stations; and
- (g) the final Voters List.

Polling Stations

8.23 The Electoral Officer will establish two Polling Stations: one On-Reserve, and one in Prince Rupert. Online voting is also permitted.

PART 9 ELECTION DAY

Electoral Officer

9.1 The Electoral Officer shall be allowed to vote in the Election if they are on the Voters List.

Polling Hours

9.2 The Polling Station shall be open from 9 a.m. until 8 p.m. local time on the day of the Election.

Verification of the Ballot Box

9.3 The Electoral Officer or Deputy Electoral Officer shall, immediately before the start of the poll:

- (a) provide one ballot box for the position of Mayor, and one ballot box for the position of Councillor;

- (b) open the ballot boxes and call such persons as may be present to witness that they are empty and complete a written statement to that effect, verified by a witness;
- (c) lock and/or properly seal the ballot boxes in a manner preventing them from being opened without breaking the seal; and
- (d) place the ballot boxes in public view for the reception of the ballots.

Secrecy and Security

- 9.4 Voting shall be by secret ballot.
- 9.5 The Electoral Officer or Deputy Electoral Officer shall maintain order at all times in the Polling Station. Any person who in any way interferes, disrupts or attempts to influence the orderly conduct of the poll may be removed from the polling station.
- 9.6 No person shall, on the day the Election is held, on the premises of the Polling Station:
 - (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) try to interfere with or influence any Elector in marking his or her ballot; or
 - (c) try to obtain information as to how an Elector is about to vote or has voted.

Voting Procedure

- 9.7 Each person, on arriving at the Polling Station, shall give his or her name to the Electoral Officer or Deputy Electoral Officer. The Electoral Officer or the deputy electoral may request identification from an Elector for the purpose of confirming his or her identity.
- 9.8 The Electoral Officer or Deputy Electoral Officer shall, if the person's name is set out in the Voters List, place his or her initials on the ballot(s) and provide them to the Elector.
- 9.9 The Electoral Officer or Deputy Electoral Officer shall cause to be placed in the proper column of the Voters List a mark opposite the name of every person receiving a ballot.
- 9.10 An Elector to whom a Mail-in Ballot was mailed or provided under this Code may obtain a ballot and vote online or in person at a polling place 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 that the Elector has lost the Mail-in Ballot, signed by the Elector in the presence of the Electoral Officer, Deputy Electoral Officer, a justice of the peace, a notary public or a commissioner for oaths.

- 9.11 The Electoral Officer or Deputy Electoral Officer shall, when requested to do so, explain the method of voting to the Elector.
- 9.12 After receiving a ballot, an Elector shall:
- (a) immediately proceed to the compartment provided for marking ballots;
 - (b) mark the ballot by placing an "X" or other mark that clearly indicates the Elector's choice but does not identify the Elector opposite the name of the Candidate or Candidates for whom he or she desires to vote;
 - (c) fold the ballot in a manner that conceals the names of the Candidates and any marks, but exposes the initials on the back; and
 - (d) deliver the ballot to the Electoral Officer or Deputy Electoral Officer;
 - (e) or complete the online voting process.
- 9.13 On receipt of a completed ballot, the Electoral Officer or Deputy Electoral Officer shall, without unfolding the ballot, verify the initials placed on it and deposit it in the ballot box in the presence of the Elector and any other persons entitled to be present at the Polling Station.
- 9.14 While an Elector is in the compartment for the purpose of marking his or her ballot, no other person shall, except as provided in this Code, be allowed in the same compartment or be in any position from which they can see the manner in which the Elector marks their ballot.

Voting Irregularities

- 9.15 At the request of any Elector who is unable to vote in the manner set out in this Code, the Electoral Officer or Deputy Electoral Officer shall assist that Elector by marking his or her ballot in the manner directed by the Elector in the presence of another Elector selected by the Elector as a witness and shall place the ballot in the ballot box.
- 9.16 The Electoral Officer or Deputy Electoral Officer shall note on the Voters List opposite the name of an Elector requiring assistance, the fact that the ballot was marked by the Electoral Officer at the request of the Elector and the reasons for the request.
- 9.17 An Elector who has inadvertently spoiled their ballot paper, shall, on one occasion only, upon returning the spoiled ballot paper to Electoral Officer or Deputy Electoral Officer, be entitled to obtain another ballot paper. The Electoral Officer or Deputy Electoral Officer shall write the word "cancelled" upon the spoiled ballot paper and preserve it.
- 9.18 Any person who has received a ballot and who leaves the polling place without delivering the same to the Electoral Officer or a Deputy Electoral Officer in the manner provided, shall forfeit his or her right to vote at the Election, and the Electoral Officer or Deputy Electoral Officer shall make an entry in the Voters List in the column for remarks

opposite the name of such person to show that such person received a ballot and declined to vote.

- 9.19 Any person who has received a ballot and returns the ballot, having refused to vote, shall forfeit his or her right to vote at the Election, and the Electoral Officer or Deputy Electoral Officer shall make an entry in the Voters List in the column for remarks opposite the name of such person to show that such person received a ballot and declined to vote and shall mark upon the face of the ballot the word “declined” and all ballots so marked shall be preserved.

Closing of the Polling Station

- 9.20 Every Elector who is inside the Polling Station at the time fixed for closing the poll shall be entitled to vote before the poll is closed.

PART 10 COUNTING OF THE VOTES/ OPENING MAIL-IN BALLOTS

- 10.1 On the day after the Election, the Electoral Officer will, in full view of at least two other Deputy Electoral Officers and any Scrutineers who are present, reveal the online voting results and open each envelope containing a Mail-in Ballot that was received before the close of the polls and, without unfolding the ballot:
- (a) reject the ballot if:
 - (i) it was not accompanied by a completed Voter Declaration Form, or the Voter Declaration Form is not signed or witnessed;
 - (ii) the name of the Elector set out in the Voter Declaration Form is not on the Voters List; or
 - (iii) the Voters List shows that the Elector has already voted.
 - (b) in any other case, place a mark on the Voters List opposite the name of the Elector set out in the Voter Declaration Form, and deposit the ballot in the correct box for the Mayor, and/or Council ballot box.

Counting the Ballots

- 10.2 Immediately following the verification of Mail-in Ballots and the online ballots at the primary Polling Station and or secondary Polling Station, the Electoral Officer shall, in the presence of such Deputy Electoral Officers or Scrutineers as may be present, open the ballot box or boxes, examine each ballot and call out the names of the Candidates for whom the votes cast on all valid ballots.
- 10.3 A Deputy Electoral Officer shall mark a tally sheet in accordance with the names being called for the purpose of counting the votes cast for each Candidate.

Rejected Ballots

- 10.4 In examining the ballots, the Electoral Officer or Deputy Electoral Officers must reject any ballots that:
- (a) do not contain the initials of the Electoral Officer or Deputy Electoral Officer;
 - (b) do not give a clear indication of the Elector's intention;
 - (c) contain more votes than there are Candidates to be elected; or
 - (d) contain a mark by which the voter can be identified.
- 10.5 The Electoral Officer or Deputy Electoral Officer shall number objections to ballots raised and place a corresponding number on the back of the ballot paper with the word "allowed" or "disallowed", as the case may be, with his or her initials.

Procedure for Tied Votes

- 10.6 If it is not possible to determine the successful Candidate(s) for either a Mayor or Councillor position due to a tied vote, the Electoral Officer shall immediately conduct a recount and publicly announce to all those present in the Polling Station that a recount will be immediately conducted.
- 10.7 If the recount fails to determine a successful Candidate, the Electoral Officer shall decide the vote as follows:
- (a) the Deputy Electoral Officer shall place the names of the tied Candidates on blank papers, and having folded the papers and placed each in an empty ballot box; and
 - (b) the Electoral Officer without looking at the papers, shall draw for the position available. The Candidate whose name appears on the piece of paper the Electoral Officer has drawn shall be the successful Candidate.

PART 11 POST-ELECTION PROCEDURES

Announcement

- 11.1 After completing the counting of the votes and establishing the successful Candidates, the Electoral Officer shall declare to be elected:
- (a) for the positions of Mayor the Candidate for the having the highest number of votes;
 - (b) for the positions of Off-Reserve Councillor, the 3 Candidates having the highest number of votes; and
 - (c) for the offices of On-Reserve Councillor, the 9 Candidates having the highest numbers of votes

- 11.2 Despite section 11.1 a Candidate for the office of Off-Reserve Councillor shall only be declared to be elected if he or she was in the top 10 Candidates in the Election. If less than three Candidates for the office of Off-Reserve Councillor were in the top 10 Candidates in the Election, then the Electoral Officer shall declare to be elected:
- (a) for the office of Mayor, the Candidate having the highest number of votes;
 - (b) for the offices of Off-Reserve Councillor, the Candidates in the top 10 Candidates in the Election, if any; and
 - (c) for the offices of On-Reserve Councillor, the Candidates having the highest number of votes such that the total number of Councillors declared to be elected is 12.
- 11.3 Following the declaration of elected Candidates made pursuant of this Code the Electoral Officer shall complete and sign an Election report, which shall contain:
- (a) the names of all Candidates;
 - (b) the number of ballots cast for each; and
 - (c) the number of Rejected Ballots.
- 11.4 Within four days after counting all of the votes, the Electoral Officer shall:
- (a) sign and post, in at least one conspicuous place at the Lax Kw'alaams Band office and on the Lax Kw'alaams Band website the Election report; and
 - (b) mail a copy of the Election report to every Off-Reserve Elector who has voted by Mail-in-Ballot who resides Off-Reserve.

Retention of Ballots and Other Election Material

- 11.5 The Electoral Officer shall deposit all ballot papers in sealed envelopes, including those rejected, spoiled and unused, and shall keep these ballots, online voting results and all materials in connection with the Election.
- 11.6 All ballots and materials kept in accordance with this Code shall be kept for 45 days from the date on which the Election was held or until a decision on an Election appeal is made, 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 who shall make a declaration that they witnessed the destruction of those papers.

Mayor and Councillor Appointment of Office

- 11.7 A Candidate who has been elected Mayor or Councillor shall, within 3 business days of the Electoral Officer's declaration under section 11.1, sign the Council Code of Conduct confirming he or she agrees to uphold and comply with the Council Code of Conduct guidelines and shall take and sign the Oath of Office, confirming he or she agrees to uphold and comply with the Oath of Office.

- 11.8 There will be a two-day transitional period between the Election and the changeover of the governing Council where:
- (a) the outgoing Council must meet with the incoming Council to brief them on the affairs of the Council; and
 - (b) the new Council does not begin until the end of the 2-day transitional period.
- 11.9 If a person elected as Mayor or On-Reserve Councillor or Off-Reserve Councillor was not qualified to be a Candidate in accordance with this Code, then the Electoral Officer shall declare the office of that person vacant and declare to be elected the Candidate who had the highest votes in the Election.
- 11.10 Despite section 11.9, Off-Reserve Candidates shall only fill a vacancy in the office of Off-Reserve Councillor if the Off-Reserve Candidate who had the next highest votes in the Election was in the top 10 Candidates in the Election. If he or she was not, then the On-Reserve Candidate who had the next highest votes in the Election shall fill the vacancy.
- 11.11 The Electoral Officer shall give notice in writing to the elected Candidate whose office is declared vacant under section 11.9 and to the elected Mayor and Council.

PART 12 ELECTIONS APPEAL BOARD

- 12.1 If an Election appeal is filed according to the requirements outlined in Part 15 of the Election Regulations, the Electoral Officer (or in the case of an appeal related to the Electoral Officer, the Band's Legal Counsel), shall immediately instruct the BC Arbitration and Mediation Institute ("BCAMI") to appoint an Arbitrator with experience in First Nations issues (the "Election Appeal Board"). In the event that BCAMI ceases to exist, or if BCAMI is unable to appoint an Arbitrator, the Electoral Officer shall, with the help of Lax Kw'alaams Band's legal counsel, contact a similar professional organization to appoint the Election Appeal Board.

Functions

- 12.2 The Election Appeal Board shall hear all Election appeals about the Election of the Mayor and Councillors and the removal of the Mayor or any Councillors in connection with an Election appeal as authorized by this Code.
- 12.3 The Election Appeal Board shall operate independently from the Band Council.
- 12.4 The Election Appeal Board may change any time limits imposed by the Election Code with respect to any Election appeal.

PART 13
ELECTION APPEAL MECHANISM TIMING

13.1 A Candidate or an Elector may, within 45 days from the date on which the Election was held, submit an Election appeal to the Electoral Officer by mail.

Grounds for Election Appeals

13.2 An Election appeal submitted to the Electoral Officer must sufficiently outline, in writing, one or more of the following:

- (a) that the person declared elected was not qualified to be a Candidate, including evidence in support of such an allegation;
- (b) that there was a violation of this Code in the conduct of the Election that might have affected the result of the Election, including a violation of the Election Code of Conduct as set out in Part 7, and must identify the Candidate affected, including evidence in support of such an allegation; or,
- (c) that there was Corrupt or fraudulent practice in relation to the Election, including evidence in support of such an allegation.

Submission

13.3 An Election appeal submitted to the Electoral Officer must:

- (a) be in writing and set out the facts supporting the grounds for the Election appeal and must include any supporting documentation;
- (b) clearly identify which Candidates are affected by the Election appeal (the “Affected Candidates”) and/or which Elections Officers, if any, are affected by the Election appeal (the “Affected Elections Officers”);
- (c) be accompanied by a non-refundable fee of \$100.00 by certified cheque or money order payable to Lax Kw’alaams Band;
- (d) be copied to the Lax Kw’alaams Band’s lawyers listed on the notice of nomination.

Procedure

13.4 Upon receiving of an Election appeal, the Electoral Officer shall:

- (a) where the Election appeal is properly as set out in sections 13.1, 13.2, and 13.3 of this Code; and on its face, suggests that the person declared elected was not qualified to be a candidate, a violation of this Code in the conduct of the Election, including a violation of the Election Code of Conduct, or that there was Corrupt or fraudulent practice in relation to the Election, form an Election Appeal Board as set out in section 12.1 of the Election Code and shall forward a copy of the

Election appeal, together with supporting documents to the Election Appeal Board, the Affected Candidates and any Affected Electoral Officers; or

- (b) where the Election appeal is not properly submitted as set out in sections 13.1, 13.2, and 13.3; or does not on its face, suggest that the person declared elected was not qualified to be a candidate, a violation of this Code in the conduct of the Election, including a violation of the Election Code of Conduct, or that there was Corrupt or fraudulent practice in relation to the Election, inform the appellant(s) in writing that the Election appeal will not receive further consideration.

Response to the Allegations

- 13.5 The Affected Candidates and the Affected Electoral Officers may, within 14 days of the receipt of the Election appeal(s), forward to the Electoral Officer and Legal Counsel, by mail, a written response to the allegations, together with any supporting documentation (the “Appeal Response”). The Electoral Officer shall forward the Appeal Response to the Election Appeal Board.

Investigation

- 13.6 Where an Election appeal is referred to the Election Appeal Board, it shall conduct an investigation as soon as is practical and in accordance with the rules of procedural fairness (the “Appeal Investigation”). During the Appeal Investigation, the Election Appeal Board shall seek information from any individual they deem appropriate and give the Affected Candidates and the Affected Electoral Officers an adequate opportunity to respond to all allegations and evidence raised in the Election appeal or in the course of the Appeal Investigation.
- 13.7 The Election Appeal Board may, if it deems the material that has been filed is not adequate for deciding the Election appeal, conduct further investigation into the matter, as it deems necessary.

Decision

- 13.8 Within 45 days of completing the Appeals Investigation, the Election Appeal Board shall issue a report to the Electoral Officer (the “Appeal Report”).
- 13.9 The Appeal Report shall include:
 - (a) a summary of the investigation process followed by the Election Appeal Board, including a list of all parties interviewed;
 - (b) a summary of all of the evidence that the Election Appeal Board received;
 - (c) a summary of the Election Appeal Board’s findings of fact;
 - (d) a determination as to whether or not the Election Appeal Board concludes, on a balance of probabilities, that grounds exist for the appeal to be allowed;

- (e) a determination as to whether or not the Election Appeal Board concludes the conduct under review affected the result of the Election; and
- (f) a conclusion regarding whether or not the Election appeal is upheld or dismissed. Where the Election appeal is upheld the Appeal Report shall set aside the Election of the elected Affected Candidate(s).

13.10 The Electoral Officer shall:

- (a) in the Electoral Officer's discretion, publish a summary of the Appeal Report in the community's newsletter, in a separate written notice delivered or mailed to all Electors, or post a summary of the Appeal Report on the community channel of the Lax Kw'alaams Band website; and
- (b) post a summary of the Appeal Report in at least one conspicuous place in the Lax Kw'alaams Band Office.

13.11 The findings and conclusions of the Election Appeal Board set out in the Appeal Report are final and binding upon all parties and will not be subject to appeal.

13.12 If the Appeal Report concludes that grounds for the Election appeal as set out in section 13.2 have been established and the Election appeal is upheld, any applicable Council position(s) which are rendered vacant as a result of the Appeal Report will be filled as set out in section 11.9 of this Code.

PART 14 THE COUNCIL

Composition and Size

14.1 The Council shall consist of:

- (a) 1 Mayor who is a Lax Kw'alaams Band member; and
- (b) 12 Councillors who are Lax Kw'alaams Band members selected in accordance with section 11.1 of this Code, a maximum of three of whom shall be Off-Reserve Councillors with the highest votes and the remainder of whom shall be On-Reserve Councillors.

Meetings

14.2 The first meeting of the Council shall be held not later than 3 business days after its Election, and meetings shall thereafter be held on such days and at such times as may be necessary for the business of the Council or the affairs of the Lax Kw'alaams membership.

14.3 No member of the Council may be absent from 3 consecutive meetings without being authorized to do so by the Council.

- 14.4 The Mayor or a quorum of the Council may summon a special meeting of the Council (e.g. for an emergency or crisis that requires an immediate decision).
- 14.5 The secretary to the Council shall notify each member of the Council of the day and hour and place of each meeting of the Council.

Order and Proceedings

- 14.6 A majority of the whole council shall constitute a quorum.
- 14.7 If no quorum is present within 30 minutes after the time appointed for the meeting, the secretary shall call the roll and take the names of the members of Council present and Council shall stand adjourned until the next meeting.
- 14.8 The Mayor shall be the chairperson at meetings of Council. In the absence of the Mayor, a chairperson shall be chosen from among the Councillors present until his or her arrival.
- 14.9 Upon a quorum being present, the chairperson shall take the chair and call the meeting to order.
- 14.10 The order of business at each regular meeting of the Council shall be in accordance with the current edition of Robert's Rules of Order which shall govern in all cases to which they are applicable and in which they are not inconsistent with this Code and any special rules of order the Council may adopt.
- 14.11 The Council may appoint special committees on any matters as the interests of membership may require.

Mode of Election for Mayor and Councillors

- 14.12 Mayor and Councillors shall be elected by a vote held as set out in this Code.

Term of Office

- 14.13 The term of office for the position of Mayor and Councillors shall be four (4) years.
- 14.14 Council shall, by Resolution, establish the date on which the Election is to be held which must be no sooner than 100 days before, and no later than 10 days after, the end of the term of office of the Council.

Vacancy

- 14.15 The Mayor or Councillor position may become vacant if, while in office:
- (a) the Mayor or Councillor resigns in writing from office of his or her own accord;
 - (b) the Mayor or Councillor has been unable to perform the functions of his or her office for more than 6 months due to illness or other incapacity;
 - (c) the Mayor or Councillor dies; or

- (d) the Mayor or Councillor is removed from office as set out in section 15.1 and 15.2 and/or Part 13 of this Code.

PART 15
REMOVAL OF COUNCIL MEMBERS FROM OFFICE

- 15.1 The Mayor or Councillor shall be removed from office if he or she:
- (a) has been absent from 3 Council meetings within a one-year period without prior authorization from the Mayor;
 - (b) fails to uphold the Council Code of Conduct;
 - (c) fails to uphold the Oath of Office;
 - (d) fails to remove himself/herself from a Conflict of Interest situation; or
 - (e) accepts or offers a bribe, forges a Council document or otherwise acts dishonestly in his or her role.
- 15.2 The Mayor or Councillor who is removed from office shall not be permitted to be nominated for a position on Mayor or Councillor for a period of one Consecutive Term after the removal.

Procedure

- 15.3 A petition to declare a person ineligible to continue to hold the office of Mayor or Councillor shall be initiated by:
- (a) a Lax Kw'alaams Band member (the "Petitioner") who is at least 18 years of age submitting a petition to the Electoral Officer and Legal Counsel. The petition must be submitted no more than 90 days after the event(s) giving rise to the ground for removal occurred/was discovered. The petition must identify:
 - (i) the Mayor or the Councillor the petition seeks to remove (the "Respondent");
 - (ii) the reason under sections 15.1 and 15.2 on which removal of the Respondent is sought, including the date upon which the event giving rise to the ground for removal occurred/was discovered;
 - (iii) the evidence in support of the petition, supported by a written statement sworn before a duly appointed commissioner for taking affidavits;
 - (iv) the name and signature of the Petitioner;
 - (v) the number of signatures equal to at least 51% of the Electors who voted in the last Election in support of the Petition; and

(vi) a non-refundable filing fee of \$100.00 payable to the Lax Kw'alaams Band to be used solely in connection with the administrative costs of addressing the petition.

or;

(b) within 90 days after the event(s) giving rise to the ground for removal occurred/was discovered, at least seven (7) Band Council members (the "Petitioners") passing a Band Council Resolution (the "Resolution") and submitting a petition to the Electoral Officer and the Legal Counsel on which shall appear:

(i) the reason under section 15.1 and 15.2 on which removal of the Mayor or Councillor is sought, including the date upon which the event giving rise to the ground for removal occurred/was discovered;

(ii) the evidence in support of the Resolution, supported by an affidavit sworn before a duly appointed commissioner for taking affidavits; and

(iii) the signatures of all Band Council members who voted for the removal.

15.4 In the event that any Band Councillors plan to consider whether or not to pass the Resolution as contemplated in section 15.3(b):

(a) the Mayor or Councillor who is subject of the proposed petition (the "Respondent") shall be provided with two (2) weeks' advanced notice of any Band Council meeting where the Band Council debates whether or not to pass the Resolution (the "Notice");

(b) the Notice shall include a summary of the grounds alleged, including a summary of the relevant facts; and disclosure of all relevant evidence in support of the proposed Resolution;

(c) despite the Conflict of Interest rules in the Council Code of Conduct, the Respondent shall have the opportunity to address Band Council before it votes on the Resolution; and,

(d) the Respondent shall be given a reasonable opportunity to be present if Band Council hears from Council members in favour of removal.

15.5 A petition to the Electoral Officer shall be submitted by delivering the petition to the office of the Lax Kw'alaams Band or by mailing it to the office of the Lax Kw'alaams Band.

15.6 On receipt of a petition, the Electoral Officer shall make sure that the petition was filed in time; complies with section 15.3; on its face, reveals breach of section 15.1 and 15.2; and if applicable, that the process set out at section 15.4 was followed. If the petition was not filed in time, does not comply with section 15.3, does not, on its face, amount to a breach of section 15.1 and 15.2 or, if applicable, the process set out at section 15.4 was not

followed, the Electoral Officer shall so notify the Petitioner and no further steps shall be taken with respect to the petition.

- 15.7 Where the Electoral Officer decides that the petition was filed within the 90 day time limit; complies with section 15.3; amounts to, on its face, a breach of section 15.1 and 15.2; and if applicable, that the process set out at section 15.4 was followed, the Electoral Officer shall immediately, instruct BCAMI to appoint an Arbitrator with experience in First Nations issues (the “Conduct Review Board”). In the event that BCAMI ceases to exist, or if BCAMI is unable to appoint an Arbitrator, the Electoral Officer shall, with the help of Legal Counsel, contact a similar professional organization to appoint the Conduct Review Board. The Electoral Officer shall also provide a copy of the petition to the Respondent and post a further copy of the petition in the Band Office.
- 15.8 The Conduct Review Board shall operate independently from Band Council.
- 15.9 The Respondent may, within 14 days of the receipt of the petition, forward to the Electoral Officer by mail, a written response to the allegations in the petition, together with any supporting documentation (the “Petition Response”). The Electoral Officer shall forward copies of the Petition Response to the Conduct Review Board.
- 15.10 Once it has been formed, the Conduct Review Board shall conduct an investigation as soon as practicable and in accordance with the rules of procedural fairness (the “Conduct Investigation”). During the Conduct Investigation, the Conduct Review Board shall canvass all witnesses and give the Respondent a reasonable opportunity to respond to all allegations and evidence raised in the petition or in the course of the Conduct Investigation. The Conduct Review Board shall produce a report of its findings (the “Petition Report”) to the Electoral Officer within 45 days of completing the Conduct Investigation.
- 15.11 The Petition Report shall include:
 - (a) a summary of the investigation process followed by the Conduct Review Board, including a list of all witnesses interviewed;
 - (b) a summary of the Conduct Review Board’s finding of facts;
 - (c) a decision as to whether the Conduct Review Board believes, on a balance of probabilities, that the Respondent breached section 15.1 and 15.2 of the Election Code, including rationale in support of that decision; and,
 - (d) a conclusion regarding whether the petition is upheld or dismissed. Where the petition is upheld the Petition Report shall:
 - (i) declare the Council position of the Respondent vacant; and
 - (ii) declare Respondent disqualified from being a Candidate for a period of up to 4 years from the date of the Petition Report.

15.12 The Electoral Officer shall:

- (a) deliver a summary of the Petition Report to Band Council, the Petitioner(s) and the Respondent;
- (b) in the Electoral Officer's discretion, publish the summary of the Petition Report in the community's newsletter, in a separate written notice delivered or mailed to all Electors, or post the summary of the Petition Report on the community page of the Lax Kw'alaams Band website; and
- (c) post the summary of the Petition Report in at least one conspicuous place in the Lax Kw'alaams Band Office.

15.13 The findings and conclusions of the Conduct Review Board set out in the Petition Report are final and binding upon all parties and will not be subject to appeal.

15.14 If the Petition Report concludes that section 4.18 of the Election Code has been breached, the Respondent's Council position is declared vacant and shall be filled as set out in sections 15.15 and 15.16 of the Election Code.

Vacancy of Mayor and Council

15.15 In the event that the office of the Mayor or On-Reserve Councillor or Off-Reserve Councillor becomes vacant as the result of a petition initiated under section 15.3 of the Election Code, the Candidate who had the next highest votes in the last general Election shall fill the vacancy and hold office for the remainder of the Council's term of office.

15.16 Despite section 15.15, a vacancy in the office of Off-Reserve Councillor shall only be filled by an Off-Reserve Candidate if the Off-Reserve Councillor who had the next highest votes in the last general Election was in the top 10 Candidates in the last general Election. If he or she was not, then the vacancy shall be filled by the On-Reserve Candidate who had the next highest votes in the last general Election. If a vacancy cannot be filled as set out in sections 15.15 and 15.16 then a By-Election will be called.

PART 16 AMENDMENTS

16.1 Development and passage of amendments to this Code may be initiated by a simple majority of Council.

16.2 Upon passing a Resolution as set out in section 16.1, Council shall prepare a notice that sets out a:

- (a) summary of the proposed amendments to this Code;
- (b) statement that the full copy of the proposed amendments can be obtained at the Lax Kw'alaams Band administration office; and
- (c) description of the amendment process.

- 16.3 The notice provided for in section 16.2 shall be mailed or hand delivered to all known Electors.
- 16.4 An Elector may, within 45 days from the date the section 16.2 notice is mailed or hand delivered to them, file a written objection to the proposed amendments.
- 16.5 If no written objection is received from an eligible Elector as set out in section 16.4, Council shall, by way of Resolution, adopt the proposed amendment.
- 16.6 If there are a number written objections equal to, at least, 15% of the Electors who voted in the most recent Election, the Council shall arrange for a referendum to poll all eligible Electors by a simple majority vote before proceeding with the proposed amendments. The decision of the referendum will be binding on Council.
- 16.7 Any amendment approved more than 3 months prior to an Election shall be effective for that Election. Any amendments approved less than three (3) months prior to an Election shall not come into force until the conclusion of that Election process.
- 16.8 Notwithstanding section 16.2, amendments to this Code that only involved clerical changes, such as fixing typographical errors or renumbering sections may be made by Council.

**SCHEDULE A
LAX KW'ALAAMS BAND
COUNCIL CODE OF CONDUCT**

A. PURPOSE

The purpose of this Code of Ethics, Conduct and Conflict of Interest (the “Council Code of Conduct”) is to set out the professional duties and obligations of Mayor and Council members that will protect the best interests of the Lax Kw’alaams Band. The Council Code of Conduct is also designed to identify the expectations Lax Kw’alaams Band members can have of their leaders and representatives.

The Mayor and Council are entrusted by the Lax Kw’alaams Band with the authority to govern and lead. If Council is to lead, then on each given issue, it must strive to speak with a single voice.

ETHICS

Ethics refers to a person’s values and conduct, with reference to standards of fairness, impartiality, professionalism, honesty, trustworthiness, confidentiality, and respectfulness.

B. COUNCIL CODE OF CONDUCT

This Council Code of Conduct of conduct is a set of rules outlining the responsibilities and practices of the Mayor and Council members based on ethical principles and the rule of law.

The Mayor and Councillors of the Lax Kw’alaams Band shall:

1. Promote and maintain, at all times, in their actions and words, the integrity and dignity of the Lax Kw’alaams Band and its programs, government, staff, and members;
2. Represent the membership and participate in Council meetings to the best of their ability;
3. Conduct themselves in a professional and responsible manner that will bring credit to themselves, the Council, and the membership;
4. Be prompt, prepared, and conscientious in the performance of their duties as Council members;
5. Use initiative to find ways of fulfilling their duties as Council members;
6. Attend all Council meetings and Annual General Meetings unless there is a valid reason for absence or lateness, in which case the Councillor shall inform the Mayor or band administrator in advance of the meeting;
7. Attend all meetings, workshops, conferences or other events as assigned by Council, as official delegates or representatives of Lax Kw’alaams, and formally report back to Council on the proceedings of such meetings;

8. Maintain a positive and cooperative attitude when dealing with fellow Council members, Lax Kw'alaams Band employees, and Lax Kw'alaams Band members;
9. Work as team members towards the betterment of the Lax Kw'alaams Band;
10. Work together in a constructive and supportive manner, and respect and support resolutions passed by Council in Council meetings;
11. Not publicly or privately criticize other Council members, the Mayor, Lax Kw'alaams Band employees or Lax Kw'alaams Band members;
12. Uphold contracts approved by the present and past Council unless due diligence otherwise warrants;
13. Not give out official or confidential information obtained while a Councillor unless the release of such information has been authorized by Council motion;
14. Not discuss or disclose any "In-Camera" business to any persons who did not participate in the "In-Camera" session(s); and
15. Not speak on behalf of the Lax Kw'alaams Band without the prior approval of the Mayor.

C. LOYALTY

1. All Councillors, including the Mayor, must be loyal to the interests of all Lax Kw'alaams Band members. As such, when acting in an official capacity as a Council member, this loyalty comes first over:
 - (a) any advocacy or special interest group or membership on other councils, boards or staffs;
 - (b) the personal interest of any Council member acting as an individual user of a Lax Kw'alaams Band program or service; and
 - (c) the individual Councillor's family.

D. CONFLICT OF INTEREST

1. Neither the Mayor, Councillors, nor any member of their immediate family, shall be allowed to benefit from contracts, agreements or other undertakings that are associated with the Lax Kw'alaams Band unless such awards are made through an open and fair competition.
2. The Mayor and Councillors shall not:
 - (a) take part in the discussion of, or vote on, resolutions that would directly benefit them, or any members of their immediate family, without first declaring their conflict of interest;

- (b) accept gifts, hospitality, or entertainment other than those having nominal or insignificant value, or related to cultural protocol;
 - (c) be placed in a situation where he or she is obligated to any person who might benefit from or seek to gain special consideration or favour;
 - (d) be a member of a hiring or selection committee where an immediate family member has applied for the position;
 - (e) benefit from the use of information acquired from the appointment to Council or from any Lax Kw'alaams Band transactions that involve decisions over which the Council member has influence, such as investments, borrowing, purchases, sales, contracts, grants, and approvals; or
 - (f) directly or indirectly use or allow the use of Lax Kw'alaams Band equipment, vehicles, keys, or property, for any purpose other than official Lax Kw'alaams Band business or as authorized by an official Lax Kw'alaams Band policy.
3. The Mayor and Councillors shall not be part of a discussion or participate on a committee where decisions on the allocation of resources may benefit him or her, or any immediate family member, without first declaring their conflict of interest.
 4. It is the responsibility of the Mayor and Councillors to inform the Council of any potential or existing conflicts of interest with regard to their immediate family members.
 5. Councillors shall not use information obtained as a result of their position for personal gain.
 6. Councillors shall not seek donations or contributions in kind from or on behalf of organizations with which they are affiliated without the prior approval of Council.
 7. For the purpose of this Council Code of Conduct, immediate family member includes:
 - (a) Father or mother (including natural or step), common-law or foster parent;
 - (b) brother, sister or first cousin;
 - (c) spouse or common law spouse;
 - (d) child (natural, step, ward, legally adopted);
 - (e) father in law, mother in law;
 - (f) grandparents;
 - (g) first aunts or uncles; and
 - (h) brother in law or sister in law.

8. Upon becoming aware of a potential or existing conflict of interest the person must immediately declare their conflict and must remove themselves from decision making, or if agreed to by Council that their participation is necessary, have the conflict noted in Council minutes.
9. A member of Council who excuses him or herself from a meeting due to a conflict of interest shall be counted as present and form part of the quorum, and the Councillor's absence must be recorded in the minutes.

E. EMPLOYMENT

1. No member of Council shall be hired as an employee or contractor of the Lax Kw'alaams Band or Band Entity unless the Council member resigns his or her Council seat immediately upon commencing such engagement or employment.
2. If an employee of the Lax Kw'alaams Band is elected to Council, he or she must either resign his or her position or take a leave of absence from his or her employment for the duration of the Council term.
3. A member of Council may hold employment with another employer and/or carry on a business provided that:
 - (a) it is not in conflict (perceived or otherwise) with this policy;
 - (b) it does not interfere with the performance of his or her Council duties;
 - (c) it does not bring Lax Kw'alaams into disrepute;
 - (d) he or she does not derive an advantage from being a Council member; and
 - (e) the matter has been reviewed by Council and has received Council approval.

F. EXERCISE OF AUTHORITY

1. The Mayor and Council members may not exercise individual authority except as set out in Council policies. As such:
 - (a) The Mayor and individual Council members must recognize that they have no authority to direct the Lax Kw'alaams Band Administrator, managers, or other staff except as may be stated under other Lax Kw'alaams Band policies adopted by the Council from time to time;
 - (b) The Mayor and individual Council members have no authority to interact with the public, the media or other entities on behalf of Council, unless the authority has been granted by the Council;
 - (c) The Mayor and individual Council members have no authority to evaluate the performance of the Lax Kw'alaams Band Administrator during the person's regular performance review, except where specifically authorized by Council and in accordance with the prescribed performance evaluation process; and

- (d) The Mayor and Council members will accept authorized signing authorities and approval processes as established by Council by-laws and Lax Kw'alaams Band policies covering such areas as budget expenditures, capital expenditures, purchases, and payments.

G. BREACH OF THIS COUNCIL CODE OF CONDUCT

1. The failure of the Mayor or a Council member to abide by this Council Code of Conduct shall result in that individual being subject to progressive discipline and/or removed from office as outlined below.
2. Potential breaches include, but are not limited to, the following:
 - (a) a breach of the Oath of Office & Confidentiality Agreement;
 - (b) conduct by an elected person within or outside the Lax Kw'alaams Band involving obscene language, fighting, or the excessive consumption of alcohol or other drugs;
 - (c) corrupt practices, bribery (giving or accepting), dishonesty or willful wrong doing;
 - (d) conflict of interest;
 - (e) insubordination (e.g. the refusal to follow the orders of Council);
 - (f) personal, physical, or sexual harassment of staff, Lax Kw'alaams Band members, or any other persons;
 - (g) disclosure of confidential information, including In-Camera business of the Mayor and Council, and any other information that the individual has acquired by reason of his or her role as a member of Lax Kw'alaams Band Council;
 - (h) speaking on behalf of the Lax Kw'alaams Band without the authorization of the Mayor and Council; or
 - (i) receiving a charge in relation to a criminal offence unless such charges relate to the protecting, enhancing, or exercising Lax Kw'alaams aboriginal treaty rights (a "Charge"). Receiving a Charge will result in the Mayor's or Council member's immediate removal from office.

PROGRESSIVE DISCIPLINE

In the event that a Councillor accused of misconduct (the "Accused Councillor") fails to comply with this Council Code of Conduct (the "Misconduct"), the Accused Councillor's Misconduct will be addressed as follows (the "Progressive Discipline Policy"):

STEP ONE: INFORMAL CENSURE

An informal censure is issued for a first occurrence of Misconduct, which in the discretion of the Mayor, or a majority of Councillors if the Mayor is the Accused Councillor (the “Decision Maker”), is minor in nature and should not receive more discipline than an informal censure. Such informal censure will not be recorded in the Accused Councillor’s file, but a note that the Accused Councillor received an informal censure will be recorded in the file.

Where the Decision Maker believes that an informal censure is necessary, the Decision Maker shall write to the Accused Councillor outlining the situation with sufficient detail (i.e., where, when, who was involved, what occurred) to allow the Accused Councillor to properly respond (the “Proposal for Informal Censure”). The Accused Councillor will be given an opportunity to respond to the Proposal for Informal Censure to explain the situation and his or her actions.

This explanation will be considered by the Decision Maker who will either conclude that an informal censure is warranted or not. Where the Decision Maker decides to issue a notice of informal censure, the Decision Maker will do so in writing and will include reasons as to why the Misconduct was unacceptable and resulted in an informal censure.

The notice of informal censure will also include notification to the Accused Councillor that further disciplinary action under this Progressive Discipline Policy, up to and including Step 4 – Initiation of the Petition Process will follow if unacceptable behaviour continues or there are further instances of Misconduct.

STEP TWO: FORMAL CENSURE

A formal censure may be issued following a second or third occurrence of Misconduct. A formal censure may also be issued, in the sole discretion of the Decision Maker, in the case of a first occurrence of Misconduct which is serious enough to warrant such action.

Where the Decision Maker believes that a formal censure is necessary, the Decision Maker shall write to the Accused Councillor outlining the situation with sufficient detail (i.e., where, when, who was involved, what occurred) to allow the Accused Councillor to properly respond (the “Proposal for Formal Censure”). The Accused Councillor will be given an opportunity to respond to the Proposal for Formal Censure in writing to explain the situation and his or her actions.

This explanation will be considered by the Decision Maker who will either conclude that a formal censure is warranted or not. Where the Decision Maker decides to issue a formal censure, the Decision Maker will do so in writing and will include reasons as to why the Misconduct was unacceptable and resulted in an informal censure.

The Accused Councillor will also be informed that where the formal censure is issued, both the written formal censure, and the Accused Councillor’s written response will be placed in their file.

The formal censure will also include notification to the Accused Councillor that further disciplinary action under this Progressive Discipline Policy, up to and including Step 4 –

Initiation of the Petition Process will follow if unacceptable behaviour continues or there are further instances of Misconduct.

STEP THREE: REQUEST FOR RESIGNATION

A formal censure may be issued following a second or third occurrence of Misconduct. A formal censure may also be issued, in the sole discretion of the Decision Maker, in the case of a first occurrence of Misconduct which is serious enough to warrant such action. A request for resignation a first step or second step is reserved for serious Misconduct and, as a third step, is issued in occurrences in which prior progressive discipline has failed to correct the problem for which the censures were issued.

Where the Decision Maker believes that a request for resignation is necessary, the Decision Maker shall write to the Accused Councillor outlining the situation with sufficient detail (i.e., where, when, who was involved, what occurred) to allow the Accused Councillor to properly respond (the "Proposal for Request for Resignation"). The Accused Councillor will be given an opportunity to respond to the Proposal for Request for Resignation in writing to explain the situation and his or her actions.

This explanation will be considered by the Decision Maker who will either conclude that a request for resignation is warranted or not. Where the Decision Maker decides to issue a request for resignation, under this Council Code of Conduct and the Councillor's Oath of Office, the Decision Maker will do so in writing and will include reasons as to why the Misconduct was unacceptable and warranted and the request for resignation.

The Accused Councillor will be provided with 5 days to consider the request for resignation. After 5 days have passed, the Accused Councillor must either resign or must provide written reasons why he or she refuses to resign (the "Refusal to Resign").

The Accused Councillor will also be informed that both the request for resignation, and if applicable, the Accused Councillor's Refusal to Resign will be placed in their file.

The request for notification will also put the Accused Councillor on notice that his or her refusal to resign may result in further disciplinary action under this Progressive Discipline Policy, up to and including Step 4 – Initiation of the Petition Process.

STEP FOUR: INITIATION OF PETITION PROCESS UNDER THE ELECTION CODE

In the event of first occurrence of intolerable Misconduct which, in the discretion of the Decision Maker is fundamentally inconsistent with continued participation on the Lax Kw'alaams Band Council, where progressive discipline has failed to correct the Misconduct, and/or where an Accused Councillor submits a Refusal to Resign, the Decision Maker make take steps to have the Accused Councillor removed under Part 15 of the Lax Kw'alaams Election Code.

SAMPLE

AGREEMENT TO BE BOUND BY THIS COUNCIL CODE OF CONDUCT

I have read this Council Code of Conduct and agree to abide by this Council Code of Conduct, including the Progressive Discipline Policy, during my term of office as an elected member of the Lax Kw'alaams Band:

SIGNED, SEALED AND DELIVERED

by ~~_____~~ ~~_____~~ ~~_____~~ in the presence of:

Name

Address

Occupation

~~_____~~ ~~_____~~ ~~_____~~

SIGNED, SEALED AND DELIVERED

by ~~_____~~ ~~_____~~ ~~_____~~ in the presence of:

Name

Address

Occupation

~~_____~~ ~~_____~~ ~~_____~~

SAMPLE

Oath of Office

The Mayor and Council members shall agree to take the following Oath of Office upon being elected to the Council, a signed copy of which will be kept in the Councillor's file:

OATH OF OFFICE

I [insert name], a Council member of the Lax Kw'alaams Band, declare that, in carrying out my duties as a Council member/Mayor, I will

1. Exercise the powers of my office and fulfill my responsibilities in good faith and in the best interests of the Lax Kw'alaams Band.
2. Exercise these responsibilities, at all times, with due diligence, care and skill in a reasonable and prudent manner.
3. Respect and support Lax Kw'alaams Band's by-laws, policies, Code of Ethics, Council Code of Conduct, and decisions of the Council and membership.
4. Not use or divulge to anyone personal information acquired as a result of my office for my own benefit or for the benefit of any other person.
5. Not divulge any personal or other confidential information that is acquired as a result of my office and take all steps that are reasonably necessary to ensure that any such information is kept confidential.
6. Conduct myself in a spirit of collegiality and respect for the collective decisions of the Council and subordinate my personal interests to the best interests of the Lax Kw'alaams Band.
7. Immediately declare any personal conflict of interest that may come to my attention.
8. Immediately resign my position as a Council member of the Lax Kw'alaams Band in the event that I, or my colleagues on the Council, have concluded that I have breached the Council Code of Conduct or my "Oath of Office."

SIGNED, SEALED AND DELIVERED)
by ~~✂~~ ~~✂~~ ~~✂~~ in the presence of:)

_____)
Name)

_____)
Address)

_____)
Occupation)

_____)
~~✂~~ ~~✂~~ ~~✂~~

SAMPLE

**LAX KW'ALAAMS BAND ELECTION
Notice of Nomination Period**

Nomination process will commence on _____ at 8:30 a.m.

End on _____ at 5:00 p.m.

- Candidates for the positions of Mayor and 12 Councillors on the Lax Kw'alaams Band Council for the next four-year term.
- Get your application form from the Electoral Officer or the deputy officer.
- You must be a member of Lax Kw'alaams Band who is 18 years or older to be a Candidate, vote for, or endorse a Candidate.
- To nominate Candidates for the positions of five Trustees for the Lax Kw'alaams Indian Band Settlement Trust for the next term. No less than four of the Trustees elected must be ordinarily Resident On-Reserve and only one Trustee elected may be a member of the Lax Kw'alaams Band Council. (Trustees: submit form less fee and require five signatures from Lax Kw'alaams Band members)

Electors residing On/Off Reserve may be a Candidate for the position of Mayor or Council or Trustee. Nominations form must include the signed declaration forms and a \$100.00 non-refundable fee in cheque or money order payable to the Lax Kw'alaams Band. The Electoral Officer must receive nomination forms before the end of the nomination period. Forms received after 5 p.m. on [DATE] will not be accepted.

The Election will be held at Lax Kw'alaams, B.C. on [DATE].

A second polling station will be held at the Prince Rupert on the same day.

Any Elector may vote in person or by requesting a Mail-in Ballot from the Electoral Officer

Given under my hand ___ day of _____ 20__.

Electoral Officer: _____

Address: _____

Email address: _____

Phone: _____ Fax: _____

If you wish to have your name and address released to any Candidate for this Election for the purpose of sending you campaign literature, please check the statement below, print and sign your name, detach this form and return it to the Electoral Officer.

I authorize my name and address to be released to any Candidate at this Election.

Name

Birth Date

Phone

SAMPLE

**LAX KW'ALAAMS BAND ELECTION
Nomination Form**

for

Election to be held on _____

Nomination process will commence on _____ at 8:30 a.m. and end on
_____ at 5:00 p.m.

Nomination for the Position of Mayor or Councillor for the Lax Kw'alaams Band and Trustee

The Lax Kw'alaams Band Election Code state that a Candidate can have their name submitted for only one office, as set out in sections 5.6 and 6.2.

Mayor _____

On-Reserve Council _____

Off-Reserve Council _____

Trustee _____

I _____ born on _____
(name of candidate) (birth date)

Do declare that I am a Lax Kw'alaams Band member with the registry number _____.

My residency is located at _____
(address) (city)

Phone # _____

Nomination papers will be only accepted with a \$100.00 non-refundable fee in the form of a certified cheque or money order to the Lax Kw'alaams Band

The 25 names that have shown to support my candidacy are all eligible Electors of the Lax Kw'alaams Band Election Code.

Attached to this form are Declaration Forms from my 25 supporters

SIGNATURE of CANDIDATE: _____ DATE: _____

By signing you are confirming that the information you have provided is true.

SAMPLE

LAX KW'ALAAMS BAND ELECTION

Declaration Form for Support for Candidate

This declaration must be signed by Lax Kw'alaams members who are at least 18 years old

Declaration of Support for Mayor or On/Off Reserve Councillor and Trustee

In the matter of the Election of the Mayor ____ On-reserve Councillor ____ Off-reserve Councillor ____ Trustee ____
Check one of the candidates

I hereby support:

_____, for the above position.
Print name of candidate

In accordance with the provisions of the Lax Kw'alaams Band Election Code,

I _____ solemnly declare that:
(Please print your name)

1. I am a member of the Lax Kw'alaams Band. Registration # _____.
2. My date of birth is _____.
3. My current mailing address is _____.
4. I am at least 18 years of age.

This form is to be attached with nomination form for the candidate.

I make this solemn declaration conscientiously believing it to be true and knowing that it has the same force and effect as if made under oath. I understand that it is an offence to make a false statement in this declaration.

Signature of Elector Supporter

Date

SAMPLE

LAX KW'ALAAMS BAND ELECTION

Mail-In Voter Declaration
For Ballot(s) Only

I _____ solemnly declare that:
(Please print your name)

1. I am a member of the Lax Kw'alaams Band.
2. I am at least 18 years of age or older on voting day. My date of birth is _____
3. My current mailing address is _____
4. I have read and understood the mail-in package sent to me. In marking the Ballot, I have voted freely and without compulsion or undue influence of anyone.
5. I have folded the Ballot, hiding my mark and showing and the Electoral Officer's initials on the back, and have placed the Ballot in the ballot envelope.
6. I understand that I may only vote once, and that if I vote in person, this Ballot will not be counted as a vote cast.

I make this solemn declaration conscientiously believing it to be true and knowing that it has the same force and effect as if made under oath. I understand that it is an offence to make a false statement in this declaration.

Signed this _____ day of _____ 20____ at _____.

Signature of Voter

SAMPLE

WITNESS DECLARATION

In the presence of _____ at _____ (please print witness name) (town or city)	
This _____ day of _____, 20____.	
_____ Signature of Witness	_____ Phone Number of Witness
Mailing Address of Witness _____	

SAMPLE

LAX KW'ALAAMS BAND ELECTION

To: Electoral or Deputy Electoral Officer

From: _____
(Full name of candidate)

**Re: Appointment of Scrutineers
Lax Kw'alaams Band Election**

I hereby appoint:

_____ and

_____ to act as

Scrutineer on my behalf on Election day.

Signature

date