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PART 1 - PREAMBLE & TITLE

1. This Code shall be called the Xatśúll Custom Election Code.

PART 2 - COMING INTO FORCE

2. This Code comes into force upon the passing of an Order in Council proclaiming the removal of the Soda Creek Indian Band from the Election provisions of the *Indian Act*.

PART 3 - INTERPRETATION

3. In this Code

“All-Candidates Meeting” means a mandatory meeting of all the candidates in advance of the Election.

“Appellant” means an individual who submits an appeal in accordance with this Code with respect to an Election.

“Band Administrator” means the person responsible for the day-to-day management of Xatśúll administration.

“Band Council Resolution” means a resolution signed at a duly convened Chief and Council meeting.

“By-election” means a special Election to fill a position on the Council that has become vacant.

“Candidate” means a Xatśúll Member who

- a) is at least 18 years of age on the day on which the Nomination Meeting is held; and
- b) has been nominated to be a Candidate pursuant to the provisions of this Code.

“Code” means the leadership selection system set out in the Xatśúll Custom Election Code.

“Code of Campaign Ethics” means guidelines, general rules of behaviour and standards established in this Code, which govern the conduct of Candidates running for office and their supporters relating to their participation in the electoral process.

“Council” means the body composed of those persons selected pursuant to this Code.

“Councillor” means a person elected to the role of councillor in accordance with this Code.

“Deputy Electoral Officer” means any person appointed by the Electoral Officer for the purposes of an Election to assist them in the conduct of the Election process.

“E-ballot” means a ballot submitted electronically in accordance with this Code

“Election” means a general Election or By-election for Kúkwpí7 or for Councillors of the Band held pursuant to the provisions of this Code.

“Election Day” means the day the Election is held.

“Electoral Officer” means a person, appointed by a Band Council Resolution before each Election, who has the responsibility for conducting the Nomination Meeting, the Election and post-election procedures.

“Elector” means a person who:

- a) is a Xatśúll Member; and
- b) is at least 18 years of age on the Election Day.

“Indian Registration Administrator” means the Tribal Nation employee or contractor responsible for maintaining the Xatśúll membership list.

“Kúkwpí7” means a person elected to the role of Chief in accordance with this Code.

“Mail-in Ballot” means a ballot mailed or delivered in accordance with this Code.

“Nomination Meeting” means the meeting at which persons come forward to nominate and second Candidates at the Election.

“Oath” means a solemn affirmation.

“Petition” means a document for removal of a member of Council.

“Petition and Appeal Board” means the body appointed by a Band Council Resolution in accordance with section 156 of this Code to review and make decisions concerning petitions for removal from office and Election appeals.

“Polling Station” means a building, hall or room which is selected as the site at which voting takes place.

“Registrar” means the Officer of the Department of Indian Affairs responsible for the Xatśúll Membership list.

“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.

“Voter Declaration Form” means a document that sets out, or provides for:

- a) the name of the Elector;
- b) the Indian Registration Number or, if the Elector does not have a Xatśúll membership or registry number, the date of birth of the Elector; and
- c) the name, address and telephone number of a witness to the signature of the Elector.

“Voters List” means the list of Xatśūll Members eligible to vote in an Election.

“Xatśūll” means the Soda Creek Indian Band.

“Xatśūll Laws and Policies” means all enacted or adopted Laws and Policies of Xatśūll.

“Xatśūll Member” means a person whose name is listed on the Xatśūll membership list.

PART 4 - THE COUNCIL

Composition and Size

4. The Council shall consist of one Kúkwpi7 and 4 Councillors.

Mode of Election for Kúkwpi7 and Councillors

5. The Kúkwpi7 and Councillors shall be elected by a vote held in accordance with this Code.

Staggered Terms

6. Kúkwpi7 will be elected in March 2023 and elections for the position of Kúkwpi7 will be held every four years after that date.
7. Two Councillors will be elected May 2023 and elections for two Councillors will be held every four years after that date.
8. Two Councillors will be elected May 2021 and elections for two Councillors will be held every four years after that date.
9. If all positions on Council become vacant, and there is a By-election for Kúkwpi7 and four Councillors, the two Candidates for Councillor with the highest number of votes will serve the remainder of the four-year term and the two Candidates for Councillor with the third and fourth highest number of votes will serve the remainder of the two-year term.

Term of Office

10. The term of office for the position of Kúkwpi7 and Councillors, subject to this Code and any vacancies under it, shall be 4 years.
11. The term of office may, under rare mitigating circumstances such as a pandemic, be continued beyond 4 years if such continuation is not opposed by the votes of more than 50% of the members of Council. This continuation shall not exceed 60 days at which time an Election must be held.
12. If section 11 occurs and the date of the Election is postponed, the term of office of the Council members may be shortened to allow for the following Election to continue to take place in accordance with section 6 to section 8.

13. The term of office for an outgoing member of Council shall end at midnight on Election Day.
14. The term of office for an incoming member of Council will begin at 12:01 am the day after the Election Day.

Term of Office for By-elections and Appeals

15. The successful Candidate in a By-election shall hold office for the remainder of the original term of office of the Kúkwpi7 or Councillor whom they are elected to replace.

Vacancy

16. A Kúkwpi7 or Councillor position on the Council may become vacant if, while in office the Kúkwpi7 or Councillor:
 - a) Fails to sign their Oath of office
 - b) Resigns in writing from office of their own accord;
 - c) Has been unable to perform the functions of their office for more than six months due to illness or other incapacity;
 - d) Dies; or
 - e) Is removed from office in accordance with this Code.

PART 5 - PRE-NOMINATION PROCEDURE

Appointment of an Electoral Officer

17. The Electoral Officer shall be appointed by a Band Council Resolution not less than 100 days before the expiration of the Council's term of office.
18. The Band Council Resolution for the appointment of the Electoral Officer shall contain their full name and address, the date of the Election, the type of Election which is to be conducted (general Election or By-election), as well as any special instructions.
19. If an Electoral Officer has not been appointed within the time set out in section 17, the Electoral Officer shall be appointed by the Band Administrator as soon as possible.
20. The Electoral Officer must be a person who:
 - a) is not a Xatsúll Member;
 - b) has no vested interest in the outcome of the Election;
 - c) is at least 21 years of age; and
 - d) has experience in the conduct of elections or has received appropriate training.

21. In the event that the Electoral Officer cannot fulfill their duties, an existing Deputy Electoral Officer shall be appointed by a Band Council Resolution, to undertake the duties of the Electoral Officer. In the absence of an existing Deputy Electoral Officer, the Council shall appoint a new Electoral Officer.

Electoral Officer Oath of Office

22. The Electoral Officer and any Deputy Electoral Officers must swear an Oath to uphold the office in accordance with this Code.

Responsibilities and Ethics

23. 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 this Code;
 - b) remain neutral and professional in the conduct of the duties of their office, and refrain from providing any preferential treatment or expressing support for or opposition to any Candidate;
 - c) not accept anything of value (including but not limited to money, offers of employment, gifts, travel) in exchange for preferential treatment or access to a public official or non-public information;
 - d) not discriminate against anyone because of race, religion, sex, age, or handicap;
 - e) use public office facilities to fulfill the terms of their office, and not for personal or partisan benefit;
 - f) not pressure or intimidate other officials or personnel to favour a certain Candidate; and
 - g) 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

24. At least 79 days before the Election Day, the Electoral Officer shall obtain the names, Indian Registration numbers and dates of birth of all Xatśūll Members who will have attained the age of 18 years on the Election Day.
25. The Indian Registration Administrator shall, no later than 79 days before the Election Day, provide the Electoral Officer with the last known addresses, if any, of all Electors who do not reside on the reserve.

26. Electors are responsible for providing the Indian Registration Administrator with their current addresses for Election purposes.
27. An Elector's address shall only be used by the Electoral Officer for the purpose of providing notices, Mail-In Ballots or other Election documents to Electors who are entitled to receive them under this Code.
28. Except for the purposes noted in the preceding section, the Electoral Officer shall not disclose an Elector's address without the consent of the Elector.
29. A Candidate may obtain from the Electoral Officer a list of the names and addresses of Electors who have consented to have their addresses disclosed to Candidates.
30. At least 79 days before the Election Day, the Electoral Officer shall prepare a Voters List containing the names of all of the Electors in alphabetical order.
31. The Electoral Officer shall post the Voters List in a public area of the band administration building and in such other conspicuous places on the reserve as may be determined by the Electoral Officer, no later than 72 days prior to the Election Day.
32. On request, the Electoral Officer or Deputy Electoral Officer shall confirm whether the name of a person is on the Voters List.
33. The Electoral Officer may revise the Voters List upon presentation of documentary evidence which demonstrates that:
 - a) the name of an Elector has been omitted from the Voters List;
 - b) the name of an Elector is incorrectly set out in the Voters List; or
 - c) the name of a person not qualified to vote is included in the Voters List.
34. A person, or an Elector acting on their behalf, may, no later than 2 days prior to the Election Day, demonstrate that the name of an Elector has been omitted from or incorrectly set out in the Voters List by presenting in writing to the Electoral Officer evidence from the Registrar that the person:
 - a) is entitled to have their name entered on the Xats'ull membership list; and
 - b) will be at least 18 years of age on the Election Day.
35. A person may demonstrate that the name of a person not qualified to vote has been included in the Voters List by presenting in writing to the Electoral Officer evidence that the person:
 - a) is neither on the Xats'ull membership list nor entitled to have their name entered on the Xats'ull membership list; or

- b) will not be at least 18 years of age on the Election Day.
36. Where the Electoral Officer believes or has information that a person whose name is on the Voters List is not an Elector, or where, in accordance with the preceding section, an Elector demonstrates to the Electoral Officer that the name of a person not qualified to vote appears on the Voters List, the Electoral Officer shall give written notice to the person whose eligibility is challenged at least 10 days prior to the Election Day, or as soon as practicable after that time.
 37. The notice given under the preceding section shall include the reasons for seeking the removal of the name from the Voters List and any supporting documents and shall provide notice that a written reply may be sent to the Electoral Officer, which must be received as soon as practicable and no later than the day before the Election Day.
 38. 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.
 39. The decision of the Electoral Officer under the preceding section is final and is not subject to appeal.
 40. A person whose name does not appear on the Voters List shall be entitled to vote on Election Day, provided they present documentary proof to the Electoral Officer demonstrating their qualifications as an Elector to the Electoral Officer's satisfaction.

Appointment of Deputies and Interpreters

41. The Electoral Officer shall appoint deputies and interpreters as they deem necessary, who shall work under their direction.
42. 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.
43. A Deputy Electoral Officer shall not be a member of Council or a Candidate in the Election.
44. The Electoral Officer may make such orders and issue such instructions consistent with the provisions of this Code as they may deem necessary for the effective administration of the Election.

PART 6 - THE NOMINATION PROCESS

Notice of Nomination Meeting and Mail-in Nomination Process

45. The Electoral Officer shall, at least 30 days before the Nomination Meeting:
 - a) post a notice of Nomination Meeting in at least one conspicuous place on the reserve.

- b) mail a notice of the Nomination Meeting and a Mail-in Nomination Form to every Elector who does not reside on the reserve.
46. A notice of a Nomination Meeting shall include:
- a) the date, time, duration and location of the Nomination Meeting;
 - b) if available, the method for Xatsúll Members to request to virtually attend the Nomination Meeting;
 - c) the date, time and location of the All-Candidates Meeting;
 - d) the Election Day and the location of each polling place;
 - e) the name and phone number of the Electoral Officer;
 - f) a statement that any Elector may vote by Mail-in Ballot or E-Ballot;
 - g) a description of the manner in which an Elector can nominate a Candidate, or second the nomination of a Candidate; and
 - h) a statement that, if the Elector wants to receive information from Candidates, the Elector can agree to have their address released to the Candidates.
47. The Electoral Officer shall record the names of the Electors to whom a notice of the Nomination Meeting was mailed, the addresses of those Electors, and the date on which the notices were mailed.

Eligibility to be Nominated

48. To be nominated in an Election, a person must:
- a) be at least 18 years of age;
 - b) be included on the Voters List;
 - c) not have been removed from Office in the past 6 years per section 179.a); and
 - d) not have resigned from their previous term of Office resulting in this By-election.

Eligibility to Nominate

49. Any Elector may propose or second the nomination of any qualified person to serve as the Kúkwpi7 or Councillor:
- a) by delivering or mailing a written nomination and a completed, signed and witnessed Voter Declaration Form to the Electoral Officer before the time set for the Nomination Meeting;

- b) orally, at the Nomination Meeting; or
- c) virtually, where the Electoral Officer has provided a procedure for virtual nominations.

Nomination Meeting

- 50. The Nomination Meeting shall be held at least 42 days prior to the Election Day.
- 51. Only Xatśúll Members may attend Nomination Meetings and proof of Xatśúll Membership will be required by the Electoral Officer.
- 52. A Nomination Meeting may include virtual participation where the Electoral Officer provides a secure link to Xatśúll Members upon request.
- 53. At the time and place set for the Nomination Meeting, the Electoral Officer shall declare the Nomination Meeting open for the purpose of receiving the nominations of Candidates for the available Council positions.
- 54. The Electoral Officer is responsible for managing and conducting the Nomination Meeting.
- 55. Immediately following the opening of the Nomination Meeting, the Electoral Officer shall read aloud all written nominations and secondments that have been received by mail or delivered in accordance with subsection 50.a).

Duration

- 56. The Nomination Meeting shall remain open for at least 3 hours.

Maintaining Order and Security

- 57. The Electoral Officer shall maintain order at all times during the Nomination Meeting and may cause to be removed any person who, in their opinion, is disrupting or otherwise interfering with the proceedings.

Nomination Procedure

- 58. Mailed nominations that are not received by the Electoral Officer before the time set for the Nomination Meeting are void.
- 59. The Electoral Officer shall record the name of the Candidate, the nominator and the seconder and confirm to those present at the Nomination Meeting that the proposed Candidate is eligible to be elected to the position of Kúkwpi7 or Councillor.
- 60. A person present at a Nomination Meeting who is eligible to do so may second the nomination of any person nominated in writing.

61. Where the same person receives two written nominations for the same office, the second nomination shall constitute a secondment of the first nomination.
62. Any Elector may nominate or second no more than:
 - a) one eligible person for the office of Kúkwpí7; and
 - b) the number of eligible persons equivalent to the vacancies for the office of Councillor.
63. As soon as possible after the Nomination Meeting, the Electoral Officer shall:
 - a) if only one eligible person has been nominated for Election as Kúkwpí7, declare that person to be elected;
 - b) if the number of eligible persons nominated to serve as Councillors does not exceed the number to be elected, declare those persons to be elected; and
 - c) where more than the required number of eligible persons are nominated for Election as Kúkwpí7 or Councillors, announce that an Election will be held.
64. On the day following the Nomination Meeting, the Electoral Officer shall post in at least one conspicuous place on the reserve a list of nominees, their nominators and seconders and the offices for which they are nominated.

PART 7 – CANDIDACY

65. A Candidate for Kúkwpí7 may also be a Candidate for the office of Councillor in a subsequent Election.
66. A nominee shall, within 5 days after the end of the Nomination Meeting, file the following documents with the Electoral Officer:
 - a) a notice of acceptance of nomination;
 - b) a sworn declaration confirming that they have read and understood the Council Code of Conduct, the Council Oath of Office, Declaration of Confidentiality and Council Roles and Responsibilities, and if elected, they will abide by them.
67. No person shall accept candidacy in an Election if that person is not eligible to be a Candidate in accordance with this Code.
68. A nominee who fails to file the documents in accordance with this Code shall not be a Candidate in the Election, and their name shall not appear on the Election ballot.

Code of Campaign Ethics

69. Candidates must campaign:

- a) according to the rules established in this Code;
- b) without coercion or vote-buying;
- c) respecting the right and freedom of other parties to organize and campaign;
- d) respecting the rights of voters to obtain information from a variety of sources and to attend political rallies;
- e) ethically, focusing on political issues and Candidate platforms, instead of conducting smear campaigns or ones of rumour and innuendo;
- f) non-violently, without intimidating opposing party Candidates, opposition supporters or the media, and without the use of language inciting their own supporters to violence;
- g) respecting the freedom of the press to cover the campaign and to express opinions on the campaign;
- h) respecting the electoral officials and not interfering with the performance of their duties; and
- i) accepting and complying with the official Election results and the final decision of the Petitions and Appeal Board.

70. A Candidate may be removed as a Candidate by the Electoral Officer for conduct in breach of the Code of Campaign Ethics set out in section 70.

Acclamation

71. Where the office of Kúkwpi7 and/or the offices of Councillor are filled by acclamation the Electoral Officer shall post in at least one conspicuous place on the reserve, and mail to every Elector who does not reside on the reserve, a notice that sets out the names of the persons who have been acclaimed and states that an Election will not be held.

72. Where the office of Kúkwpi7 or Councillor is filled by acclamation, the term of office begins at 12:01 am the day after the scheduled Election Day regardless of whether an Election takes place on that day.

Withdrawal

73. A Candidate may withdraw their candidacy within 5 days of the date on which the Nomination Meeting was held by submitting a written withdrawal of nomination to the Electoral Officer.

74. A Candidate who dies before the close of the polls shall be considered to have withdrawn their candidacy.

All-Candidate Forum

75. The All-Candidates Forum will be held within 5 days of the Nomination Meeting.
76. Only Xat'süll Members may attend the All-Candidate Forum.
77. All Candidates must submit a summary of their Election platform to the Band Administrator prior to the All-Candidates Forum.
78. All Candidates must make every best effort to participate in an All-Candidates Forum prior to the Election.
79. If a Candidate fails to:
 - a) submit a summary of their Election platform or
 - b) fails to attend the All-Candidates Forumthe Candidate will be removed from the list of Candidates.

PART 8 - PRE-ELECTION PROCEDURE

Ballots

80. The Electoral Officer shall prepare ballot papers setting out the names of the Candidates, in alphabetical order by surname.
81. Where two or more Candidates have the same name, the Electoral Officer shall add to the ballots such additional information as is 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

82. The Election shall be held at least 42 days after the Nomination Meeting.
83. The Electoral Officer shall, within 3 days after the Nomination Meeting, post a notice of Election in at least one conspicuous place on the reserve.
84. The notice shall include:
 - a) the date of the Election;
 - b) the availability of voting by Mail-In-Ballot to all Electors who request a Mail-In-Ballot package from the Electoral Officer and the process and deadline for requesting the Mail-In-Ballot;
 - c) the availability of voting by E-ballot to all Electors who request an E-Ballot from the Electoral Officer and the process and deadline for requesting an E-Ballot;

- d) the times at which the Polling Station(s) will open and close;
- e) the location of the Polling Station(s); and
- f) a statement that the Voters List is posted for public viewing and its location.

Requesting to Vote by E-Ballot or Mail-In Ballot

- 85. Any Elector may request to vote by E-Ballot or Mail-In-Ballot by delivering a written request to the Electoral Officer at least fourteen (14) days before the Election Day.
- 86. An Elector may only request to vote either by E-ballot or Mail-In Ballot.
- 87. Any request must include:
 - a) the Elector's name;
 - b) the Elector's Indian registration number;
 - c) the Elector's date of birth;
 - d) the mechanism by which the Elector wishes to vote (E-ballot or Mail-In Ballot); and
 - e) the Elector's email address (if requesting an E-ballot).
- 88. An Elector may only make a request on their own behalf.
- 89. It is the sole responsibility of the Elector to ensure that the Elector delivers their request for a Mail-In Ballot or E-Ballot to the Electoral Officer at least fourteen (14) days before the Election Day.

Mail-in Ballots

- 90. The Electoral Officer shall, at least 35 days prior to the Election Day, mail to every Elector who has requested a Mail In Ballot, a Mail-In Ballot package consisting of:
 - a) a ballot initialled 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) a Voter Declaration Form which shall set out:
 - i) the name of the Elector;
 - ii) the Indian Registration number
 - iii) date of birth of the Elector; and

- iv) the name, address and telephone number of the witness to the signature of the Elector;
 - e) the notice of Election set out in section 84; and
 - f) a letter of instruction regarding voting by Mail-In Ballot which shall also include 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
91. Upon receipt of a request for a Mail-In-Ballot package, the Electoral Officer shall mail or deliver a Mail-In-Ballot package described in section 91 to the Elector whose name appears on the application.
92. 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.
93. 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 they desire 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 Election Day.
94. Where an Elector is unable to vote in the manner set out in the preceding section, 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.
95. A witness referred to in the preceding section shall attest to:

- a) the fact that the person completing and signing the Voter Declaration Form is the person whose name is set out in the form; or
 - b) the fact that the Elector is the person whose name is set out in the form and that the ballot was marked according to the directions of the Elector.
96. Mail-In Ballots that are not received by the Electoral Officer before the close of polls on the Election Day shall not be counted.
97. If an Elector uses the Mail-In-Balloting process and also casts a vote in person on the Election Day the Electoral Officer shall reject the Elector's Mail-In-Ballot(s).
98. It is the sole responsibility of an Elector who uses a Mail-In-Ballot package to ensure the Elector delivers the pre-addressed return envelope enclosing the Elector's sealed ballot envelope and Voter Declaration Form to an Electoral Officer prior to the close of the Polling Stations on the Election Day.

Electronic Voting

99. The Electoral Officer shall promptly send to each Elector who requests to vote by E-Ballot, to the email provided by the Elector, the following package:
- a) detailed instructions for voting by E-Ballot;
 - b) relevant password(s) for voting by E-Ballot; and
 - c) any other information the Electoral Officer considers appropriate.
100. The Electoral Officer shall keep a record of every Elector to whom an E-Ballot package is sent.
101. Every Elector who receives an E-Ballot package and who chooses to vote by this method shall follow the instructions for voting by E-Ballot provided by the Electoral Officer.
102. It is the sole responsibility of an Elector who votes by E-Ballot to ensure the Elector casts their E-Ballot prior to the opening of the Polling Stations on the Election Day.

Equipment for the Election

103. 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 voting locations; and
- g) the final Voters List.

Polling Stations

- 104. The Electoral Officer will establish at least one Polling Station on the reserve.
- 105. The Electoral Officer shall provide a voting compartment in the Polling Station where Electors can mark their ballots free from observation and the Electoral Officer may appoint security to maintain order in the Polling Station.

PART 9 - ELECTION DAY

Candidate's Scrutineer

- 106. A Candidate shall be entitled to not more than two scrutineers in the Polling Station at any one time.
- 107. A Candidate's scrutineer must present a letter of authorization to the Electoral Officer or the Deputy Electoral Officer, signed by the Candidate, in order to be permitted to remain in the Polling Station.

Polling Hours

- 108. The Polling Station shall be open from 9 a.m. until 8 p.m. local time on the Election Day.

Verification of the Ballot Box

- 109. The Electoral Officer or Deputy Electoral Officer shall, immediately before the commencement of the poll:
 - a) open the ballot box and call such persons as may be present to witness that it is empty and complete a written statement to that effect, verified by a witness;
 - 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.

Secrecy and Security

- 110. Voting shall be by secret ballot.
- 111. No Elector may vote by proxy or authorize another person to vote on their behalf.
- 112. No person shall, on the Election Day 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) attempt to interfere with or influence any Elector in marking their ballot; or
 - c) attempt to obtain information as to how an Elector is about to vote or has voted.
113. The Electoral Officer or Deputy Electoral Officer shall maintain order at all times in the Polling Station and may cause to be removed any person who in any way interferes, disrupts or attempts to influence the orderly conduct of the poll.

Voting Procedure

114. The Electoral Officer shall receive a list of individuals who have voted by E-Ballot and shall cross them off the Voters List indicating they have already cast their ballot and are not eligible to vote in person or by Mail-In Ballot.
115. Each person, on arriving at the Polling Station, shall give their name and photo identification to the Electoral Officer or Deputy Electoral Officer.
116. The Electoral Officer or Deputy Electoral Officer shall, if the person's name is set out in the Voters List, place their initials on the ballot and provide them to the Elector.
117. 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 paper.
118. An Elector to whom a Mail-In Ballot was mailed or provided under section 91 may obtain a ballot and vote 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 or Deputy Electoral Officer.
119. The Electoral Officer or Deputy Electoral Officer shall, when requested to do so, explain the method of voting to the Elector.
120. 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 they desire 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.
121. 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.
122. While an Elector is in the compartment for the purpose of marking their ballot paper, no other person shall, except as provided in section 124, 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 paper.

Voting Irregularities

123. At the request of any Elector who is unable to vote in the manner set out in section 121, the Electoral Officer or Deputy Electoral Officer shall assist that Elector by marking their 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.
124. 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 paper was marked by them at the request of the Elector and the reasons, therefore.
125. An Elector who has inadvertently dealt with their ballot paper in such a manner that it cannot be conveniently used shall, on one occasion only, upon returning it to the 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.
126. 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, or after receiving a ballot, refuses to vote, shall forfeit their 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 the Electoral Officer or Deputy Electoral Officer shall mark upon the face of the ballot the word "declined" and all ballots so marked shall be preserved.

Closing of the Polling Station

127. 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

Verification of Mail-in Ballots

128. At the close of the Polls, the Electoral Officer or Deputy Electoral Officer shall, in the presence of any Candidates or their scrutineers who are present, 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 Mail-In Ballot if:
 - i) it was not accompanied by a Voter Declaration Form, or the Voter Declaration Form is not signed or witnessed;
 - ii) the Voter Declaration Form does not contain a date of birth or an Indian Registration number that matches the information contained for that Elector on the Voters List;
 - iii) the name of the Elector set out in the Voter Declaration Form is not on the Voters List; or
 - iv) the Voters List shows that the Elector has already voted in person or electronically.
 - 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 a ballot box.

Counting the Ballots

129. The Electoral Officer or Deputy Electoral Officer shall supply other Deputy Electoral Officers and all persons present and who so request with a tally sheet to keep their own tally of the votes.
130. Immediately after the Mail-In Ballots have been deposited in the ballot box, the Electoral Officer or Deputy Electoral Officer shall, in the presence of any Candidates or their scrutineers who are present, open all ballot boxes and examine each ballot.
131. The Electoral Officer or Deputy Electoral Officer shall call out the names of the Candidates for whom the votes were cast on all valid ballots.
132. A Deputy Electoral Officer shall mark a tally sheet in accordance with the names being called out under the preceding section, for the purpose of arriving at the total number of votes cast for each Candidate.

133. After the ballots are counted, the Electoral Officer shall announce the E-Ballot results and tabulate the results with the other ballots;

Ballots not Counted

134. In examining the ballots, the Electoral Officer or Deputy Electoral Officer 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 Elector can be identified.
135. The Electoral Officer or Deputy Electoral Officer shall attach a note to each ballot rejected which outlines the reason for rejection.
136. The Electoral Officer or Deputy Electoral Officer shall take a note of any objections made by any Candidate or their scrutineer to any of the ballots found in the ballot box and decide any questions arising out of the objection.
137. The Electoral Officer or Deputy Electoral Officer shall number objections to ballots raised pursuant to the preceding section and place a corresponding number on the back of the ballot paper with the word "allowed" or "disallowed", as the case may be, with their initials.

Other Polling Stations

138. Immediately upon completion of the counting of the ballots at a Polling Station other than that considered the principal Polling Station managed by the Electoral Officer, the Deputy Electoral Officer shall transmit the results to the Electoral Officer.

Tie

139. If it is not possible to determine the successful Candidate(s) for either a Kúkwpi7 or Councillor position due to an equal number of votes being cast (i.e., tie vote), the Electoral Officer shall establish a time for the conduct of a recount and publicly announce this time in the presence of all those present in the Polling Station.
140. A recount conducted pursuant to the preceding section must take place within 24 hours of the announcement by the Electoral Officer made pursuant to the preceding section, in the presence the Candidates and their scrutineers who wish to attend.
141. At the time established pursuant to section 140, the Electoral Officer shall conduct a recount of the valid ballots.

142. If the recount fails to determine a successful Candidate, the Electoral Officer shall place the names of the Candidates having the same number of votes on a paper and place each in a receptacle. Without looking, they shall draw as many papers as there are positions available. The Candidate(s) whose name(s) appear on the pieces of paper the Electoral Officer has drawn from the receptacle shall be the successful Candidate.

PART 11 - POST-ELECTION PROCEDURES

Announcement

143. After completing the counting of the votes and establishing the successful Candidates, the Electoral Officer shall declare to be elected the Candidate or Candidates having the highest number of votes.
144. Following the declaration of elected Candidates made pursuant to the preceding section, 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.
145. Within 4 days after completion of the counting of the votes, the Electoral Officer shall:
- a) sign and post, in at least one conspicuous place on the reserve, the Election report prepared in accordance with the preceding section;
 - b) include in the newsletter distributed on reserve and accessible online in members only portal; and
 - c) forward a copy of the Election report to the Band Administrator.

Retention of Ballots and Other Election Material

146. The Electoral Officer shall deposit all ballots in sealed envelopes, including those rejected, spoiled and unused, and shall retain these ballots and all materials in connection with the Election for 45 days from the Election Day 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 who shall make a declaration that they witnessed the destruction of those papers.

Kúkwpi7 and Councillor Oath of Office

147. A Candidate who has been elected Kúkwpi7 or Councillor shall, within 5 days of the Election Day, swear an Oath of office before either the Electoral Officer, a justice of the peace, notary public or duly appointed commissioner for taking Oaths, swearing to:

- a) uphold and comply with Xatśūll Laws and Policies;
 - b) fulfill the duties and responsibilities of their office under the Code, the Governance Policy and all Xatśūll Laws and Policies;
 - 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 Xatśūll Laws and Policies, is considered confidential; and
 - e) always act in the best interests of Xatśūll in carrying out their duties.
148. Where an elected Candidate cannot, due to illness or other valid reason, swear the Oath of office within the time prescribed in the preceding section, themselves or an Elector acting on their behalf may file a petition with the Electoral Officer for an extension of the time to swear the Oath of office.
149. The Electoral Officer receiving a petition under the preceding section shall determine whether the circumstances justify an extension and shall provide the Candidate making the request written notice of the decision, and where applicable, the extension period.
150. Subject to section 150, if a person elected as Kúkwpí7 or Councillor fails to file the sworn Oath of office with the Electoral Officer on or before the specified time period, the Electoral Officer shall declare the office vacant.
151. The Electoral Officer shall give notice in writing to the elected Candidate whose office is declared vacant under the preceding section and to the elected Kúkwpí7 and Council.
152. Unless the vacancy occurring under section 151 results in a situation where the Council can no longer form a quorum, the position shall remain vacant until such time as a By-election is called by Council.

PART 12 - PETITIONS AND APPEAL BOARD

Composition

153. The Petitions and Appeal Board shall be composed of three people who:
- a) are at least 18 years of age;
 - b) are not members of Xatśūll;
 - c) have no vested interest in the outcome of the Election;
 - d) are knowledgeable about Election procedures; and
 - e) understand the principles of natural justice.

154. At least 100 days before the Election Day, the Council shall:
- a) select the members of the Petitions and Appeal Board in accordance with the preceding section; and
 - b) draw a list of 10 additional potential members.
155. The term of office of the Petitions and Appeal Board shall be from its appointment under the preceding section until the day on which the Council selects another Petitions and Appeal Board in accordance with this Code.
156. Upon receipt of an Election appeal in accordance with section 162, any Petitions and Appeal Board member who is immediate family of any Appellant or Candidate, or who may be reasonably apprehended to have a bias or conflict in connection with the Election appeal, shall excuse themselves from the Petitions and Appeal Board.
157. The remaining members of the Petitions and Appeal Board will select additional members as required to attain three members from the list of potential members drawn by the Council.
158. Each member of the Petitions and Appeal Board shall execute an Oath of office and accept their appointment by forwarding a letter of acceptance to the Council.

Functions

159. The Petitions and Appeal Board shall supervise and administer, in accordance with the provisions of this Code:
- a) all Election appeals; and
 - b) all petitions for the removal of a Council member from office.

PART 13 - ELECTION APPEAL MECHANISM

Timing

160. A Candidate or an Elector may, within 30 days from the Election Day, submit an appeal to the Petitions and Appeal Board.

Grounds for Appeals

161. An appeal submitted pursuant to the preceding section must sufficiently outline one or more of the following:
- a) that the person declared elected was not qualified to be a Candidate;
 - b) that there was a violation of this Code in the conduct of the Election that might have affected the result of the Election; or

- c) that there was corrupt or fraudulent practice in relation to the Election.

Submission

162. An appeal submitted to the Petitions and Appeal Board must:
- a) be in writing and set out in an affidavit sworn before a notary public or duly appointed commissioner for taking Oaths the facts substantiating the grounds for the appeal accompanied by any supporting documentation; and
 - b) be accompanied by a deposit in the amount of \$100.

Procedure

163. Upon receipt of an Election appeal, the Petitions and Appeal Board shall:
- a) in the case where the appeal is submitted in accordance with section 164, forward a copy together with supporting documents by registered mail to the Electoral Officer and to each Candidate at the Election; or
 - b) in the case where the appeal is not submitted in accordance with section 164, inform the Appellant(s) in writing that the appeal will not receive further consideration.

Response to the Allegations

164. Any Candidate or the Electoral Officer may, within 14 days of the receipt of the appeal(s), forward to the Petitions and Appeal Board by registered mail a written response to the appeal allegations, together with any supporting documentation.

Investigation

165. The Petitions and Appeal Board may, if the material that has been filed is not adequate for deciding the validity of the Election complained of, conduct such further investigation into the matter as the Petitions and Appeal Board deems necessary.

Decision

166. After a review of all of the evidence that it has received, the Petitions and Appeal Board shall rule:
- a) that the evidence presented was not sufficiently substantive to determine that:
 - i) the person declared elected was not qualified to be a Candidate;
 - ii) a violation of this Code has taken place that might have affected the result of the Election;

or

- iii) there was a corrupt or fraudulent practice in relation to the Election that might have affected its results,

and dismiss the appeal; or

- b) that all evidence and information gathered allows for the reasonable conclusion that:

- i) the person declared elected was not qualified to be a Candidate;
- ii) a violation of this Code has taken place that might have affected the result of the Election; or
- iii) there was a corrupt or fraudulent practice in relation to the Election that might have affected its results,

and uphold the appeal by setting aside the Election of one or more Council members.

167. The decision of the Petitions and Appeal Board made pursuant to the preceding section shall be:

- a) published in the community's newsletter, which is mailed to Xats'ull Members, or in a separate written notice delivered or mailed to all Xats'ull Members; and
- b) posted in at least one conspicuous place on the reserve.

168. The decision of the Petitions and Appeal Board is final and not subject to appeal.

PART 14 - REMOVAL OF COUNCIL MEMBERS FROM OFFICE

169. The Kúkwpi7 or a Councillor may be removed from office and be prevented from running for office for 6 years if they:

- a) Fail to attend three consecutive regular meetings of Council without being reasonably excused from attendance by a quorum of the Council;
- b) Have been convicted of an indictable offence under the *Criminal Code*, (R.S.C., 1985, c. C-46) since their election, other than an offence committed in the furtherance of aboriginal title and rights; and
- c) Engage in such other conduct in breach of their Oath of Office that is of such a serious nature and having exhausted internal mechanisms, that removal is necessary and appropriate.

Procedure

170. Proceedings to declare a person ineligible to continue to hold the office of Kúkwpi7 or Councillor shall be initiated by:
- a) any Elector submitting to the Petitions and Appeal Board a Petition on which shall appear:
 - i) the ground pursuant to section 171 on which removal of a Kúkwpi7 or Councillor is sought;
 - ii) the evidence in support of the Petition;
 - iii) the signature of the Petitioner;
 - iv) the signatures of at least 25% of all eligible Electors in support of the Petition; and
 - v) a non-refundable filing fee of \$50.
 - b) a majority of Council members passing a Band Council Resolution and submitting a Petition to the Petitions and Appeal Board on which shall appear:
 - i) the ground pursuant to the preceding section on which removal of a Kúkwpi7 or Councillor is sought;
 - ii) the evidence in support of the Band Council Resolution; and
 - iii) the signatures of all Council members who voted for the removal.
171. On receipt of a Petition, the Petitions and Appeal Board shall verify that the Petition complies with section 172. If the Petition does not comply, the Petitions and Appeal Board shall so notify the petitioner(s).
172. In a case where the Petition complies with subsection 172, the Petitions and Appeal Board shall:
- a) determine that the grounds put forth in the Petition are either frivolous in nature or unsubstantiated, and dismiss the Petition; or
 - b) schedule a review hearing, which shall take place within 20 days from the date on which the Petition was submitted to the Petitions and Appeal Board.
173. In a case where the Petition has been dismissed under the preceding section, the Petitions and Appeal Board shall so inform the petitioner(s) in writing and provide a rationale.
174. In a case where the Petitions and Appeal Board schedules a hearing under subsection 174.b), the Petitions and Appeal Board shall:

- a) send a written notice of the hearing by registered mail to Council, the petitioner(s) and the Council member who is the subject of the Petition for removal;
- b) provide a community notice that a Petition for removal has been received and a hearing will be held regarding the Petition for removal.

175. The written notice described in the preceding section shall set out:
- a) the nature of the hearing and all related particulars;
 - b) the date, time and location of the hearing; and
 - c) a statement that the petitioner(s), any member of Council or the Council member who is the subject of the Petition for removal may, at the hearing, make a presentation to the Petitions and Appeal Board, which may include the presentation of documents and testimony by witnesses.
176. The Petitions and Appeal Board shall conduct a hearing at the time and place set out in the notice provided under section 177.
177. Within 5 days of the day on which the hearing under the preceding section is held, the Petitions and Appeal Board shall rule:
- a) that the Petition shall be allowed to stand, and declare the Council position of the member of Council who is the subject of the Petition to be vacant; or
 - b) that the Petition is dismissed.
178. The Petitions and Appeal Board shall send, by registered mail, a written notice of the ruling made under the preceding section to Council, the petitioner(s) and the Council member who is the subject of the Petition for removal.
179. The decision of the Petitions and Appeal Board made under section 179 is final and binding upon all parties.
180. If the Council position is declared vacant under subsection 179.a), the Kúkwpi7 or Councillor removed from office shall be disqualified from being a Candidate for (6) six years commencing on the date of the Petitions and Appeal Board's ruling.

By-election

181. Unless otherwise provided in this Code, in the event that the office of Kúkwpi7 or Councillor becomes vacant, a By-election shall be held within 90 days after the date on which the position is declared vacant.
182. No By-election shall be held if there are less than 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.

183. No sitting Council member is eligible to be a Candidate in a By-election. If a Council member wishes to be a Candidate in a By-election, they must resign their Council position prior to the Nomination Meeting for the By-election.
184. Except as expressly provided otherwise in this Code, the rules and procedures in this Code shall apply to By-elections.

PART 15 – AMENDMENTS

185. The process for development and passage of amendments to this Code may be initiated by:
- a) a petition presented to Council, signed by at least 25% of all eligible Electors and setting out the specific area in this Code proposed for amendment; or
 - b) a Band Council Resolution.
186. Upon receipt of an amendment proposal in accordance with the preceding section, Council shall prepare a notice that sets out:
- a) a list of the proposed amendments to this Code;
 - b) a statement that the full copy of the proposed amendments can be obtained at the band administration office; and
 - c) a description of the amendment process.
187. The notice provided for in the preceding section shall be:
- a) published in the community's newsletter, delivered or mailed to Electors, or by separate notice delivered or mailed to all Electors; and
 - b) posted in at least one conspicuous place on the reserve.
188. Electors may, within 14 days of publication of the notice outlined in section 188, provide comments concerning the proposed amendments in writing to Council.
189. Following receipt of comments concerning the proposed amendments pursuant to the preceding section, the Council shall review the comments and make such changes to the proposed amendments as they deem necessary in order to arrive at a final amendment proposal.
190. The Council shall submit the final amendment proposal to a plebiscite to be conducted in accordance with the Soda Creek Indian Band Plebiscite Code.
191. Should the majority of the votes cast at a plebiscite be in favour of the proposed amendments being brought to the Code, Council shall amend the Code accordingly.

192. Elections held under the amended Code shall take place no sooner than 100 days from the plebiscite.

Draft