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### **PART 1 - PREAMBLE & TITLE**

1. This code shall be called the Xat'sull 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

**“appellant”** means an individual who submits an appeal in accordance with this code with respect to an election.

**“by-election”** means a special election to fill a position on the council that has become vacant.

**“candidate”** means a band member who

- (a) is at least 18 years of age on the day on which the nomination meeting is held;
- (b) is a member of the band; and
- (c) has been nominated to be a candidate pursuant to the provisions of this code.

**“code”** means the leadership selection system set out herein.

**“Code of Ethics”** means guidelines, general rules of behaviour and standards established in accordance with section 54 of this code, which govern the conduct of candidates running for office and their supporters relating to their participation in the electoral process.

**“Complaints and Appeal Board”** means the body appointed by a band council resolution in accordance with section 194 of this code to review and make decisions concerning petitions for removal from office and election appeals.

**“corrupt practices”** means bribery direct or indirect, or providing a financial or material incentive to an elector in exchange for a vote.

**“council”** means the body composed of those persons selected pursuant to this code.

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**“deputy electoral officer”** means any person appointed by the electoral officer for the purposes of an election to assist him in the conduct of the election process.

**“election”** means a general election or by-election for Chief or for Councillors of the band held pursuant to the provisions of this code.

**“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 member of the band; and
- (b) is at least 18 years of age on the day on which the election is held.

**“Indian Registration Administrator”** means the band employee or contractor responsible for maintaining the mailing addresses of the band membership list.

**“mail-in ballot”** means a ballot mailed or delivered in accordance with section 133 of 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.

**“ordinarily resident on the reserve”** refers to the residential status of an elector who is considered to have his ordinary residence on the reserve. A person’s ordinary residence can be described as:

- (a) the place the person normally eats and sleeps;
- (b) the place the person receives mail;
- (c) the residence of the person’s immediate family; or
- (d) a place in proximity to the person’s place of employment.

A person can only be ordinarily resident in one place at one time, and a person is ordinarily resident in that place until another place of ordinary residence is acquired. A person may also be temporarily absent from a place of ordinary residence for education, medical or temporary employment reasons.

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

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“**Registrar**” means the Officer of the Department of Indian Affairs responsible for the band’s 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 band membership or registry number of the elector or, if the elector does not have a band 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 band members eligible to vote in an election.

“**Xat’sull**” means the Soda Creek Indian Band.

## **PART 4 - THE COUNCIL**

### **Composition and Size**

4. The council shall consist of **one chief and 4 councillors.**

### **Meetings**

5. **The first meeting of the council shall be held not later than 5 business days after its election,** on a day, hour and place to be stated in a notice given to each member of the council, 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 band.
6. No member of the council may be **absent from meetings of council for three consecutive meetings without being authorized to do so by the council.**
7. The chief of the band or a quorum of the council may summon a **special meeting of the council upon providing, where practicable, 24 hours notice to members of council.**

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8. The secretary to the council shall notify each member of the council of the day, hour and place of each meeting of the council.

### **Order and Proceedings**

9. **Quorum shall be 3 members of Council.**
10. 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 then present and council shall stand adjourned until the next meeting.
11. **The chief of the band shall be the chairperson at meetings of council.**
12. Upon a quorum being present, the chairperson shall take the chair and call the meeting to order.
13. In the absence of the chief, a chairperson shall be chosen from among the councillors present until his or her arrival.
14. The chairperson shall maintain order and **decide all questions of procedure.**
15. The order of business at each regular meeting of the council shall be as follows:
  - a. reading, correction (if any) and adoption of the minutes of the previous meeting;
  - b. unfinished business;
  - c. hearing presentations from Band members and visitors;
  - d. presentation and reading of correspondence and petitions;
  - e. new business;
  - f. presentation and consideration of reports of committees, managers and council members;
  - g. adjournment.
16. Each resolution shall be presented or read by the mover, and when duly moved and seconded and placed before the meeting by the chairperson, shall be open for consideration.
17. After a resolution has been placed before the meeting by the chairperson, it shall be deemed to be in the possession of the council, but it may be withdrawn by consent of the majority of the council members present.

18. When any council member desires to speak, he or she shall address remarks to the chairperson and confine remarks to the question then before the meeting.
19. In the event of more than one council member desiring to speak at one time, the chairperson shall determine who is entitled to speak.
20. The chairperson or any council member may call a council member to order while speaking, and the debate shall then be suspended and the council member shall not speak until the point of order is determined.
21. A council member may speak only once on a procedural issue.
22. Any member of the council may appeal the decision of the chairperson to the council and all appeals shall be decided by a majority vote and without debate.
23. All questions before the council shall be decided by majority vote of the councillors present.
24. The chairperson shall not be entitled to vote unless the votes in favour and against the measure are equal, in which case the chairperson shall cast the deciding vote.
25. Every member present when a question is put shall vote thereon unless the council excuses him or her or unless he or she is personally interested in the question, in which case he or she shall declare his interest, and may recuse himself or herself or be required to recuse himself or herself by a majority vote of the other council members.
26. A member of the council who refuses to vote or abstains from voting shall be deemed to vote in the affirmative.
27. Whenever a division of the council is taken for any purpose, each council member present and voting shall announce his or her vote upon the question openly and individually to the council and, when so requested by any member, the secretary shall record it.
28. Any member may require the question or resolution under discussion to be read for his or her information at any period of the debate, but not so as to interrupt a member who is speaking.
29. The regular meetings of the council shall be open to members of the band, and no member shall be excluded from a regular meeting except for improper conduct.

30. Notwithstanding the previous section, Council may, by motion, adjourn a regular meeting of the Council, and convene an *in camera* meeting of Council where the matter to be discussed is of sufficient sensitivity that confidentiality is required.
31. The chairperson may expel or exclude from any meeting any person who causes a disturbance at the meeting.
32. The council may appoint special committees on any matters as the interests of the band may require.
33. Council shall determine what constitutes quorum for each committee.
34. The chief of the band shall be an ex officio member of all committees and be entitled to vote at all committee meetings, and other members of the council may attend meetings of a committee and may with the consent of the committee take part in the discussion but shall not be entitled to vote.
35. The general duties of committees are:
  - a. to report to the council from time to time as often as the interests of the band may require, all matters connected with the duties imposed on them and recommend such action by the council in relation to those duties as they may deem necessary and expedient; and
  - b. to consider, advise and report upon all matters referred to them by the council or by the chief of the band.
36. Special meeting of committees shall be called at the request of the chairperson or a majority of the committee or, in the absence of the chairperson, on request of the chief of the band.

#### **Costs of Attending Meetings of Council**

37. Notwithstanding the provision of honoraria for serving on council, members of council are expected to cover their own costs of attending meetings of council.

#### **Mode of Election for Chief and Councillors**

38. The chief and councillors shall be elected by a vote held in accordance with this code.

#### **Term of Office**

39. The term of office for the position of chief and councillors shall, subject to this Code and any vacancies under it, shall be 4 years.



40. The term of office may, under mitigating circumstances, 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.

#### **Election and Term of Chief**

41. The first Nomination Meeting for the election of chief shall take place on **Tuesday, January 25, 2011.**
42. Subject to this Code, subsequent Nomination Meetings for the election of chief shall take place on the last Tuesday in January every four years beginning in the year, 2015.
43. The first election of chief under this Code shall take place on **Tuesday, March 8, 2011.**
44. Subject to this Code, subsequent elections of chief shall take place on the second Tuesday in March every four years beginning in the year, 2015.
45. The term of office for a chief elected under this Code shall commence at 12:01 am on the Monday following his or her election and, subject to any vacancy arising under this Code, shall expire at midnight on the Sunday following the next election of chief.

#### **Election and Term of Councillors**

46. The first Nomination Meeting for the election of councillors shall take place on **Tuesday, March 29, 2011.**
47. Subject to this Code, subsequent Nomination Meetings for the election of councillors shall take place on the last Tuesday in March every two years beginning in the year, 2013.
48. The first election of councillors under this Code shall take place on **Tuesday, May 10, 2011.**
49. Subject to this Code, subsequent elections of councillors shall take place on the second Tuesday in May every two years beginning in the year, 2013.
50. The term of office for:
  - a. the two candidates for councillor who receive the most votes in the first election of councillors under this Code shall commence at 12:01 am on the Monday following his or her election (**Monday, May 16, 2011**) and, subject to any vacancy arising under this Code, shall expire at midnight on

- the Sunday following the election of councillors four years later (**Sunday, May 17, 2015**);
- b. the two candidates for councillor who receive the third and fourth most votes in the first election of councillors under this Code shall commence at 12:01 am on the Monday following his or her election (**Monday, May 16, 2011**) and, subject to any vacancy arising under this Code, shall expire at midnight on the Sunday following the election of councillors two years later (**May 19, 2013**); and
  - c. a councillor elected under this Code in subsequent elections of councillors shall commence at 12:01 am on the Monday following his or her election and, subject to any vacancy arising under this Code, shall expire at midnight on the Sunday following the election of councillors four years later.

### **Term of Office for By-elections and Appeals**

- 51. The successful candidate in a by-election shall hold office for the remainder of the original term of office of the chief or councillor whom he or she is elected to replace.
- 52. In the event that a successful appeal results in a new general election, the term of the newly elected council shall commence on the date all elected council members swear the oath of office and expire on the date set out in sections 45 or 50.

### **Vacancy**

- 53. A chief or councillor position on the council may become vacant if, while in office:
  - a. the chief or councillor resigns in writing from office of his or her own accord;
  - b. the chief or councillor has been unable to perform the functions of his or her office for more than six months due to illness or other incapacity;
  - c. the chief or councillor dies; or
  - d. the chief or councillor is removed from office in accordance with this Code; or

### **PART 5 – CODE OF ETHICS**

- 54. Candidates must campaign:

- a. according to the rules and regulations established in this code and pursuant to the Code of Ethics;
  - 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 Complaints and Appeal Board.
55. Every person is guilty of an offence who, during an election period, directly or indirectly offers a bribe to influence an elector to vote or refrain from voting or to vote or refrain from voting for a particular candidate, or during an election period, accepts or agrees to accept a bribe that is offered.
56. Every person is guilty of an offence who, by intimidation or duress, compels a person to vote or refrain from voting or to vote or refrain from voting for a particular candidate in an election, or by any pretence or contrivance, induces a person to vote or refrain from voting or to vote or refrain from voting for a particular candidate in an election.

#### **PART 6 - REMOVAL OF COUNCIL MEMBERS FROM OFFICE**

57. The chief or a councillor may be removed from office and be prevented from running for office for 6 years if he or she:
- a. violates this code, his or her oath of office or the Code of Ethics;

- b. fails to attend three consecutive regular meetings of council without being reasonably excused from attendance by a quorum of the council;
- c. fails to maintain a standard of conduct expected of a member of council;
- d. has been convicted of an indictable offence since his or her election, other than an offence committed in the furtherance of aboriginal title and rights;
- e. accepts or offers a bribe, forges a council document or otherwise acts dishonestly in his or her role;
- f. is negligent in failing to ensure the safety and protection of the community's members and property;
- g. abuses his or her office such that the conduct brings the community or council into disrepute;
- h. encourages others to commit any of the above acts or omissions; or
- i. engages in such other conduct as may be determined by council to be of such a serious nature that the removal is necessary and appropriate.

#### **Procedure**

58. Proceedings to declare a person ineligible to continue to hold the office of chief or councillor shall be initiated by:
- a. any elector submitting to the Complaints and Appeal Board a petition on which shall appear:
    - i. the ground pursuant to the preceding section on which removal of a chief 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 of the band 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 Complaints and Appeal Board on which shall appear:

- i. the ground pursuant to the preceding section on which removal of a chief or councillor is sought;
  - ii. the evidence in support of the resolution; and
  - iii. the signatures of all council members who voted for the removal.
59. On receipt of a petition, the Complaints and Appeal Board shall verify that the petition complies with subsection 58(a). If the petition does not comply, the Complaints and Appeal Board shall so notify the petitioner(s).
60. In a case where the petition complies with subsection 58(a), the Complaints 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 board.
61. In a case where the petition has been dismissed under the preceding section, the Complaints and Appeal Board shall so inform the petitioner(s) in writing and provide a rationale.
62. In a case where the Complaints and Appeal Board schedules a hearing under subsection 60(b), the board shall 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.
63. 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 board, which may include the presentation of documents and testimony by witnesses.
64. The Complaints and Appeal Board shall conduct a hearing at the time and place set out in the notice provided under section 62.
65. Within 5 days of the day on which the hearing under the preceding section is held, the Complaints 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.
66. The Complaints 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.
67. The decision of the Complaints and Appeal Board made under section 65 is final and binding upon all parties.
68. If the council position is declared vacant under subsection 65(a), the chief or councillor removed from office shall be disqualified from being a candidate for (6) six years commencing on the date of the board's ruling.

### **By-election**

69. Unless otherwise provided in this code, in the event that the office of chief or councillor becomes vacant, a by-election shall be held within 90 days after the date on which the position is declared vacant.
70. 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.
71. 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, he must resign his council position prior to the nomination meeting for the by-election.
72. Except as expressly provided otherwise in this code, the rules and procedures in this code shall apply to by-elections.

## **PART 7 - PRE-NOMINATION PROCEDURE**

### **Appointment of an Electoral Officer**

73. 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.
74. The band council 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 which is to be conducted (general election or by-election), as well as any special instructions.

75. If an electoral officer has not been appointed within the time set out in section 73, the electoral officer shall be appointed by the band manager as soon as possible.
76. The electoral officer must be a person who:
- a. is not a member of the band;
  - 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.
77. In the event that the electoral officer cannot fulfill his or her 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.

#### **Oath of Office**

78. The electoral officer must swear an oath to uphold the office in accordance with this code.

#### **Responsibilities and Ethics**

79. 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 and pursuant to the Code of Ethics;
  - b. remain neutral and professional in the conduct of the duties of his 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 his 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**

- 80. At least 79 days before the day on which an election is to be held, the electoral officer shall obtain the names, band membership numbers and dates of birth of all band members who will have attained the age of 18 years on the date on which the election is to be held.
- 81. The Indian Registration Administrator shall, no later than 79 days before the date on which the election is to be held, provide the electoral officer with the last known addresses, if any, of all electors who do not reside on the reserve.
- 82. Electors are responsible for providing the Indian Registration Administrator with their current addresses.
- 83. An elector's address shall be used by the electoral officer only for the purpose of providing notices, mail-in ballots or other election documents to electors who are entitled to receive them under this code.
- 84. 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.
- 85. A candidate for election as chief or councillor 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.
- 86. 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.
- 87. 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 date on which the election is to be held.
- 88. On request, the electoral officer or deputy electoral officer shall confirm whether the name of a person is on the voters list.



89. The electoral officer shall 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.
90. A person, or an elector acting on his behalf, may, no later than 2 days prior to the date on which an election is to be held, 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 elector:
- a. is entitled to have his name entered on the band list;
  - b. will be at least 18 years of age on the date on which the election is to be held; and
  - c. is qualified to vote in band elections.
91. 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 band list nor entitled to have his name entered on the band list;
  - b. will not be at least 18 years of age on the date on which the election is to be held; or
  - c. is not qualified to vote in band elections.
92. 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 date on which the election is to be held, or as soon as practicable after that time.
93. 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 date on which the election is to be held.

94. 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.
95. The decision of the electoral officer under the preceding section is final and is not subject to appeal.
96. A person whose name does not appear on the voters list shall be entitled to vote on election day, provided he presents documentary proof to the electoral officer demonstrating his qualifications as an elector to the electoral officer's satisfaction.

### **Appointment of Deputies and Interpreters**

97. The electoral officer shall appoint deputies and interpreters as he or she deems necessary, who shall work under his or her direction.
98. 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.
99. A deputy electoral officer shall not be a member of council or a candidate in the election.
100. Every deputy electoral officer shall swear an oath of office to:
  - a. uphold and comply with this code, the Code of Ethics and all the laws of the community;
  - b. fulfill the duties and responsibilities of his or her office under this code;
  - c. carry out his or her duties faithfully, honestly, impartially and to the best of his or her abilities;
  - d. 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
  - e. always act in the best interests of the community in carrying out his or her duties.
101. The electoral officer may make such orders and issue such instructions consistent with the provisions of this code as he or she may deem necessary for the effective administration of the election.

## **PART 8 - THE NOMINATION PROCESS**

### **Notice of Nomination Meeting and Mail-in Procedures**

102. The electoral officer shall, at least 30 days before the date on which the nomination meeting is to be held, post a notice of nomination meeting in at least one conspicuous place on the reserve.
103. The electoral officer shall, at least 30 days before the date on which the nomination meeting is to be held, mail a notice of the nomination meeting and a voter declaration form to every elector who does not reside on the reserve in respect of whom the electoral officer has been provided with, or has been able to obtain, an address.
104. A notice of a nomination meeting shall include:
  - a. the date, time, duration and location of the nomination meeting;
  - b. the date on which the election will be held and the location of each polling place;
  - c. the name and phone number of the electoral officer;
  - d. the statement that any voter may vote by mail-in ballot;
  - e. a description of the manner in which an elector can nominate a candidate, or second the nomination of a candidate; and
  - f. the statement that, if the elector wants to receive information from candidates, the elector can agree to have his or her address released to the candidates.
105. 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 Nominate**

106. In order to be entitled to nominate a candidate at an election, an elector must, on the day of the nomination meeting:
  - a. be at least 18 years of age; and
  - b. be included on the voters list.

107. Subject to section 106, any elector may propose or second the nomination of any qualified person to serve as the chief 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; or
  - b. orally, at the nomination meeting.

### **Nomination Meeting**

108. The nomination meeting shall be held at least 42 days prior to the date on which the election is to be held.
109. 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 nomination of candidates for the available council positions.
110. The electoral officer is responsible for managing and conducting the nomination meeting.
111. 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 107(a).

### **Duration**

112. The nomination meeting shall remain open for at least 3 hours.

### **Maintaining Order and Security**

113. The electoral officer shall maintain order at all times during the nomination meeting and may cause to be removed any person who, in his or her opinion, is disrupting or otherwise interfering with the proceedings.

### **Nomination Procedure**

114. Mailed nominations that are not received by the electoral officer before the time set for the nomination meeting are void.
115. The electoral officer shall record the name of the candidate, the nominator and the seconder and confirm to those present at the meeting that the proposed candidate is eligible to be elected to the position of chief or councillor of the band.
116. A person present at a nomination meeting who is eligible to do so may second the nomination of any person nominated in writing.

117. Where the same person receives two written nominations for the same office, the second nomination shall constitute a secondment of the first nomination.
118. Any elector may nominate or second no more than:
  - a. one eligible person for the office of chief; and
  - b. the number of eligible persons equivalent to the vacancies for the office of councillor.
119. At the end of the nomination meeting, the electoral officer shall:
  - a. if only one person has been nominated for election as chief, declare that person to be elected;
  - b. if the number of 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 persons are nominated for election as chief or councillors, announce that an election will be held.
120. 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 9 – CANDIDACY**

121. Only electors who meet the requirements of a candidate as set out in this code may be nominated as a candidate.
122. An unsuccessful candidate for chief may be a candidate for the office of councillor in a subsequent election.
123. (1) 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 he or she:
    1. has read and understood the Council Code of Conduct, the Council Oath of Office, Declaration of Confidentiality and Council Roles and Responsibilities, and if elected, he or she will abide by them;

2. will participate in an all-Candidates forum prior to the election; and
3. will submit a summary of his or her election platform to the Band Manager prior to the all-Candidates forum.

(2) A nominee who fails to file the documents in accordance with this section shall not be a candidate in the election, and his or her name shall not appear on the election ballot.

124. No person shall accept candidacy in an election if that person is not eligible to be a candidate in accordance with this code.

#### **Withdrawal**

125. A candidate may withdraw his 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.
126. A candidate who dies before the close of the polls shall be considered to have withdrawn his candidacy.

### **PART 10 - PRE-ELECTION PROCEDURE**

#### **Acclamation**

127. Where the office of chief and all offices of councillor are filled by acclamation:
- a. 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; and
  - b. sections 128 through 185 shall not apply.

#### **Ballots**

128. The electoral officer shall prepare ballot papers setting out:
- a. the names of the candidates nominated for election as chief, in alphabetical order by surname; and
  - b. the names of the candidates nominated for election as councillors, in alphabetical order by surname.

129. 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**

130. The election shall be held at least 42 days after the day on which the nomination meeting was held.
131. The electoral officer shall, within 3 days after the day on which the nomination meeting was held, post a notice of election in at least one conspicuous place on the reserve.
132. 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**

133. The electoral officer shall, at least 35 days prior to the date on which the election is to be held, mail to every elector who is not ordinarily resident on the reserve and for whom a valid postal address is known, and to every elector whose application to vote by mail-in ballot has been received, 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. an voter declaration form which shall set out:
    - i. the name of the elector;

- ii. the membership number and date of birth of the elector; and
    - iii. the name, address and telephone number of the witness to the signature of the elector;
  - e. the notice of election set out in section 131; 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.
- 134. An elector who is ordinarily resident on the reserve and who is unable to vote in person on election day may, at least 10 days prior to the date on which the election is to be held, request a mail-in ballot package from the electoral officer.
- 135. An elector not residing on the reserve who has not received a mail-in ballot package may, not later than 10 days prior to the date on which the election is to be held, request a mail-in ballot package from the electoral officer.
- 136. Upon receipt of a request for a mail-in ballot package under section 134 or 135, the electoral officer shall mail or deliver a mail-in ballot package described in section 133 to the elector whose name appears on the application.
- 137. 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.
- 138. 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.
139. 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.
140. 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.
141. 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.

### **Equipment for the Election**

142. 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**

- 143. The electoral officer will establish at least one polling station on the reserve.
- 144. 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 11 - ELECTION DAY**

### **Electoral Officer**

- 145. Subject to section 180 of this Code, the electoral officer shall not be allowed to vote in the election.

### **Candidate's Scrutineer**

- 146. A candidate shall be entitled to not more than two scrutineers in the polling station at any one time.
- 147. 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**

- 148. 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**

- 149. 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**

150. Voting shall be by secret ballot.
151. No elector may vote by proxy or authorize another person to vote on his or her behalf.
152. 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.
153. 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. attempt to interfere with or influence any elector in marking his ballot; or
  - c. attempt to obtain information as to how an elector is about to vote or has voted.

### **Voting Procedure**

154. Each person, on arriving at the polling station, shall give his or her name to the electoral officer or deputy electoral officer.
155. 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 both the ballot for chief and the ballot for councillor and provide them to the elector.
156. 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.
157. An elector to whom a mail-in ballot was mailed or provided under section 133, 134 or 135 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, deputy electoral officer, a justice of the peace, a notary public or a commissioner for oaths.

158. The electoral officer or deputy electoral officer shall, when requested to do so, explain the method of voting to the elector.
159. 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.
160. 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.
161. While an elector is in the compartment for the purpose of marking his or her ballot paper, no other person shall, except as provided in section 162, be allowed in the same compartment or be in any position from which he or she can see the manner in which the elector marks his or her ballot paper.

### **Voting Irregularities**

162. At the request of any elector who is unable to vote in the manner set out in section 159, 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.
163. The electoral officer or deputy electoral officer shall note on the voters list opposite the name of an elector requiring assistance, as set out in section 162, the fact that the ballot paper was marked by him or her at the request of the elector and the reasons therefore.
164. An elector who has inadvertently dealt with his or her 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.

165. 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 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 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**

166. 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 12 - COUNTING OF THE VOTES**

### **Opening Mail-in Ballots**

167. At the time published in the notice prepared under section 131 for the counting of the votes, 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 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 a band 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.
  - 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**

168. 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.
169. Immediately after the mail-in ballots have been deposited in the ballot box under subsection 167(b), 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.
170. 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.
171. 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.

### **Ballots not Counted**

172. 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 voter can be identified.
173. The electoral officer or deputy electoral officer shall attach a note to each ballot rejected which outlines the reason for rejection.
174. Subject to review on recount or on an election appeal, the electoral officer or deputy electoral officer shall take a note of any objections made by any candidate or his or her scrutineer to any of the ballots found in the ballot box and decide any questions arising out of the objection.
175. 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 his or her initials.

### **Other Polling Stations**

176. 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**

177. If it is not possible to determine the successful candidate(s) for either a chief 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.
178. 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.
179. At the time established pursuant to section 177, the electoral officer shall conduct a recount of the valid ballots.
180. If the recount fails to determine a successful candidate, the electoral officer shall cast ballots in order to break the tie. 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, he 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 constitute the candidate(s) for whom the electoral officer shall cast a vote.

## **PART 13 - POST-ELECTION PROCEDURES**

### **Announcement**

181. After completing the counting of the votes and establishing the successful candidates, the electoral officer shall declare to be elected the candidates or candidates having the highest number of votes.
182. 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.
183. 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. mail a copy of the election report to every elector of the band who does not reside on the reserve; and
  - c. forward a copy of the election report to the band administrator.

#### **Retention of Ballots and Other Election Material**

184. The electoral officer shall deposit all ballot papers in sealed envelopes, including those rejected, spoiled and unused, and shall retain these ballots and all materials in connection with the election.
185. All ballots and materials retained in accordance with the preceding section shall be retained for 45 days from the date on which the election was held or until a decision on an appeal is rendered, whichever date is later, after which time the electoral officer may, unless directed otherwise by the council, destroy them in the presence of two witnesses who shall make a declaration that they witnessed the destruction of those papers.

#### **Chief and Councillor Oath of Office**

186. A candidate who has been elected chief or councillor shall, within 5 days of the electoral officer's declaration under section 181 or notice under section 127 of this code, 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 this code, the Code of Ethics and all laws of the band;
  - b. fulfill the duties and responsibilities of his or her office under this code, the Code of Ethics and all laws of the band;
  - c. carry out his or her duties faithfully, honestly, impartially and to the best of his abilities;



- d. keep confidential, both during and after his term of office, any matter or information which, under this code, the laws of the band or policy, is considered confidential; and
  - e. **always act in the best interests of the band in carrying out his duties.**
187. Where a candidate elected as chief or councillor cannot, due to illness or other valid reason, swear the oath of office within the time prescribed in the preceding section, he or she or an elector acting on his or her behalf may file a petition with the electoral officer for an extension of the time to swear the oath of office.
188. 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.
189. No person elected as chief or councillor shall be permitted to assume office until they have sworn and filed with the electoral officer the oath of office required under section 186.
190. Subject to section 188, if a person elected as chief 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.
191. 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 chief and council.
192. Unless the vacancy occurring under section 190 results in a situation where the band council can no longer form a quorum, the position shall remain vacant until such time as a by-election is called by council.

## **PART 14 - COMPLAINTS AND APPEAL BOARD**

### **Composition**

193. The Complaints and Appeal Board shall be composed of three people who:
- a. are at least 18 years of age;
  - b. are not members of the Soda Creek Indian Band;
  - 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.
194. At least 100 days before the date on which the election is to be held, the band council shall:
- a. select the members of the Complaints and Appeal Board in accordance with the preceding section; and
  - b. draw a list of 10 additional potential members.
195. The term of office of the Complaints and Appeal Board shall be from its appointment under the preceding section until the day on which the council selects another Complaints and Appeal Board in accordance with this code.
196. Upon receipt of an election appeal in accordance with section 200, any Complaints 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 appeal, shall excuse themselves from the board.
197. The remaining members of the Complaints and Appeal Board will select additional members as required to attain three from the list of potential members drawn by the band council in accordance with subsection 194(b).
198. Each member of the Complaints and Appeal Board shall execute an oath of office and accept his appointment by forwarding a letter of acceptance to the council.

### **Functions**

199. The Complaints 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 15 - APPEAL MECHANISM**

### **Timing**

200. A candidate or an elector may, within 30 days from the date on which the election was held, submit an appeal to the Complaints and Appeal Board.

### **Grounds for Appeals**

201. 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**

202. An appeal submitted to the Complaints 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**

203. Upon receipt of an election appeal, the Complaints and Appeal Board shall:
- a. in the case where the appeal is submitted in accordance with section 202, 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 199, inform the appellant(s) in writing that the appeal will not receive further consideration.

### **Response to the Allegations**

204. Any candidate or the electoral officer may, within 14 days of the receipt of the appeal(s), forward to the Complaints and Appeal Board by registered mail a written response to the appeal allegations, together with any supporting documentation.

### **Investigation**

205. The Complaints 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 board deems necessary.

### **Decision**

206. After a review of all of the evidence that it has received, the Complaints and Appeal Board shall rule:

- a. that the evidence presented was not sufficiently substantive to determine that:

- i. a violation of this code has taken place that might have affected the result of the election;
- ii. the person declared elected was not qualified to be a candidate;  
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. a violation of this code has taken place that might have affected the result of the election;
- ii. the person declared elected was not qualified to be a candidate;  
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.

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

- a. published in the community's newsletter, which is mailed to band members, or in a separate written notice delivered or mailed to all band members; and

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b. posted in at least one conspicuous place on the reserve.

208. The decision of the Complaints and Appeal Board is final and not subject to appeal.

## PART 16 – AMENDMENTS

209. 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.

210. Upon receipt of an amendment proposal in accordance with the preceding section, council shall prepare a notice that sets out:

a. a summary 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.

211. The notice provided for in the preceding section shall be:

a. published in the community's newsletter, delivered or mailed to band electors, or by separate notice delivered or mailed to all band electors; and

b. posted in at least one conspicuous place on the reserve.

212. Electors may, within 14 days of publication of the notice outlined in section 210, provide comments concerning the proposed amendments in writing to council.

213. 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.

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214. The council shall submit the final amendment proposal to a band plebiscite to be conducted in accordance with the Soda Creek Indian Band Plebiscite Code.
215. 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.
216. Elections held under the amended code shall take place no sooner than 100 days from the band plebiscite.