

**CUSTOM ELECTION CODE OF THE
KWIKWASNUT'INUXW HAXWA'MIS FIRST NATION, 2021**

DRAFT

February 2021

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PART 1: PREAMBLE & TITLE

- A. THIS ELECTION CODE SHALL BE CALLED THE CUSTOM ELECTION CODE OF THE KWIKWASNUT'INUXW HAXWA'MIS FIRST NATION, 2021.
- B. THE KWIKWASNUT'INUXW HAXWA'MIS FIRST NATION HAS THE INHERENT RIGHT TO SELF DETERMINATION AS STATED IN THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES AND THE RIGHT TO SELF GOVERNMENT AS RECOGNIZED AND AFFIRMED BY SECTION 35(1) OF THE *CONSTITUTION ACT, 1982*.
- C. THE HEREDITARY GOVERNANCE SYSTEMS OF THE KWIKWASNUT'INUXW HAXWA'MIS CONTINUE TO BE FOUNDATIONAL TO KWIKWASNUT'INUXW HAXWA'MIS DECISION MAKING AND THIS CUSTOM ELECTION CODE IS NOT INTENDED TO DISPLACE KWIKWASNUT'INUXW HAXWA'MIS HEREDITARY GOVERNANCE SYSTEMS; AND
- D. THE ROLE OF KWIKWASNUT'INUXW HAXWA'MIS HEREDITARY LEADERS IN PROVIDING GUIDANCE AND ADVICE TO KWIKWASNUT'INUXW HAXWA'MIS COUNCIL IS RECOGNIZED AS A COMPONENT OF KWIKWASNUT'INUXW HAXWA'MIS FIRST NATION SELF-GOVERNMENT.

PART 2: DEFINITIONS

1. (1) In this Code:

“Administrative Leave” means temporary leave with pay and any benefits intact, but the Council member on Administrative Leave has no authority as a Council member during the leave, including the right to vote on Council decisions, and if the Council member also holds a staff or manager position with Kwikwasnut'inuxw Haxwa'mis, they have no authority pursuant to that staff or manager position during the leave;

“Amendment Committee” means a committee appointed pursuant to Part 14;

“Appellant” means a person who submits an appeal in accordance with Part 12;

“Arbitrator” means an independent third party appointed in accordance with Part 5 to hear appeals, petitions or other matters to be determined by an Arbitrator;

“Assistant Electoral Officer” means any person appointed to assist in the conduct of the election process;

“Band Member” means a person whose name appears on the Kwikwasnut'inuxw Haxwa'mis First Nation Membership list;

“Band Council Resolution” means a formal motion moved by a Council member, seconded by another Council member and approved by a majority of a quorum of Council at a duly convened meeting of Council;

“By-election” means a special election to fill a position on the Council in accordance with this Code;

“Candidate” means a person who:

- (a) is at least 18 years of age on the day on which the Nomination Meeting is held;
- (b) is a Band Member;
- (c) has been nominated to be a Candidate pursuant to the provisions of this Code; and
- (d) has fulfilled the requirements pursuant to this Code;

“Campaign Rules” means guidelines, general rules of behaviour and standards established in accordance with Part 4 of this Code, which govern the conduct of Candidates running for office and their supporters;

“Code” means the leadership selection system set out herein;

“Community Vote Meeting” means a meeting held pursuant to Part 15 of this Code;

“Council” means the sum of all those persons elected pursuant to this Code into the offices of Chief Councillor and Councillor;

“days” means calendar days;

“Electoral Boundary” means the area outlined in Appendix A;¹

“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 in accordance with this Code;

“Elector” means a person who:

- (a) is a Band Member; and
- (b) is at least 18 years of age on the day on which the election is held;

“Elector Declaration Form” means a declaration in the form set out in Schedule “A” Forms;

“Electors’ List” means the list of Band Members eligible to vote in an election;

“frivolous or vexatious” means a proceeding which is not calculated to lead to any practical result and where the party bringing the proceeding is not acting in good faith and merely wishes to embarrass or annoy their opponent;

“indictable criminal offence” means the most serious type of offence under the *Criminal Code of Canada*. Examples of this type of offence include but are not limited to theft over \$5,000, assault, or murder;

“Immediate Family Member” means a person’s mother, father, sister, brother, child, spouse or common-law partner, whether by blood, marriage or adoption;

“Kwikwasnut’inuxw Haxwa’mis” means Kwikwasnut’inuxw Haxwa’mis First Nation as recognized under the *Indian Act* and as represented by its Council and any successor Council;

¹ Includes all Musgamagw communities, Alert Bay, and the North Island inclusive of Port McNeill.

“Kwikwasnut’inuxw Haxwa’mis Band Manager” means the person in the senior administrative staff role for Kwikwasnut’inuxw Haxwa’mis;

“Kwikwasnut’inuxw Haxwa’mis First Nation Membership List” means the list of Band Members compiled in accordance with the *Indian Act* and kept up to date by the Registrar;

“Mail-in Ballot” means a ballot mailed or delivered;

“Nomination Form” means a nomination in the form set out in Schedule “A” Forms;

“Nomination Meeting” means the meeting at which persons nominate and second Candidates for an election;

“Notice of Appeal” means a notice in the form set out in Schedule “A” Forms;

“Notice of Community Meeting” means a notice pursuant to Part 14 of this Code;

“Notice of Community Vote Meeting” means a notice pursuant to Part 15 of this Code;

“Notice of Nomination Meeting” means a notice in the form set out in Schedule “A” Forms;

“Oath of Office” means an oath in the form set out in Schedule “A” Forms;

“ordinarily resident in the Electoral Boundary” refers to the residential status of an Elector who is considered to have their ordinary residence within the Electoral Boundary for a period of six months. 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 Member; 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 or ordinary residence is acquired.

A person may also be temporarily absent from a place of ordinary residence for education, medical or temporary employment reasons;

“ordinarily resident on the Reserve” refers to the residential status of an Elector who is considered to have their 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 Member; 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 or ordinary residence is acquired.

A person may also be temporarily absent from a place of ordinary residence for education, medical or temporary employment reasons;

“Pardon” includes “record suspension” as defined in the *Criminal Records Act*, 1985 as amended from time to time and includes a community pardon granted in accordance with the traditional customs of the Kwikwasnut'inuxw Haxwa'mis;

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

“Platform” means a document setting out the goals, priorities, and principles of a Candidate who wishes to be elected to Council;

“Registrar” means the Kwikwasnut'inuxw Haxwa'mis employee responsible for maintaining the Kwikwasnut'inuxw Haxwa'mis First Nation Membership List;

“Reserve” means Gwayasdums IR #1;

“Run Off” means an election held to break a tie in accordance with Part 10;

“vested interest” means a situation in which a person has an opportunity to benefit their personal interests by acting as the Electoral Officer;

(2) Where the time limited for the doing of an act expires or falls on a Saturday or Sunday or a federal or provincial holiday, the act must be done on the last business day prior to the Saturday or Sunday or federal or provincial holiday.

(3) Where there is a reference to a number of days or a number of days between two events, in calculating that number of days, the days on which the events happen are excluded.

(4) Where there is a meeting or community engagement activity held in accordance with this Code, only Kwikwasnut'inuxw Haxwa'mis staff, persons hired to conduct the meeting or community engagement, Band Members, and the Immediate Family Members of Band Members shall be permitted to attend.

PART 3: THE COUNCIL

Composition and Size

2. (1) The Council shall consist of one (1) Chief Councillor, two (2) Councillors who reside within the Electoral Areas (“Resident Councillor”), and one (1) Councillor who may reside anywhere in British Columbia (“Non-Resident Councillor), collectively referred to as “Councillors”.

Method of Election for Chief Councillor and Councillors

3. The Chief Councillor and Councillors shall be elected by a vote held in accordance with this Code.

Term of Office

4. The term of office for the position of Chief Councillor and Councillors is no longer than four (4) years.
5. (1) At least one-hundred (100) days before an election day, Council shall, by Band Council Resolution:
 - (a) establish the date on which an election is to be held; and
 - (b) designate the locations of Polling Stations.(2) The Council must post a copy of the completed Band Council Resolution:
 - (a) in a conspicuous place at the principal administration office of Kwikwasnut’inuxw Haxwa’mis;
 - (b) at all other locations designated by Council, and;
 - (c) on the website of Kwikwasnut’inuxw Haxwa’mis.
6. (1) The term of office for a Council member commences once they meet the requirements set out in section 122 of this Code.
 - (2) A person elected under this Code holds office until the electoral officer signs the election report following a subsequent election for that office.
7. The successful Candidate in a By-election shall hold office for the remainder of the original term of office of the Chief Councillor or Councillor whom they are elected to replace.
8. The first election held under this Code will take place in 2023.

Vacancy

9. A Chief Councillor or Councillor position on the Council may become vacant if, while in office:
 - (a) the Chief Councillor or Councillor resigns in writing from office of their own accord;

- (b) the Chief Councillor or Councillor has been unable to perform the functions of their office for more than six (6) months due to illness or other incapacity;
- (c) the Chief Councillor or Councillor dies;
- (d) the Chief Councillor or Councillor is removed from office in accordance with Part 13;
- (e) the Chief Councillor or Resident Councillor cease to be ordinarily resident in the Electoral Boundary;
or
- (f) the Chief Councillor or Councillor is otherwise unable to fulfill the terms of office.

By-election

- 10. No By-election shall be held unless a By-election is necessary to have sufficient Council members to maintain a quorum.
- 11. 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.
- 12. Except as expressly provided otherwise in this Code, the rules and procedures in this Code shall apply to By-elections.

PART 4: CAMPAIGN RULES

- 13. Candidates must campaign:
 - (a) according to the rules and regulations 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 Electors 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 campaigns of rumors and innuendo;
 - (f) non-violently, without intimidating opposing 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 their opinions on the campaign;
 - (h) respecting the Electoral Officer and the Assistant Electoral Officer and not interfering with the performance of their duties; and

- (i) accepting and complying with the official election results and any final decision of the Arbitrator.

PART 5: PRE-NOMINATION PROCEDURE

Appointment of an Electoral Officer and Arbitrator

- 14.** Council must appoint an Electoral Officer and an Arbitrator by a Band Council Resolution no later than ninety (90) days before the day on which an election is to be held. The Electoral Officer and the Arbitrator must not be the same person.
- 15.** The Band Council Resolution for the appointment of the Electoral Officer and Arbitrator shall contain:
 - (a) the Electoral Officer's full name;
 - (b) the Electoral Officer's mailing address;
 - (c) the Electoral Officer's email address;
 - (d) the Electoral Officer's phone number;
 - (e) the Arbitrator's full name;
 - (f) the Arbitrator's mailing address;
 - (g) the Arbitrator's email address;
 - (h) the Arbitrator's phone number;
 - (i) the date of the election;
 - (j) confirmation that the Arbitrator can be available to preside over any petition to remove a Council member that may be filed prior to the end of the term;
 - (k) a statement on the type of election, which is to be conducted (general election or By-election); and
 - (l) any special instructions.
- 16.** If the Electoral Officer and Arbitrator have not been appointed within the time set out in section 14, the Electoral Officer and Arbitrator shall be appointed by the Kwikwasnut'inuxw Haxwa'mis Band Manager as soon as possible.
- 17.** The Electoral Officer must be a person who:
 - (a) is not a member of Kwikwasnut'inuxw Haxwa'mis;
 - (b) has no vested interest in the outcome of the election;

- (c) is at least eighteen (18) years of age; and
- (d) has experience in the conduct of elections or has received appropriate training.

18. In the event that the Electoral Officer cannot fulfill their duties, an Assistant Electoral Officer who is not a member of Kwikwasnut'inuxw Haxwa'mis shall be appointed by a Band Council Resolution, to undertake the duties of the Electoral Officer. In the absence of an Assistant Electoral Officer who is not a member of Kwikwasnut'inuxw Haxwa'mis, the Council shall appoint a new Electoral Officer.

19. 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.

20. The Arbitrator must be a person who:

- (a) is not a member of Kwikwasnut'inuxw Haxwa'mis;
- (b) can be available to preside over any petition to remove a Council member that may be filed prior to the end of the term;
- (c) has no vested interest in the outcome of the election; and
 - (i) holds the designation of Qualified Arbitrator;
 - (ii) holds the designation of Chartered Arbitrator; or
 - (iii) has experience in the conduct of arbitrations and has received appropriate training.

Oath of Office

21. The Electoral Officer and Arbitrator must each swear an Oath of Office to:

- (a) uphold and comply with this Code;
- (b) uphold and comply with the Campaign Rules in Part 4;
- (c) uphold and comply with all the laws of Kwikwasnut'inuxw Haxwa'mis;
- (d) fulfill the duties and responsibilities of their office under this Code;
- (e) carry out their duties faithfully, honestly, impartially and to the best of their abilities;
- (f) keep confidential, both during and after their term, any matter or information which, under this Code, Kwikwasnut'inuxw Haxwa'mis law or policy, is considered confidential; and
- (g) always act in the best interests of Kwikwasnut'inuxw Haxwa'mis in carrying out their duties.

Responsibilities and Ethics

- 22.** 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 Campaign Rules in Part 4;
 - (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 and travel) in exchange for preferential treatment, a confirmed outcome in the election, or access to a public official or non-public information;
 - (d) not discriminate against anyone because of age, ancestry, colour, race of origin, race, conviction, disability (mental or physical), family and marital status, political belief, religion, sexual orientation, source of income, and gender identity or expression;
 - (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.

Electors' List

- 23.** Immediately upon being appointed, the Electoral Officer shall request from the Registration Unit in the Regional Office of Indigenous Services Canada, the names in alphabetical order by surname, of all Band Members who will have attained the age of eighteen (18) years on the date on which the election is to be held.
- 24.** No later than eighty (80) days before the day on which an election is to be held, the Registrar shall provide the Electoral Officer with the last known addresses of any Electors who are not ordinarily resident on the Reserve.
- 25.** Electors are responsible for ensuring the Registrar always has their current mailing address and current email address, if any.
- 26.** 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.
- 27.** Except for the purposes noted in in this Part, the Electoral Officer shall not disclose an Elector's address without the consent of the Elector.
- 28.** At least seventy-five (75) days before the day on which an election is to be held, the Electoral Officer shall prepare an Electors' List containing the names of all the Electors in alphabetical order by surname.

29. At least seventy-five (75) days before the day on which an election is to be held, the Electoral Officer shall post the Electors' List:
- (a) in a conspicuous location at the principal administration office of Kwikwasnut'inuxw Haxwa'mis;
 - (b) at all other locations designated by Council, and
 - (c) on the website of Kwikwasnut'inuxw Haxwa'mis.
30. On request, the Electoral Officer or Assistant Electoral Officer shall confirm whether the name of a person is on the Electors' List.
31. The Electoral Officer shall only revise the Electors' List upon confirmation from the Registration Unit in the Regional Office of Indigenous Services Canada.

Appointment of Assistant Electoral Officers and Interpreters

32. The Electoral Officer shall appoint and direct:
- (a) Assistant Electoral Officers, at least one of whom must not be a member of Kwikwasnut'inuxw Haxwa'mis; and
 - (b) any interpreters as they deem necessary.
33. Any Assistant Electoral Officer shall have such powers as described in this Code as well as those powers of the Electoral Officer as delegated to them by the Electoral Officer.
34. An Assistant Electoral Officer shall not be a member of Council or a Candidate in the election, or an Immediate Family Member of a member of Council or Candidate in the election.
35. Every Assistant Electoral Officer shall swear an Oath of Office to:
- (a) uphold and comply with this Code;
 - (b) uphold and comply with the Campaign Rules in Part 4;
 - (c) uphold and comply with all the laws of Kwikwasnut'inuxw Haxwa'mis;
 - (d) fulfill the duties and responsibilities of their office under this Code;
 - (e) carry out their duties faithfully, honestly, impartially and to the best of their abilities;
 - (f) keep confidential, both during and after their term, any matter or information which, under this Code, Kwikwasnut'inuxw Haxwa'mis law or policy, is considered confidential; and
 - (g) always act in the best interests of Kwikwasnut'inuxw Haxwa'mis in carrying out their duties.

PART 6: THE NOMINATION PROCESS

Notice of Nomination Meeting and Mail-in Procedures

36. The Electoral Officer shall, at least seventy (70) days prior to the date on which an election is to be held, post a Notice of Nomination Meeting in the form set out in Schedule “A”:
- (a) in a conspicuous location at the principal administration office of Kwikwasnut’inuxw Haxwa’mis;
 - (b) at all other locations designated by Council, and
 - (c) on the website of Kwikwasnut’inuxw Haxwa’mis.
37. The Electoral Officer shall, at least seventy (70) days prior to the date on which an election is to be held, mail a Notice of Nomination Meeting, a Nomination Form, and an Elector Declaration Form to every Elector not ordinarily resident on Reserve who has provided their address to the Registrar.

Eligibility to Nominate

38. In order to be entitled to nominate a Candidate at an election, a person must be an Elector.
39. Any Elector may propose or second the nomination of any qualified person to serve as the Chief Councillor or Councillor:
- (a) by delivering or mailing a completed Nomination Form and a completed, signed and witnessed Elector Declaration Form to the Electoral Officer before the end of the Nomination Meeting; or
 - (b) orally, at the Nomination Meeting.

Nomination Meeting

40. The Nomination Meeting shall be held at least fifty (50) days prior to the date on which an election is to be held.
41. 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.
42. The Electoral Officer is responsible for managing and conducting the Nomination Meeting.
43. Immediately following the opening of the Nomination Meeting, the Electoral Officer shall read aloud all written nominations and seconds that have been received by mail or delivered in accordance with section 39 of this Code.
44. Where the same person receives two written nominations for the same office, the second nomination shall constitute a second of the first nomination.
45. Written nominations or seconds that are not received by the Electoral Officer before the end of the Nomination Meeting are deemed void.

46. If necessary to comply with public health orders, the Nomination Meeting may take place by video conference.

Duration

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

Maintaining Order and Security

48. 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

49. The Electoral Officer shall record the name of the potential Candidate, the nominator, and the seconder whether the nomination is made orally or in writing.
50. An Elector present at a Nomination Meeting may second the nomination of any person nominated in writing.
51. Any Elector orally nominating or seconding a person as a potential Candidate at the Nomination Meeting, must complete an Elector Declaration Form before they leave the Nomination Meeting or their nominations and seconds will be deemed void.
52. Any Elector may nominate or second no more than five (5) persons total and the Elector may determine amongst those five (5) how many nominations or seconds are for the office of Chief Councillor and how many nominations or seconds are for the office of Councillor.
53. At the end of the Nomination Meeting, the Electoral Officer shall:
- (a) if only one person has been nominated as a potential Candidate for the office of Chief Councillor, declare that person to be elected as Chief Councillor subject to receiving within five (5) days:
 - (i) the statement required under section 57;
 - (ii) a duly executed Oath of Office; and
 - (iii) where that person is employed with Kwikwasnut'inuxw Haxwa'mis or a Kwikwasnut'inuxw Haxwa'mis business entity in a role where they make final decisions on which Band Members receive assets, their written resignation from that role.
 - (b) if the number of persons nominated as potential Candidates for the office of Resident Councillor and/or Councillor does not exceed the number to be elected, declare those persons to be elected as Councillors subject to receiving within five (5) days from each person:
 - (i) the statement required under section 57;
 - (ii) a duly executed Oath of Office; and

- (iii) where any of those persons are employed with Kwikwasnut'inuxw Haxwa'mis or a Kwikwasnut'inuxw Haxwa'mis business entity in a role where they make final decisions on which Band Members receive assets, their written resignation from that role, or
- (c) where more than the required numbers of persons are nominated as potential Candidates for the offices of Chief Councillor or Councillors, announce that an election will be held.

54. On the day following the Nomination Meeting, the Electoral Officer shall post a list of nominees and the offices for which they are nominated:

- (a) in a conspicuous location at the principal administration office of Kwikwasnut'inuxw Haxwa'mis;
- (b) at all other locations designated by Council, and
- (c) on the website of Kwikwasnut'inuxw Haxwa'mis.

PART 7: CANDIDACY

55. Only Electors who meet the requirements of a Candidate as set out in this Code may be declared a Candidate.

56. To be eligible for nomination as a Candidate, and to be eligible to act as a Council member, a person must:

- (a) be an Elector;
- (b) in the case of the Chief Councillor and the two Resident Councillors, be ordinarily resident within the Electoral Boundary as outlined in Appendix A;
- (c) submit a non-refundable seventy-five (\$75) dollar filing fee to the Kwikwasnut'inuxw Haxwa'mis Band Manager;
- (d) not have been convicted of an indictable criminal offence within 10 years before the date of the Nomination Meeting, unless:
 - (i) they have been granted a pardon in relation to that conviction, or
 - (ii) a court has ruled that the conviction is directly related to the exercise of that person's Aboriginal rights.
- (e) not have been removed from a position on Council within the five (5) years prior to the date of the Nomination Meeting;
- (f) not be bankrupt, as that term is defined in the *Bankruptcy and Insolvency Act*, as amended from time to time, within five (5) years of the date of the Nomination Meeting;
- (g) if it is a By-election, not be the person who resigns or is removed from their position on Council, prompting the holding of the By-election;

- (h) if the candidate is employed with Kwikwasnut'inuxw Haxwa'mis or a Kwikwasnut'inuxw Haxwa'mis business entity in a role where they make final decisions on which Band Members receive assets, they must agree at the time of nomination to resign from that role before being sworn into office; and
- (i) not be in arrears for any debt to Kwikwasnut'inuxw Haxwa'mis or a Kwikwasnut'inuxw Haxwa'mis business entity, unless:
 - (i) they have a debt repayment agreement that is entered into at least six (6) months before election day, and
 - (ii) they are in good standing in relation to their debt repayment agreement.

57. Any Elector may only be a Candidate for one of the offices of Chief Councillor or Councillor in any election.

58. A nominee shall not be declared a Candidate unless they provide a signed statement to the Electoral Officer by mail, email, or in person no later than five (5) days after the Nomination Meeting that includes:

- (a) a notice of acceptance of nomination;
- (b) the office that they accept the nomination for;
- (c) the office that they decline the nomination for (if any); and
- (d) a written confirmation that they meet the eligibility requirements of section 55

59. No person shall accept candidacy in an election if that person is not eligible to be a Candidate in accordance with this Code.

60. A nominee who fails to submit the statement required under section 57 within five (5) days of the Nomination Meeting shall not be declared a Candidate.

61. No later than forty (40) days prior to the date that an election is to be held, the Electoral Officer shall post a list of Candidates and the offices they are a Candidate for:

- (a) in a conspicuous location at the principal administration office of Kwikwasnut'inuxw Haxwa'mis;
- (b) at all other locations designated by Council; and
- (c) on the website of Kwikwasnut'inuxw Haxwa'mis.

Acclamation

62. Where the office of Chief Councillor or the offices of Councillor are filled by acclamation pursuant to section 52, the Electoral Officer shall, within six (6) days of the Nomination Meeting, prepare and sign an election report that sets out:

- (a) the names of the persons who have been acclaimed;
- (b) the offices they were acclaimed to; and
- (c) a statement that an election will not be held for those offices, and deliver that election report to:
 - (i) every Elector not ordinarily resident on the Reserve and, post that election report:
 - A. in a conspicuous location at the principal administration office of Kwikwasnut'inuxw Haxwa'mis,
 - B. at all other locations designated by Council, and
 - C. on the website of Kwikwasnut'inuxw Haxwa'mis.

Withdrawal

- 63.** A Candidate may withdraw their candidacy by submitting a written declaration to the Electoral Officer by mail, email, or in person stating that they wish to withdraw.
- 64.** A Candidate must comply with section 62 no later than forty (40) days prior to the date on which the election is to be held to ensure that their name will not appear on the ballot.
- 65.** A Candidate who dies before the close of the polls shall be considered to have withdrawn their candidacy.

Requirement to Share Platform

- 66.** No later than thirty-eight (38) days prior to the date of the election, each Candidate must:
 - (a) prepare a Platform that is:
 - (i) no longer than two (2) pages, and;
 - A. provide an electronic copy to the Kwikwasnut'inuxw Haxwa'mis Band Manager, or
 - B. provide printed copies in sufficient number to be included in all the Mail-in Ballot packages.
- 67.** No later than thirty-six (36) days prior to the date of the election, the Kwikwasnut'inuxw Haxwa'mis Band Manager must:
 - (a) provide the Electoral Officer with printed copies of each Platform in sufficient number to be included in all the Mail-in Ballot packages; and
 - (b) post the Platforms:
 - (i) in a conspicuous location at the principal administration office of Kwikwasnut'inuxw Haxwa'mis,
 - (ii) at all other locations designated by Council, and

- (iii) on the website of Kwikwasnut'inuxw Haxwa'mis.

PART 8: PRE-ELECTION PROCEDURE

Ballots

- 68.** The Electoral Officer shall prepare ballot papers no later than thirty-five (35) days prior to the date of the election setting out:
- (a) the names of the Candidates nominated for election as Chief Councillor, in alphabetical order by surname; and
 - (b) the names of the Candidates nominated for election as Councillors, in alphabetical order by surname.
- 69.** 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

- 70.** The Electoral Officer shall, no later than thirty-five (35) days prior to the date of the election, post a notice of election:
- (a) in a conspicuous location at the principal administration office of Kwikwasnut'inuxw Haxwa'mis;
 - (b) at all other locations designated by Council, and
 - (c) on the website of Kwikwasnut'inuxw Haxwa'mis.
- 71.** The notice of election shall include:
- (a) the date of the election;
 - (b) the dates of the advanced polls;
 - (c) the list of Candidates for Chief Councillor;
 - (d) the list of Candidates for Councillor;
 - (e) the times at which the Polling Stations will open and close;
 - (f) the location of the Polling Stations;
 - (g) a statement that Electors may vote by Mail-in Ballot;
 - (h) instructions for voting by Mail-in Ballot; and
 - (i) a statement that the Electors' List is posted for public viewing and its location.

Mail-in Ballots

72. The Electoral Officer shall, at least thirty-five (35) days prior to the date on which the election is to be held, mail to every Elector who is not ordinarily resident on the Reserve 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 initialed on the back by the Electoral Officer;
 - (b) an inner postage-paid return envelope, pre-addressed to the Electoral Officer;
 - (c) a second inner envelope marked “ballot” for insertion of the completed ballot;
 - (d) an Elector Declaration Form;
 - (e) any Platforms that have been received in accordance with section 66;
 - (f) the notice of election; and
 - (g) a letter of instruction which shall include:
 - (i) instructions for voting by Mail-in Ballot;
 - (ii) a statement advising Electors that they may vote in person at any Polling Station 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
 - (iii) a list of the names of Candidates who were acclaimed, if any.
73. An Elector who is ordinarily resident on the Reserve and who is unable to vote in person on election day may, no later than twenty (20) days prior to the date on which the election is to be held, request a Mail-in Ballot package from the Electoral Officer.
74. An Elector who is not ordinarily resident on the Reserve who has not received a Mail-in Ballot package may, not later than twenty (20) days prior to the date on which the election is to be held, request a Mail-in Ballot package from the Electoral Officer.
75. Upon receipt of a request for a Mail-in Ballot package the Electoral Officer shall ensure the person making the request is an Elector by checking their name against the Electors’ List and then mail or deliver a Mail-in Ballot package to the Elector whose name appears on the request.
76. The Electoral Officer shall indicate on the Electors’ List that a Mail-in Ballot package has been provided to each Elector to whom a Mail-in Ballot package was mailed or otherwise provided and keep a record of the date on which, and the address to which, each Mail-in Ballot package was mailed or otherwise provided.

77. An Elector shall vote with a 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 they want to vote for;
- (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 Elector Declaration Form in the presence of a witness who is at least eighteen (18) years of age and who also signs the Elector Declaration Form;
- (e) placing the inner envelope and the completed, signed, and witnessed Elector 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.

78. Where an Elector is unable to vote in the manner set out in section 76 the Elector may enlist the assistance of another person to mark the ballot and complete and sign a statement that they include with the Elector Declaration Form indicating this.

79. A person referred to in section 77 shall attest to:

- (a) the fact that the person completing and signing the Elector Declaration Form is the person whose name is set out in the form; and
- (b) the fact that the Elector is the person whose name is set out in the Elector Declaration Form and that the ballot was marked according to the directions of the Elector.

80. Mail-in Ballots that are not received by the Electoral Officer before the close of polls on election day shall not be counted.

Equipment for the Election

81. The Electoral Officer shall, before any Polling Station is open, supply the Polling Station with:

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

(g) the final Electors' List.

Polling Stations

82. The Electoral Officer must establish:

- (a) at least one Polling Station on the Reserve as the principal Polling Station to be used on election day;
- (b) one Polling Station in Alert Bay, British Columbia for an advanced poll to be held no later than seven (7) days prior to election day;
- (c) one Polling Station in Campbell River, British Columbia for an advanced poll to be held no later than seven (7) days prior to election day; and
- (d) any Polling Station at any other location designated by Council.

83. The Electoral Officer shall provide a voting compartment in any Polling Station where Electors can mark their ballots free from observation and the Electoral Officer may appoint security to maintain order in any Polling Station.

PART 9: ADVANCED POLLS AND ELECTION DAY

Electoral Officer

84. The Electoral Officer shall not be allowed to vote in the election.

Advanced Polls

85. Voting at advanced polls shall be conducted pursuant to sections 86 to 101.

86. At the close of polls at an advanced poll Polling Station, the Electoral Officer shall remove the ballot box from the Polling Station and keep it secure, with the seal unbroken, until it can be opened in accordance with this Code on election day for the ballots to be counted.

Polling Hours

87. The Polling Stations shall be open from 8 a.m. until 8 p.m. local time on the days of the advanced polls and election day.

Verification of the Ballot Box

88. The Electoral Officer or Assistant 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

- 89.** Voting shall be by secret ballot.
- 90.** No Elector may vote by proxy or authorize another person to vote on their behalf.
- 91.** The Electoral Officer or Assistant 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 election.
- 92.** No person shall, 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 Assistant 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.

Voting Procedure

- 93.** For each person, who enters a Polling Station, the Electoral Officer or Assistant Electoral Officer in charge of the Polling Station must:
 - (a) determine whether the person is an Elector by confirming their identity either:
 - (i) with a document that verifies their identity, which may be a status card or any photographic identification card issued by either Canada or a province of Canada,
 - (ii) by having one (1) Elector who has previously confirmed their identity in accordance with subparagraph (i) confirm the person's identity, or
 - (iii) by having the Kwikwasnut'inuxw Haxwa'mis Membership Clerk confirm the person's identity;
 - (b) if the person is an Elector, check the Electors' List to ensure they have not already voted in person;
 - (c) if the person is an Elector and have been provided a Mail-in Ballot but has not voted by Mail-in Ballot, require the person to either:
 - (i) return their Mail-in Ballot to the Electoral Officer or Assistant Electoral Officer, or
 - (ii) provide a written declaration to the Electoral Officer or Assistant Electoral Officer that has been sworn before the Electoral Officer, Assistant Electoral Officer, a justice of the peace, notary public, or commissioner for taking oaths stating that they have lost their ballot;

- (d) if the person is an Elector and either the person has not already voted or the person has complied with paragraph (c):
- (i) provide them a ballot, folded in a manner that exposes the Electoral Officer's initials without exposing the information contained on the front of the ballot;
 - (ii) advise the Elector that they must not take the ballot out of the Polling Station and that if they do take the ballot out of the Polling Station, they forfeit their right to vote at that election; and
 - (iii) make a mark on the Electors' List indicating that the Elector has been provided a ballot.
- 94.** The Electoral Officer or Assistant Electoral Officer shall, when requested to do so, explain the method of voting to the Elector.
- 95.** 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 that they want to vote for;
 - (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 Assistant Electoral Officer.
- 96.** On receipt of a completed ballot, the Electoral Officer or Assistant Electoral Officer shall visually verify the initials placed on it and direct the Elector to deposit it in the ballot box in the presence of the Elector and any other persons entitled to be present at the Polling Station.
- 97.** While an Elector is in the compartment for the purpose of making their ballot paper, no other person shall, except as provided in section 98, 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

- 98.** At the request of any Elector who is unable to vote in the manner set out in section 96, the Electoral Officer or Assistant 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.
- 99.** The Electoral Officer or Assistant Electoral Officer shall note on the Electors' List opposite the name of an Elector requiring assistance the fact that the ballot paper was marked by him/her at the request of the Elector and the reason(s) why.
- 100.** 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 Assistant Electoral Officer, be entitled to obtain another ballot paper. The Electoral Officer or Assistant Electoral Officer shall write the word "spoiled" upon the spoiled ballot paper and preserve it.

101. Any person who has received a ballot and who leaves the Polling Station without delivering the same to the Electoral Officer or an Assistant 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 Assistant Electoral Officer shall make an entry in the Electors' 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 Assistant 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

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

PART 10: COUNTING OF THE VOTES ON ELECTION DAY

Opening Mail-in Ballots

103. At the close of polls on election day, the Electoral Officer or Assistant Electoral Officer shall in the presence of any Candidates, 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 an Elector Declaration Form;
- (ii) the name of the Elector set out on the Elector Declaration Form is not on the Electors' List;
- (iii) the Elector Declaration Form is not signed by the Elector;
- (iv) the Elector Declaration Form is not signed by the witness; or
- (v) the Electors' List shows that the Elector has already voted.

(b) in any other case, place a mark on the Electors' List opposite the name of the Elector set out in the Elector Declaration Form, and deposit the Mail-in Ballot in a ballot box.

Counting the Ballots

104. The Electoral Officer or Assistant Electoral Officer shall supply other Assistant Electoral Officers and all other persons present, and who so request, with a tally sheet to keep their own tally of the votes.

105. Immediately after the Mail-in Ballots have been deposited in the ballot box, the Electoral Officer or Assistant Electoral Officer shall, in the presence of any Candidates who are present, open all ballot boxes and examine each ballot.

106. The Electoral Officer or Assistant Electoral Officer shall call out the names of the Candidates for whom the votes were cast on all valid ballots.

107. An Assistant Electoral Officer shall mark a tally sheet in accordance with the names being called out for the purpose of arriving at the total number of votes cast for each Candidate.

Ballots not counted

108. In examining the ballots, the Electoral Officer or Assistant Electoral Officer must reject any ballots that:

- (a) do not contain the initials of the Electoral Officer or Assistant 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.

109. The Electoral Officer or Assistant Electoral Officer shall attach a note to each ballot rejected, which outlines the reason(s) for rejection.

110. Subject to review on recount or on an election appeal, the Electoral Officer or Assistant Electoral Officer shall take a note of any objections made by any Candidate to any of the ballots found in the ballot box and decide any questions arising out of the objection.

111. The Electoral Officer or Assistant Electoral Officer shall number objections to ballots raised pursuant to section 109 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

112. Immediately upon completion of the counting of the ballots pursuant to sections 102 through 110 at a Polling Station other than that considered the principal Polling Station managed by the Electoral Officer on election day, the Assistant Electoral Officer shall immediately transmit the results to the Electoral Officer.

Tie

113. If it is not possible to determine the successful Candidate(s) for either a Chief Councillor 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.

114. A recount must take place within twenty-four (24) hours of the announcement by the Electoral Officer, in the presence of the Candidates.

115. At the time established, the Electoral Officer shall conduct a recount of the ballots.

116. If the recount fails to determine the successful Candidate(s), the Electoral Officer shall:

- (a) publicly declare that those offices where a successful Candidate could not be determined, are vacant;

- (b) publicly declare that there will be a Run Off to determine the successful Candidate(s); and
 - (c) immediately post a list of Candidates in the Run Off,
 - (i) in a conspicuous location at the principal administration office of Kwikwasnut'inuxw Haxwa'mis,
 - (ii) at all other locations designated by Council, and
 - (iii) on the website of Kwikwasnut'inuxw Haxwa'mis.
117. The process for the Run Off election shall be run in accordance with this Code, starting at section 60.

PART 11: POST-ELECTION PROCEDURES

Announcement

118. After completing the counting of the votes, and subject to sections 112 through 116, the Electoral Officer shall declare to be elected the Candidates having the highest number of votes.
119. Immediately following the declaration made pursuant to section 117, the Electoral Officer shall complete and sign an election report which:
- (a) includes the names of all Candidates;
 - (b) includes the number of ballots cast for each Candidate;
 - (c) includes the number of rejected ballots; and
 - (d) identifies those Candidates who were declared elected.
120. Within one (1) day after signing the election report, the Electoral Officer shall post the election report:
- (a) in a conspicuous location at the principal administration office of Kwikwasnut'inuxw Haxwa'mis;
 - (b) at all other locations designated by Council;
 - (c) on the website of Kwikwasnut'inuxw Haxwa'mis; and
 - (d) mail a copy to every Elector who is not ordinarily resident on the Reserve.

Retention of Ballots and Other Election Material

121. 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.
122. All ballots and materials retained shall be retained for one hundred and twenty (120) 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 must destroy them in the presence of two witnesses who shall make a declaration that they witnessed the destruction of those papers.

Chief Councillor and Councillor Oath of Office

- 123.** A Candidate who has been declared elected Chief Councillor or Councillor shall, within ten (10) days of the Electoral Officer's declaration:
- (a) swear the Oath of Office in the form set out in Schedule "A" before either the Electoral Officer, a justice of the peace, notary public, or duly appointed commissioner for taking oaths; and
 - (b) where the Candidate is employed by Kwikwasnut'inuxw Haxwa'mis or a Kwikwasnut'inuxw Haxwa'mis owned entity in a role where they make final decisions on which Band Members receive assets, provide their written resignation from that role to the Kwikwasnut'inuxw Haxwa'mis Band Manager.
- 124.** Where a Candidate elected as Chief Councillor or Councillor cannot, due to illness or other valid reason:
- (a) swear the Oath of Office; and
 - (b) provide the Kwikwasnut'inuxw Haxwa'mis Band Manager with their written resignation within the time prescribed in section 122;
- they, 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 or to provide their written resignation.
- 125.** The Electoral Officer receiving a petition pursuant to section 123 shall determine whether the circumstances justify an extension and shall, within three (3) days, provide the Candidate making the request written reasons for their decision, and where applicable, the extension period.
- 126.** No person elected as Chief Councillor or Councillor shall be permitted to assume office until they have complied with section 122.
- 127.** Subject to section 123, if a person elected as Chief Councillor or Councillor fails to comply with section 122, the Electoral Officer shall immediately declare the Candidate with the next highest number of votes for that office elected and post a revised election report, clearly indicating the revision:
- (a) in a conspicuous location at the principal administration office of Kwikwasnut'inuxw Haxwa'mis;
 - (b) at all other locations designated by Council;
 - (c) on the website of Kwikwasnut'inuxw Haxwa'mis; and
 - (d) mail a copy to every Elector who is not ordinarily resident on the Reserve.
- 128.** The Electoral Officer shall give notice in writing to the Candidate whose office is replaced by the Candidate with the next highest number of votes and to the elected Council members.

PART 12: APPEALS

Application for Appeal

129. Any Candidate who ran in the election or any Elector who voted in the election may appeal the results of that election by delivering to the Arbitrator:

- (a) a completed Notice of Appeal in the form set out in Schedule “A” Forms; and
- (b) an affidavit sworn before a notary public or other person authorized to be a commissioner for taking oaths, setting out that the facts alleged in the Notice of Appeal are true.

130. Every Notice of Appeal shall:

- (a) identify the office being appealed;
- (b) be accompanied by evidence supporting the facts set out in the Notice of Appeal;
- (c) be accompanied by a non-refundable two-hundred and fifty (\$250) dollar filing fee; and
- (d) be filed with the Arbitrator within thirty (30) days of the date upon which the Council member was declared elected.

Grounds for Appeal

131. An appeal under this Part must be made on one or more of the following grounds:

- (a) a Candidate was ineligible for nomination under section 55;
- (b) a Candidate or representative of a Candidate participated in illegal campaigning as prohibited in Part 4 or the rules of this Code;
- (c) a person who is not an Elector cast a vote and their vote materially affected the outcome of the election;
or
- (d) the Electoral Officer or an Assistant Electoral Officer failed to fulfill their responsibilities under this Code in a manner that materially affected the outcome of the election.

Non-compliance

132. On receipt of a Notice of Appeal, the Arbitrator shall verify that the Notice of Appeal complies with:

- (a) section 128;
- (b) section 129; and
- (c) section 130.

133. If the Notice of Appeal does not comply with section 128, section 129 and section 130, the Arbitrator shall, within ten (10) days of receipt of the Notice of Appeal, notify the appellant(s) that the appeal is dismissed for non-compliance.

134. In a case where the Notice of Appeal does comply with section 128, section 129, and section 130, the Arbitrator shall within ten (10) days of receipt of the Notice of Appeal:

- (a) schedule an appeal hearing, which shall take place within forty-five (45) days from the date on which the Arbitrator received the Notice of Appeal; or
- (b) determine that the Notice of Appeal is frivolous or vexatious and dismiss the appeal.

135. In a case where the appeal has been dismissed under paragraph 133(b), the Arbitrator shall immediately so inform the appellant(s) in writing and provide written reasons.

Evidence at an Appeal

136. Evidence at an appeal hearing may include any type of proof presented by a person in support of facts they claim to be true, including, but not limited to:

- (a) documents, such as letters, printed copies of emails, receipts, or pictures;
- (b) written statements of witnesses that are sworn to be true, signed, dated and witnessed by a third party;
- (c) digital photographs, digital audio recordings or digital video recordings; or
- (d) any other evidence that the Arbitrator determines is material and relevant to the appeal hearing.

Right to Participate in an Appeal

137. The applicant, and any person against whom an allegation is made in a Notice of Appeal, has a right to:

- (a) make submissions to the Arbitrator regarding the matter on appeal; and
- (b) have someone represent them at an appeal hearing, such as an agent, advocate, lawyer, friend or Immediate Family Member.

Delivery of Notice of Appeal to Affected Persons

138. Upon a determination under paragraph 133 (a), the Arbitrator must deliver to:

- (a) the Electoral Officer;
- (b) Council;
- (c) the Kwikwasnut'inuxw Haxwa'mis Band Manager; and
- (d) each person against whom an allegation is made in the Notice of Appeal:

- (i) a copy of the Notice of Appeal;
- (ii) copies of all evidence supporting the facts set out in the Notice of Appeal; and
- (iii) a written statement setting out:
 - A. the date, time and location of the appeal hearing,
 - B. the manner in which the appeal hearing will be held,
 - C. instructions for how each recipient may obtain a copy of this Code; and
 - D. any rules or instructions set by the Arbitrator regarding the appeal hearing.

Duty to Provide Written Statement in Relation to Notice of Appeal

- 139.** A person who receives a copy of a Notice of Appeal from the Arbitrator under section 137 and has information directly related to the allegations set out in the Notice of Appeal must, within fourteen (14) days of receiving the Notice of Appeal, deliver to the Arbitrator, the applicant and the person(s) who is the subject of the appeal, either in person or by registered mail:
- (a) a written statement of the information held by them that relates directly to the allegations set out in the Notice of Appeal; and
 - (b) copies of all evidence supporting the facts set out in that written statement.

Failure to Appear or Participate in Appeal Hearing

- 140.** If a person against whom an allegation is made in a Notice of Appeal fails to provide a response to the Arbitrator in accordance with section 138 and the Arbitrator is satisfied that the Notice of Appeal was delivered to that person, the Arbitrator may proceed with the appeal hearing without further notice to that person and without providing further opportunity to that person to be heard.

Appeal Hearing Process and Decision of Arbitrator

- 141.** Subject to section 132 and paragraph 133 (b), the Arbitrator must hold an appeal hearing within forty-five (45) days of receiving a Notice of Appeal.
- 142.** No later than thirty (30) days following the last day of the appeal hearing, the Arbitrator must make one of the following orders:
- (a) that sufficient evidence exists to prove it is more likely than not that one of the grounds of appeal has been met, therefore the election in its entirety, or the election of a Candidate, as applicable, must be put aside; or
 - (b) that sufficient evidence does not exist to prove that it is more likely than not that one of the grounds of appeal has been met, therefore the election in its entirety, or the election of the Candidate, as applicable, must be upheld and the appeal must be dismissed.
- 143.** If the Arbitrator makes a decision under paragraph 141(a) and:

- (a) the decision is to put aside the election of a specific Candidate, as opposed to the election results in their entirety, the Electoral Officer must, where possible, declare the Candidate with the next highest number of votes to be the successful Candidate for that position, and where not possible, the process in paragraph (b) must be followed; and
- (b) the decision is to put aside the election results in their entirety, Council must either:
 - (i) direct the Electoral Officer who administered the election to which the appeal relates, to conduct a new election in accordance with this Code; or
 - (ii) appoint a new Electoral Officer in the same manner and form as set out in this Code and instruct the new Electoral Officer to conduct a new election in accordance with this Code.

144. If the Arbitrator makes a decision under paragraph 141(a), the Arbitrator may further order the Candidate(s) who was the subject of the appeal to pay all or a portion of the costs of the appeal hearing, including the fees and disbursements of the Arbitrator, the costs of the applicant, or both, and the amount of costs set out in that order are deemed to be a debt owed by the applicant to Kwikwasnut'inuxw Haxwa'mis.

145. If the Arbitrator makes a decision under paragraph 141(b), the Arbitrator may further order the applicant to pay all or a portion of the costs of the appeal hearing, including the fees and disbursements of the Arbitrator, the costs of the affected Candidates, or both, and the amount of costs set out in that order are deemed to be a debt owed by the applicant to Kwikwasnut'inuxw Haxwa'mis.

Written Reasons and Publication of Decision

146. Upon making an order pursuant to section 141, the Arbitrator must:

- (a) prepare written reasons for their decision, and where a Candidate has been replaced with a Candidate who has the next highest number of votes, such written decision must include details regarding that replacement;
- (b) deliver their written reasons for decision, by registered mail, to the applicant and to each person who received a copy of the Notice of Appeal; and
- (c) post the written reasons for decision at:
 - (i) a conspicuous spot within the principal administrative offices of Kwikwasnut'inuxw Haxwa'mis,
 - (ii) all other locations considered necessary by the Arbitrator, and
 - (iii) on the website of Kwikwasnut'inuxw Haxwa'mis.

Arbitrator's Decision Final and Binding

147. The decision of the Arbitrator is final and not subject to appeal.

PART 13: REMOVAL OF COUNCIL MEMBERS FROM OFFICE

148. The Chief Councillor or a Councillor may be removed from office if they directly or indirectly:

- (a) violate this Code;
- (b) violate their Oath of Office;
- (c) violate the Campaign Rules;
- (d) fail to attend three (3) consecutive regular meetings of Council without being reasonably excused from attendance by a quorum of the Council;
- (e) have been convicted of an indictable criminal offence since their election, unless;
 - (i) they have been granted a pardon in relation to that conviction, or
 - (ii) a court has ruled that the conviction is directly related to the exercise of that person's Aboriginal rights;
- (f) become ineligible to hold office pursuant to section 55; or
- (g) encourage others to commit any of the above acts or omissions.

Procedure

149. Proceedings to remove a person from the office of Chief Councillor or Councillor shall be initiated by:

- (a) any Elector submitting to the Arbitrator a petition which must:
 - (i) state the ground(s) pursuant to section 147 on which removal of a Chief Councillor or Councillor is sought;
 - (ii) be accompanied by evidence in support of the petition;
 - (iii) be accompanied by an affidavit sworn by the petitioner before a notary public or other person authorized to be a commissioner for taking oaths, setting out that the facts alleged in the petition are true;
 - (iv) contain the signature of the petitioner;
 - (v) be accompanied by the signatures of at least 20% of all eligible Electors in support of the petition; and
 - (vi) be accompanied by a non-refundable two-hundred and fifty (\$250) dollar filing fee; or
- (b) a majority of Council members submitting a petition to the Arbitrator which shall:

- (i) state the ground(s) pursuant to section 147 on which removal of a Chief Councillor or Councillor is sought;
- (ii) be accompanied by evidence in support of the petition;
- (iii) be accompanied by an affidavit of each Council member who voted for the removal that is sworn before a notary public or other person authorized to be a commissioner for taking oaths, setting out that the facts alleged in the petition are true;
- (iv) be accompanied by a non-refundable two-hundred and fifty (\$250) dollar filing fee;
- (v) contain the signatures of all Council members who voted for the removal; and
- (vi) clearly designate one Council member as the petitioner for the purposes of notice under this Code.

Arbitrator's receipt of a petition

150. On receipt of a petition:

- (a) the Arbitrator shall immediately notify the Kwikwasnut'inuxw Haxwa'mis Band Manager that they have received a petition; and
- (b) verify that the petition complies with section 148.

151. If the petition does not comply with section 148, the Arbitrator shall, within ten (10) days of receipt of the petition, notify the petitioner and the Kwikwasnut'inuxw Haxwa'mis Band Manager that the petition is dismissed for non-compliance.

152. In a case where the petition complies with section 148, the Arbitrator shall within ten (10) days of receipt of the petition:

- (a) schedule a petition hearing, which shall take place within forty-five (45) days from the date on which the Arbitrator received the petition; or
- (b) determine that the grounds put forth in the petition are frivolous or vexatious and dismiss the petition.

153. In a case where the petition has been dismissed under paragraph 151(b), the Arbitrator shall immediately inform the petitioner and the Kwikwasnut'inuxw Haxwa'mis Band Manager in writing and provide written reasons.

Delivery of Notice of Petition to Affected Persons

154. In a case where the Arbitrator schedules a petition hearing under paragraph 151 (a), the Arbitrator must deliver to:

- (a) Council;
- (b) the petitioner;

- (c) the Council member who is the subject of the petition for removal; and
- (d) the Kwikwasnut'inuxw Haxwa'mis Band Manager:
 - (i) a copy of the petition;
 - (ii) copies of all evidence supporting the facts set out in the petition; and
 - (iii) written notice setting out:
 - A. the date, time and location of the petition hearing,
 - B. the manner in which the petition hearing will be held,
 - C. instructions for how each recipient may obtain a copy of this Code; and
 - D. any rules or instructions set by the Arbitrator regarding the petition hearing.

Right to Participate in a Petition Hearing

155. The petitioner, and any person against whom an allegation is made in a petition, has a right to:

- (a) make submissions to the Arbitrator regarding the petition; and
- (b) have someone represent them at a petition hearing, such as an agent, advocate, lawyer, friend, or Immediate Family Member.

156. Where the Arbitrator receives a petition and notifies the Kwikwasnut'inuxw Haxwa'mis Band Manager pursuant to section 149, the Council member who is the subject of the petition shall be placed on Administrative Leave.

Evidence at a Petition Hearing

157. Evidence at a petition hearing may include any type of proof presented by a person in support of facts they claim to be true, including but not limited to:

- (a) documents, such as letters, printed copies of emails, receipts, or pictures;
- (b) written statements of witnesses that are sworn to be true, signed, dated and witnessed by a third party;
- (c) digital photographs, digital audio recordings or digital video recordings; or
- (d) any other evidence that the Arbitrator determines is material and relevant to the petition hearing.

Duty to Provide Written Statement in Relation to Petition

158. A person who receives a copy of a petition from the Arbitrator under section 153 and has information not previously delivered to the Arbitrator that is directly related to the allegations set out in the petition must, within fourteen (14) days of receipt of the copy of the petition, deliver to the

Arbitrator, the petitioner and the Council member who is the subject of the petition, either in person or by registered mail:

- (a) a written statement of the information held by them that relates directly to the allegations set out in the petition; and
- (b) copies of all evidence supporting the facts set out in that written statement.

159. The Arbitrator shall conduct the petition hearing at the time and place set out in the notice provided under section 153.

Petition Hearing Decision

160. No later than thirty (30) days after the last day of the petition hearing, the Arbitrator shall decide:

- (a) that the petition shall be allowed to stand, and declare the Council position(s) of the member of Council who is the subject of the petition to be vacant; or
- (b) that the petition is dismissed, the Administrative Leave period is over, and the Council member(s) who was the subject of the petition is re-instated.

161. Immediately following a decision made pursuant to section 159, the Arbitrator shall send, by registered mail, a written decision with reasons to Council, the petitioner, and the Council member who is the subject of the petition for removal and post the decision:

- (a) in a conspicuous place at the principal administration office of Kwikwasnut'inuxw Haxwa'mis;
- (b) at all other locations designated by Council, and;
- (c) on the website of Kwikwasnut'inuxw Haxwa'mis.

162. If the Arbitrator makes a decision under paragraph 151 (b) or paragraph 159 (b), the Arbitrator may order the petitioner to pay all or a portion of the costs of the petition, including the fees and disbursements of the Arbitrator, the costs of the affected Council member(s), or both, and the amount of costs set out in that order are deemed to be a debt owed by the applicant to Kwikwasnut'inuxw Haxwa'mis.

163. If the Arbitrator makes a decision under paragraph 159 (a), the Arbitrator may order the Council member(s) who was the subject of the petition to pay all or a portion of the costs of the petition, including the fees and disbursements of the Arbitrator, the costs of the petitioner, or both, and the amount of costs set out in that order are deemed to be a debt owed by the Council member to Kwikwasnut'inuxw Haxwa'mis.

164. If the Council position is declared vacant under paragraph 159 (a), the Chief Councillor or Councillor removed from office shall be disqualified from being a Candidate for five (5) years commencing on the date of the Arbitrator's ruling.

165. The decision of the Arbitrator is final and binding upon all parties.

PART 14: AMENDMENTS

Procedure for Amendments

- 166.** Proceedings to amend this Code must be initiated by:
- (a) any Elector submitting to the Kwikwasnut'inuxw Haxwa'mis Band Manager a petition which must:
 - (i) identify the current section(s) of this Code that are proposed to be amended and the proposed rule or process to be included in the Code;
 - (ii) contain a summary of the reasons for the proposed amendment(s);
 - (iii) contain current contact information, which must include a mailing address, for the petitioner; and
 - (iv) be accompanied by the signatures of at least 20% of all eligible Electors in support of the proposed amendment(s); or
 - (b) by Band Council Resolution which must:
 - (i) identify the current section(s) of this Code that are proposed to be amended and the proposed rule or process to be included in the Code; and
 - (ii) contain a summary of the reasons for the proposed amendment(s).
- 167.** Upon receipt of a petition or upon passing of a Band Council Resolution that meets the requirements of section 165, the Kwikwasnut'inuxw Haxwa'mis Band Manager shall immediately share the proposed amendment(s) with Kwikwasnut'inuxw Haxwa'mis legal counsel and request a legal opinion on the proposed amendment(s).
- 168.** Within forty (40) days of receipt of the legal opinion required in section 166, at a duly convened meeting, Council shall record in a Band Council Resolution their decision to:
- (a) proceed with the proposed amendment(s); or
 - (b) not to proceed with the proposed amendment(s).
- 169.** Where Council decides to proceed with the proposed amendment(s), and the proceedings were initiated by petition, they shall send a copy of the Band Council Resolution recording this decision along with a statement that a Community Meeting will be held to discuss the proposed amendment(s), to the petitioner named in the petition at the mailing address provided by the petitioner.
- 170.** Where Council decides not to proceed with the proposed amendment(s), and the proceedings were initiated by petition, they shall send a copy of the Band Council Resolution recording this decision, along with written reasons for the decision, to the petitioner named in the petition at the mailing address provided by the petitioner.
- 171.** Where Council decides to proceed with the proposed amendment, they shall set a date for a Community Meeting to discuss the proposed amendment(s).

172. A Community Meeting held to discuss proposed amendment(s) must not be held within the one-hundred (100) days prior to an election.

Community Meeting

173. In accordance with section 170 Council must hold a Community Meeting where Band Members:

- (a) will discuss the proposed amendment(s); and
- (b) appoint an Amendment Committee with no more than three (3) Electors, to be responsible for coordinating the process that will be followed for drafting the proposed amendment(s).

174. Any process used to draft the proposed amendment(s) must include community engagement and provide opportunities for all Kwikwasnut'inuxw Haxwa'mis Electors to participate, including those not ordinarily resident on the Reserve.

175. The Amendment Committee may consist of only one Elector.

176. Any Elector appointed to the Amendment Committee must provide written confirmation of their acceptance of this appointment within fourteen (14) days of the Community Meeting where they were appointed.

177. If an Elector does not provide written confirmation of their acceptance, or declines the appointment, and it leaves the Amendment Committee with no Electors, Council shall appoint the member(s) of the Amendment Committee at the next duly convened Council meeting.

178. At least twenty-one (21) days prior to the Community Meeting to discuss amendment(s) the Kwikwasnut'inuxw Haxwa'mis Band Manager must prepare a Notice of Community Meeting that:

- (a) sets out the date, time and location of the Community Meeting;
- (b) attaches to it a copy of the proposed amendment(s);
- (c) states that the Community Meeting will be an opportunity for all Band Members to participate in a discussion with regard to the drafting process of the proposed amendment(s);
- (d) states that at the Community Meeting, Band Members will appoint an Amendment Committee;
- (e) states the options for Band Members to participate remotely; and
 - (i) post the Notice of Community Meeting:
 - A. at a conspicuous spot within the principal administrative offices of Kwikwasnut'inuxw Haxwa'mis,
 - B. all other locations designated by Council, and
 - C. on the website of Kwikwasnut'inuxw Haxwa'mis; and

- (ii) mail or deliver the Notice of Community Meeting to each Elector not ordinarily resident on Reserve at their last known mailing or email address.

179. The Amendment Committee must provide updates to Council every two (2) months on progress made, and immediate updates at the request of Council, and these updates must be posted:

- (a) at a conspicuous spot within the principal administrative offices of Kwikwasnut'inuxw Haxwa'mis;
- (b) all other locations designated by Council; and
- (c) on the website of Kwikwasnut'inuxw Haxwa'mis.

180. The Amendment Committee must notify Council in writing when the amendment(s) are ready for a Community Vote Meeting.

PART 15: COMMUNITY VOTE PROCEDURE

Community Vote Required

181. A community vote must be conducted in accordance with this Part to amend this Code.

Notice of Community Vote Meeting

182. Once Council is advised by the Amendment Committee that the amendment(s) is ready for a community vote in accordance with section 179, Council must:

- (a) prepare or cause to be prepared a Notice of Community Vote Meeting that sets out:
 - (i) a description of the amendment(s) suggested, including the exact wording proposed, and a summary of any background information that Electors will need to assist them in making a decision;
 - (ii) the name(s) of the persons on the Amendment Committee;
 - (iii) the date, time and location of the Community Vote Meeting at which Electors must consider the amendment(s); and
- (b) at least twenty-one (21) days prior to the scheduled Community Vote Meeting:
 - (i) post the Notice of Community Vote Meeting at:
 - A. a conspicuous spot within the principal administrative offices of Kwikwasnut'inuxw Haxwa'mis,
 - B. all other locations designated by Council, and
 - C. on the website of Kwikwasnut'inuxw Haxwa'mis; and

- (ii) mail or deliver the Notice of Community Vote Meeting to each Elector not ordinarily resident on Reserve at their last known mailing or email address.

Voting at Community Vote Meeting

183. Voting at a Community Vote Meeting may be conducted by various methods, as determined by Council, including any of the following methods or combinations thereof, at least one of which must provide an opportunity for persons not ordinarily resident on the Reserve to vote:

- (a) ballots cast in person by secret ballot at the Community Vote Meeting;
- (b) a show of hands at the Community Vote Meeting;
- (c) Mail-in Ballots; or
- (d) phone-in ballots, including video phone-in ballots.

Approval at Community Vote Meeting

184. Any amendment(s) must be considered approved at a Community Vote Meeting if:

- (a) at least twenty percent (20%) of Electors cast a vote on the matter; and
- (b) at least fifty percent (50%) plus one of those Electors who cast a vote, vote in favour of the matter.

Conduct at Community Vote Meeting

185. At a Community Vote Meeting, Council must:

- (a) where applicable, ensure that copies of any documents relating to the proposed amendment(s) are available for viewing by Electors;
- (b) ensure that the purpose and provisions of the proposed amendment(s) are explained to Electors; and
- (c) ensure that a vote is conducted on whether to approve the amendment(s), which must be the same proposed amendment(s) set out in the Notice of Community Vote Meeting.

Declaration of Community Vote Meeting Vote

186. Immediately after the close of a Community Vote Meeting, a Council member must swear a declaration setting out:

- (a) that a Notice of Community Vote Meeting was prepared, posted and delivered in accordance with this Code, and attach a copy of that Notice of Community Vote Meeting;
- (b) the total number of Electors who cast a vote at the Community Vote Meeting;
- (c) the total number of Electors who voted in favour of the proposed amendment(s);
- (d) the total number of Electors who voted against the proposed amendment(s);

- (e) that the vote was conducted in accordance with this Code; and
- (f) the outcome of the vote.

PART 16: COUNCIL MEETING PROCEDURES

First Meeting of Council

187. The first meeting of a newly elected Council must take place no later than fourteen (14) days after the Electoral Officer posts the election report pursuant to section 119.

Subsequent Meetings of Council

188. After the first meeting of Council, regularly scheduled Council meetings must take place:

- (a) at least two (2) times per month; and
- (b) on dates, at times, and in locations set by Council.

Council Chairperson

189. The Chief is the Council chairperson at a Council meeting, unless Council approves another Council member to be the Council chairperson for a specific Council meeting.

190. The Council chairperson is not entitled to vote at Council meetings, except to break a tie vote of Councillors if necessary.

191. The Council chairperson is responsible for:

- (a) calling Council meetings to order;
- (b) introducing agenda items;
- (c) determining the order of speakers for each agenda item; and
- (d) maintaining order in Council meetings.

Notice of Council Meetings

192. The Kwikwasnut'inuxw Haxwa'mis Band Manager must provide Band Members with notice of all regularly scheduled Council meetings by posting the dates, times and locations of each Council meeting:

- (a) a conspicuous spot within the principal administrative offices of Kwikwasnut'inuxw Haxwa'mis;
- (b) all other locations designated by Council; and

(c) on the website of Kwikwasnut'inuxw Haxwa'mis.

Special Meeting of Council

193. (1) Where urgent matters arise in the business or affairs of Kwikwasnut'inuxw Haxwa'mis, the Council Chairperson may summon a special meeting of Council by providing each Council member at least twenty-four (24) hours written notice of the date, time and location of that special meeting of Council, and a summary of the urgent matter that will be discussed.

(2) A notice under subsection (1) must be delivered by the Council Chairperson to each Council member either at an email address or at a texting phone number that is provided by each Council member for such purpose.

Council Member's Duty to Attend Council Meetings & Perform Functions of Office

194. (1) Council members must not be absent from three (3) or more Council meetings, either consecutively or within any twelve (12) month period, unless:

- (a) such absence is due to illness or incapacity of the Council member and the Council member who will be absent provides notification of such absence to the Council chairperson before the Council meeting; and
- (b) the Council makes a majority vote at the Council meeting approving the Council member's absence, which approval should not be unreasonably denied.

(2) When Council makes a decision under paragraph 193 (1)(b), within twenty-four hours (24hrs) of the decision being made, the Council Chairperson must notify the Council member to whom the decision relates of the decision that was made and the reasons for that decision.

195. Council members may attend Council meetings via telephone, audio, or video technology.

196. Any Council member in breach of section 193 will be subject to removal from office in accordance with Part 13.

Kwikwasnut'inuxw Haxwa'mis Member's Right to Attend Council Meetings

197. Kwikwasnut'inuxw Haxwa'mis Band Members have a right to attend all Council meetings, except those portions of a Council meeting that are held in camera.

198. Where a Kwikwasnut'inuxw Haxwa'mis Band Member disrupts the conduct of a Council meeting, the Council Chairperson may expel them from the remainder of that Council meeting.

Council Meeting Agendas

199. For every agenda for a Council meeting, the order of business must be as follows:

- (a) reading and adoption of the agenda;
- (b) reading and adoption of previous Council meeting minutes;

- (c) unfinished business;
- (d) presentation and reading of correspondence and petitions;
- (e) presentation and consideration of reports of committees;
- (f) new business;
- (g) other items (to be determined by Council); and
- (h) adjournment.

Motions at Council Meetings

200. Any Council member may make or second a motion at a Council meeting and every motion at a Council meeting must be made and seconded before it is decided.

Approval of Motions / Quorum

201. A quorum is required for all Council meetings.

202. A quorum of Council shall be three Councillors including the Chief Councillor.

203. All motions before Council must be decided by a quorum of those Council members present who are not in a conflict of interest with regard to the decision being made.

204. Motions confirmed by a quorum must be recorded as passed motions and reflected in the minutes of that meeting.

Council Meeting Minutes

205. The Council Chairperson is responsible for delegating someone to take minutes at Council meetings and the Kwikwasnut'inuxw Haxwa'mis Band Manager is responsible for maintaining copies of all Council meeting minutes.

206. The minutes of a Council meeting must:

- (a) provide a summary, not verbatim transcripts, of Council discussions;
- (b) reflect that Council deliberated before making a decision, which might include documentation of a brief summary of the options considered, or pros and cons raised; and
- (c) identify any motions made, and the outcome of any votes taken or consensus reached, but not identify how the vote was split in a majority decision, or how individual Council members voted, unless a Council member asks that their vote go on record in which case that person's vote must be documented.

Storage of, and Access to, Council Meeting Minutes

- 207.** The Kwikwasnut'inuxw Haxwa'mis Band Manager must store all Council meeting minutes in a secure area or on a secure computer system.
- 208.** Upon request to the Kwikwasnut'inuxw Haxwa'mis Band Manager, the Kwikwasnut'inuxw Haxwa'mis Band Manager must provide Band Members access to Council meeting minutes.

In Camera Sessions at Council Meetings

- 209.** For the purposes of this section, "in camera" means the part of a Council meeting that is held in private or closed to Council members who are in a conflict of interest with regard to the topic of discussion.
- 210.** Council may approve a motion to order that a portion of, or whole, Council meeting be held in camera if Council is satisfied that either:
- (a) the order is necessary to address a conflict of interest of a Council member;
 - (b) the order is necessary to maintain the confidentiality of information relating to human resources, including Council's oversight of the Kwikwasnut'inuxw Haxwa'mis Band Manager's employee performance;
 - (c) the order is necessary to allow for independent auditors to present audit results to Council without interference from the Kwikwasnut'inuxw Haxwa'mis administration or Band Members;
 - (d) the order is necessary to protect the confidentiality of information relating to a civil or criminal proceeding, or information that is subject to solicitor-client privilege; or
 - (e) the order is necessary for the safety of a person.

In Camera Session Meeting Minutes

- 211.** The Council Chairperson must appoint someone to take separate minutes at an in camera session, setting out:
- (a) the names of those persons who were in attendance at the in camera session;
 - (b) the names of any person who is granted permission by those in attendance at the in camera session to view the minutes;
 - (c) provide a summary, not verbatim transcripts, of discussions;
 - (d) reflect that Council deliberated before making a decision, which might include documentation of a brief summary of the options considered, or pros and cons raised; and
 - (e) identify any motions made, and the outcome of any votes taken or consensus reached but not identify how the vote was split in a majority decision, or how individual Council members voted, unless a Council member asks that their vote go on record in which case that person's vote must be documented.

Storage of, and Access to, In Camera Session Meeting Minutes

212. The Kwikwasnut'inuxw Haxwa'mis Band Manager must store all in camera Council meeting minutes in a secure area or computer system.
213. The Kwikwasnut'inuxw Haxwa'mis Band Manager must not allow anyone, except those persons who were privy to the in camera session and who are granted permission by those in attendance at the in camera session, access to the in camera meeting minutes.

PART 17: GENERAL

Administrative Procedures

214. The Council, from time to time, may approve administrative procedures necessary to implement this Code.

Effective Date

215. The *[name of last code]* is hereby repealed and replaced with this Code.

SCHEDULE "A" FORMS

DRAFT V1

NOTICE OF NOMINATION MEETING

TAKE NOTICE THAT the Council of Kwikwasnut'inuxw Haxwa'mis has called an Election to be held on [date] in accordance with the *Custom Election Code of the Kwikwasnut'inuxw Haxwa'mis First Nation, 2020*.

AND TAKE NOTICE THAT Electors may vote by Mail-in Ballot or in person.

**[List instructions for voting by Mail-in Ballot]
[List Polling Sites and Hours for voting in person]**

AND TAKE NOTICE THAT the following positions must be filled on Council:

[List Positions]

AND TAKE NOTICE THAT all Members of Kwikwasnut'inuxw Haxwa'mis who will be at least 18 years of age as of the date of the election are Electors;

AND TAKE NOTICE THAT a Nomination Meeting will be held for the nomination of Candidates for Council as follows:

Date: _____
Time: _____
Location: _____

AND TAKE NOTICE THAT pursuant to the *Custom Election Code of the Kwikwasnut'inuxw Haxwa'mis First Nation, 2020*, each Elector may nominate or second a potential Candidate in person at the Nomination Meeting or by:

- (a) completing a Nomination Form and Elector Declaration Form; and
- (b) ensuring the Nomination Form and Elector Declaration Form are received by the Electoral Officer before the close of the Nomination Meeting;

AND TAKE NOTICE THAT pursuant to the *Custom Election Code of the Kwikwasnut'inuxw Haxwa'mis First Nation, 2020*, to be eligible for nomination as a Candidate, and to be eligible to act as a Council member, a person must:

- (a) be an Elector;
- (b) reside in the Traditional Territory of the Kwikwasnut'inuxw Haxwa'mis
- (c) submit a non-refundable seventy-five (\$75) dollar filing fee with the Kwikwasnut'inuxw Haxwa'mis Band Manager;
- (d) not have been convicted of an indictable criminal offence within ten (10) years before the date of the Nomination Meeting, unless:

- (iii) they have been granted a pardon in relation to that conviction, or
- (iv) a court has ruled that the conviction is directly related to the exercise of that person's Aboriginal rights.
- (e) not have been removed from a position on Council within the five (5) years prior to the date of the Nomination Meeting;
- (f) not be bankrupt, as that term is defined in the *Bankruptcy and Insolvency Act*, as may be amended from time to time, within five (5) years of the date of the Nomination Meeting;
- (g) not be in arrears for any debt to Kwikwasnut'inuxw Haxwa'mis or a Kwikwasnut'inuxw Haxwa'mis business entity, unless:
 - (i) they have a debt repayment agreement that is entered into at least six (6) months before election day, and
 - (ii) they are in good standing in relation to their debt repayment agreement;
- (h) if the candidate is employed with Kwikwasnut'inuxw Haxwa'mis or a Kwikwasnut'inuxw Haxwa'mis business entity in a role where they make final decisions on which Band Members receive assets, they must agree at the time of nomination to resign from that role before being sworn in to office; and
- (i) if it is a By-election, not be the person who resigns or is removed from their position on Council, prompting the holding of the By-election.

AND TAKE NOTICE THAT Electors may contact [Name of Electoral Officer] located at [address] in [City], British Columbia or by telephone at [Ph. Number], to obtain a copy of the *Custom Election Code of the Kwikwasnut'inuxw Haxwa'mis First Nation, 2020*, an Elector Declaration Form or a Nomination Form.

For more information on nomination procedures or Council election process, please contact:

XXXX
Electoral Officer
[Address], British Columbia
Ph/Txt: XXXX
Email: XXXX

**KWIKWASNUT'INUXW HAXWA'MIS COUNCIL ELECTION
NOMINATION FORM**

Instructions:

An election for Kwikwasnut'inuxw Haxwa'mis Council is underway. If you are a Kwikwasnut'inuxw Haxwa'mis Band Member who is or will be at least eighteen (18) years of age on [election day], you are entitled to nominate or second up to five (5) persons to be potential Candidates. In order to nominate or second persons:

- (a) complete this Nomination Form;
- (b) sign this Nomination Form; and
- (c) ensure this Nomination Form and an Elector Declaration Form is received by the Electoral Officer by the close of the Nomination Meeting, which will be held on [date] from [commencement time] until [closing of meeting time] at [location].

You may deliver this Nomination Form to the Electoral Officer by either:

- (a) mail courier or hand delivery to [address]; or
- (b) hand delivery at the Nomination Meeting.

NOTE THAT A NOMINATION FORM THAT IS RECEIVED BY THE ELECTORAL OFFICER AFTER THE CLOSE OF THE NOMINATION MEETING WILL NOT BE ACCEPTED.

Person Being Nominated / Seconded as a Candidate

1. Name : _____

For the position of: _____

2. Name : _____

For the position of: _____

3. Name : _____

For the position of: _____

4. Name : _____

For the position of: _____

5. Name : _____

For the position of: _____

Personal Information of Person Making the Nomination

Name : _____

Telephone Number: _____

Address: _____

Email Address: _____

Status Number: _____

Signature: _____

...

FOR OFFICE USE ONLY:

The person making the nomination / second is an Elector

YES / NO

SIGNATURE OF ELECTORAL OFFICER:

DATE:

NOTICE OF APPEAL

TAKE NOTICE THAT pursuant to the *Custom Election Code of the Kwikwasnut'inuxw Haxwa'mis First Nation, 2020*, [Name of Elector], an Elector, of [Address], in the City of [City], in the Province of [Province] hereby appeals to the Kwikwasnut'inuxw Haxwa'mis Arbitrator from the declaration of election results, dated [Date of Electoral Officer's election report].

AND TAKE NOTICE THAT the grounds under which this appeal is made are as follows:

1. a Candidate was ineligible for nomination;
2. a Candidate or representative of a Candidate participated in illegal campaigning according to the rules of the *Custom Election Code of the Kwikwasnut'inuxw Haxwa'mis First Nation, 2020*;
3. a person who is not an Elector cast a vote and their vote materially affected the outcome of the election;
4. the Electoral Officer or an Assistant Electoral Officer failed to fulfill their responsibilities under this Code in a manner that materially affected the outcome of the election;

AND TAKE NOTICE THAT the factual basis for this appeal is as follows:

1. [list relevant fact]. This fact is supported by the following evidence: [list evidence and attach to Notice of Appeal]
2. [list relevant fact]. This fact is supported by the following evidence: [list evidence and attach to Notice of Appeal]
3. [list relevant fact]. This fact is supported by the following evidence: [list evidence and attach to Notice of Appeal]
4. The above facts materially affected the outcome of the election. This fact is supported by the following evidence: [list evidence and attach to Notice of Appeal]

Contact Information of Person Bringing Appeal

Name : _____

Telephone Number: _____

Address: _____

Email Address: _____

Signature

Date

Form 4 Oath of Office of Council Member

I, [Chief Councillor / Councillor], do solemnly and sincerely [swear / declare] that I will be a true and faithful servant to Kwikwasnut'inuxw Haxwa'mis, as a member of Kwikwasnut'inuxw Haxwa'mis Council and that I will:

ACCOUNTABILITY

1. act always in the best interests of Kwikwasnut'inuxw Haxwa'mis, whether my actions are within my duties as a Council member or in my personal capacity;
2. act always with honesty and in accordance with the laws of Canada and the Province, and Kwikwasnut'inuxw Haxwa'mis laws, By-laws, policies and procedures;
3. be present, in person, in the Kwikwasnut'inuxw Haxwa'mis traditional village on Gilford Island a minimum of four (4) times each calendar year with the purpose of being available to community members and to attend community meetings and gatherings;
4. take responsibility for my actions and decisions and not exceed the authority of my position on Council;
5. accurately, adequately and only where authorized by Council to do so, communicate decisions made by Council to Kwikwasnut'inuxw Haxwa'mis members and the public, and where I do communicate such decisions to Kwikwasnut'inuxw Haxwa'mis members and the public I will do so in a manner that respects the decisions made and the decision-making process, and in a manner that fosters the implementation of the decision;

INTEGRITY

6. at all times act with integrity by being completely honest and truthful in my actions and consistent, fair and reasonable in my communications with other persons and in my approach to decision-making;
7. at all times act in a manner that maximizes the level of trust in Council as a whole;
8. never take a bribe or accept anything of value for me or my Immediate Family Members (including but not limited to money, offers of employment, gifts and travel) in exchange for preferential treatment or a vote at a Council meeting;
9. never use or condone the use of violence directly or indirectly;
10. never forge Council documents;
11. act with due care, competence, and diligence, without misrepresenting material facts or allowing my independent judgement to be subordinated;
12. avoid a conflict of interest or the appearance of a conflict of interest and avoid being involved in any transaction or business matter where I am in a conflict of interest or appear to be in a conflict of interest and to openly declare any circumstances where I am in a conflict of interest or apparent conflict of interest and then remove myself as necessary;

13. sign and comply with any Confidentiality Agreement in relation to my position on Council;

DEALINGS WITH COUNCIL

14. act in a positive, cooperative, respectful and professional manner in dealings with other members of Council;

15. reply to all communications from another Council member promptly and completely;

16. attend all Kwikwasnut'inuxw Haxwa'mis Council meetings and Kwikwasnut'inuxw Haxwa'mis Annual General Meetings and arrive on time for such meetings, unless my absence or lateness is allowed in accordance with the *Custom Election Code of the Kwikwasnut'inuxw Haxwa'mis First Nation, 2020*;

17. actively participate in debates and decisions being made by Council, unless I am in a position of conflict of interest in relation to the topic that is under debate or decision that is being made;

18. work together with all members of Council in a spirit of openness, honesty, and transparency that encourages engagement, collaboration, and respectful communication;

19. not act in a manner that impugns or is destructive to a debate or decision being considered by Council as a whole;

20. not improperly obstruct or delay an investigation that is taking place in relation to the actions or omissions of Council, an individual Council member, Kwikwasnut'inuxw Haxwa'mis Administration or an individual member of Kwikwasnut'inuxw Haxwa'mis Administration;

21. when appointed to committees and other bodies as part of my duties, make every effort to participate diligently in these bodies with good faith and care;

22. not make statements known to be false or make a statement with the intent to mislead Council;

DEALINGS WITH EXTERNAL STAKEHOLDERS

23. when dealing with anyone outside Kwikwasnut'inuxw Haxwa'mis, including public officials, take care not to compromise the integrity or damage the reputation of Kwikwasnut'inuxw Haxwa'mis;

24. uphold all formal commitments and agreements that are made with government agencies and other organizations;

25. not use my individual position on Council to unduly influence a decision, recommendation or other action of a non-Kwikwasnut'inuxw Haxwa'mis person or body;

26. where I believe that it is necessary for action to be taken by Kwikwasnut'inuxw Haxwa'mis to influence a decision, recommendation or other action of a non-Kwikwasnut'inuxw Haxwa'mis person or body, bring the matter before Council for a decision on whether to take action unilaterally on behalf of Kwikwasnut'inuxw Haxwa'mis and in which manner such action must be taken;

DEALINGS WITH KWIKWASNUT'INUXW HAXWA'MIS ADMINISTRATION

- 27. not ask any member of Kwikwasnut'inuxw Haxwa'mis Administration to do something contrary to any law of Canada or the Province, or any Kwikwasnut'inuxw Haxwa'mis law, By-law, policy or procedure, or resolution;
- 28. act in a manner that is respectful and courteous toward all members of Kwikwasnut'inuxw Haxwa'mis Administration;
- 29. not overstep the role of or undermine the responsibilities or decisions of any member of Kwikwasnut'inuxw Haxwa'mis Administration unless such action is within my role pursuant to a current Kwikwasnut'inuxw Haxwa'mis law, By-law or policy;
- 30. not use my individual position on Council to influence a decision of any member of Kwikwasnut'inuxw Haxwa'mis Administration in relation to the delivery of Kwikwasnut'inuxw Haxwa'mis services to an individual Kwikwasnut'inuxw Haxwa'mis Member;
- 31. where I have concerns in relation to the delivery of a Kwikwasnut'inuxw Haxwa'mis service, review the existing Kwikwasnut'inuxw Haxwa'mis policy to determine whether I believe the policy needs to be updated to improve access or delivery of the service to which the policy relates, and where I believe an update is necessary I will bring those recommended policy updates to Council for a decision on whether to update the policy;

DEALINGS WITH MEMBERSHIP

- 32. at the request of members, provide members with information on the dates, times and locations of upcoming Council meetings;
- 33. at the request of members, provide members with access to Kwikwasnut'inuxw Haxwa'mis laws, By-laws, policies and procedures, unless the policies and procedures are deemed confidential by Council; and
- 34. honestly and fairly represent the views of members at Council meetings.

Signed this _____ day of _____, 20_____.

(Signature)

(Date)

(Witness Signature)

(Date)

Form 5 Elector Declaration Form

ELECTOR DECLARATION

In the matter of the election of Kwikwasnut'inuxw Haxwa'mis Council, held according to the *Custom Election Code of the Kwikwasnut'inuxw Haxwa'mis First Nation, 2020, I,*

_____ solemnly declare that:
(Please print your name)

- 1) I am a member of Kwikwasnut'inuxw Haxwa'mis First Nation.
- 2) My status number is _____ and my date of birth is _____.
- 3) My current mailing address is:

_____, _____, _____
(Street number and name or P.O. Box) (First Nation/Municipality) (Prov/Territory) (Postal Code)

- 4) I am at least 18 years of age.
- 5) I do not know of any reason why I would be disqualified from voting at this election.

I make this solemn declaration conscientiously believing it to be true and knowing that it has the same force and effect as if made under oath.

Date: _____

Name: _____

Signature: _____

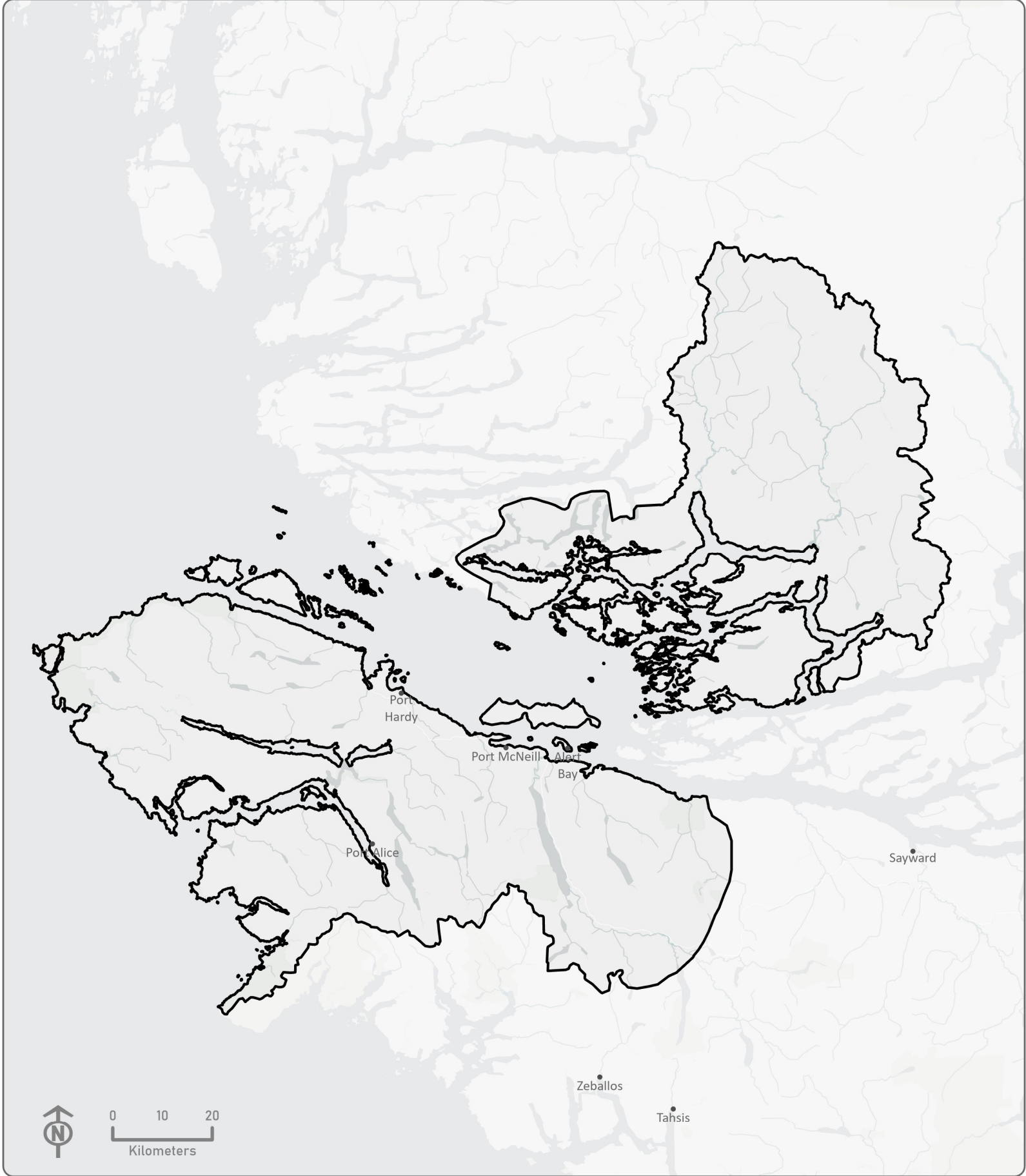
WITNESS DECLARATION (to be filled out by any person who is at least 18 years old)

Declared before me at _____ this day of ____ day of _____, 20__.

Name of Witness: _____

Signature of Witness: _____

_____, _____, _____
(Street number and name or P.O. Box) (First Nation/Municipality) (Prov/Territory) (Postal Code)



Appendix A - Electoral Area Boundary

Sources: Waterbody, Coastline: Freshwater Atlas; First Nation Community Locations: DataBC; Musgamagw Boundary: Musgamagw Dzawada'enuxw Tribal Council (MDTC)