

TSESHAHT CUSTOM ELECTION CODE

May ___, 2024

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TSESHAHT CUSTOM ELECTION CODE, _____, 2024

PREAMBLE

WE ARE TSESHAHT.

We have always, and will continue to, exercise the Rights, Responsibilities and Powers/Authorities of our ḥawīih. Our Territory, and Tseshaht Title and Rights, have never been ceded, surrendered, or extinguished.

Since Time Immemorial, we have exercised, and continue to exercise, our inherent right to Self-determination, including our governance, in accordance with Tseshaht Laws, customs, teachings, and traditions. Tseshaht has a hereditary system of ḥawīih (hereditary chiefs). Currently, Tseshaht has seated ḥawīih and an elected Chief and Council. We enact this Code in exercise of our right to govern, and in recognition of the changing world around us.

TITLE

This Code shall be cited as the “Tseshaht Custom Election Code, _____ 2024” (the “Code”).

PART 1 PURPOSE

The purpose of this Code is to establish rules and procedures for matters related to the election of the Council.

PART 2 INTERPRETATION AND APPLICATION

APPLICATION

- 2.1 Any previously enacted Tseshaht Election Code or Custom Election Code is hereby repealed. This Code replaces any previously enacted Tseshaht Election Code, including any Custom Election Code.
- 2.2 This Code applies to every Tseshaht General Election and By-election until such time as it may be amended or repealed.

DEFINITIONS

- 2.3 In this Code, the following words and phrases have the meaning appearing thereafter:
 - “**Advance Poll**” means a Poll established by the Head Electoral Officer that will take place at least two (2) weeks before the date set for an Election.
 - “**Appeal Board**” means the Committee appointed in accordance with this Code and whose members are responsible for all those duties set out in this Code and such other matters as are necessary to carry out those duties.
 - “**By-election**” means an election which is not a General Election, and which is held to fill one or more vacancies on the Tseshaht Council.
 - “**Candidate**” means a person nominated to run in an Election who has satisfied the candidacy eligibility criteria, and “Candidates” means collectively all such persons.
 - “**Caretaker Mode**” means the sitting Council cannot make decisions that commit or bind the incoming Council.

“Chief Councillor” means the person elected as Chief Councillor of Tseshaht pursuant to this Code.

“Council” means collectively the Chief Councillor and the Councillors who are elected under this Code to form the governing council of Tseshaht.

“Councillor” means a person elected as one of the eight (8) Council members of Tseshaht pursuant to this Code other than the Chief Councillor.

“Criminal Conviction” means an offence punishable pursuant to the Criminal Code R.S.C. 1985, c. C-46 or the Controlled Drugs and Substances Act, SC 1996, c 19 or their equivalents as amended from time to time, in Canada or abroad, for which a pardon has not been obtained and does not include a conviction for fishing or hunting or in relation to the assertion or exercise of Aboriginal rights or title.

“Deliver” or **“Delivery”** means to send a document in person, by mail, courier, e-mail, or facsimile.

“Elder” means a Tseshaht Member who is sixty (60) years of age or more at the applicable time.

“Election” means an election pursuant to this Code and includes a General Election or a By-election.

“Election Day” means the day on which an Election is held.

“Enticement” means offering a Voter money, alcohol or illicit drugs, a preferential benefit such as employment or housing, or any other favour, in exchange for a vote for a particular Candidate in an Election.

“Executive Director” means the Executive Director or equivalent of Tseshaht, or his or her designate. The Executive Director is the senior most staff person of the Tseshaht administration.

“Financial Administration Law” means Tseshaht’s Financial Administration Law, 2022, brought into force on April 21, 2022.

“General Election” means an Election held once every four (4) years by which the eight (8) Councillors and one (1) Chief Councillor are elected to Tseshaht Council.

“ḥawiiḥ” is the plural form of ḥawil.

“ḥawil” means a person who is the recognized hereditary Head of the House for each of the groups constituting Tseshaht, being maaqʼλiiʔatḥ (Maaktl-ee-aht), hach`aaʔatḥ (Haa-cha-aht), hikuuʔatḥ (heekoolth-aht) and cíšaaʔatḥ (Tseshaht) of the ḥawiiḥ of Tseshaht.

“Head Electoral Officer” means the person appointed by the Tseshaht Council who is responsible for carrying out an Election and any other associated duties, according to this Code.

“Indian Act” means the Indian Act, R.S.C. 1985, Chapter I-5 as amended.

“Mail-in ballot” means a ballot cast by post and may include a ballot cast by e-mail.

“Majority” means fifty (50) percent plus one (1) of the votes cast.

“Manager” means a person employed by Tseshaht with authority that includes the ability to supervise and discipline staff.

“Member” means a person who is registered as a member of Tseshaht.

“Membership List” means the list maintained by Tseshaht of all those persons who are Members of Tseshaht.

“Nominee” means a person nominated pursuant to this Code for the position of Chief Councillor or Councillor.

“Notice” means providing Election information to Members from time to time pursuant to this Code and may include by post or e-mail, by posting in the Tseshaht Administration office, on the Tseshaht website or other websites, or in the Ha-Shilth-Sa newspaper.

“Poll” means the casting and recording of Voters’ ballots in an Election.

“Polling Place” means one or more locations for the Poll where voting in an Election takes place.

“Post” means posting in the Tseshaht administration office, on the Tseshaht website and such other places as the Appeal Board may suggest.

“Reserve” means a tract of land, the legal title to which is vested in His Majesty, that has been set apart by His Majesty for the use and benefit of Tseshaht.

“Special Voting Opportunity” means a voting opportunity as set out in sections 20.6 – 20.9 of this Code.

“Tseshaht” means *cišaaʔath*, a distinct Indigenous people with common territory, language, culture, values, customs, practices, traditions, spiritual beliefs and legal and political systems in respect of the marine, terrestrial and other resources in a large marine area and a large terrestrial area offshore and onshore of central and western Vancouver Island, and includes a body of Indians that constitutes a “band” within the meaning of the Indian Act, R.S.C. 1985, c. I-5 as amended.

“Voter” means a person eligible to vote in an Election pursuant to section 10.1 of this Code.

“Voters List” means the list of all those Members who are eligible to vote in an Election pursuant to section 10.1 of this Code.

“Voting Package” means a notice of a vote that is delivered to each Voter on the Voter List, whether on or off Reserve, together with:

- (i) information regarding the purpose of the Election;
- (ii) voting instructions, including the date and time by which the Head Electoral Officer must receive the voting envelope, and the date and time of when the results will be announced;
- (iii) a ballot envelope; and
- (iv) a voting envelope.

PART 3 TIME

3.1 If the time set for doing anything under this Code falls or ends on a statutory holiday or National Indigenous Peoples Day, the time is extended to the next day that is not a statutory holiday or National Indigenous Peoples Day except as otherwise provided in this Code.

- 3.2 Failure to give Notice within the time period stipulated by this Code will not, by itself, invalidate an Election.
- 3.3 After a General Election is called, the Council will be in Caretaker Mode for the four (4) weeks immediately prior to the Election Day.

PART 4 COUNCIL

- 4.1 The Council is comprised of one (1) Chief Councillor and eight (8) Councillors.

ELIGIBILITY

- 4.2 In order to be eligible to be a Candidate for the position of Chief Councillor or Councillor, a person must:
- (a) be nineteen (19) years of age or older on the date set for a General Election or By-election;
 - (b) be a person whose name appears on the Membership List or who is entitled to have his/her name appear on the Membership List on the date that person is nominated;
 - (c) not be employed, or contracted by Tseshaht;
 - (d) have submitted a criminal record check and have no Criminal Conviction; and
 - (e) be in good financial standing with Tseshaht and not be personally bankrupt.

PART 5 GENERAL ELECTIONS

- 5.1 Every four (4) years, there shall be a General Election, at which time a Chief Councillor and eight (8) Councillors shall be elected.
- 5.2 The term of office for the Chief Councillor and the Councillors elected in a General Election shall be four (4) years.
- 5.3 If it is necessary to delay a General Election beyond the four-year anniversary date, then the terms of the sitting Chief Councillor and Councillors shall be extended until the Election date but not more than six (6) months.
- 5.4 A General Election shall occur on the third Saturday of November every four (4) years.

PART 6 VACANCIES

- 6.1 The Chief Councillor or a Councillor's position becomes vacant if the person holding the position:
- (a) resigns in writing;
 - (b) becomes incapacitated or is unable to fulfill the duties of office for a period of four (4) months or more;
 - (c) is deceased;
 - (d) fails without just cause, to attend in person, by telephone, or electronically, three (3) or more consecutive duly convened Council meetings;
 - (e) becomes employed by Tseshaht;

- (f) is found to be in violation of the code of conduct adopted by Tseshaht pursuant to its Financial Administration Law and such violation warrant, under that code of conduct, vacating the position of Chief Councillor or Councillor as the case may be; or
 - (g) is the subject of a Criminal Conviction.
- 6.2 If the Chief Councillor or a Councillor's position is vacated, that person may not run as a Candidate in the next Election.
- 6.3 As soon as practicable after learning of an event under section 6.1, the Executive Director shall provide notice in writing to the affected Chief Councillor or Councillor, as the case may be, that their position is vacated.
- 6.4 The Executive Director shall advise the other members of the Council in writing when the Chief Councillor or a Councillor's position has been vacated.

PART 7 ELECTIONS

- 7.1 In the event that a vacancy occurs when there is more than twelve (12) months remaining in the term then a By-election shall be called.
- 7.2 The Council shall call a By-election within thirty (30) days of the vacancy.

PART 8 ELECTION OFFICIALS

HEAD ELECTORAL OFFICER

- 8.1 The Council shall appoint a Head Electoral Officer no less than seventy (70) days before a General Election.
- 8.2 The Head Electoral Officer shall not be a member of Tseshaht.
- 8.3 The Head Electoral Officer shall be nineteen (19) years of age or older on the date of appointment.
- 8.4 The Executive Director shall be responsible for negotiating a contract with the Head Electoral Officer.
- 8.5 The Head Electoral Officer has discretion to interpret this Code in carrying out an Election.
- 8.6 If a person believes the Head Electoral Officer has interpreted this Code in a patently unreasonable manner, that person may apply to the Appeal Board for review of the Head Electoral Officer's interpretation.
- 8.7 The Appeal Board shall consider the matter at the earliest opportunity and shall make a decision prior to the Election on whether to affirm or quash the Head Electoral Officer's interpretation.
- 8.8 The decision of the Appeal Board will be final.
- 8.9 The Head Electoral Officer shall be responsible for all those duties set out in this Code and for such other matters as are necessary to carry out those duties.

ASSISTANT ELECTORAL OFFICER

- 8.10 The Head Electoral Officer may appoint one or more Assistant Electoral Officers to assist him or her in carrying out the duties as set out in this Code. An Assistant Electoral Officer must not be less than nineteen (19) years of age on the date of appointment.
- 8.11 The Head Electoral Officer shall provide all supervision of the Assistant Electoral Officers and shall be responsible for all remuneration paid to the Assistant Electoral Officers.

PART 9 PROCESS

APPEAL BOARD

- 9.1 No less than seventy (70) days prior to an Election, the Council shall appoint an Appeal Board.
- 9.2 The Appeal Board will consist of three (3) individuals:
- (a) who are not registered Members of Tsshaht;
 - (b) have no vested interest, financial or otherwise in the outcome of the Election; and
 - (c) have a demonstrable, working knowledge of the principles of good governance, due process, fairness, and equity.
- 9.3 The Appeal Board shall supervise and administer any appeals from the Election for which the Appeal Board is appointed and shall address such appeals to the Head Electoral Officer in accordance with the provisions of this Code.
- 9.4 The Appeal Board will serve only during that particular Election and will be disbanded fourteen (14) days after the last Election or upon the completion of any appeal brought in relation to last Election, whichever is later.

PROCESS FOR AN ELECTION APPEAL

- 9.5 Within fourteen (14) days of the Election, any Candidate or Voter may challenge an Election result by sending a written notice of appeal to the Executive Director, which must set out allegations of one or more of the enumerated grounds for an appeal pursuant to section 9.6, and include their name, signature, and contact information. The Executive Director shall then forward this document immediately to the Appeal Board.
- 9.6 Grounds for an appeal may include the following:
- (a) Fraudulent practice in connection with the Election;
 - (b) Undue influence during the Election process;
 - (c) Double voting;
 - (d) Ballot or ballot box tampering;
 - (e) Election process interference;
 - (f) Substantial non-compliance with this Code; or
 - (g) Corruption.

- 9.7 Non-compliance with Section 21.1 [Preparing the Polling Station] is not a valid ground for appeal pursuant to section 9.6.
- 9.8 Within seven (7) days of the Appeal Board receiving the appeal, it shall send a copy of the appeal, with supporting documentation and instructions on how to provide a written statement, to all Candidates in the Election and the Head Electoral Officer.
- 9.9 Any Candidate or the Head Electoral Officer may within fourteen (14) days of receipt of the appeal, provide the Appeal Board with a written response to the appeal allegations, together with any supporting documentation.
- 9.10 No earlier than seven (7) days of receipt of the appeal, the Appeal Board may conduct or authorize such further investigation as it deems appropriate or necessary, including convening a hearing to:
- (a) hear statements from the Candidate or Voter challenging the Election, the Head Electoral Officer, any Assistant Electoral Officers, and any witnesses the Appeal Board determines are necessary for the consideration of the challenge; or
 - (b) receive written statements or evidence in whatever form the Appeal Board determines is reliable.
 - (c) After a review of all the information that it has received, the Appeal Board may:
 - (d) deny the appeal on the grounds that the evidence presented did not reveal an infraction of this Code, or on the grounds that an infraction of this Code was revealed, but the infraction did not affect the results of the Election;
 - (e) declare the entire Election as invalid and void; or
 - (f) declare the Election of only one (1) or some of the Candidates as invalid and void.
- 9.12 The Appeal Board shall issue a written decision within five (5) days of concluding its deliberations on the challenge and the Head Electoral Officer shall post the decision in the Tseshaht administration office, on the Tseshaht website, and such other places as the Appeal Board sees fit.
- 9.13 The Appeal Board shall also, if necessary, give instructions to the Head Electoral Officer on how the problems identified in the appeal can be corrected.
- 9.14 If the Appeal Board declares the entire Election void, then a new General Election shall be set.
- 9.15 If the Appeal Board declares the Election of only some of the Candidates as invalid and void, then the Candidate with next highest votes will be deemed elected.
- 9.16 The decision of the Appeal Board is final and binding.
- 9.17 If a decision of the Appeal board under 9.10 or 9.11 results in another General Election or a By-Election (as the case may be), the Head Electoral Officer may set reasonable timelines for that subsequent General Election or By-Election (as the case may be) that differ from the timelines under this Code for General Elections or By-Elections, provided that:
- (a) the General Election or By-Election (as the case may be) takes place as soon as practicable; and

(b) all Voters receive sufficient notice of the General Election or By-Election (as the case may be).

PART 10 VOTER ELIGIBILITY AND VOTERS LIST

- 10.1 In order to be eligible to vote in a General Election or By-election, a person must:
- (a) be a person whose name appears on the current Membership List; and
 - (b) be sixteen (16) years of age or older on the date of the voting for the Election.
- 10.2 Within seven (7) days of their appointment, the Head Electoral Officer shall prepare a Voters List.
- 10.3 Only persons whose name appears on the Voters List shall be entitled to vote in that General Election or By-election.
- 10.4 The Head Electoral Officer shall post the Voters List online, in the Tseshaht administration office and in such other places as the Head Electoral Officer may determine.
- 10.5 It is the responsibility of each Member who wishes to participate in an Election to ensure their name appears on the Voters List and to contact the Head Electoral Officer if it does not.
- 10.6 If a person believes he or she should be a Voter but is not recognized by the Head Electoral Officer as a Voter, no less than seven (7) days before an Election, that person may apply to the Appeal Board for his or her name to be added to the Voters List.
- 10.7 The Appeal Board shall consider the matter at the earliest opportunity and shall make a decision prior to the Election on whether the person's name should be added to the Voters List. The decision of the Appeal Board shall be final.

PART 11 NOTICE TO VOTERS

- 11.1 At least fifty-six (56) days prior to an Election, the Head Electoral Officer shall post a Notice to Voters in the Tseshaht administration office, on the Tseshaht website and such other places as the Appeal Board may suggest. This Notice shall, at least, include:
- (a) the date(s) and time(s) set for the Election and the Advance Poll(s);
 - (b) the locations where the Voters list is posted;
 - (c) the method of voting;
 - (d) information about Special Voting Opportunities;
 - (e) the address of the Election Polling Station(s) and Advance Polling Place(s);
 - (f) the date and time set for the nomination meeting and the location of that meeting;
 - (g) how to nominate a person in writing and the deadline by which written nominations must be received by the Head Electoral Officer; and
 - (h) the contact information for the Head Electoral Officer.

PART 12 NOMINATION PROCESS

- 12.1 The Head Electoral Officer must call a nomination meeting at least forty-two (42) days before a General Election or a By-election, by posting a Notice to Voters at the Tseshaht administration

office, on the Tseshaht website, and other such places as the Appeal Board may suggest if so requested.

- 12.2 The nomination meeting shall be:
- (a) open to Members;
 - (b) chaired by the Head Electoral Officer; and
 - (c) no less than one (1) hour in length.
- 12.3 Only Voters are eligible to nominate or second a nomination for the positions of Chief Councillor and Councillors.
- 12.4 A Member may be nominated for either the position of Chief Councillor or Councillor, but not both.
- 12.5 A Member may not self-nominate.
- 12.6 Every Voter making an oral nomination must state their name, the name of the Member being nominated, and the position that they are being nominated for.
- 12.7 Every oral nomination must be seconded by another Voter who also identifies themselves.
- 12.8 After each oral nomination is made, the Head Electoral Officer shall confirm from the Voter's List that the nominator and the seconder are both qualified to do so under section 12.3 and if they are not, the nomination shall not be accepted.
- 12.9 A Voter may only nominate or second one (1) person for the position of Chief Councillor.
- 12.10 If a Voter nominates or seconds more than one (1) person for the position of Chief Councillor, only the first nomination or second will be accepted by the Head Electoral Officer.
- 12.11 A Voter may only nominate or second a maximum of eight (8) for the Councillor positions.
- 12.12 If a Voter nominates or seconds more than eight (8) for the Councillor positions, only the first eight (8) nominations or seconds will be accepted by the Head Electoral Officer.

NOMINATION IN WRITING

- 12.13 A Voter may also nominate persons in writing by contacting the Head Electoral Officer, and providing his/her mailing or e-mail address, and requesting that a nomination form be sent to him or her by mail or e-mail.
- 12.14 In order to nominate in writing, the Voter must Deliver to the Head Electoral Officer a nomination form with:
- (a) the name of the Member being nominated;
 - (b) the position that the Member is being nominated for;
 - (c) the printed name, signature, and Tseshaht Membership number of the Voter making the nomination; and
 - (d) the printed name, signature, and Tseshaht Membership number of the Voter seconding the nomination.

- 12.15 Completed nomination forms can be mailed or e-mailed to the Head Electoral Officer, but to be accepted, must be received by the Head Electoral Officer by 8:00 p.m. on the date of the nomination meeting.
- 12.16 Before the close of the nomination meeting, the Head Electoral Officer shall read out each written nomination form which has been received and confirm from the Voters' list that each nominator and seconder are qualified to nominate under section 12.3, and if they are not, the nomination will not be accepted.
- 12.17 In the event there are not enough persons nominated for each of the positions up for Election, the Head Electoral Officer shall schedule another nomination meeting to take place within four (4) days of the initial nomination meeting.

PART 13 CONFIRMATION OF CANDIDATES' ELIGIBILITY

- 13.1 After the nomination meeting, the Head Electoral Officer shall as soon as practicable, notify all qualified Nominees of their nomination and of the requirements to be qualified as a Candidate in the Election. Only persons who are Members and who are of the age of nineteen (19) or older on the day they are nominated may be a Candidate in a general election or by-election.
- 13.2 To qualify as a Candidate, within one (1) week of being notified of the nomination, each Nominee shall Deliver to the Head Electoral Officer:
 - (a) a signed acceptance of nomination form, including full legal name, Membership number, mailing address, telephone number and e-mail address;
 - (b) a Criminal Record Check, with no convictions, other than those for fishing or hunting or in the assertion or defence of Tseshaht Rights and Title;
 - (c) a declaration in the form appended to this Code, confirming if he or she;
 - (d) is not presently bankrupt; and
 - (e) (ii) is in good financial standing with Tseshaht.
- 13.3 If a Nominee does not satisfy all of the requirements of section 13.2 within the prescribed time, they shall be deemed to have declined the nomination. However, under extenuating circumstances, and if requested by a nominee, the Head Electoral Officer may exercise their discretion and grant an extension of up to two (2) days for the nominee to satisfy the requirements of section 13.2.
- 13.4 The Head Electoral Officer shall promptly inform any person whom they determine is not qualified to be a Nominee or Candidate.
- 13.5 Within seven (7) days of being given notice of the Head Electoral Officer's decision, that person may appeal that decision to the Appeal Board.
- 13.6 The Appeal Board shall, within seven (7) days, consider the matter as it sees fit and within seven (7) days of considering the matter, shall make a decision whether the person is qualified to be a Nominee or Candidate, as the case may be.
- 13.7 The decision of the Appeal Board shall be final.

PART 14 CONDUCT DURING AN ELECTION

- 14.1 A Nominee, a Candidate, a member of Council, the Head Electoral Officer, Assistant Electoral Officer, scrutineers and a member of the Appeal Board shall not:
- (a) offer an Enticement to a Voter;
 - (b) accept funds or gifts from any source in relation to the conduct of an Election campaign;
 - (c) participate in any slanderous, or character attack on any of the Nominees or Candidates;
 - (d) utilize social media to fuel misinformation or make unfounded claims or attacks against any of the Nominees or Candidates;
 - (e) utilize Tseshaht staff during regular business hours to assist with an Election campaign; or
 - (f) utilize Tseshaht administrative resources to assist with an Election campaign.

PART 15 DISQUALIFICATION

- 15.1 If at any time prior to an Election, the Head Electoral Officer determines that a Candidate has contravened this Code, including misstatements in their declaration about personal bankruptcy or financial standing to Tseshaht or about their qualifications to run as a Candidate for Chief Councillor, that Candidate shall be disqualified by the Head Electoral Officer from that Election.
- 15.2 A Candidate disqualified by the Head Electoral Officer under this section may appeal.
- 15.3 Within seven (7) days of being given notice of the Head Electoral Officer's decision, that person may appeal that decision to the Appeal Board.
- 15.4 The Appeal Board shall, within seven (7) days, consider the matter as it sees fit and, within seven (7) days of considering the matter, shall make a decision whether the person is qualified to be a Candidate.
- 15.5 The decision of the Appeal Board shall be final.

PART 16 WITHDRAWAL

- 16.1 A Candidate may withdraw from an Election at any time by advising the Head Electoral Officer in writing. A withdrawing Candidate's name shall not be put on the ballot.
- 16.2 If a Candidate withdraws after ballots are printed for an Election, the Head Electoral Officer shall post a notice of the withdrawal on-line on the Tseshaht website, at the polling station, and such other places as the Appeal Board may suggest, and any votes cast for the withdrawn Candidate shall be void.

PART 17 ACCLAMATION

- 17.1 If there is only one (1) qualified Candidate for the position of Chief Councillor, the Head Electoral Officer shall declare them to be duly elected by acclamation.
- 17.2 If there are eight (8) or fewer qualified Candidates for the Councillor positions, the Head Electoral Officer shall declare them to be duly elected by acclamation.

- 17.3 If there are fewer than eight (8) qualified Candidates duly elected by acclamation or no qualified Candidate for the Chief Councillor position in a General Election or By-election, the Head Electoral Officer shall re-open the nomination process, including the scheduling of another nomination meeting within seven (7) days, for the vacant positions.

PART 18 CONFIRMATION OF ELECTION DATE

- 18.1 If more than the minimum number of Nominees are qualified as Candidates for the positions of Chief Councillor or Councillors, the Head Electoral Officer shall confirm the Election date and post a list including the names of Candidates and the positions they have been nominated for. The Head Electoral Officer shall ensure this list is posted in the Tseshaht administration office, on the Tseshaht website and such other places as the Head Electoral Officer may determine.
- 18.2 After the date of an Election is confirmed, the Head Electoral Officer shall schedule a meeting for all Candidates (the "All-Candidates Meeting") and provide notice of it by posting in the Tseshaht Administration office, on the Tseshaht website and in such other places as the Head Electoral Officer may determine, including for example, the Ha-Shilth-Sa.
- 18.3 The Head Electoral Officer shall consult with the Executive Director to ensure that the usual arrangements are made to enable Members who cannot attend the All-Candidates Meeting in person, to attend electronically. The Head Electoral Officer, or in his/her absence the Executive Director, shall chair the All-Candidates Meeting.

PART 19 PREPARATION OF BALLOTS FOR THE ELECTION

- 19.1 For a General Election, once the qualified Candidates have been confirmed, the Head Electoral Officer shall prepare two (2) ballots, one (1) for the Chief Councillor position, and one (1) for the Councillor positions.
- 19.2 For a By-election, once the qualified Candidate or Candidates have been confirmed, the Head Electoral Officer shall prepare appropriate ballots for the vacant positions.
- 19.3 Each ballot will list the names of the Candidates, including any nicknames, with the surnames in alphabetical order.

PART 20 VOTING OPPORTUNITIES AND PROCEDURES

VOTING

- 20.1 A Voter may vote in an Election by:
- (a) appearing in person at a polling station on Election Day;
 - (b) mail-in or electronic ballot;
 - (c) advance Poll; or
 - (d) if eligible, accessing a Special Voting Opportunity.
- 20.2 It is the responsibility of every Voter who wishes to participate in an Election using a Mail-in ballot or electronic ballot, to ensure that the Head Electoral Officer has their current mailing and street address, and email address.

ADVANCE POLL

- 20.3 The Head Electoral Officer shall establish an Advance Poll to take place at least two (2) weeks before the date set for an Election.
- 20.4 The procedures that apply for the poll on Election Day set out below, also apply for the Advance Poll.
- 20.5 Ballots cast in the Advance Poll shall be placed in a locked ballot box labelled “Advance Poll ballots” and kept safely and securely by the Head Electoral Officer until such time as the votes are counted.

SPECIAL VOTING OPPORTUNITY

- 20.6 Tseshaht Elders and other Voters who are: physically challenged, reside in the Alberni Valley, and are unable to attend at the polling station on Election Day may contact the Head Electoral Officer and request, or authorize their caregiver to request on their behalf, a Special Voting Opportunity. The request will include an explanation of why the Elder or other Voter requires a Special Voting Opportunity.
- 20.7 Whether an Elder or other Voter qualifies for a Special Voting Opportunity shall be at the discretion of the Head Electoral Officer.
- 20.8 Where a Special Voting Opportunity is necessary, the Head Electoral Officer shall arrange with the Elder or other Voter an agreed upon time and location and attend there with Election materials so voting may take place. The time of the Special Voting Opportunity can be before the Election Day.
- 20.9 For the purposes of the Special Voting Opportunity, the Head Electoral Officer shall:
- (a) confirm the Elder’s or other Voter’s identity;
 - (b) cross out the Elder’s or other Voter’s name from the Voters List;
 - (c) issue the ballots and provide privacy so that voting can occur; and
 - (d) provide the Elder or other Voter with access to the locked Special Voting Opportunity ballot box in order to deposit his/her ballots.

VOTING BY MAIL BY REQUEST

- 20.10 As soon as practicable after being appointed, the Head Electoral Officer shall consult with the Executive Director and obtain the most recent list of Voters’ mail addresses.
- 20.11 The Head Electoral Officer shall, no less than twenty-one (21) days before the date set for the Election, send a Mail-in ballot Voting Package to Voters who have explicitly requested to receive a mail-in ballot.
- 20.12 Any Voter wishing to vote by Mail-in ballot may request a Mail-in ballot Voting Package from the Head Electoral Officer and provide his or her mailing address.
- 20.13 The Mail-in ballot Voting Package sent by the Head Electoral Officer shall include voting instructions, the ballots, privacy envelope and a return envelope addressed to the Head Electoral Officer, with the Voter’s name and return address marked on it.
- 20.14 The Head Electoral Officer shall keep a record of all the Mail-in ballot Voting Packages they send out.

- 20.15 When voting by mail, a Voter shall:
- (a) for the position of Chief Councillor, mark the ballot with the name of the one (1) Candidate being voted for;
 - (b) for the positions of Councillor, mark the ballot to indicate the Eight (8) or less Candidates being voted for; and
 - (c) place the marked ballots in the privacy envelope, seal the privacy envelope, place the privacy envelope in the return envelope with the Voter's name and address in the top left-hand corner of the return envelope and return by mail to the Head Electoral Officer.
- 20.16 A Mail-in ballot must be received by the Head Electoral Officer prior to 8:00 p.m. local time on the date of the Election.
- 20.17 A Mail-in ballot that is received later than 8:00 p.m. shall not be counted by the Head Electoral Officer, and the unopened return envelope shall be marked "Rejected."
- 20.18 Only the Head Electoral Officer may open mail addressed to them.
- 20.19 Upon receiving a Mail-in ballot, the Head Electoral Officer shall cross the name shown on the return envelope off the Voters' list, remove the privacy envelope containing the ballots and place it into the locked Mail-in ballot box.
- 20.20 The return envelopes shall not be destroyed until after the Election is concluded and all appeal periods have expired.

ELECTRONIC VOTING

- 20.21 Electronic voting shall be done using a method that is approved by the Head Electoral Officer as secure, accessible, and effective. Any Voter wishing to vote electronically ballot, shall request an electronic Voting Package from the Head Electoral Officer and provide an e-mail address and telephone number.
- 20.22 Head Electoral Officer shall record the name of each Voter who requests and receives an electronic Voting Package.
- 20.23 The electronic Voting Package shall contain clear instructions for electronic voting.
- 20.24 Electronic voting must be completed prior to 8:00 p.m. local time on the date of the Election.
- 20.25 The Head Electoral Officer shall maintain records of votes cast electronically.
- 20.26 The Head Electoral Officer shall maintain the privacy of any Voter choosing to vote electronically.

PART 21 ELECTION DAY PROCEDURES

PREPARING THE POLLING STATION

- 21.1 The Head Electoral Officer shall ensure, in consultation with the hāwīih, that the appropriate Teshahst customary protocols are carried out to open the poll.

VOTING ON ELECTION DAY

- 21.2 On an Election Day, the poll will open at 8:00 a.m. and close at 8:00 p.m.

- 21.3 Voters attending to vote must be prepared to provide proof of their Membership and, if they are not known personally by the Head Electoral Officer or an Assistant Electoral Officer, shall provide them with proof of Membership. Once the Voter's identity has been confirmed, his or her name will be crossed off the Voters List and he or she will be provided with the ballot(s) and directed to the polling booth.
- 21.4 If an eligible Voter is not known to the Head Electoral Officer or Assistant Electoral Officer and does not have identification at the time of voting, they may prove their identity and residence by making a written solemn declaration and being vouched for by another eligible Voter who must:
- (a) have identification;
 - (b) also make a written solemn declaration; and
 - (c) personally know the Voter who is not known to the Head Electoral Officer or Assistant Electoral Officer and who does not have identification at the time of voting.
- 21.5 A Voter who requires assistance to vote may have a support person accompany them when they mark their ballots.
- 21.6 Once voting has been completed, the Voter shall deposit the ballot(s) into the locked ballot box.

CLOSING THE POLL

- 21.7 The Head Electoral Officer shall close the poll at 8:00 p.m. on Election Day.
- 21.8 When the Head Electoral Officer has declared the poll closed, any Voter waiting in line inside the polling station shall have the right to cast their ballot(s).
- 21.9 After the last Voter who was in line inside the location of the polling station at 8 p.m. has voted, the Head Electoral Officer shall ensure, in consultation with the *hāwīih*, that the appropriate *Tseshah*t customary protocols are carried out to close the poll.

PART 22 COUNTING THE BALLOTS

INITIAL COUNT

- 22.1 Once voting is concluded, the Head Electoral Officer shall place together all the ballot boxes (Advance Poll, Special Voting Opportunity, Mail-in, electronic votes, and Election Day ballot boxes), unlock them and commence to count all the ballots.
- 22.2 During the ballot count, the Head Electoral Officer may be assisted by one (1) or more Assistant Electoral Officers.
- 22.3 The ballot counting shall, if possible, be conducted in public view of any Members present for the count.
- 22.4 Every Candidate may appoint any person as a scrutineer provided that person is of age nineteen (19) years or older. The scrutineer shall have the right to be present in the room where the ballots are counted and to watch the ballot counting.
- 22.5 The Head Electoral Officer shall have a list of Candidates and shall record one (1) vote cast for that Candidate each time a ballot is so marked.
- 22.6 A ballot shall be recorded as spoiled when:

- (a) the ballot is blank, meaning that there is no vote cast for any Candidate;
 - (b) for Chief Councillor, more than one (1) name has been marked on the ballot;
 - (c) for the Councillors, more than the maximum names have been marked on the ballot;
 - (d) the ballot has on it the hand-written name of a person who is not a Candidate; or
 - (e) the ballot is defaced in such a way that no vote is decipherable.
- 22.7 A ballot shall not be recorded as spoiled because the Voter casting the ballot has voted for fewer Candidates than they are entitled to vote for.
- 22.8 A spoiled ballot shall not count as a vote for any Candidate.
- 22.9 If the Head Electoral Officer has received Mail-in or electronic ballots from a Voter who has voted at a polling station, the Head Electoral Officer shall reject those Mail-in or electronic ballots.
- 22.10 The tally sheets maintained by the Head Electoral Officer shall show the number of votes cast for each Candidate, the number of spoiled ballots, and the number of ballots cast on Election Day, in the Advance Poll, in a Special Voting Opportunity, or by mail or electronically.
- 22.11 All ballots, the return envelopes for Mail-in ballots, and the electronic voting records shall be retained by the Head Electoral Officer until the end of the challenge period, or the conclusion of any challenges or appeals.
- 22.12 Once the challenges or appeals timelines are concluded, the Head Electoral Officer shall destroy the ballots.

FINAL COUNT

- 22.13 At the end of the initial count, the Head Electoral Officer shall determine if the ballots need to be counted again. If the Head Electoral Officer determines that the ballots do not need to be counted again then the initial count shall become the final count.
- 22.14 If the Head Electoral Officer determines that the ballots should be counted again then the Head Electoral Officer shall immediately, or as soon thereafter as possible, recount the ballots. The Head Electoral Officer shall recount the ballots as many times as they think necessary and until they are satisfied that the count is accurate.
- 22.15 By way of example the Head Electoral Officer may recount the ballots if:
- (a) the difference in the ballot count between two Candidates is less than five (5) votes;
 - (b) the Head Electoral Officer believes a mistake was made in the count;
 - (c) the Head Electoral Officer believes that a ballot may have been improperly recorded; or
 - (d) other reasonably held belief by the Head Electoral Officer that the initial count may not be accurate.
- 22.16 When the Head Electoral Officer is satisfied that the count of ballots is accurate, that count shall become the final count.
- 22.17 The Head Electoral Officer shall announce the final count as soon as it is determined, by:

- (a) announcing the vote count for each of the Candidates for Chief Councillor and declaring the Candidate with the most votes as elected;
 - (b) announcing the vote count for each of the Candidates for the Councillor positions and announcing the eight Candidates with the most votes as elected; and
 - (c) announcing the number of spoiled ballots.
- 22.18 The Head Electoral Officer shall post the results of the final count in the Tseshaht administration office, on the Tseshaht website and such other places as the Appeal Board may suggest.
- 22.19 In the event of a tie for highest number of votes between two (2) or more Candidates for the position of Chief Councillor, the Head Electoral Officer shall write both names on a ballot, and place in a container, and shall draw one ballot, the person whose name appears on the ballot will be deemed to have received a vote from the draw and declared the winner.
- 22.20 In the event of a tie for eighth position for Councillor between two (2) or more Candidates for that position, the Head Electoral Officer shall write the names on a ballot, and place in a container, and shall draw one ballot, the person whose name appears on the ballot will be deemed to have received a vote from the draw and declared the winner.

PART 23 AMENDMENTS

- 23.1 Significant amendments to this Code shall be drafted with the participation of a Working Group of community members appointed by the Council on recommendation from a community meeting, and overseen by the Executive Director and/or a person of their choosing.
- 23.2 This Code may be amended at a meeting of the members provided that:
- (a) notice has been given to the members at least one (1) month before the meeting of the proposed amendments to or proposed repealing of this Code, including providing information as to how Voters not able to attend in person may participate in the meeting electronically; and
 - (b) a Majority of the Voters participating in the meeting, either in person or electronically, vote in favour of the proposed amendments or of repealing this Code.

PART 24 MINOR AMENDMENTS AND MISCELLANEOUS

- 24.1 Notwithstanding Part 23 [Amendments], Council may make minor amendments to this Code by Band Council Resolution so long as such amendments are typographical in nature and do not substantively alter the rules and procedures under the Code.
- 24.2 If minor amendments are made, the amended Code shall be available in the Tseshaht administration office and on the Tseshaht website, and the community shall be notified.

MISCELLANEOUS

- 24.3 This Election Code shall come into effect at 11:59 p.m. on the day that it is adopted by the Voters.
- 24.4 The first General Election held in accordance with this Code shall be in 2024 and will be scheduled for no later than November 16, 2024.

- 24.5 The Head Electoral Officer shall use a form of Delivery for providing Notice and carrying out his or her duties that are most likely to reach the intended audience.
- 24.6 This Code is a complete Code for the purposes of an Election.
- 24.7 The Council may enact regulations to carry out the purposes of this Code, including regulations for forms.

PART 25 REVIEW

- 25.1 The Council shall appoint, an ad hoc committee of one (1) or more ʻāwīī, one (1) or more members of Council and one (1) or more Members of Tseshaht, on recommendation from the community at a community meeting, to review this Code five (5) years after it comes into effect to recommend to Council if any amendments are necessary.

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