

TOQUAHT NATION GOVERNMENT

GOVERNMENT ACT

TNS 2/2011



OFFICIAL CONSOLIDATION – CURRENT TO MARCH 11, 2014

This is a certified true copy of the consolidated Government Act TNS 2/2011, Current to March 11, 2014

Date: July 3rd, 2014

Kristen Johnson

Signed: _____
Law Clerk

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PREAMBLE

The Toquaht Nation asserts that we have exercised sovereign authority over our lands since time immemorial. Despite the arrival of settlers on our lands the Toquaht Nation has preserved and protected our traditional territories and we accept the obligations and responsibilities inherent in governing.

It is the desire of the Toquaht government to govern in a manner that is responsible, transparent, democratic and accountable, blending hereditary and modern-day governing institutions. In doing so, our governing structures honour our past and embrace the future ensuring the continued existence of the Toquaht Nation as strong political, social and cultural community that aspires to grow as an organized, determined, successful and self-reliant peoples.

The Toquaht Nation adopts this Act based on these values.

PART 1 - INTRODUCTORY PROVISIONS

Short title

1.1 This Act may be cited as the Government Act.

Executive oversight

1.2 The chairperson is responsible for the executive oversight of this Act.

Application

1.3 This Act applies to the structures and procedures of the Toquaht government.

Definitions

1.4 In this Act,

“alternate chairperson” means the member of Council chosen as alternate chairperson under section 2.1(c)(ii);

“chairperson” means the chairperson of Council;

“chief electoral officer” means the individual chosen to perform the duties and exercise the powers of the chief electoral officer under the Elections Act;

“confidentiality agreement” means the agreement set out in Schedule 1;

“eligible voter” means an eligible voter as defined in the Elections Act;

“facilitator” means the person chosen to facilitate meetings of the People’s Assembly under section 4.5;

“motion” means a main motion, subsidiary motion, incidental motion, privileged motion or a restorative motion as defined in the rules;

“ordinary meeting” means a meeting of Council called by the chairperson under section 2.2;

“quorum” means the minimum number of members of Council established under section 2.12 necessary to convene an official meeting of Council or the minimum number of members of the Executive established under section 3.3 to convene an official meeting of the Executive;

“resolution” means the formal expression of the will of Council;

“rules” means the Council Rules of Order and Procedure Act;

“special meeting” means a meeting of Council called by the chairperson under section 2.3;

“symbol” means the official seal or symbol of the Toquaht Nation formally adopted by Council to signify the authority to represent the Toquaht Nation.

PART 2 - TOQUAHT LEGISLATIVE BRANCH

Opening ceremonies

- 2.1**
- (a) The Tyee Ha'wilt must convene the first meeting of Council not more than 10 days after a regular election.
 - (b) The Tyee Ha'wilt must preside at the first meeting of Council until a chairperson has been chosen under subsection (c)(ii).
 - (c) The agenda for the first meeting of Council after a regular election must include
 - (i) the swearing-in of the members of Council and signing of a confidentiality agreement,
 - (ii) the choosing of a chairperson and an alternate chairperson from the members of Council,
 - (iii) subject to section 2.2(b), the scheduling of ordinary meetings, and
 - (iv) any other business determined by Council.
 - (d) All members of Council must be sworn in by customary practice and by signing a confidentiality agreement, as set out in Schedule 1, administered by the Tyee Ha'wilt.

Ordinary meetings

- 2.2**
- (a) The chairperson in consultation with Council may call an ordinary meeting of Council at any time as may be required.
 - (b) Council must meet no fewer than four times in each calendar year.

Special meetings

- 2.3** The chairperson may, with the informal consent of a majority of the members of Council, call a special meeting of Council with no less than 24 hours' notice.

Notice of meetings

- 2.4**
- (a) The chairperson must issue a written notice of each ordinary meeting at least 14 days prior to that ordinary meeting.
 - (b) The chairperson must provide the notice of the ordinary meeting directly to each member of Council and post the notice in accordance with Toquaht law.
 - (c) A notice provided under this section must include the proposed agenda for the ordinary meeting.

- (d) The chairperson must provide notice of a special meeting to the members of Council either in writing, electronically or verbally, which notice must indicate the purpose of the special meeting.

Agendas for meetings

- 2.5**
- (a) The chairperson must prepare a proposed agenda for each ordinary meeting.
 - (b) An agenda must include
 - (i) any unfinished business tabled at the previous meeting,
 - (ii) any additional agenda item the chairperson deems necessary, and
 - (iii) any matter requested by a member of Council to be added to the agenda as new business at least six days prior to the ordinary meeting.
 - (c) At the beginning of an ordinary meeting, the chairperson must request a motion to adopt the agenda.
 - (d) During debate on a motion to adopt the agenda, a member of Council may move an amendment to the motion to introduce other business or that the business be dealt with in a different order.

Business by resolution

- 2.6**
- (a) Any matter to be decided by Council must be presented in the form of a motion.
 - (b) Every affirmative decision of Council must be made by the adoption of a resolution.
 - (c) Legislation to be enacted or a contract or document to be ratified must be attached as an appendix to the resolution by which it is proposed to be enacted, approved or ratified.
 - (d) A resolution to enact legislation must include a statement of the name of the legislation and the proposed effective date, or method for determining the effective date, of that legislation.

Legislation

- 2.7**
- (a) Legislation may only be passed when Council has
 - (i) given it first reading by adopting a resolution to accept the legislation as introduced,

- (ii) given it second reading by
 - (A) considering the legislation in committee, which may be a committee of the whole Council, and
 - (B) adopting a resolution to accept the legislation in principle, and
 - (iii) given it third reading by adopting a resolution to enact that legislation.
- (b) A resolution to accept legislation in principle under subsection (a)(ii)(B) may not be adopted on the same day that the legislation is given first reading.
 - (c) A resolution to enact legislation under subsection (a)(iii) may not be adopted on the same day that the legislation has been given second reading.
 - (d) The chairperson may permit legislation to proceed in any shorter time than that allowed by subsection (b) if Council, by unanimous approval, resolves to permit the earlier enactment of that legislation.

Chairperson

- 2.8**
- (a) The chairperson must preside over each meeting of Council when in attendance.
 - (b) The chairperson has the authority, subject to the rules, to preserve order in Council and to decide questions of order and procedure.
 - (c) In deciding a question of order or procedure, the chairperson
 - (i) may invite submissions from members of Council,
 - (ii) must rule on the question, and
 - (iii) must give reasons for the ruling based on this Act, the rules or general parliamentary procedure

Alternate chairperson

- 2.9** When the chairperson is unable to perform the duties or exercise the powers of that office, the alternate chairperson must perform such duties and exercise such powers for the duration of the time the chairperson is unable to perform or exercise them.

Chairperson's term of office

- 2.10** The chairperson holds office with the support of a majority of Council until the next regular election.

Resignation of the chairperson

- 2.11** (a) The chairperson may resign as chairperson either
- (i) by announcing to the members of Council during a meeting of Council an intention to resign on a specified date, or
 - (ii) by giving written notice to the law clerk of the intention to resign on a specified date.
- (b) If the office of chairperson becomes vacant, the members of Council must appoint a new chairperson at its next meeting which meeting must be called by the Tyee Ha'wilt.

Quorum

- 2.12** (a) A meeting of Council requires a quorum of 50% of its members present.
- (b) If, in a particular case, the Constitution requires more members of Council to be present than required by this section, the higher requirement must be satisfied before the meeting can begin.

Participation in proceedings

- 2.13** (a) Only a member of Council or other person approved by the chairperson may speak during Council meetings.
- (b) The right of a member of Council to participate in proceedings of Council may not be delegated to another person.
- (c) Subject to subsection (d), a member of Council may introduce any motion.
- (d) A member of Council must give at least 14 days written notice to the chairperson before introducing a motion that concerns
- (i) development or approval of an annual budget,
 - (ii) financial administration of the Toquaht government,
 - (iii) any trust of the Toquaht government,
 - (iv) the exercise of Toquaht government taxation powers, or
 - (v) ratification of a fiscal agreement with another government.

Rules governing proceedings

- 2.14** (a) Members of Council may only participate in a meeting of Council in accordance with the Constitution, this Act and the rules.
- (b) During a meeting, a member of Council may, in accordance with the rules, move that one or more of the requirements of the rules be suspended during all or part of that meeting.
- (c) If a motion under subsection (b) is supported by two-thirds of the members of Council present, the chairperson must suspend the particular requirement referred to in the motion for the period stated.
- (d) Despite the suspension of any particular requirement under subsection (c), the chairperson must conduct the balance of the meeting in accordance with the Constitution, this Act and any requirements of the rules not suspended.

Electronic attendance at meetings

- 2.15** (a) If a member of Council is physically unable to attend a meeting of Council, that member may attend that meeting by means of such telephonic, electronic or other communication facilities as permit all persons participating in that meeting to communicate adequately with each other.
- (b) Each member of Council participating in the manner described in subsection (a) is deemed to be present at the meeting.

Voting

- 2.16** (a) In order to vote, a member of Council must be present when the vote is called.
- (b) Only a member of Council may vote.
- (c) The chairperson may vote on any motion but if the chairperson's vote results in a tie vote, the motion is deemed to have failed.
- (d) After a vote has been taken in accordance with the rules, if a member of Council requests, the law clerk must make a record of the vote.

Office of the law clerk established

- 2.17** (a) The office of the law clerk is established.
- (b) The chairperson must appoint an individual to hold the office of the law clerk.
- (c) The law clerk reports to Council.

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- (d) The law clerk is responsible for
- (i) advising the chairperson on the rules,
 - (ii) advising Council on questions of procedure or interpretation of the rules,
 - (iii) assisting members of Council in drafting notices, making motions and preparing resolutions,
 - (iv) assisting in the development and drafting of legislation,
 - (v) certifying that legislation submitted to the Tyee Ha'wiltl for signing is a true copy of the legislation enacted by Council,
 - (vi) maintaining the registry of laws and official records,
 - (vii) certifying that a document is a true copy of a Toquaht law,
 - (viii) preparing agendas and notices of Council meetings and providing them in accordance with this Act and the rules,
 - (ix) providing public access to the records of Council meetings as required,
 - (x) coordinating with the chairperson to ensure that Council has adequate facilities for its meetings, and
 - (xi) preparing any other duty assigned by Council.

Delegation authority

- 2.18** (a) Upon the approval of the Tyee Ha'wiltl, the law clerk may delegate, in writing, the performance of any of the law clerk's duties or the exercise of any of the law clerk's powers to a Toquaht government employee.
- (b) Despite the delegation of any duties or powers under subsection (a), the law clerk remains responsible for ensuring that the duties are performed properly and the powers are exercised appropriately.

Registry of laws and official records

- 2.19** (a) The registry of laws and official records is established.
- (b) The law clerk must deposit in the registry of laws and official records
- (i) the original copy of every enactment of Council, as soon as it has been signed by the Tyee a wíl,

- (ii) the original copy of every enactment of the Executive as soon as it has been signed by the Tyee a wil,
 - (iii) the original copy of every other Toquaht enactment,
 - (iv) the original copy of any amendments to the Maa-nulth Treaty made in accordance with 1.14.0 of Chapter 1 General Provisions of the Maa-nulth Treaty, and
 - (v) the original copy of any other document required or authorized under a Toquaht enactment to be deposited in the registry of laws and official records.
- (c) When the law clerk deposits the original copy of a Toquaht enactment or document in the registry of laws and official records, the law clerk must
 - (i) make three copies of that Toquaht enactment or document,
 - (ii) certify each copy to be true,
 - (iii) if the enactment is legislation or a regulation, deliver in accordance with Toquaht law one of the certified copies to British Columbia and another, if requested, to Canada,
 - (iv) keep the third certified copy available for public inspection at the Toquaht administrative office, and
 - (v) archive the original.
- (d) The law clerk
 - (i) must maintain an official continuing consolidation of each Toquaht enactment separate from the original of that Toquaht enactment, in which the law clerk records the effect on that Toquaht enactment of each amendment to it when that amendment comes into force, and
 - (ii) may provide a copy of the consolidated Toquaht enactment to any person for any purpose.
- (e) If the law clerk has certified a copy of a consolidated Toquaht enactment provided under subsection (d)(ii), any person may rely on it as a correct statement of that Toquaht enactment as of the date it was certified.
- (f) The law clerk may, in consultation with the chairperson, establish and maintain an electronic version of the registry of laws and official records.

PART 3 - TOQUAHT EXECUTIVE BRANCH

General

- 3.1** (a) For certainty, the Executive established by section 2.1 of the Constitution is vested with the Executive powers of the Toquaht government.
- (b) The Executive is responsible for the operations of the Toquaht government.

Powers and duties

- 3.2** (a) The Executive may exercise the powers and must perform the duties of the Executive set out in the Constitution, this Act or any other Toquaht enactment.
- (b) Council must establish the symbol that may be affixed to a document to be signed by a member of the Executive on behalf of the Toquaht Nation in order to signify that the signatory represents the Toquaht Nation.

Meetings of the Executive

- 3.3** (a) Members of the Executive may meet at any time and location deemed reasonably necessary by the Tyee Ha'wiltl or any two members of the Executive.
- (b) The Tyee Ha'wiltl or any two members of the Executive who initiate a meeting under subsection (a) must provide written notice of the meeting directly to each member of the Executive and the law clerk.
- (c) A meeting of the Executive requires a quorum of 50% of its members present.
- (d) As soon as practicable after a meeting of the Executive, the chairperson of the Executive must provide the endorsed minutes of that meeting to each member of the Executive and the law clerk.

Suspension or removal from office

- 3.4** Council may, by resolution approved by a two-thirds majority of the members of Council present and voting, suspend or remove a member of the Executive from his or her Executive portfolio.

PART 4 - TOQUAHT PEOPLE'S ASSEMBLY

Assembly

- 4.1** For certainty, a meeting of the People's Assembly must be convened in accordance with the Constitution.

Notice

- 4.2** At least 30 days prior to a meeting of the People's Assembly, the chairperson must post notice of the meeting in accordance with Toquaht law, including the date, time and location of the meeting.

Agenda

- 4.3** A notice posted under section 4.2 must include a proposed agenda for the meeting of the People's Assembly.

Location

- 4.4** All meetings of the People's Assembly must be held at a location within the Hahoulthee unless otherwise directed by a majority of eligible voters present and voting at the previous meeting of the People's Assembly.

Facilitator

- 4.5** All meetings of the People's Assembly must be chaired by a facilitator chosen by the chairperson.

Procedures

- 4.6**
- (a) The facilitator must call a meeting of the People's Assembly to order and open the meeting on the designated date and time.
 - (b) The first order of business at all meetings of the People's Assembly will be the adoption of the agenda, at which time Toquaht citizens may propose additional agenda items.
 - (c) The adoption of the agenda, and the inclusion or exclusion of additional agenda items, will be determined by approval of a motion by a majority of the eligible voters present and voting by way of a show of hands.
 - (d) The facilitator must adhere to the agenda adopted in accordance with this section.
 - (e) The facilitator must afford a representative of the Toquaht government an opportunity to make a report or presentation on each agenda item.

- (f) Following any presentation or report under subsection (e) Toquaht citizens will be permitted the opportunity to raise questions or seek clarification in relation to that specific agenda item.
- (g) All questions and discussions must be advanced in a respectful manner.
- (h) The facilitator must maintain a speakers list.
- (i) Each speaker must be permitted a maximum of five minutes to frame a question or make a statement after which time the facilitator must recognize an individual to respond to the question or a new speaker.
- (j) If the original speaker wishes to continue on the topic or raise a subsequent question, the facilitator must place that speaker at the end of the speakers list.
- (k) The facilitator must maintain order at a meeting of the People’s Assembly and has the authority to rule any speaker out of order.
- (l) At the close of a meeting of the People’s Assembly, the facilitator must verbally summarize the resolutions passed and seek instructions from those present on the date and location of the next meeting of the People’s Assembly.
- (m) In performing the duties and exercising the powers in accordance with this section, the facilitator may refer to the rules for guidance.

Resolutions

- 4.7**
- (a) A speaker may make a motion to obtain a resolution of the People’s Assembly on the agenda item being addressed.
 - (b) In order to clarify a discussion, the facilitator may request that a speaker make a motion.
 - (c) Except for matters requiring a referendum in accordance with the Constitution, Referendum Act, or other Toquaht enactment, a resolution is passed if approved by a majority of eligible voters present and voting at a meeting of the People’s Assembly by way of a show of hands.
 - (d) Any resolution passed at a meeting of the People’s Assembly constitutes a recommendation to the Toquaht government.

Record of event

- 4.8** The facilitator is responsible for maintaining a complete record of each meeting of the People’s Assembly and must make that record public within 30 days of the close of the meeting.

PART 5 - TOQUAHT HA'WIIH

Roles and responsibilities

- 5.1** (a) For certainty, the Tyee Ha'wilth and the Chaa-maa-taa must assume their roles and responsibilities in the Toquaht government set out in the Constitution.
- (b) The Tyee Ha'wilth and the Chaa-maa-taa must conduct their affairs in accordance with customary practices.

PART 6 - VACANCIES

Resignation

- 6.1** (a) Any member of Council may resign from that office by
- (i) announcing to the members of Council during a meeting of Council his or her resignation, or
 - (ii) by giving written notice to the law clerk of his or her resignation.
- (b) In the event of a resignation of an elected member of Council under subsection (a), a by-election must be held in accordance with the Elections Act.
- (c) In the event of a resignation by a Ha'wiltth under subsection (a), that position must be filled in accordance with Toquaht custom.

Deceased member of Council

- 6.2** If a member of Council dies, a by-election to replace that member of Council must be held in accordance with the Elections Act.

Removal for cause

- 6.3** (a) A member of Council may introduce a motion calling for the removal of another member of Council
- (i) for conduct determined by Council to be contrary to the Integrity Act, or
 - (ii) because the member of Council is incapable of performing the duties and exercising the powers of a member of Council due to mental or physical inability.
- (b) Prior to calling a vote on a motion introduced under subsection (a), the chairperson
- (i) must give to the individual identified in the motion an opportunity to address Council, and
 - (ii) may move to appoint a special committee to consider the matter under section 18.2 of the rules.

Declaration of vacancy

- 6.4** If a motion made under section 6.3(a) is approved by at least 80% of Council present and voting, or upon becoming aware of the resignation of a member of Council under section 6.1(a) or upon the death of a member of Council, the chairperson must declare the

office vacant, call for and hold a special meeting of the Council to appoint a chief electoral officer and notify the chief electoral officer in writing of the vacancy and the date of the vacancy.

By-election

- 6.5** Upon receipt of the notice under section 6.4, the chief electoral officer must hold a by-election in the case of an elected member of Council in accordance with the Elections Act to fill the vacancy.

Removal of a Ha'wilth

- 6.6** In the event that the member of Council removed is a Ha'wilth, that position must be filled in accordance with Toquaht customs.

PART 7 - CONSULTATION WITH TOQUAHT CITIZENS

Explanatory memorandum

- 7.1** (a) Legislation being introduced in Council must be accompanied by an explanatory memorandum.
- (b) The explanatory memorandum must
- (i) express in plain English the purpose of the legislation, and
 - (ii) identify how Toquaht citizens will be informed and offered an opportunity to make comments or raise questions concerning the proposed legislation.

PART 8 - GENERAL PROVISIONS

Commencement

8.1 This Act comes into force on the Maa-nulth Treaty effective date.

SCHEDULE 1 –CONFIDENTIALITY AGREEMENT

Each person who is elected or appointed to Council to serve the Toquaht Nation must sign a confidentiality agreement as follows:

“I, [name], will treat as confidential all information, material and documents provided to me in my role as a member of Council and will not disclose, release or publish such information, material or documents unless Council has formally indicated that such information, material or documents are no longer confidential.

I so swear

[Signature]”

SCHEDULE 2 – NON-CITIZEN PARTICIPATION

Consultation

- 1.1 A person who is not a Toquaht citizen but who is ordinarily resident on Toquaht lands must
- (a) be consulted by Toquaht institutions,
 - (b) be permitted to attend meetings of Toquaht institutions open to the public, and
 - (c) have a reasonable opportunity to make representations to Toquaht institutions,
- in regard to any matter that directly and significantly affects that person.

Representation

- 2.1 A person who is not a Toquaht citizen but who is ordinarily resident on Toquaht lands must be permitted to
- (a) become a member, commissioner, director, trustee or employee of,
 - (b) seek appointment to, and
 - (c) vote in the affairs of,
- a Toquaht public institution to the extent permitted by the law establishing that Toquaht public institution.

LEGISLATIVE HISTORY

Government Act TNS 2/2011 enacted April 1, 2011

Amendments

Section	Amendment	In Force
1.4	TNS 3/2012, s.6.4(g)	July 10, 2012
2.17(d)(iv)	TNS 3/2014, s.3.1	March 11, 2014
2.19	TNS 3/2014, s.3.1	March 11, 2014

Amending Acts:

TNS 3/2012 Economic Development Act enacted July 10, 2012

TNS 3/2014 Miscellaneous Amendments Act enacted March 11, 2014

Regulations enacted under this Act: