

**THE RULES OF PROCEDURE FOR
THE TA'AN KWÄCH'ÄN JUDICIAL COUNCIL**

March 2006

These Rules of Procedure for the Ta'an Kwäch'än Judicial Council are hereby adopted by the Council on the _____ day of March, 2006.

**Chuck Hume
Judge**

**Michael Dougherty
Judge**

**John Bailey
Judge**

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PRINCIPLES

The Ta'an Kwäch'än Judicial Council has made these rules of procedure pursuant to 12.1.6 of the *Constitution of the Ta'an Kwäch'än Council*. These rules have been prepared with the guidance of the following principles:

- to make the Judicial Council accessible to all Ta'an Kwäch'än Citizens;
- to conduct the Judicial Council's hearing and decision-making processes in a safe, respectful and trusting environment;
- to ensure the Judicial Council's proceedings are fair, honest and transparent;
- to ensure that the Judicial Council's decisions are made in an impartial and neutral manner;
- to consider, where appropriate, Ta'an Kwäch'än Council customs and traditions; and
- to maintain respect for Ta'an Kwäch'än Council, its Citizens, and culture.

PART 1 - GENERAL

1.0 Definitions

1.1 In these rules:

"Board", "Citizen", "Chief", "Elders Council", "Family Director", "Family Spokesperson", "Judicial Council", "Ta'an Kwäch'än Council", and "Traditional Family" have the same meaning as that under the *Constitution of the Ta'an Kwäch'än Council*;

"Constitution" means *Constitution of the Ta'an Kwäch'än Council*;

2.0 Title

2.1 These rules may be cited as the *Judicial Council Rules of Procedure*.

3.0 Judges' Decision-making and Panels

3.1 The Judicial Council shall seek to achieve consensus, but in the absence of consensus, decisions will be by majority vote of the judges.

3.2 The Judicial Council may establish a panel to consider any matter brought before it and such panels may consist of one or more judges.

4.0 Service of Documents and Communication with the Council

4.1 Documents, notices and other written material required to be submitted to the Judicial Council or to another party in a proceeding must be served by personal service, registered mail or facsimile. Where a document is sent by facsimile to the Judicial Council, an original copy must also be subsequently forwarded to it.

4.2 Except during a public hearing, communication related to all Judicial Council proceedings must be addressed to the Office of the Ta'an Kwäch'än Judicial Council or to a person designated by the Judicial Council.

4.3 Electronic mail will not be considered communication with the Judicial Council unless specifically authorized by the Judicial Council.

5.0 Records of the Council

5.1 Records of all applications made to the Judicial Council shall be maintained by it in a place accessible to all Citizens that include copies of all documents filed in its proceedings and written decisions.

6.0 Interpretation of the Rules and Technical Objections

6.1 These rules will be interpreted liberally to achieve a fair and efficient determination of every matter before the Judicial Council.

6.2 No Judicial Council proceeding is invalid because of an objection based only on a technical irregularity or a defect in form.

7.0 Application of Rules

7.1 These rules apply to all proceedings of the Judicial Council.

7.2 Where any matter of procedure is not provided for in these rules, the Judicial Council may, at any time, issue a direction on procedure to deal with the matter.

7.3 The Judicial Council may, by its own motion, or on application by a party in any proceeding, dispense with, vary or supplement these rules.

7.4 Where there is a conflict between the rules and a specific direction given by the Judicial Council on procedure, the direction on procedure prevails over the rules.

7.5 To address the requirements of fairness, the Judicial Council may, upon notice to the parties to a proceeding, shorten or extend the time fixed by these rules for any action.

7.6 Where the Judicial Council issues a direction under 7.2, varies or supplements the rules under 7.3, shortens or extends times fixed by the rules under 7.5, it shall do so in writing and provide copies to the parties and to the Board.

8.0 Non-Compliance with the Rules

8.1 Where a party to a proceeding has not complied with these rules or a direction on procedure issued by the Judicial Council, the Judicial Council may adjourn the proceeding until satisfied that the requirement has been complied with or take such other steps as it considers just and reasonable.

9.0 Forms

9.1 The Judicial Council may specify that any document or communication must be submitted to the Council in a particular form and such forms will from time to time be appended to these rules.

10.0 Telephone or other Communication

- 10.1 Participation in any proceeding of the Judicial Council may be by means of telephone or other communications facilities that are likely to enable all persons participating to hear each other, and a person so participating is deemed to be present at the proceeding.

PART 2 – MATTERS ADJUDICATED BY THE JUDICIAL COUNCIL

11.0 Challenging the validity of a law or regulation of the Ta'an Kwäch'än Council

- 11.1 A written notice submitted to the Judicial Council under 14.4 of the Constitution challenging the validity of a law or regulation shall identify the grounds in 14.2 of the Constitution that apply to the challenge and set out a detailed explanation why the law or regulation should be declared invalid and void.
- 11.2 The written notice referred to in 11.1 shall include, where applicable, the decision of the Board referred to in 14.3 of the Constitution.
- 11.3 The Family Spokesperson and elder submitting a written notice to the Judicial Council under 11.1 shall at the same time provide a copy of the written notice to the Board.
- 11.4 Prior to determining under 14.5 of the Constitution whether a law or regulation is invalid and void, the Judicial Council shall convene a hearing and invite submissions on behalf of the Board, and from the Family Spokesperson and elder that submitted the written notice.
- 11.5 Part 4 of these rules shall apply to a hearing referred to under 11.4 with such changes as are necessary in the circumstances.
- 11.6 A decision by the Judicial Council on the validity of a law or regulation shall be made in writing with reasons.

12.0 Appeal of a family line failing to provide consent to a candidacy for Chief

- 12.1 An appeal of a family line refusing to consent to the candidacy for Chief of a Citizen who is not a direct descendant of a Traditional Family, submitted under 5.4.1 of the *Ta'an Kwäch'än Council Election Rules*, shall be provided in writing to the Judicial Council and shall include a copy of the written reasons for the decision from the Family Director representing the family line.

- 12.2 The Judicial Council shall consider the appeal and all documents submitted and may conduct a hearing with respect to the matter.
- 12.3 Where the Judicial Council decides to conduct a hearing under 12.2, Part 4 shall apply, with such changes as are necessary in the circumstances.
- 12.4 Following its consideration, the Judicial Council shall, as soon as practicable, affirm the decision of the family line or order that the Citizen shall be a candidate for the office of Chief.

13.0 Appeal of Election Results

- 13.1 A candidate or Citizen eligible to vote in an election may submit a written appeal of the result of the election to the Judicial Council as provided under 11.1 of the *Ta'an Kwäch'än Council Election Rules*.
- 13.2 The Judicial Council shall forward a copy of the appeal and all supporting documents to the elections committee and to each candidate within 10 days of receipt of an appeal under 13.1.
- 13.3 As provided under 11.3 of the *Ta'an Kwäch'än Council Election Rules*, within 14 days of receipt of a copy of an appeal, the elections committee or a candidate may provide a written submission including support documents to the Judicial Council addressing the details of the appeal.
- 13.4 The Judicial Council will provide copies of all documents referred to in 13.3 to the appellant and all other parties to the appeal within 10 days of their receipt.
- 13.5 Where the Judicial Council determines that the documents referred to in 13.1 and 13.3 are not adequate for deciding on the validity of the election, the Judicial Council shall conduct further investigation of the appeal that it considers necessary, which may include a hearing.
- 13.6 Where the Judicial Council decides to conduct a hearing under 13.5, Part 4 shall apply, with such changes as are necessary in the circumstances.
- 13.7 As provided in 11.6 of the *Ta'an Kwäch'än Council Election Rules*, upon completion of its review, the Judicial Council shall submit a report to the Board and an order respecting whether the election stands or is voided.

14.0 Charge of compromising the dignity and effectiveness of office

- 14.1 A charge against a member of the Board brought under 12.2 of the Constitution shall be made by written notice and shall specify in reasonable detail the matters which form the basis of the charge.
- 14.2 As required by 12.2.2 of the Constitution, the written notice referred to in 14.1 shall be delivered to the Judicial Council and the Board member.
- 14.3 The Judicial Council may require evidence in writing from a Citizen confirming that the written notice referred to in 14.1 has been delivered to the Board member.
- 14.4 As provided in 12.2.3 of the Constitution, within 30 days of receiving the written notice, a Board member shall provide the Judicial Council with his or her written response to the charge.
- 14.5 Following receipt of a response under 14.4 or after the 30 days referred to in 14.4 have expired, the Judicial Council shall convene a hearing as soon as practicable.
- 14.6 The Board member and the Citizen making the charge are entitled to be parties at the hearing.
- 14.7 Part 4 shall apply to a hearing under 14.5 with such changes as are necessary in the circumstances.
- 14.8 The final determination of the Judicial Council shall be made in writing with reasons.

PART 3 – OTHER JUDICIAL COUNCIL MATTERS

15.0 Mediation and Arbitration

- 15.1 Where a Citizen and the Board agree to refer a dispute between that Citizen and the Ta'an Kwäch'än Council to the Judicial Council for mediation or arbitration under 12.1.2 of the Constitution, they shall provide a written agreement to the Judicial Council that includes a description of the matter under dispute.
- 15.2 Within 21 days of receipt of an agreement referred to under 15.1, the Judicial Council shall appoint one or more judges to mediate or arbitrate the dispute, as the case may be.

- 15.3 A mediation under this Part shall be conducted in accordance with such guidelines as may be agreed to by the mediator and the parties, which may address:
- 15.3.1 the confidentiality of discussions held and information shared in the course of the mediation, including where appropriate the protocol for contact with the media;
 - 15.3.2 the requirements and process for disclosure of all pertinent information;
 - 15.3.3 the timelines for the mediation process;
 - 15.3.4 the ability of either party to terminate the mediation at any time; and
 - 15.3.5 such other matters as the mediator and the parties may agree to.
- 15.4 The mediator may, at any time in the course of a mediation, issue directions on procedure to the parties.
- 15.5 Where a dispute is resolved by mediation the terms of the resolution shall be set out in writing and signed by the parties.
- 15.6 Where a dispute is referred to mediation but is not resolved, the parties may agree in writing to:
- 15.6.1 request that the mediator issue a non-binding report on the matter to the parties; or
 - 15.6.2 refer the matter to be arbitrated in accordance with this section.
- 15.7 An agreement to refer a dispute to arbitration shall provide that the decision of the arbitrator will be final and binding on the parties to the agreement.
- 15.8 An arbitration under this section shall be conducted in a manner that is timely and procedurally fair.
- 15.9 A judge participating in the mediation of a dispute shall not participate in any subsequent proceedings, including arbitration, relating to the matters in the dispute.
- 15.10 The decision in an arbitration under this section shall be in writing with reasons.

15.11 A member of the Judicial Council involved in mediation or arbitration under this section shall not be called as a witness in litigation or other proceeding relating to the matters in the dispute.

16.0 Investigation of financial irregularities

16.1 The Judicial Council shall appoint a committee referred to in 12.1.3 of the Constitution to investigate alleged financial irregularities of the Ta'an Kwäch'än Council, upon the request of the Board, Elders Council or General Assembly.

16.2 A request by the Board, Elders Council or the General Assembly in 16.1 must be accompanied by a copy of the resolution to make the request and specify the matter to be investigated.

16.3 Within 30 days of the receipt of a request under 16.1, the Judicial Council shall establish a committee to investigate the matter and establish its terms of reference.

16.4 A committee established under 16.3 must be comprised of a person or persons with relevant expertise in financial management.

16.5 An investigation of financial irregularities conducted under 16.3 shall be conducted in a timely manner.

16.6 The Board shall provide all financial records, accounts and reports reasonably required by the committee to complete its investigation.

16.7 The Judicial Council shall require that, on completion of its investigation, the committee shall provide its report to the Board and the Elders Council and shall notify the Judicial Council that it has done so.

PART 4 – HEARINGS

17.0 Definitions

17.1 In this Part, the term “application” means a notice under 11.1, an appeal under 12.1 and 13.1, or a charge under 14.1, as the case may be, and the term “applicant” has a corresponding meaning.

18.0 Pre-Hearing Conferences

- 18.1 The Judicial Council may invite the applicant and other parties to participate in a pre-hearing conference.
- 18.2 The purposes of a pre-hearing conference include:
 - 18.2.1 to clarify and where possible narrow the issues;
 - 18.2.2 to explore possible admission of facts, the proof of facts or the use of any public documents; and
 - 18.2.3 to review the procedures to be followed at the hearing and to identify any need for additional information.

19.0 Motion for the dismissal of an application

- 19.1 A party named in an application may file a motion with the Judicial Council to have it determine whether the application is frivolous, vexatious, or outside the jurisdiction of the Judicial Council to consider.
- 19.2 Where a party files a motion under 19.1, the Judicial Council shall, within 10 days unless it determines otherwise, convene a hearing to consider the matter.
- 19.3 At a hearing under 19.2:
 - 19.3.1 the party filing the motion shall speak to the matter;
 - 19.3.2 the other party or parties named in the motion may speak to the matter;
 - 19.3.3 no witnesses or evidence respecting the substance of the matter addressed in the application may be presented without leave of the Judicial Council;
- 19.4 At the conclusion of the hearing referred to in 19.2 the Judicial Council shall:
 - 19.4.1 grant the motion and dismiss the application if it determines that it is frivolous, vexatious or outside its jurisdiction to consider; or
 - 19.4.2 deny the motion and set a date for a hearing to consider the application as soon as practicable.

20.0 Consideration of an application

- 20.1 When the Judicial Council is satisfied that an application is complete and no motion has been filed under 19.1, it shall set a hearing date within 60 days to consider the matter and provide the affected parties at least 14 days notice of the date of the hearing.
- 20.2 Incomplete applications may be returned to the applicant with an explanation of the inadequacies, and not be considered by the Judicial Council.
- 20.3 The Judicial Council may request further information from the applicant prior to proceeding with consideration of the application.

21.0 Response to an application

- 21.1 A party named in an application shall file a written response to the application with the Judicial Council within 30 days, which will include proof that the response has been provided to the applicant.
- 21.2 A response under 21.1 shall include:
 - 21.2.1 the respondent's name, address and contact information;
 - 21.2.2 if applicable, the name, address and contact information of the person designated as the contact person or agent for the respondent;
 - 21.2.3 a concise statement of the response to the matter set out in the application and any relevant references in the Constitution or other laws or regulations of the Ta'an Kwäch'än Council.

22.0 Conduct of hearings

- 22.1 Unless the Judicial Council determines otherwise, hearings shall be open to the public.
- 22.2 A party may be added to the proceeding on application to the Judicial Council or the Judicial Council may identify an additional party to the proceeding without application.
- 22.3 The Judicial Council shall set the conditions of participation of a party added to the proceeding under 22.2.

- 22.4 No person other than the applicant, a party named in the application, a party added to the proceeding under 22.2, or their legal counsel shall make a representation at a hearing except with the permission of the Judicial Council.
- 22.5 Unless otherwise determined by the Judicial Council, the order of appearance and the process for the hearing shall be as follows:
- 22.5.1 Opening Prayer;
 - 22.5.2 applicant's submission;
 - 22.5.3 questions on the applicant's submission by a party named in the application;
 - 22.5.4 questions on the applicant's submission by other parties as determined by the Judicial Council;
 - 22.5.5 questions on the applicant's submission by the Judicial Council;
 - 22.5.6 submission by the party named in the application;
 - 22.5.7 questions on the submission under 22.6.6 by the applicant;
 - 22.5.8 questions on the submission under 22.6.6 by other parties as determined by the Judicial Council;
 - 22.5.9 questions on the submission under 22.6.6 by the Judicial Council;
 - 22.5.10 closing comments by the party or parties named in the application;
 - 22.5.11 closing comments by the applicant; and
 - 22.5.12 Closing Prayer.

23.0 Evidence at hearings

- 23.1 Written evidence not addressed in the application, response from the party named in the application or written submission by a party added to the proceeding under 22.2 shall not be introduced at a hearing without the agreement of the Judicial Council.

23.2 Subject to determinations of the Judicial Council, evidence may be presented at a hearing whether or not it would be admissible in any other court.

24.0 Decisions of the Judicial Council

24.1 At any time during a hearing, if the Council concludes that the application is frivolous, vexatious, or is outside the jurisdiction of the Council to consider, it may dismiss the application.

24.2 A decision of the Council following a hearing shall be made in writing with reasons, signed by all presiding judges and issued within 30 days of the hearing.

24.3 Copies of a written decision under 24.2 shall be provided to the parties to the proceeding as soon as practicable.

PART 5 – AMENDMENT OF RULES

25.0 These rules may be amended by the Judicial Council from time to time.