

**Kitasoo Xai'xais Nation
Operations Manual**

**Section 11
Code of Conduct
&
Managing Conflicts of Interest**



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**Section Eleven
Codes of Conduct
(Councillors, Committee Members, and Employees)**

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11.01 Code of Conduct for Employees – Every employee is required to comply with the rules set out in the Operations Manual Section 5 Human Resources, including its Standard of Professional Conduct as well as the conflict of interest rules contained in this Section.

11.02 Code of Conduct for Councillors and Committee Members
Each Councillor and Committee Member must adhere to the following Code of Ethics:

- a. A Councillor/Committee Member abides by all by-laws, rules, and regulations of the Nation;
- b. A Councillor/Committee Member does not engage in illegal activities and must immediately notify the Chief Councillor if he or she is charged with any offence under the laws of the Nation, British Columbia or Canada;
- c. A Councillor/Committee Member does not put their personal interests or the interests of their Immediate Family before the community when acting in their position on Council or on a Committee;
- d. Councillors/Committee members follow policies, and generally should not interfere with staff decisions made pursuant to policies. If a Councillor/Committee member disagrees with the outcome of a policy, then they suggest changes to the policy.
- e. A Councillor/Committee Member demonstrates a concern for the welfare and needs of the Kitsoo Xai'xais Nation as to the services offered under the programs provided by Council, and is prepared to devote the required time and effort to carry out their respective roles and responsibilities;
- f. A Councillor/Committee Member does not engage in any act or activity that would bring Council or any of its programs into disrepute;
- g. A Councillor/Committee Member is courteous and polite to the people in the community who address their concerns to the Councillor/Committee Member;
- h. When a person approaches a Councillor/Committee member about an issue that a specific staff or committee is responsible for, then the Councillor/Committee member will first direct the person to that staff member or committee;
- i. A Councillor/Committee Member does not use intoxicants in public or be seen in an intoxicated state in public;
- j. A Councillor/Committee Member is required to attend all their meetings as scheduled both within and outside the community and notifies the Chief Councillor or their Committee Chair if attendance is not possible;
- k. A Councillor/Committee Member must not be absent from three consecutive meetings unless authorized to do so by the Chair of their Committee or Council, or with the consent of the majority of their Committee or Council;
- l. A Councillor/Committee member must pay attention during meetings, be respectful, and not leave meetings early unless an emergency arises or they are granted permission by the Chair of their Committee, the Chief Councillor, or with the consent of the majority of their Committee or Council;

- m. A Councillor/Committee Member abides by the oath of Office and Confidentiality as contained in the Operations Manual;
- n. A Councillor/Committee Member abides with the Council policy and procedures as set out in the Operations Manual; and
- o. A Councillor/Committee Member encourages and fosters a team spirit within the Council organization and the Nation in general.

11.03 Conflict of Interest Introduction

- a. The Council is an organization that serves the needs of our Nation and all employees, Councillors and Committee members must put the needs of their employer and the Nation before their own interests when working for the Nation. This Conflict of Interest policy is designed to help you understand how personal and outside activities and relationships can create problems, and how to manage them. Employees must always work in the best interests of their Employer—the Nation’s administration. It is important to recognize and declare conflicts of interest when they arise so that unbiased decisions can be made, and to avoid any perception of corruption.
- b. As Kitasoo Xai’xais community is a small, tight-knit community with strong family connections and a tradition of customary adoption, conflicts of interest will arise often. It may not always be possible to avoid a conflict of interest, but all conflict of interests must be declared and managed according to this policy.

11.04 Definitions

“Conflict of Interest”: is a situation where in the context of an action or decision an employee, Councillor, or Committee Member’s dedication to act in the Organization or Nation’s best interest could be impaired because of that person’s personal interests or the interests of their:

- a. Immediate Family or other family members,
- b. close friends,
- c. roommates,
- d. business partners,
- e. employers,
- f. businesses that they have a significant financial interest in including businesses that they own totally or partially, have an ongoing business relationship with, have lent or owe money to, or have a right to a share of the business’ profits or property, and
- g. other organizations that they have a legal duty to serve, such as being on their Board of Directors.

Exceptions: a conflict of interest does not arise if:

- i. the action or decision will benefit or harm the Band’s membership as a whole or a group of members identified by their age, gender, financial circumstances, on or off-reserve status, educational or medical needs. For example, the Housing Manager can propose a rental discount for elders even though they may be an elder themselves or have elders in their Immediate Family.
- ii. the action or decision will benefit or harm the Council or the Committee as a whole and is reasonable and in the best interests of the Nation. For example,

Council can vote on whether or not to provide all Councillors with a reasonable amount of pay or benefits after obtaining the opinion of the General Manager.

Or,

- iii. the conflict of interest is so remote or insignificant that the interest cannot reasonably be regarded as likely to influence the Councillor, Committee Member or employee. For example, a Councillor is voting on whether to contract with a company that they own less than 5% of the shares of such as through an investment fund. Or a member of the public buys a Councillor a coffee.

“Direct Conflict of Interest” is a type of Conflict of Interest where an individual, their spouse, a person living in the individual’s home, or a business that they control or own at least 5% of the voting shares in, may receive a Financial Benefit from a decision or action involving the individual, but does not include situations that fall under the list of exceptions to the definition of Conflict of Interest in this Operations Manual.

“Financial Benefit” is gaining money, property, or other material benefit including but not limited to:

- a. Employment or contract benefits;
- b. Educational, medical, dental, retirement or other financial savings;
- c. Gifts, honorariums and bonuses;
- d. The payment of any money; and
- e. The allotment giving, leasing, renting, or other grant of an interest in Kitasoo Xai’xais Nation property or land.

“Immediate Family Member” is a person’s spouse, a child, parent, guardian, sibling, grandchild or grandparent of the person or their spouse, and any person who lives with the person in their home as a member of their family. A person is an immediate family member whether they have that relationship naturally, or by customary or other legal adoption.

“Perceived Conflict of Interest” can exist where it could reasonably appear that an employees’, Councillor’s and Committee member’s Personal Interests may influence their ability to act in the best interests of the Organization or Nation, whether or not this is the case.

“Potential Conflict of Interest” is a situation that a reasonable person thinks might be a conflict of interest, or which may result a conflict of interest in the future.

11.05 Examples of Conflict of Interest:

- i. Insider information: such as when a person uses confidential information acquired because of the person’s position with the Nation’s Administration to unfairly benefit themselves, immediate family, friends or business partners, such as where an employee discloses a bid on a construction project to a friend who is interested in making a competing bid;
- ii. Self-dealing: such as when an employee benefits from a financial transaction, contract or private arrangements because the employee influenced the decision, such as where a Housing Authority employee decides to prioritize repairs to their own home.

- iii. **Conflicting Fiduciary Duties:** such as when an employee is also a director for an organization that has requested funding from KXN, in such cases the employee has legal duties to both organizations that are in conflict.
- iv. **Favouritism:** an employee uses the Employer's property to pursue their private interests or the interests of friends, families or a business or organization controlled by any of these individuals, such as where a manager makes a KXN vehicle available for his or her family members but nobody else.
- v. **Nepotism:** such as where an employee's immediate supervisor is a Department Manager who hires them or approves their pay and benefits.
- vi. **Theft of opportunity:** such as when an employee working on housing repairs for the Employer takes private side jobs for work that they would have otherwise done for the homeowner at no cost through the Housing Department.
- vii. **Kickbacks:** such as when an employee requests or receives personal gifts or benefits for providing a KXN service, other than unsolicited traditional gifts declared to and approved by the General Manager.

11.06 Conflict of Interest Declarations at Hiring and Election

- i. **For Employees.** During hiring interviews, potential employees including potential managerial employees must declare all conflicts of interest, including potential and perceived conflicts of interest that they may have with the job they are applying for to their Personnel Selection Committee and potential supervisor. If an employee is unsure whether a situation is a conflict of interest, they must declare it so that it can be considered.
- ii. **For Finance Employees and Managers.** Once hired, finance and Managerial employees, including the General Manager must complete and sign a Conflict of Interest Declaration using the form attached at Appendix 11C" and submit it to the Human Resources Officer and General Manager to be kept with their employee file. Regular employees do not need to complete a Conflict of Interest Declaration Form.
- iii. **For Councillors and Committee Members.** Each Councillor and committee member must file with the General Manager and Chief Councillor, within thirty days of being sworn into office or being appointed or elected to a committee, a completed and signed Conflict of Interest Declaration using the form attached at Appendix 11C".
- iv. **Updating Declaration Forms.** If any facts listed in a completed Conflict of Interest Declaration Form change, or if the declaration is no longer true and complete, then that manager, councillor, committee member must promptly provide an updated and signed Declaration form.
- v. **Requests for Further Information.** Managers, councillors and committee members must provide additional information about such matters listed in a Conflict of Interest Declaration

Form, or potential conflicts of interest that their Department Managers, the General Manager, the Chief Councillor or Council request.

Personnel Selection Boards. Each Personnel Selection Board member must declare any conflicts of interest to the other members of the Personnel Selection Board and the General Manager pursuant to Section 11 Code of Conduct and Managing Conflicts of Interest, and withdraw from the selection process if excused by the General Manager or the other members of the Personnel Selection Board if the eligibility list includes an Immediate Family Member. In that case, the General Manager or the Chief when applicable will appoint another suitable person for the Personnel Selection Board.

11.07 Conflict of Interest Requirements for Employees

- i. **Declaring:** Throughout one's employment it is the responsibility of every employee to immediately declare all conflicts of interest, including potential and perceived conflicts of interest to their Department Manager. If an employee is unsure whether a situation is a conflict of interest, they must declare it so that it can be considered.
- ii. **Recusing:** If the employee's Department Manager believes that the employee has a direct conflict of interest, then the employee will take no further action or part in the decision making related to that conflict of interest, and will not attempt to influence the matter, except to answer questions from the Department Manager, the General Manager, the Human Resources Manager, the Finance Manager or the Chief Councillor.
- iii. **Other Protections if a Conflict of Interest is not Direct:** If the employee's Department Manager, considers that the employee only has a perceived or potential conflict of interest or a conflict of interest that is not a Direct Conflict of Interest, then the Employee may still be required by the Department Manager to remain involved in the action or decision if the Department Manager approves of other protections to manage the conflict of interest.
- iv. **If an employee's Department Manager might also have a conflict of interest** with the same issue, then the employee should make their conflict of interest declaration to the General Manager for consideration instead.
- v. **If an Immediate Supervisor or Department Manager is an Immediate Family Member,** then the employee must submit their timecards, leave requests, accommodation requests, or other special requests for personal or Financial Benefits to their supervisor or manager's superior, usually the General Manager. The General Manager or Chief Councillor can direct the employee to submit these matters to another Manager.
- vi. **General Manager and Chief Councillor Conflicts of Interest.**
 - a. Throughout the General Manager's employment it is their responsibility to immediately declare all potential, direct, and perceived conflicts of interest to the Chief Councillor, who acts as their Department Manager for the purposes of this Conflict of Interest policy.

- b. If an employee is required to provide the General Manager with a conflict of interest declaration, but believes that the General Manager may also be in a potential, direct or perceived conflict of interest, then they must provide their declaration to the Chief Councillor. If the Chief Councillor also appears to be in a potential, direct or perceived conflict of interest, then the declaration must be provided to the Deputy Chief, who will raise the matter with the rest of Council to determine whether the General Manager or Chief Councillor should be recused or whether other protections should be taken.

- vii. **Recording:** Department Managers, the General Manager, the Chief Councillor and the Deputy Chief will record in writing all employee conflict-of-interest declarations received by them and any conflict of interest protections taken and forward them:
 - 1. to the Human Resources Officer who will maintain records on employee Personnel files, and
 - 2. the Finance Manager if the conflict of interest concerns a Financial Benefit.

- viii. **Employees must also not:**
 - a. take other employment or volunteer positions while working for the Organization when it conflicts with the duties, responsibilities and required working hours, or where the position conflicts with the interests and business of the employer. Employees must declare other employment positions to their Department Manager.

 - b. use for profit, political gain or personal gain, information, resources, funds, property or an opportunity belonging to the employer.

 - c. take part in discussions or decisions affecting a business, or an organization in which they, or a member of their Immediate Family have a financial interest in, except as permitted by this policy. They need to declare these as Conflicts of Interest.

 - d. use access to the employer's information, resources or funds to put themselves, their family or personal friends at an advantage over other Band members.

 - e. demand, accept or offer personal gifts, discounts, loans, sales incentives, services or benefits from or to a person or organization having dealing with their employer, except unsolicited traditional gifts declared to and approved by the General Manager.

 - f. Council Elections: employees must not show support in favour of any particular candidate during working hours. The General Manager may vote but must be neutral during Council Elections, unless Council has approved them to be on leave without pay in order to run as candidate. Employees are free to express their personal political opinions outside of work if they:
 - i. do not harm the reputation of the Employer,
 - ii. do not disclose confidential information,
 - iii. are clear that they are expressing their personal opinions and not that of the employer, and
 - iv. are not working directly on a Council Election matter.

11.08 Breach of Conflict of Interest Policy by Employees. Failure to declare or manage conflicts of interest pursuant to Section 11 is cause for discipline up to and including termination of employment. The Council may authorize legal action to recover financial benefits from employees who wrongfully obtain them from a conflict of interest.

11.09 Conflict of Interest Requirements for Council and Committee Members

- a. **Voting is Mandatory Unless Excused or when there is a Direct Conflict of Interest.** Every Council or Committee member present during a meeting when a question is put shall vote on it unless their Council or Committee excuses them, or they are in and declare a Direct Conflict of Interest in which case they shall not be obliged to vote.
- b. **Refusing to Vote is Misconduct.** A Council or Committee member who refuses to vote on a matter during a meeting where they are present who has not been excused and who is not in a Direct Conflict of Interest has engaged in misconduct by neglecting their duties and can be investigated for discipline pursuant to Section 11.11 or 11.12.
- c. **Declaring.** It is the responsibility of Councillors and Committee Members to immediately declare and fully disclose the full nature and extent of all conflicts of interest, including potential and perceived conflicts of interest to the other members of their Council or committee, and to request that they be excused from the meeting if they feel that they have a Conflict of Interest.
- d. **Excusing and Removing for Conflicts of Interest.** If the other members of the Council or Committee considers that a member has a:
 - i. Direct Conflict of Interest with respect to a matter being considered; or
 - ii. a conflict of interest that is not a Direct Conflict of Interest, but which the Council or Committee member asks to be excused for, and the majority of the Council or Committee believes is serious enough to excuse the member;

Then, that Councillor Committee Member must:

- i. leave the room or call and not remain or attend at any part of a meeting while the matter is under consideration,
- ii. not vote on a question in respect of the matter,
- iii. not attempt in any way, whether before, during or after such a meeting, to influence the voting on any question in respect of the matter, and
- iv. not participate in any discussion of the matter with other Council or Committee members, or employees of the Organization,

except that the recused Councillor or Committee member can answer questions put to them by the General Manager, Finance Manager, Chief Councillor, or the remaining members of their Council or Committee but only during a meeting of that Council or Committee.

e. **Councillors and Committee Members cannot be Removed unless a Conflict of Interest is Direct.** While Councillors and Committee Members should request that they be excused from meetings where they have a conflict of interest, and must declare all conflicts of interest, including potential and perceived conflicts of interest, they cannot be forced to leave a meeting or vote unless their conflict of interest is direct.

f. **Recording.** The person recording the minutes of Council or Committee meetings must record:

- i. All conflict of interest declarations or statements,
- ii. the reasons given for them,
- iii. whether the remaining Council or Committee members confirmed the conflict of interests and excused or removed the members, and if not, why; and
- iv. the time of the members' departure from the meeting room and, if applicable, of the members' return.

And must provide a copy of the minutes to the General Manager, and the Finance Manager if the conflict of interest concerned a Financial Benefit.

f. **Financial Benefits for Councillors or Committee Members.** Prior to approving a Financial Benefit to a Councillor or Committee Member, the Council or Committee must obtain the opinion of the General Manager on whether the Financial Benefit is reasonable, considering any applicable policy or budget.

g. **Committee Members not to be Immediate Family.** Members of a Committee must not be immediate family members of one another. If multiple members of an immediate family are on a committee, then they must report their relationship to Chief and Council so that new members can be appointed to the committee or so that a byelection can be held.

11.10 Preserving Quorum with Conflict of Interest Rules

a. When due to the Conflict of Interest requirements listed above the number of members of Council or a Committee able to vote on a matter is less than the quorum required, then the remaining Council or Committee members may vote to allow all those Councillors or Committee members who have been excused due to conflicts of interest to vote, except for those who have a Direct Conflict of Interest.

b. If there is still not enough members of Council or a Committee to constitute a quorum after allowing all but those Council or Committee members to vote who have a Direct Conflict of Interest, then:

i. if the matter is before a Committee, the Committee will report the matter to Council for it to make a decision, or

ii. if the matter is before Council, then the Council may either:

- a) invite all Band Members to a General Meeting at which the attending band membership will be able to vote on the matter, after being informed of the conflicts of interests by the General Manager and hearing the opinions of the Councillors, including the conflicted Councillors;

- b) relax these conflict of interest rules further by Band Council Resolution after receiving legal advice, but only if the matter concerns personal or confidential information that if shared at a General Meeting would be harmful to the interests of the Organization or the Kitasoo Xai'xais Nation; or
- c) delegate the authority to make a decision to a third party, such as a professional investigator, consultant, lawyer or cultural leader after obtaining legal advice.

11.11 Breach of Code of Ethics or Conflict of Interest Policy by Councillors

- a. If a Councillor is accused of breaching any of provisions of the Operations Manual Section 11, Code of Conduct & Managing Conflicts of Interest, then the Chief Councillor or the General Manager, or an investigator appointed by Council, may conduct an investigation into the allegation and produce a written report for the remaining Councillors. An investigation must include giving the accused Councillor an opportunity to respond to the allegation.
- b. If after receiving the investigation report, the remaining Council members find that a Councillor breached any of the provisions in the Operations Manual Section 11, Code of Conduct & Managing Conflicts of Interest then the remaining Councillors may vote to:
 - i. suspend financial and other benefits typically given to the Councillor,
 - ii. remove the Councillor from Committees,
 - iii. issue a statement to the Membership, though in doing so the Councillors should be certain of the truth of the statement and avoid unnecessary breaches of personal privacy,
 - iv. ask for a resignation from the Councillor,
 - v. request that the Minister of Indigenous-Crown Relations remove the Councillor, and/or
 - vi. authorize legal action to recover financial benefits from the Councillor who wrongfully obtained them from a conflict of interest.
- c. A Councillor can only be removed from office for breaching the Operations Manual Section 11, Code of Conduct & Managing Conflicts of Interest if they are convicted of an indictable offence, or the Minister of Indigenous-Crown Relations and Northern Affairs declares that in their opinion, the Councillor:
 - i. is unfit to continue in office by reason of his having been convicted of an offence,
 - ii. has been absent from three consecutive meetings of the council without being authorized to do so, or
 - iii. was guilty, in connection with an election, or corrupt practice, accepting a bribe, dishonesty or malfeasance.

11.12 Breach of Code of Ethics or Conflict of Interest Policy by Committee Members.

- a. If Council is made aware of a breach by a Committee Member of any provision of the Operations Manual Section 11, Code of Conduct & Managing Conflicts of Interest, then the Chief Councillor or the General Manager, or an investigator appointed by the other Council members, may

conduct an investigation into the allegation and produce a written report for Council. An investigation must include giving the accused Committee Member an opportunity to respond to the allegation.

- b. If after receiving the investigation report, the Council finds that the Committee Member breached any of the provisions in the Operations Manual Section 11, Code of Conduct & Managing Conflicts of Interest then the Councillors may vote to:
 - i. suspend or remove the Committee member from the Committee,
 - ii. suspend financial and other benefits typically given to the Councillor,
 - iii. issue a statement to the Membership, though in doing so the Councillors should be certain of the truth of the statement and avoid unnecessary breaches of personal privacy, and/or
 - iv. authorize legal action to recover financial benefits from the Committee member who wrongfully obtained them from a conflict of interest

Oath of Office and Confidentiality

11.13 Oath for Councillor – Each Councillor, once voted in office, is required to take an Oath of Office and Confidentiality in the form as attached in **Appendix “11B”**.

11.14 Oath for Committee Member – Each Committee Member, as condition of taking office and serving on the Committee, is required to take an Oath of Office and Confidentiality in the form as attached in **Appendix “11C”**.

Appendix 11A: Oath of Office & Confidentiality *(For a Councillor)*

I, _____, do solemnly declare that, as an elected member of the Council, I shall faithfully, truly and impartially to the best of my judgement, skill, knowledge and ability carry out, discharge and perform the duties and responsibilities of Councillor, remembering that the primary objective of my position is to serve my fellow Band members and the community, which I am a member of.

That I will not, except as required in the discharge of my duties or as required by law, disclose to any person any matter brought before Council relating to the business or affairs of the Kitsoo Xai'xais Nation, that is not otherwise public knowledge.

I further declare, that I will respect the authority of the Band membership and seek their approval whenever appropriate. I will familiarize myself and abide with the approved policies of Council and the Code of Ethics for Councillor as contained in the Operations Manual.

Councillor Signature

Date

Witness

Witness

Appendix 11B: Oath of Office & Confidentiality *(For a Committee Member)*

I, _____, do solemnly declare that I shall faithfully, truly and impartially to the best of my judgement, skill, knowledge and ability carry out, discharge and perform the duties and responsibilities of the office as a Member of the _____ Committee of the Council and will not, except as required in the discharge of my duties or as required by law, disclose to any person any matter brought before such Committee relating to the business or affairs of the Kitasoo Xai'xais Nation, that is not otherwise public knowledge.

I further declare, that I will respect the authority of the Council and the Band Membership. I will familiarize myself and abide with the approved policies of Council and the Code of Ethics for Committee Members as contained in the Operations Manual.

Committee Member Signature

Date

Witness

Witness

Appendix 11C: Kitasoo Xai'xais Nation – Conflict of Interest Declaration Form

Note: Please note when a question is “not applicable”.

Name: _____

Position: _____

Date: _____

1. I have read and understood the Kitasoo Xai'xais Nation Code of Conduct and Conflict of Interest Policy in the Operations Manual at Section 11.

2. Below I list details of:

a. businesses that I have a significant financial interest in including businesses that I own or control totally or partially, or have a right to a share of the business' profits or property:

b. Any trust or deceased person's estate that I have an interest in such as a potential inheritance or for which I am the executor or administrator:

c. Any land, homes, rental units, or certificates of possessions I own, lease or rent within the traditional territory of the Kitasoo Xai'xais Nation:

d. Any other elected or appointed offices, directorships, and employment position(s) in addition to the position written above:

-
- e. All immediate family members working for the KXN Organization such as an employee or contractor. Immediate family members are: your spouse, children, parents, guardians, siblings, grandchildren or grandparents of you or your spouse, and any person who lives with you in your home as a member of your family. A person is an immediate family member whether you have that relationship with them naturally, or by customary or other legal adoption.

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-
-
-
3. Other Conflict of Interests with my role position may arise because:

-
-
-
-
4. Other than as disclosed above, I am not aware of any other relationship or interest that is likely to compromise, or be perceived to compromise, my ability to exercise my judgment with a view to the best interest of the KXN Organization and the Kitasoo Xai'xais Nation.
5. I agree to provide an updated Conflict of Interest Declaration Form if any of the facts above change or become incomplete.

Signature

Date