



Lax Kw'alaams Band

206 Shashaak Street
Lax Kw'alaams, BC V0V 1H0
Canada
1-877-725-3293

February 11, 2019

Re: AMENDMENTS TO THE CUSTOM CODE

In accordance with Section 134 of the Lax Kw'alaams Band Election Regulations we write to inform you that on November 27, 2018 the Band Council passed a band council resolution starting the process for amending the Lax Kw'alaams Band Election Code.

A COPY OF THE PROPOSED AMENDMENTS AND A SUMMARY CAN BE OBTAINED AT THE BAND ADMINISTRATION OFFICE AT NO CHARGE.

Summary of Amendments in the Band Election Code

Some of the key amendments made in the Band Election Code include:

- using independent arbitrators for electoral and conduct disputes,
- implementing a progressive discipline process for all Council members,
- offering electronic voting,
- requiring criminal record checks for councilors, and
- changes in both quorum and the starting point for referendums,
- There have been no changes to the size of council.

Amendment Process

Sections 133 to 139 of Band Election Code describe the amendment process. A member 18 years of age or older may within (45) days from the date this notice was mailed or hand delivered may file a written objection to the proposed amendments with Band Administrator. If no written objection is received from an eligible elector the Band Council shall adopt the proposed amendments. If there is any written objection from an eligible elector in accordance with Section 136 the Band Council shall arrange for a referendum to poll all eligible voters by a simple majority vote before proceeding with the proposed amendments. The decision of the referendum will be binding on Council. Notices can be sent to 206 Shashaak Street, Lax Kw'alaams, BC V0V 1H0.

Name: Erminio Pucci

Title: Interim Band Administrator

Summary of Changes to Lax Kw'alaams Band Election Code

February 11, 2019

No.	Part No. in Final Draft	Paragraph No. in Original	Section No. in Final Draft	Original Provision	Amended Provision in Final Draft
	Name	Name		Election Regulations	Election Code
1.	3 (Interpretation)	3 – “Candidate”	3.1 (b) – “Candidate”		<p>Added conditions to “Candidate”:</p> <ul style="list-style-type: none"> (v) Person who has not been removed from a position on Council within 8 years of date of nomination meeting (vi) Is not bankrupt (vii) If by-election, is not the person who resigns or is removed from their position on Council (viii) Does not have a civil court judgment against them or a criminal conviction involving theft, fraud or misuse of property (ix) Is not personally in arrears for any debt to the Lax Kw'alaams Band or a Lax Kw'alaams business entity
2.	3 (Interpretation)	Oath	N/A	Solemn affirmation	Not defined
3.	3 (Interpretation)	3 – “Complaints and Appeal Board”	3.1 (d) – “Conduct Review Board”	<p>“Complaints and Appeal Board” means the body appointed by a council resolution in accordance with Part 14 of this code to review and make decision concerning removal from office and election appeals and complaints</p>	<p>“Conduct Review Board” means the body <u>appointed by the Electoral Officer</u> with Part 15 of this Code to review and make decisions concerning removal from office and Election appeals and complaints</p>
4.	3 (Interpretation)	N/A	3.1 (l) – “Election Appeal Board” and 3.1 (m) – “Election Code of Conduct”	N/A	<p>Added definitions of “Election Appeal Board” and “Election Code of Conduct”</p>
5.	4 (Pre-Nomination Procedure)	36 – Oath of Office	4.5 – Oath of Office	The electoral officer must swear an oath to uphold the office in accordance with this code.	The Electoral Officer and Deputy Electoral Officer must swear a solemn oath (“Oath of Office”) to uphold the office and to:

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					<ul style="list-style-type: none"> (a) uphold and comply with this Code, the Code of Conduct and all the laws of the community; (b) fulfill the duties and responsibilities of his or her office under this Code; (c) carry out the duties faithfully, honestly, impartially and to the best of his or her abilities; (d) subject to requirements under this Code and all applicable privacy laws, keep confidential, both during and after his or her term of office, any matter or information which, under this Code, community law or policy, is considered confidential; and always act in the best interests of the community in carrying out his or her duties.
6.	6 (Candidacy)	N/A	6.4 – Eligibility	N/A	<p>(Added Section 6.4) No Elector shall be eligible to be nominated if he or she:</p> <ul style="list-style-type: none"> (a) has been found to have committed a Corrupt Election practice or has been deemed ineligible under section 15.1 and 15.2 of the Election Code; or (b) is employed by a Lax Kw’alaams Band Entity, unless he or she is willing to resign or take a leave of absence from their position immediately following their Election to Council; <ul style="list-style-type: none"> • “Band Entity” intended to include Ec Dev entities
7.	8 (Pre-Election Procedure)	N/A	8.2 – Online Voting	N/A	<p>(Added Section 8.2) The Council may direct the Electoral Officer to permit voting by electronic means</p>
8.	8 (Pre-Election)	75 – Mail-in Ballots	8.8 – Mail-in Ballots	Request at least 10 days before the day	Request at least 14 days before the day on

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	Procedure)			on which the election is to be held,	which the Election is to be held
9.	8 (Pre-Election Procedure)	N/A	8.14 – Online Voting Platform Requirements and 8.15 to 8.21 – Online Voting Processes	N/A	Added sections 8.14 to 8.21 regarding Online Voting Platform Requirements and Online Voting Processes
10.	9 (Election Day)	83 – Electoral Officer	9.1 – Electoral Officer	The electoral officer shall be allowed to vote in the election provided that his name appears on the voters list.	The Electoral Officer shall be allowed to vote in the Election if they are on the voters list
11.	11 (Post-Election Procedures)	115	11.7	A candidate who has been elected Mayor or Councillor shall, within 3 business days of the electoral officer’s declaration under section 109, <u>agree to uphold and comply with the Code of Conduct guidelines</u>	A Candidate who has been elected Mayor or Councillor shall, within 3 business days of the Electoral Officer’s declaration under section 11.1, shall <u>sign the Council Code of Conduct confirming he or she agrees to uphold and comply with the Council Code of Conduct guidelines and shall take and sign the Oath of Office, confirming he or she agrees to uphold and comply with the Oath of Office.</u>
12.	12 (Elections Appeal Board)	120 – Composition	12.1	<u>The Complaints and Appeal Board shall be composed of five Lax Kw’Alaams members I.R. #1 as appointed by the Mayor and Council for the 4-year term commencing on the day they are appointed until the day the members of another board are selected:</u> (a) Be at least 18 years of age, and (b) Not have a vested interest in the outcome of an election	If an Election appeal is filed according to the requirements outlined in Part 15 of the Election Regulations, the Electoral Officer (or in the case of an appeal related to the Electoral Officer, <u>the Band’s Legal Counsel</u>), shall <u>immediately instruct the BC Arbitration and Mediation Institute (“BCAMI”) to appoint an Arbitrator with experience in First Nations issues (the “Election Appeal Board”).</u> In the event that BCAMI ceases to exist, or if BCAMI is unable to appoint an Arbitrator, the Electoral

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				<p>appeal or a petition for the removal of a council member from office</p>	<p>Officer shall, with the help of Lax Kw'alaams Band's legal counsel, contact a similar professional organization to appoint the Election Appeal Board.</p> <p>(*Appeals are now submitted to the Electoral Officer instead of the Complaints and Appeal Board)</p>
13.	<p>13 (Election Appeal Mechanism Timing)</p>	126 – Submission	13.3 – Submission		<p>(Added 13.3(b) and (d))</p> <p>(b) clearly identify which Candidates are affected by the Election appeal (the “Affected Candidates”) and/or which Election Officers, if any, are affected by the Election appeal (the “Affected Elections Officers”)</p> <p>(d) be copied to the Lax Kw'alaams Band's lawyers listed on the notice of nomination</p>
14.	<p>13 (Election Appeal Mechanism Timing)</p>	127 – Procedure	13.4 – Procedure	<p>Upon receipt of an election appeal, the Complaints and Appeal Board shall:</p> <p>(a) in the case where the appeal is submitted in accordance with section 124, 125, and 126 forward a copy together with supporting documents by registered mail to each candidate at the election; or</p> <p>(b) in the case where the appeal is not submitted in accordance with section 124, 125 and 126 inform the appellant(s) in writing that the appeal will not receive further consideration.</p>	<p>13.4 Upon receiving of an Election appeal, the Electoral Officer shall:</p> <p>(a) where the Election appeal is properly as set out in sections 13.1, 13.2, and 13.3 of this Code; and on its face, suggests that the person declared elected was not qualified to be a candidate, a violation of this Code in the conduct of the Election, including a violation of the Election Code of Conduct, or that there was Corrupt or fraudulent practice in relation to the Election, form an Election Appeal Board as set out in section 12.1 of the Election Code and shall forward a copy of the Election appeal, together with supporting documents to the Election Appeal Board, the</p>

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					<p>Affected Candidates and any Affected Electoral Officers; or (b) where the Election appeal is not properly submitted as set out in sections 13.1, 13.2, and 13.3; or does not on its face, suggest that the person declared elected was not qualified to be a candidate, a violation of this Code in the conduct of the Election, including a violation of the Election Code of Conduct, or that there was Corrupt or fraudulent practice in relation to the Election, inform the appellant(s) in writing that the Election appeal will not receive further consideration.</p>
15.	13 (Election Appeal Mechanism Timing)	N/A	13.6 – Investigation	N/A	<p>(Added section 13.6) Where an Election appeal is referred to the Election Appeal Board, it shall conduct an investigation as soon as is practical and in accordance with the rules of procedural fairness (the “Appeal Investigation”). During the Appeal Investigation, the Election Appeal Board shall seek information from any individual they deem appropriate and give the Affected Candidates and the Affected Electoral Officers an adequate opportunity to respond to all allegations and evidence raised in the Election appeal or in the course of the Appeal Investigation.</p>
16.	13 (Election Appeal Mechanism Timing)	130 to 132 – Decision	13.8 to 13.12 – Decision	Complaints and Appeal Board procedure to dismiss or uphold appeal	Election Appeal Board procedure to issue “Appeal Report” to Electoral Officer and Electoral Officer procedures
17.	14 (The Council)	9 – Order and	14.6 – Order and	The quorum shall be <u>5 members</u> of	A majority of the whole council shall

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		Proceedings	Proceedings	Council	constitute a quorum
18.	15 (Removal of Council Members from Office)	22 – Procedure	15.3 – Procedure	<p>Proceedings to declare a person ineligible to continue to hold the office of Mayor or Councillor shall be initiated by:</p> <ul style="list-style-type: none"> (a) a Lax Kw’alaams member who is at least 18 years of age submitting to the Complaints and Appeal Board a petition on which shall appear: <ul style="list-style-type: none"> (i) the ground pursuant to section 21(1) on which removal of a Mayor or Councillor is sought; (ii) the evidence in support of the petition; (iii) the signature of the petitioner; (iv) <u>the signatures of at least 25% of Lax Kw’alaams members</u> who is at least 18 years of age in support of the petition; and (v) a non-refundable filing fee of \$100.00. (b) <u>a majority of council members passing a Band Council Resolution</u> and submitting a petition to the Complaints and Appeal Board on which shall appear: <ul style="list-style-type: none"> (i) the ground pursuant to section 21 (1)on 	<p>A petition to declare a person ineligible to continue to hold the office of Mayor or Councillor shall be initiated by:</p> <ul style="list-style-type: none"> (a) a Lax Kw’alaams Band member (the “Petitioner”) who is at least 18 years of age submitting a petition to the Electoral Officer and Legal Counsel. The petition must be submitted no more than 90 days after the event(s) giving rise to the ground for removal occurred/was discovered. The petition must identify: <ul style="list-style-type: none"> (i) either the Mayor or the Councillor the petition seeks to remove (the “Respondent”); (ii) the reason under sections 15.1 and 15.2 on which removal of the Respondent is sought, including the date upon which the event giving rise to the ground for removal occurred/was discovered; (iii) the evidence in support of the petition, supported by a written <u>statement sworn before a duly appointed commissioner for taking affidavits;</u> (iv) the name and signature of the Petitioner; (v) <u>the signatures of at least 51% of Lax Kw’alaams Band members</u> who voted

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				<p>which removal of the Mayor or Councillor is sought;</p> <p>(ii) the evidence in support of the resolution; and</p> <p>(iii) the signatures of all council members who voted for the removal.</p>	<p>in the last Election in support of the Petition; and</p> <p>(vi) a non-refundable filing fee of \$100.00 payable to the Lax Kw'alaams Band to be used solely in connection with the administrative costs of addressing the petition or;</p> <p>(b) within 90 days after the event(s) giving rise to the ground for removal occurred/was discovered, <u>at least seven (7) Band Council members (the "Petitioners") passing a Band Council Resolution (the "Resolution")</u> and submitting a petition to the Electoral Officer and the Legal Counsel on which shall appear:</p> <p>(i) the reason under section 15.1 and 15.2 on which removal of the Mayor or Councillor is sought, including the date upon which the event giving rise to the ground for removal occurred/was discovered;</p> <p>(ii) the evidence in support of the Resolution, <u>supported by an affidavit sworn before a duly appointed Commissioner for taking affidavits;</u> and</p> <p>(iii) the signatures of all Band Council members who voted for the removal.</p>
19.	15 (Removal of Council Members)	23 to 29 – Procedure	15.4 to 15.14 – Procedure	Procedure for Complaints and Appeal Board to allow petition to remove	Procedure for Electoral Officer to forward petition to Conduct Review Board to draft a

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	from Office)			Council member or dismiss petition	Petition Report removing a Council member or dismissing a petition 15.4 (a) the Mayor or Councillor will be provided with 2 weeks' notice of any discussion on a removal.
20.	16 (Amendments)	133	16.1	Development and passage of amendments to this code may be initiated by: (a) <u>unanimous Band Council Resolution</u>	Development and passage of amendments to this Code may be initiated by <u>a simple majority of Council</u>
21.	16 (Amendments)	138	16.6	If there is <u>any written objection from an eligible elector</u> in accordance to 136 the Council shall arrange for a referendum to poll all eligible voters by a simple majority vote before proceeding with the proposed amendments. The decision of the referendum will be binding on Council.	If there are <u>written objections from at least 15% of the Electors who voted in the most recent Election</u> , the Council shall arrange for a referendum to poll all eligible electors by a simple majority vote before proceeding with the proposed amendments. The decision of the referendum will be binding on Council.
22.	Schedule A (Lax Kw'alaams Band Council Code of Conduct)	N/A	B. Council Code of Conduct	N/A	Addition of 15 rules outlining the responsibilities and practices making up the Council Code of Conduct for the Mayor and Councillors of the Lax Kw'alaams Band
23.	Schedule A (Lax Kw'alaams Band Council Code of Conduct)	Authority of Council	Council Code	Authority of Mayor and Council	F. EXERCISE OF AUTHORITY 1. The <u>Mayor and Council</u> members may not exercise individual authority except as set out in Council policies. As such: (a) The Mayor and individual Council members must recognize that they have no authority to direct the Lax Kw'alaams Band Administrator, managers, or other staff except as may be stated under other Lax Kw'alaams Band policies adopted by the Council from time to time; (b) <u>The Mayor and individual Council</u>

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					<p>members have no authority to interact with the public, the media or other entities on behalf of Council, unless the authority has been granted by the Council;</p> <p>(c) The Mayor and individual Council members have no authority to evaluate the performance of the Lax Kw'alaams Band Administrator during the person's regular performance review, except where specifically authorized by Council and in accordance with the prescribed performance evaluation process; and</p> <p>(d) The Mayor and Council members will accept authorized signing authorities and approval processes as established by Council by-laws and Lax Kw'alaams Band policies covering such areas as budget expenditures, capital expenditures, purchases, and payments</p>
24.	Schedule A (Lax Kw'alaams Band Council Code of Conduct)	N/A	G. Breach of this Council Code of Conduct	N/A	Addition of Progressive Discipline system for breach of Council Code of Conduct by Mayor or Councilor
25.	Oath of Office	N/A	Oath of Office	N/A	Addition of sample Oath of Office