

Date: April 13, 2018
To: Eligible Electors of Lower Kootenay (i.e. LKB Members 18+yrs age)
From: Heather Suttie, LKB Director of Operations
Re: LKB Custom Election By-law Review and Amendments

We are reviewing and re-writing LKB's Custom Election Code, which sets out (a) who can sit on our Council, (b) the rules Council Members need to abide by, (3) the manner in which Council must run Council Meetings, and (4) the rules around how we hold our Council members accountable for their actions. We need your help in doing this!! We have held 3 community engagement meetings to discuss these matters with you in person, and now it is time for you to put your thoughts on paper for us!

YOU COULD WIN UP TO \$1,500 JUST BY FILLING OUT THIS SURVEY AND RETURNING IT TO US!!!

If you win Prize #1, your name gets put back in the draw for the remainder of the prizes

Get your survey back before May 9, 2018 & you could win all 3 prizes!

Prize #1 \$900 Cash – Draw date: May 9, 2018
Prize #2 \$400 Cash – Draw date: May 16, 2018
Prize #3 \$200 Cash – Draw date: May 23, 2018

PLEASE COMPLETE AND RETURN YOUR SURVEY AS FOLLOWS:

In Person: You can deliver the survey to the Lower Kootenay Administration Office

By Mail/Email: You can send the survey directly to Sonya Pighin Law

By Phone: You can contact Sonya Pighin Law to arrange a time where you can complete the survey by phone

Sonya Pighin Law

Mail. 3363 Perimeter Close, Victoria, BC V9C 4J6

Email. sonya@sonyapighinlaw.com

Phone. 1-778-676-0333

Next Steps: (1) Sonya will draft a new Custom Election Code for LKB based on the feedback we get from you. (2) We will invite you to comment on the new Custom Election Code (3) Sonya may make changes to the Custom Election Code based on your feedback on the first draft (4) A ratification vote will be held to determine whether you want to keep the current Custom Election Code or approve the new one.

GOOD LUCK IN THE RAFFLE AND WE LOOK FORWARD TO HEARING FROM YOU REGARDING WHAT YOU WANT IN YOUR NEW LAW!!

LKB ELECTION BY-LAW REVIEW & AMENDMENTS COMMUNITY SURVEY 2018

COUNCIL COMPOSITION
<p>1. How Many People Should be on Council? Currently, there is 1 Chief and 4 Councillors</p> <ul style="list-style-type: none"><input type="checkbox"/> 1<input type="checkbox"/> 2<input type="checkbox"/> 3<input type="checkbox"/> 4<input type="checkbox"/> 5<input type="checkbox"/> Other: _____
<p>2. How should the decision on who becomes Chief be made?</p> <ul style="list-style-type: none"><input type="checkbox"/> Decision should be made by a majority of those persons elected onto Council<input type="checkbox"/> We, the members, should be the ones who decide who gets to be the Chief<input type="checkbox"/> Other: _____
<p>3. Should the position of Chief be a full-time position?</p> <ul style="list-style-type: none"><input type="checkbox"/> Yes<input type="checkbox"/> No
<p>4. Should more than one person within a person's immediate family be allowed to sit on Council at the same time? (*includes a person's: Grandmother, Grandfather, Mother, Father, Brother, Sister, Aunt, Uncle, First Cousin, Son, Daughter, Grandchild)</p> <ul style="list-style-type: none"><input type="checkbox"/> Yes<input type="checkbox"/> No
<p>5. Should there be a separate seat on Council for an off-reserve member to represent off-reserve members interests? (*This person could attend Council meetings by teleconference)</p> <ul style="list-style-type: none"><input type="checkbox"/> Yes<input type="checkbox"/> No
TERM OF COUNCIL, HONORARIUMS & REPORTING BACK ON COUNCIL ACTIVITIES
<p>6. Should Council Elections be staggered with half of Council elected in one election year and the other in the next election year?</p> <ul style="list-style-type: none"><input type="checkbox"/> Yes<input type="checkbox"/> No
<p>7. How long should a person's Term on Council last for once they have been elected?</p> <ul style="list-style-type: none"><input type="checkbox"/> 2 years<input type="checkbox"/> 3 years<input type="checkbox"/> 4 years
<p>8. How many times in a row should a person be allowed to serve on Council?</p> <ul style="list-style-type: none"><input type="checkbox"/> Unlimited number of times<input type="checkbox"/> 2 Terms of Office<input type="checkbox"/> 3 Terms of Office

9. What activities should a person on Council receive an honorarium for? (tick all that apply)

- preparation for, attendance at, and participation in regularly scheduled Council meetings
- preparation for, attendance at, and participation in meetings with local (city, regional district), provincial or federal government representatives
- preparation for, attendance at, and participation in meetings of any regional, provincial or national aboriginal organizations or association, such as the Union of BC Indian Chiefs, Assembly of First Nations or the First Nations Summit
- attendance at LKB band meetings, for the purpose of reporting back to community members on activities being undertaken by Council and the LKB Administration
- attendance at community events, such as: Christmas Dinner, Student Awards Day, Aboriginal Day
- attendance at and participation in training sessions that will assist Council members in understanding how to properly fulfill their Council duties
- attendance at local meetings where Council is welcoming outside persons to the LKB's traditional territory
- reviewing and responding to communications from membership
- activities undertaken by Council with regard to business operations
- Other:

10. How much money should a Council member receive as an honorarium for time spent on Council duties?

- Hourly Amount of: \$ _____
- Amount of: \$ _____ per 4 hour meeting
- Amount of: \$ _____ per full day
- Amount of: \$ _____ per month, regardless of how many hours they put in to their duties as Council
- Other:

11. How should Council have to report back to LKB members regarding the activities they undertake?

- In person, at a band meeting, no less than ____ times per year
- In writing, and delivered to all band members, no less than ____ times per year
- In writing, and available to band members by written request made to the CEO
- Other:

12. What information should Council members have to report back to members on regarding their carrying out of Council duties?

- Date, time, location and duration of meetings attended by Council
- Purposes of meetings attended by Council
- Decisions made at meetings attended by Council
- Other:

13. How should Council honorariums be reviewed?

- Once per calendar year by a committee of persons who are not immediate family members to any person on Council
- Once per calendar year by the LKB Finance Committee (**this is a committee of non-members composed of people who understand financial statements, budgets, etc*)
- Once per calendar year at the LKB Annual General Meeting, by secret vote of those present following a report by the auditors on LKB's financial position
- During election years, by a vote of membership and based on information provided by the Finance Committee regarding LKB's financial situation
- Other:

ELIGIBILITY TO BE A CANDIDATE

14. Should a person have to be an LKB member to run for the position of Chief?

- Yes
- No

15. Should a person have to be a LKB member to run for the position of Councillor?

- Yes
- No

16. Should a person be over 18 years of age to run for a position on Council?

- Yes
- No

17. Should a person who has been convicted of an indictable offence be allowed to run for a position on Council? (Note: Generally, an indictable offence is a serious offence that comes with a very long prison sentence)

- Yes
- Yes, but only if that offence related to the person exercising their Aboriginal rights
- Yes, but only if that person has received a pardon for the offence, meaning the government has wiped their record clean
- No
- Other:

18. Should a person who has been removed from Council against their will be allowed to run again?

- Yes – If a Council member has been removed from Council against their will, it should then be up to the community to decide at the next election whether that person gets elected to Council again
- They should have to wait at least one Council term before being allowed to run again
- They should have to wait at least two Council terms before they can run again

19. Should a person who resigns be allowed to run again in the by-election at which their seat is voted upon?

- Yes
- No

20. Should a person who has been convicted of theft be allowed to run for Council?

- Yes
- Yes, but only if the conviction is more than ____ years old
- No

<p>21. Should a person who has been convicted of fraud be allowed to run for Council?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> Yes, but only if the conviction is more than ____ years old</p> <p><input type="checkbox"/> No</p>
<p>22. Should a person who owes LKB money be allowed to run in an election?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> Yes, but only if they are actively paying the money back to LKB</p> <p><input type="checkbox"/> No, they should need to pay the money they owe back to LKB in full <u>before</u> they can run for Council again</p> <p><input type="checkbox"/> Other: _____</p>
<p>23. Should a person be allowed to work for LKB or a LKB-owned business and sit on Council at the same time?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p>24. Should a person who gets elected into a position on Council be required to continue meeting the eligibility criteria throughout their Council term, or face removal?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p>NOMINATION PROCEDURES</p>
<p>25. In what ways should a person be allowed to nominate a person to run in an election? Tick all that apply.</p> <p><input type="checkbox"/> In person, at a nomination meeting</p> <p><input type="checkbox"/> By completing a nomination form and returning it to the electoral officer</p> <p><input type="checkbox"/> A person should be allowed to also nominate themselves</p> <p><input type="checkbox"/> Other: _____</p>
<p>26. Should a person be allowed to run for both the position of Chief and the position of Councillor at the same time?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p>27. Should a person be allowed to nominate as many people as they want for a position on Council?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p>28. Should a person be allowed to nominate themselves for a position on Council?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p>29. Should a person have to pay a candidate fee to participate as a candidate?</p> <p><input type="checkbox"/> Yes, and that fee should be \$_____</p> <p><input type="checkbox"/> No</p>
<p>30. If yes, should that candidate fee be returned to them after the election?</p> <p><input type="checkbox"/> Yes, but only if at least ____% of those people who vote in the election, vote for that candidate</p> <p><input type="checkbox"/> No</p>

31. Should a person have to sign a declaration stating they meet all eligibility criteria in order to be accepted as a candidate and have their name added to the ballot?

- Yes
- No

CAMPAIGNING & ALL CANDIDATES FORUMS

32. Which of the following, if any, should be considered “illegal campaigning”? (tick all that apply)

- Providing a person money, lending a person money, or offering or promising to do something for that person if they vote for or against a particular candidate
- Intimidating a person so they will vote for or against a particular candidate
- Telling a person a lie for the purpose of encouraging them to vote for or against a particular candidate

33. What should the result be if a person is found guilty of illegal campaigning? (tick all that apply)

- Loss of their seat on Council and the person with the next highest number of votes gets the seat
- A new election, but only if that Council member won their seat by more than 5 votes

34. Should those candidates who run in an election be required to participate in an All Candidates Forum, where they answer a series of questions in front of membership regarding what actions they will take if they are elected to address current challenges faced by LKB?

(Note: This is not a meeting where Council members will promise things to members, rather it is a meeting where they set out what steps they plan to take in order to achieve different goals for LKB)

- Yes
- No

VOTING OPTIONS

35. Should LKB start using online, electronic voting options so that members who cannot vote in person have an option to vote other than by mail-in ballot?

- Yes
- No

36. Who should be sent a mail-in ballot package?

- All off-reserve members
- Only those members who request a mail-in ballot by phoning or emailing the electoral officer

ELECTION APPEALS

37. Who should be the decision-maker when it comes to an election appeal?

- This should stay the same, with an appeal board appointed that consists of 3 members with no Council members or employees of LKB being allowed on the appeal board
- We should use an independent arbitrator. Although they can be costly, at least they are independent and can make an un-biased decision

38. Should a person have to pay a fee to bring an election appeal forward?

- Yes, a small fee of no more than \$_____ will discourage people from bringing unnecessary appeals
- Yes, a person who brings an appeal should pay a fee of no more than \$_____ but if they win the appeal they should be reimbursed that fee
- No, a person should not be forced to pay a fee but if they do bring an appeal forward and they lose in that appeal then the costs of the appeal process should become a debt owed by that person to the band
- No – making a person pay for an appeal will result in some people having no access to the appeals process because they cannot afford to do so. All costs should be paid out of LKB

funds

39. How many days should a person have to file their election appeal? (only choose one)

- 5 days
- 10 days
- 14 days

40. When should a person be allowed to file an appeal?

- When illegal campaigning (i.e. corrupt practice) is alleged
- When it is alleged that the rules in the Election Code were not properly followed and the failure to follow them may have impacted the outcome of the election
- Other:

BAND COUNCIL PROCEDURES

41. How often should meetings of Council occur? (Tick all that you agree with)

- The first meeting of a new Council should take place no later than one month following the election
- Council meeting dates should be chosen by Council, based on their availability to attend
- Council meetings should be held *at least* one time per month
- Council meetings should be held *at least* two times per month

42. What time of day should Council meetings be held?

- Council should decide themselves what time of day they will hold Council meetings
- Council meetings should always take place in the evening
- Council meetings should always take place in the day time

43. Where should Council meetings be held?

- At the LKB administration office
- On LKB Lands
- Other (Specify):

44. Who should be allowed to call a special meeting of Council (i.e. a Council meeting that isn't scheduled in advance)?

- The Chief, alone
- At least 2 members of Council

45. How far in advance should Council agendas be finalized?

- At least one week in advance, unless there is an urgent request that gets added to the agenda late
- Whenever they are done, they are done

46. Who should get a copy of the Council Agenda?

- Just Council members need copies of the Agenda
- The Council Agenda should be sent to members who ask for it by making a request to the Director of Operations
- The Council Agenda should be posted on the Administration Building poster board for members on-reserve to view in advance
- Other:

47. How far in advance should members be given notice of the date and time of Council meetings?

- At least one week notice is enough
- Council meeting dates and times should be set and notice should be given at least 3 months in advance setting out the Council schedule

48. Who should be allowed to add an item to a Council agenda?

- Any Council Member
- The Director of Operations
- The Chairperson for an LKB Committee (ex. Membership Committee, Housing Committee, Finance Committee)
- A member, provided that the item is related to the governance of LKB, or some other item to which Council has exclusive authority

49. When a decision is being made by Council, and a Council member refuses to vote (other than refusing due to conflict of interest), how should their lack of voting be treated?

- If a Council member refuses to vote, they should be deemed to have voted in favor of the motion
- If a Council member refuses to vote, they should be deemed to have voted against the motion

50. Should the Chairperson of a Council meeting be allowed to vote?

- Yes
- No

51. When should Council be allowed to order an “in camera” session?

- When the order is necessary to address a conflict of interest of a Council member
- When the order is necessary to maintain the confidentiality of information relating to human resources, including Band Council’s oversight of the director of operations’ employee performance
- When the order is necessary to allow for independent auditors to present audit results to Band Council without interference from the administration or members
- When the order is necessary to protect the confidentiality of information relating to a civil or criminal proceeding, or information that is subject to solicitor-client privilege
- When the order is necessary to protect the privacy of an individual band member
- When the order is necessary for the safety of a person
- Other:

52. Should Council meetings be open to Band Members to attend?

- Yes
- No

53. Should a Band Member be removed from a Council meeting if they are acting improperly, such as interrupting Council business?

- Yes
- No

GROUND FOR DISCIPLINE AND REMOVAL OF COUNCIL

54. When should someone be subject to a disciplinary order? (Tick all that apply)

- if they miss a Council meeting without consent of the rest of Council
- if they miss more than 3 Council meetings in a row
- if they miss more than 3 community meetings in a row
- if they miss an AGM or other band meeting at which they are required to report back to membership
- If they breach their oath of office
- If they breach their confidentiality agreement
- If they breach a LKB law or by-law
- If they fail to perform a duty that they must perform in accordance with a law, by-law or policy
- engage in physical violence, harassment or threatening behavior towards a member of LKB regardless of whether it occurs on LKB lands
- engage in physical violence, harassment or threatening behavior towards staff member or contractor of LKB, regardless of whether it occurs on LKB lands
- engage in physical violence, harassment or threatening behavior towards any person while on LKB lands
- engage in physical violence, harassment or threatening behavior towards a member of LKB
- makes a promise to a member regarding that member's access to services or funding, without authority from Council to make such promises
- makes commitments to third parties, or signs documents on behalf of LKB without the authority from Council to make such commitments or sign such documents
- Other:

55. When should a Council member be subject to a removal order, without an opportunity to correct their behavior?

- If they have more than ____ infractions on record regarding disciplinary orders
- if they miss a Council meeting without consent of the rest of Council
- if they miss more than 3 Council meetings in a row
- if they miss more than 3 community meetings in a row
- if they miss an AGM or other band meeting at which they are required to report back to membership
- If they breach their oath of office
- If they breach their confidentiality agreement
- If they breach a LKB law or by-law
- If they fail to perform a duty that they must perform in accordance with a law, by-law or policy
- engage in physical violence, harassment or threatening behavior towards a member of LKB regardless of whether it occurs on LKB lands
- engage in physical violence, harassment or threatening behavior towards staff member or contractor of LKB, regardless of whether it occurs on LKB lands
- engage in physical violence, harassment or threatening behavior towards any person while on LKB lands
- engage in physical violence, harassment or threatening behavior towards a member of LKB
- makes a promise to a member regarding that member's access to services or funding, without authority from Council to make such promises
- makes commitments to third parties, or signs documents on behalf of LKB without the authority from Council to make such commitments or sign such documents
- Other:

TYPES OF ORDERS AND DISCIPLINARY PROCEEDINGS

56. Which of the following Disciplinary / Removal Orders should be used?

- Suspension from Council duties for a time period of no more than 60 days without remuneration
 - Verbal Warning documented in Council Minutes
 - Written Warning documented in Council Minutes
 - Public apology to LKB Members acknowledging wrongdoing
 - Removal from Office
 - Legal Action against the Council member on behalf of LKB
 - Other:
-

57. Who should make the decision that an investigation needs to be conducted when a Council member denies allegations against them?

- A Panel of Members, who are voted in at the same time as the Council election takes place
 - A Panel of Elders / Elder Council, consisting of all those LKB members who are over the age of 65 years
 - Those Council Members who are not in a conflict of interest on the matter
 - Other:
-

58. What factors should be weighed against the costs to LKB in relation to the investigation when making the decision on whether to conduct the investigation in the first place?

- The seriousness of the alleged conduct
 - That if the alleged conduct is true, it will result in an automatic removal order
 - That the alleged conduct has likely caused significant harm to a member
 - That the alleged conduct involved threats, weapons, violence, bullying or harassment
 - That the Council member in question has been found responsible for similar actions in the past
 - That criminal conduct is alleged
 - Other:
-

59. Who should conduct the actual investigation of a Council member's actions and make the decision whether there is enough evidence for an order to be made against that Council member?

- An independent and experienced investigator who is hired by LKB to do so
 - A Panel of Members, who are voted in at the same time as the Council election takes place
 - A Panel of Elders / Elder Council, consisting of all those LKB members who are over the age of 65 years
 - Those Council Members who are not in a conflict of interest on the matter
 - Other:
-

60. How much evidence should be required before a Council member's actions are proven?

- Enough evidence to show that there is not a single doubt the Council member acted in the manner to which they are alleged to have acted
- Enough evidence to show that it is more likely than not the Council member acted in the manner to which they are alleged to have acted

61. Who should make the decision on which disciplinary / removal order to grant when a Council member is found to have acted in a manner that brings with it grounds for disciplinary action or removal?

- A Panel of Members, who are voted in at the same time as the Council election takes place
- A Panel of Elders / Elder Council, consisting of all those LKB members who are over the age

of 65 years
 Those Council Members who are not in a conflict of interest on the matter

62. Should disciplinary / removal hearings be held in an open meeting where members can attend?
 Yes
 No

63. Should disciplinary / removal hearings be allowed by written arguments/submissions if this is going to reduce the cost of the hearing to LKB even if it makes it harder to tell if the person making the submission is telling the truth?
 Yes
 No

64. Which of the following should be mandatory before a new Council member can take their seats in office?
 Public Ceremony
 Signing of Oath of Office
 Signing of Confidentiality Agreement
 Signing of Conflict of Interest Agreement

INDEMNITY FOR COUNCIL MEMBERS *An indemnity is where LKB agrees to pay the costs of Council members in legal proceedings to protect those Council Members from possible losses or damages that they may suffer as a result of carrying out their duties

65. Should the Council of LKB EVER be given an indemnity in relation to their actions on Council?
 Yes, but only if LKB insurance covers the legal case against the Council member
 Yes, but only if (a) a band meeting is held first disclosing the legal action against the Council members, (b) the Council member attends that band meeting to explain why they should get the indemnity, and (c) members who are present at that band meeting vote in favor of providing the indemnity
 Other:

ADDITIONAL COMMENTS:

This section will be torn off and added to the raffle. This will also help us keep track of who has returned their surveys

RAFFLE TICKET
Name: _____
Status #: _____

DRAW DATES: (Prizes in Canadian Dollars)
PRIZE #1 - \$900 CASH – March 9, 2018
PRIZE #2 - \$400 CASH – March 16, 2018

Phone / Email: _____

PRIZE #3 - \$200 CASH – March 23, 2018