

INFORMATION SHEET (Amended: 2018 09 26)

A Proposal to Amend the Xat'sūll Custom Election Code

The Vote

On **Wednesday, November 28, 2018**, there will be a vote of Xat'sūll members 18 years of age or older, to consider amendments to the Xat'sūll Custom Election Code.

Members will be able to vote in person at the Deep Creek Health Building or by mail-in ballot.

Proposed amendments supported by a majority of those who vote will become part of the Xat'sūll Custom Election Code.

Background

In 2009, after about a dozen meetings of the members, Xat'sūll voted in favour of its own Custom Election Code. This meant that the Band was no longer bound by the *Indian Act* rules about elections of Xat'sūll Chief and Council. Xat'sūll now has its own rules about elections.

Although the 2009 Xat'sūll Custom Election Code (the "2009 Code") has worked well, it has become apparent that some changes should be made.

Proposed changes have been discussed and recommended by current and previous Band Councils. These have been discussed with the membership at community and Treaty working group meetings. In addition, members were surveyed about the proposed changes during the summer of 2018.

The proposed changes to the Xat'sūll Custom Election Code, incorporating Council and membership input were included in the attached draft amended Code (the "Draft 2018 Code"). On September 25, 2018, Band Council passed a resolution recommending the Draft 2018 Code be distributed to the membership for consideration.

Process for Making Amendments.

1. If you are a Xatsúll (Soda Creek Indian Band member), please review the this Information Sheet and the attached Draft 2018 Custom Election Code and provide your comments on it in writing to Dora Demers, Xatsúll Band Administrator, no later than **October 17, 2018**.
2. There will also be a community meeting on **Tuesday, October 9, 2018, from 5 to 8 pm at the Deep Creek gym** where you can provide further input to the Code.
3. Council will consider and incorporate appropriate changes suggested by members and pass a resolution to hold a referendum/plebiscite on the proposed amendments.
4. Council will hire a Plebiscite Officer to oversee the vote which will take place on **November 28, 2018**. Members may vote in person at the Deep Creek Health Building or by mail-in ballot.
5. Amendments that receive approval from a majority of Xatsúll members who vote will be approved and become part of the Xatsúll Custom Election Code in the future.

Proposed Amendments

Here is a summary of the amendments that are being considered so far.

1. **Make the following Band members ineligible to run for Council:**
 - a. **A person who has, within 5 years before the Election Day, been convicted of an offence punishable by indictment in Canada or an equivalent offence in another country;**
 - b. **A person who has ever been convicted of an election offence, such as intimidation or vote-buying;**
 - c. **A person who is, within 7 days after being nominated, in arrears on a debt to the Band or to a business controlled by the Band;**
 - d. **is ineligible by order of the Complaints and Appeals Board; or**

e. is otherwise ineligible pursuant to this Code.

Rationale: Band members want to ensure that its Council members are honest, of good character and not in default of payments to the Band. Note that a member who is debt to the Band or a business controlled by the Band is eligible provided they are not in default of payments on that debt. A nominee who is in default has 7 days to remedy the situation after the nomination meeting.

This type of provision is very common in the Election Codes of other First Nations.

Impacted sections:

New.

Draft 2018 Code s. 5

2. Require nominees to attend an orientation session arranged by the Band Administrator, and amend the election schedule to give time for this to happen.

Rationale: The work of Council is complex and demanding. It is unfair for people to take on the role of Chief or Councillor if they don't know "what they are getting into".

This requirement will be added to the current requirement for candidates to provide a written "platform" of what they want to achieve as a member of Council and to attend and participate in an all candidates forum.

The nomination meeting will be rescheduled to happen 9 weeks (63 days) before the election to allow the above steps to take place. If a Candidate does not (a) attend the orientation session, (b) provide a written platform and (c) attend and participate in the all candidates forum, that candidate will not be included on the election ballot.

If, for any reason, the Band Administrator fails to arrange an orientation session or all-candidates forum, candidates will not be penalized.

The current (2009) Code requires candidates to provide a written platform and attend and participate in an all candidates forum. But, because the nomination meeting only happens 42 days in advance of the election, the mail-in ballots were being sent out before the All-Candidates forum. So, if a candidate didn't provide their platform or attend the forum, they would still be on the ballot.

When we first discussed this problem, the suggestion was to remove the requirement to provide the platform and attend the All-Candidates forum. But a number of Band members really like that requirement.

So, the proposed amendment is to ensure that the nomination meeting, written platforms, orientation session and All-Candidates forum can all occur before the mail-in ballots go out.

Impacted sections:

2009 Code- Sections 108 and 123.

Draft 2018 Code- ss. 107-114.

3. Move provisions relating to Council meeting procedures from the Election Code and put them in a separate Band Policy.

Rationale: Xat'sūll needs a policy governing Council meeting procedures, but that subject is not part of the election process, so it shouldn't be in an Election Code—it should be in a separate Band policy.

Council meeting procedures were covered in the 2009 Code because INAC insisted on it before the Code would be approved by their Minister. Now that Xat'sūll has control over its own Election Code and amendments to it, it makes more sense and creates more flexibility for those rules to be in a separate policy. If the Council meeting procedures are in a policy, they may be amended from time-to-time by a resolution of Council to fit the needs of Council and the membership without having to go to a full referendum—an expensive and time-consuming process.

Impacted sections:

2009 Code- sections 15 through 36

Council meeting procedures to be included in Xatsūll Governance Policy.

4. Remove “transitional” provisions from the Custom Election Code.

Rationale: A number of provisions in the 2009 Code reflect the fact that Xatsūll was moving away from the *Indian Act* and there are references to that fact and the timing for the first set of elections under the new Code. Those sections are no longer required and can/should be removed.

The 2009 Code had specific dates for the first set of elections under the Code. Those dates have long past and should be removed from the Code. The Code will be renamed the “Xatsūll Election Code”.

Impacted sections:

2009 Code: Sections 1, 2 and 41 through 50.

Draft 2018 Code: Sections 1-3 and 12-16.

5. Clarify language in some areas of the Code.

Rationale: Parts of the 2009 Code are a little hard to understand. Clearer language will be proposed and gender-specific language will be removed. Amendments will provide that key election notices are posted on both Xatsūll reserves.

Impacted sections:

2009 Code: throughout.

Draft 2018 Code: throughout.

6. Allow Council to provide other means of voting (eg electronic, telephone) in the future without having to amend the Code.

Rationale: Right now, the Code allows members to vote in person or by mail-in ballot. Technology now allows for dependable voting by telephone or electronic means. Xatsūll is not yet ready to adopt these technologies but

may be in the near future. This proposed amendment would allow Council to provide for this without having to go through an expensive referendum/plebiscite process.

Impacted sections:

2009 Code: n/a

Draft 2018 Code: s. 207.

The proposed amended Code is attached with the major changes highlighted. Members can compare it with the existing 2009 Code on the Xatsūll website, xatsull.com.

Note: In addition to the above proposed Code amendments, Band members will be asked if they support a proposal to amend the Xatsūll Human Resources Policy to prohibit Band members to be employees of the Band while they are serving on Council.

The rationale for this is that it is very difficult for a person who is both an employee and a Council Member separate the two roles. It is also difficult for other staff and community members. However, other people argue that this is unfair to Band employees who may be great candidates but don't want to give up a job to run for Council.

We would like to hear from the membership about this issue.