

**POLICY FOR
FIRST NATION EXPENDITURE BY-LAWS, 2020**

**PART I
PREAMBLE**

WHEREAS:

- A. Section 83(1) of the *Indian Act* recognizes First Nation jurisdiction to raise revenue through property tax;
- B. Memorandum of Understanding (MOU) between the First Nations Tax Commission and the Minister of Indian Affairs and Northern Development (now the Minister of Indigenous Services) provides for the Commission to review and recommend section 83 by-laws for ministerial approval; and
- C. Policies are established by the Commission to further the policy objectives expressed in the Memorandum of Understanding, including to ensure the integrity of the First Nations property taxation system and to assist First Nations to achieve economic growth through the generation of stable local revenues.

**PART II
PURPOSE**

This Policy sets out the requirements that should be met for First Nation expenditure by-laws enacted under section 83 of the Act. This Policy is used by the Commission in its review and recommendation of First Nation by-laws.

The Commission recognizes that each First Nation's property taxation system operates within the broader context of its fiscal relationships with other governments. This Policy is intended to support a more comprehensive First Nation fiscal framework within Canada.

**PART III
AUTHORITY AND PUBLICATION**

This Policy is established pursuant to section 1.2 of the MOU.

**PART IV
APPLICATION**

This Policy applies to every annual expenditure by-law submitted to the Commission for review and recommendation pursuant to the MOU.

**PART V
CITATION**

This Policy may be cited as the *Policy for First Nation Expenditure By-laws, 2020*.

**PART VI
DEFINITIONS**

In this Policy:

“Act” means the *Indian Act*, R.S.C. 1985, c. I-5 and the regulations enacted under that Act;

“annual budget” means a budget of a First Nation setting out its projected local revenues and its projected expenditure of those local revenues during a budget year;

“annual expenditure by-law” or “By-law” means a by-law required under subsection 83(2) of the Act that is enacted in each taxation year;

“Commission” means the First Nations Tax Commission established under the *First Nations Fiscal Management Act*, S.C. 2005, c. 9;

“Council” has the same meaning as “council of the band” in subsection 2(1) of the Act;

“First Nation” means a band as defined in the Act;

“local revenues” means money raised by a First Nation under a taxation by-law and payments made to a First Nation in lieu of a tax imposed by a taxation by-law;

“local service” means an activity, work or facility undertaken or provided by or on behalf of the First Nation that is funded partially or fully by local revenues, that is for a public purpose, and that falls within a category of expenditures listed in the Schedule;

“reserve fund” means a local revenues reserve fund established by the First Nation;

“resolution” means a motion passed and approved by a majority of Council present at a duly convened meeting; and

“taxation by-law” means a by-law made under paragraph 83(1)(a) of the Act.

Except as otherwise provided in this Policy, words and expressions used in this Policy have the same meaning as in the Act.

PART VII POLICY

1. Restrictions on Expenditures

1.1 The annual expenditure by-law must provide for local revenues to be expended only on local services and, without limitation, must not provide for

(a) per capita distributions; or

(b) expenditure relating to any commercial, for-profit, enterprise undertaken by or on behalf of the First Nation, including without limitation by a corporation in which shares are held by or for the benefit of the First Nation.

1.2 Despite paragraph 1.1(b), the annual expenditure by-law may provide for an expenditure to a corporation referred to in that paragraph that is a grant under a granting program established by the First Nation.

2. Annual Expenditure By-laws

2.1 The annual expenditure by-law must include as a schedule the First Nation’s annual budget for the current budget year, using the categories of revenues and expenditures set out in the Schedule.

2.2 The annual budget must segregate and set out separately the revenues and expenditures from a local improvement tax by-law.

2.3 The annual budget must set out

(a) the amounts to be paid by the First Nation in the budget period under each service agreement between the First Nation and a third-party service provider;

(b) the amounts to be paid by the First Nation under each granting program established by the First Nation; and

(c) in an appendix, each reserve fund and its opening balance, all transfers in and out of the reserve fund, and its closing balance.

2.4 The annual budget must include a contingency amount for the provision of local services, which amount must be at least one percent (1%) and not more than ten percent (10%) of the total revenues in the current budget year, excluding

- (a) any amounts transferred from the current year's local revenues into a reserve fund;
- (b) any amounts transferred from a capital reserve fund into the current year's revenues; and
- (c) any revenues from a local improvement tax by-law.

3. Contingency Amounts

The By-law must provide that contingency amounts may be expended as necessary in any of the categories of expenditures set out in the By-law.

4. Reserve Funds

Where a First Nation wishes to transfer money into or out of a reserve fund, the By-law must

- (a) establish the reserve fund unless it has been previously established in an annual expenditure by-law; and
- (b) authorize all payments into a reserve fund and all expenditures from a reserve fund.

5. Establishing a Reserve Fund

Where a First Nation wishes to establish a reserve fund, the reserve fund must

- (a) be established in an annual expenditure by-law and include a statement respecting the purposes of the reserve fund; and
- (b) comply with the requirements in the First Nation's taxation by-law.

6. Reserve Fund Purposes

The By-law may establish reserve funds only for one or more of the following purposes:

- (a) capital infrastructure replacement, provided its purposes are supported by a capital development plan;
- (b) capital infrastructure improvement, provided its purposes are supported by a capital development plan;
- (c) contingency reserves, provided it meets the requirements in section 7; and
- (d) other non-capital purposes, provided its purposes are supported by a capital development plan, contingent liability plan, land management plan, long-term economic plan or financial plan.

7. Contingency Reserve Funds

7.1 Where the By-law establishes a contingency reserve fund, the reserve fund must be established only for the purposes of funding unforeseen operating expenditures and stabilizing the temporary impacts of cyclical local revenue decreases.

7.2 Where a First Nation has established a contingency reserve fund, the By-law may provide for a transfer of the current year's local revenues into that reserve fund, provided that

- (a) the amount transferred must not exceed ten percent (10%) of the current year's local revenues; and
- (b) the balance in the reserve fund must not at any time exceed the amount that is fifty percent (50%) of the current year's local revenues.

7.3 Where a First Nation's contingency reserve fund has a balance that exceeds the amount that is fifty percent (50%) of the current year's local revenues, the First Nation's annual expenditure by-law must

- (a) not authorize a transfer of money into the reserve fund; and

(b) authorize a transfer of money from the reserve fund into the current year's local revenues, or into another reserve fund, in an amount sufficient to reduce the balance in the contingency reserve fund to not more than fifty percent (50%) of the current year's local revenues.

8. Restrictions on Reserve Fund Transfers and Borrowing

8.1 The By-law must not authorize a transfer from a reserve fund unless the transfer is

- (a) to expend moneys for the purpose for which the reserve fund was established;
- (b) to another reserve fund as provided in subsection 8.2 or 8.3; or
- (c) to borrow money from the reserve fund as provided in subsection 8.4.

8.2 If a First Nation wishes to authorize a transfer of money from a capital purpose reserve fund to another reserve fund, the By-law must

- (a) only authorize a transfer where all projects for which the reserve fund was established have been completed; and
- (b) show the transfer out from the originating reserve fund and the transfer into the receiving reserve fund.

8.3 If a First Nation wishes to authorize a transfer of money from a non-capital purpose reserve fund to another reserve fund, the By-law must show the transfer out from the originating reserve fund and as the transfer into the receiving reserve fund.

8.4 If a First Nation wishes to authorize the borrowing of money from a reserve fund, the By-law must

- (a) authorize borrowing from a reserve fund only where the money is not immediately required for the purpose of the reserve fund, and on condition that the First Nation repay the amount borrowed plus interest on that amount at a rate that is at or above the prime lending rate set from time to time by the principal banker to the First Nation; and
- (b) show the borrowing as a transfer out from the reserve fund into the current year's local revenues.

9. Required Reserve Fund

Where a First Nation has enacted a local improvement tax by-law, the By-law must

- (a) establish a reserve fund for the local improvement tax in the first year the local improvement tax is levied; and
- (b) in each year show a transfer into the reserve fund of all revenues from the local improvement tax by-law that are not expended in the current budget year.

10. Notice of Annual Expenditure By-laws

A First Nation must, in each year before submitting its annual expenditure by-law to the Commission for review and consideration of recommending ministerial approval, give notice of its annual expenditure by-law

- (a) by posting a copy of the By-law on the *First Nations Gazette* website or in a prominent place on the First Nation's website; or
- (b) by holding a public meeting at which taxpayers may meet with the tax administrator or members of Council to discuss the proposed By-law.

11. Notice of Annual Budget

Where the Council has made a by-law under section 83(2) of the Act which provides for an annual budget to be approved by resolution, the First Nation must give notice of the annual budget in the same manner that is required for annual expenditure by-laws under section 10.

12. Timing of Annual Expenditure By-laws

12.1 A Council that has made a taxation by-law and that makes an annual expenditure by-law must make that By-law at least once each year on or before November 30 of the taxation year to which the annual expenditure by-law applies.

PART VIII REVOCATION AND COMING INTO FORCE

Revocation

The *Policy for First Nations Expenditure By-laws, 2018* that was established and effective on June 29, 2018, is hereby revoked.

Coming Into Force

This Policy is established and in effect as of April 29, 2020.

PART IX ENQUIRIES

All enquiries respecting this Policy should be directed to:

First Nations Tax Commission
321-345 Chief Alex Thomas Way
Kamloops, BC V2H 1H1
Telephone: (250) 828-9857

or

First Nations Tax Commission
202 – 190 O’Connor Street
Ottawa, ON K2P 2R3
Telephone: (613) 789-5000 ext. 204

SCHEDULE
LOCAL SERVICE EXPENDITURE CATEGORIES

1. General Government Expenditures
 - a. Executive and Legislative
 - b. General Administrative
 - c. Other General Government
2. Protection Services
 - a. Policing
 - b. Firefighting
 - c. Regulatory Measures
 - d. Other Protective Services
3. Transportation
 - a. Roads and Streets
 - b. Snow and Ice Removal
 - c. Parking
 - d. Public Transit
 - e. Other Transportation
4. Recreation and Culture
 - a. Recreation
 - b. Culture
 - c. Heritage Protection
 - d. Other Recreation and Culture
5. Community Development
 - a. Housing
 - b. Planning and Zoning
 - c. Community Planning
 - d. Economic Development Program
 - e. Tourism
 - f. Trade and Industry
 - g. Land Rehabilitation and Beautification
 - h. Other Regional Planning and Development
6. Environment Health Services
 - a. Water Purification and Supply
 - b. Sewage Collection and Disposal
 - c. Garbage, Waste Collection, and Disposal

- d. Recycling
- e. Other Environmental Services
- 7. Fiscal Services
 - a. Other Debt Payments
 - b. Accelerated Debt Charges
 - c. Other Fiscal Services
- 8. Other Services
 - a. Health
 - b. Social Programs and Assistance
 - c. Agriculture
 - d. Education
 - e. Other Services