

Lower Nicola Indian Band

Lower Nicola Indian Band Council

TRESPASS BY-LAW No. 2015-01

**Lower Nicola Indian Band
Trespassing By-Law 2015-01**

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Preamble

WHEREAS Section 81, paragraphs (a), (d), (e), (h), (n), (p) and (r) of the Indian Act empower the Council of the Lower Nicola Indian Band to ass by-laws to provide for the health of residents; the prevention of disorderly conduct and nuisances; the protection of trespass by persons or animals on the reserve; the regulation of the conduct of activities of hawkers, peddlers or others who enter the reserve to buy, sell or otherwise deal in wares or merchandise; any matter arising out of or ancillary to the exercise of powers under this section; and the imposition on summary conviction of a fine or imprisonment for the violation of such by-law;

Whereas the Council of the Lower Nicola Indian Band deems it expedient and necessary for the benefit, comfort and safety of residents of the Lower Nicola Indian Band lands, to provide for the removal and punishment of persons trespassing upon Lower Nicola Indian Band lands or frequenting Lower Nicola Indian Band lands for prohibited purposes;

NOW THEREFORE the Council of the Lower Nicola Indian Band hereby resolves to enact this Trespass By-law, Number 2015-01as follows:

Part 1 – Introductory Provisions

Short title

1.1 This By-law may be cited as the "Lower Nicola Indian Band Trespass By-law".

Definitions

1.2 In this By-law,

- (a) "Band" means the Lower Nicola Indian Band;
- (b) "Building" includes any structure used by a person for shelter, accommodation or storage and without restricting the generality of the foregoing includes houses, trailers, mobile homes, sheds, tents, and boats;
- (c) "By-law Enforcement Officer" means any person or persons appointed by Council to administer and enforce the provisions of this By-law, and includes any delegate or any Police Officer with responsibility of carrying out the provisions of this By-law, or the authorized agent of any corporation or society with whom Council has an agreement to act as By-law Enforcement Officer;
- (d) "Council" means the Council of the Lower Nicola Indian Band as defined in the Indian

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Act as duly constituted;

- (e) "Domestic Animal" means any animal that is tame, under the control of humans or dependent on them for survival;
- (f) "keep" includes to keep, harbor or have in one's possession;
- (g) "Lower Nicola Lands" means lands reserved for the Lower Nicola Indian Band within the meaning of the Indian Act, R.S.C 1985, c. I-5; See Appendix #1
- (h) "Notice of Expulsion" means a notice in writing that contains
 - (i) the name of the person or persons to be expelled,
 - (ii) the date and details of the trespass or the prohibited activity,
 - (iii) the date on which the person is to leave Lower Nicola Lands or cease the prohibited activity, and
 - (iv) the procedure by which the named person can apply for a review of the Notice of Expulsion;
- (i) "Notice of Order" means a notice in writing that contains
 - (i) the name of the person or persons that it is issued to,
 - (ii) the date and details of the order, and
 - (iii) the procedure by which the named person can apply for a review of the Notice of Order;
- (j) "Occupier" means
 - (i) the Council in its capacity of managing Lower Nicola lands or Premises for the Lower Nicola Indian Band;
 - (ii) a person who is in lawful possession of a Premises pursuant to a certificate of possession, lease, permit or other allotment by Council, or
 - (iii) a person who has the responsibility for and control over the condition of a Premises, the activities carried on there, or control over persons allowed to enter the Premises;
- (k) "Officer" means any police officer, peace officer, by-law enforcement officer, or other person charged with the duty to Reserves and maintain the public

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peace, and any person appointed by the Council for the purpose of maintaining law and order on the Reserves, or enforcing this by-law;

- (l) "Owner" in relation to a domestic animal means any person who keeps, or has control, care or custody of a Domestic Animal. If a person who keeps, or has control, care or custody, of a Domestic Animal is under 19 years of age, the parent or guardian of that minor is deemed to be the owner for the purpose of this By-law;
- (m) "Person" includes an association, society, corporation, or partnership;
- (n) "Police Officer" means any person defined as an "officer" under the Police Act, R.S.B.C. 1996, c. 367, any person defined as "member" under the Royal Canadian Mounted Police Act, R.S.C., c. R-10, or any member of the First Nation Community Policing Service;
- (o) "Premises" means a residence of a person authorized to live on Lower Nicola Lands and includes the dwelling house and the outdoor portion of the property surrounding the dwelling house that is acknowledged to be for the Occupier's private use, or any Building or fenced lot used for a residence, business or by the Lower Nicola Indian Band;
- (p) "Reserves" means the Reserves of the Lower Nicola Indian Band;
- (q) "Running at Large" means any Domestic Animal that is not on a leash or under the direct control of a responsible person and is not confined to the Premises of a person owning or having custody, care or control of such Domestic Animal; and
- (r) "Trespass" means any act that constitutes trespass under the common law, including the following:
 - (i) entering or remaining in or on a Premises without lawful authority or without the permission of the Occupier;
 - (ii) entering or remaining on Lower Nicola Lands without the lawful authority or without the permission of the Occupier; or
 - (iii) engaging in an activity on Lower Nicola Lands or on in a Premises after the person has had notice from the Occupier that the activity is prohibited.

Interpretation

- 1.3 (a) The headings given to the sections in this By-law are for convenience or reference only. They do not form part of this By-law and must not be used in the interpretation of this By-law.
- (b) In this By-law, unless otherwise specified or the context requires otherwise,
 - (i) words in the singular include the plural and words in the plural include the

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singular,

- (ii) gender-specific terms include both genders and include corporations, and
- (iii) if a word or expression is defined, other parts of the speech and grammatical forms of the same word or expression have corresponding meanings.

References to other Laws

1.4 A reference in this By-law to another Lower Nicola By-law or to an enactment of Canada or British Columbia is a reference to that By-law or enactment as amended, whether amended before or after the commencement of this By-law.

Compliance with Other Laws

1.5 Where any Federal Act or regulation or Provincial Act or regulation or any Lower Nicola law applies to any matter covered by this By-law, compliance with this By-law will not relieve the person from also complying with the provisions of the other applicable Act, regulation, or By-law.

Application of this By-law

1.6 This By-law applies to Lower Nicola Lands.

Part 2 – Administration

By-Law Enforcement Officer

2.1 Council may appoint one or more By-law Enforcement Officers to provide for the administration and enforcement of this By-law.

Part 3 – Trespass

Offence of Trespass

3.1 Any person that Trespasses on Lower Nicola Lands commits an offence.

Presumption of Trespass

3.2 Any person found on Lower Nicola Lands who is not a member of the Lower Nicola Indian Band is presumed not to have the consent of Council to be on Lower Nicola Lands, until proven otherwise.

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Trespass by Domestic Animals

3.3 Subject to the provisions of the Lower Nicola Dog and Cat Control By-Law, the owner of a Domestic Animal found Running on Lower Nicola Lands commits an offence and is responsible for any damage or loss resulting from that Domestic Animal Running at Large.

Designation of Areas

3.4 Council may by resolution designate locations on Lower Nicola Lands

- (a) that are open or restricted to the public, and
- (b) on which the carrying on of specified activities is permitted or prohibited.

Part 4 – Prohibited Purposes

Prohibited Purposes

4.1 Subject to section 4.2, a person who conducts any of the following activities on Lower Nicola Lands is deemed to be frequenting Lower Nicola Lands for a prohibited purpose and commits an offence:

- (a) hunting, fishing or trapping;
- (b) hawking or peddling of wares or merchandise;
- (c) loitering;
- (d) camping, except in areas of Lower Nicola Lands designated by Council pursuant to Section 3.4;
- (e) accessing the foreshore, except in areas of Lower Nicola Lands designated by Council pursuant to Section 3.4;
- (f) operation of an all-terrain vehicle, non-motorized vehicle or vehicle on roads and trails that are not open to the public, except in areas of Lower Nicola Lands designated by Council pursuant to Section 3.4;
- (g) dumping of refuse;
- (h) soliciting financial assistance; or
- (i) any other activity that is prohibited by law or a Lower Nicola Indian Band By-Law

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Authority to Carry Out Certain Prohibited Purposes

4.2 Section 4.1 does not apply to

- (a) a person who is a registered Lower Nicola Indian Band member, or a lawful resident of Lower Nicola Lands, and is carrying out the activity with lawful authority, or
- (b) a person who is authorized by Council or who has lawful authority to carry out the activity.

Part 5 – Right of Entry

Power of Entry

5.1 A By-Law Enforcement Officer may, at all reasonable times, enter upon any Lower Nicola Lands, other than a person's private Premises, in order to determine whether the provisions of this By-law are being complied with.

Part 6 – Notices and Signs

Entry Prohibited

6.1 Other than with consent of lawful authority, a person must not enter onto or Trespass on a Premises

- (a) where notice is given or posted prohibiting entry, or
- (b) that is enclosed or fenced in a manner that indicates the Occupier's intention to keep persons or animals out of the Premises, or to keep persons or animals on the Premises.

Ability to Give Notice

6.2 A person has notice not to Trespass or not to engage in a specified activity when he or she has been given notice by Council, a By-Law Enforcement Officer, or a Police Officer, or an Occupier.

Method of Giving Notice

6.3 A notice under this Part may be given

- (a) orally,

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- (b) in writing, or
- (c) by means of signs posted so that a sign is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to the Premises or the area of Lower Nicola Lands to which it applies.

Posting of Signs

- 6.4 A sign posted for the purposes of this By-law must bear the words “No Trespassing” or “Carrying on of (describe the activity) is prohibited within (describe the area)”.

Destruction of Signs

- 6.5 A person must not tear down, remove, damage, deface or in any way cover up a sign that has been lawfully posted under this By-law.

Notice Not Required

- 6.6 For certainty, a person may be found guilty of an offence under this By-law regardless of whether notice not to Trespass or not to engage in a specified activity was given or received.

Part 7 – Immunity

No Liability

- 7.1 Council, a By-Law Enforcement Officer or any member, employee, servant or agent of the Lower Nicola Indian Band is not liable for any damage or loss sustained by any person, or to property of any person, as a result of the neglect or failure, for any reason, to discover or detect any contravention of this By-law, or from the neglect or failure, for any reason, to enforce this By-law.

No Action May Be Instituted

- 7.2 No action for damages lies or may be instituted against, present or past, Council, a By-Law Enforcement Officer, or any member, employee, servant or agent of the Lower Nicola Indian Band
- (a) for anything said or done by that person in the performance or intended performance of the person’s duty or the exercise of the person’s authority under this By-law, or
 - (b) for any alleged neglect or default in the performance or intended performance of the person’s duty or the exercise of the person’s authority under this By-law.

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Availability of Defense

- 7.3 Section 7.1 does not provide a defense if Council, a By-Law Enforcement Officer, or a member, employee, servant or agent of the Lower Nicola Indian Band, in relation to the conduct that is the subject matter of the action, being guilty of dishonesty, gross negligence, or malicious or willfully misconduct.

Part 8 – Enforcement

Order

- 8.1 (a) A Police Officer or By-Law Enforcement Officer may order any person who is in violation of this By-law to refrain from violating the By-law within such period as is reasonable in the circumstances.
- (b) A person who fails or refuses to comply with an order made under subsection (a) commits an offence.

Immediate Expulsion by a Police Officer or By-Law Enforcement Officer

- 8.2 (a) A Police Officer or By-Law Enforcement Officer may order any person who is Trespassing to leave the Premises or Lower Nicola Lands immediately and may order any person who engages in a prohibited activity to cease immediately.
- (b) Where a person fails or refuses to obey an order made under subsection (a), any Police Officer or By-Law Enforcement Officer may take such reasonable measures as may be necessary to remove the person from the Premises or Lower Nicola Lands.

Notice of Order

- 8.3 (a) An order under this By-law must be issued
- (i) verbally, with details recorded in a Notice of Order, or
 - (ii) in writing in a Notice of Order.
- (b) A Notice of Order under subsection (a) must be
- (i) given personally to the person to whom applies,
 - (ii) delivered to the last known address of the person to whom it applies, or
 - (iii) made available at the Council Office, or as otherwise designated by Council, to the

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person to whom it applies if the address of the person is unknown.

Notice of Expulsion by Council

- 8.4 (a) Council may issue a Notice of Expulsion that requires a person that has been Trespassing or frequenting Lower Nicola Lands for prohibited purposes to leave Lower Nicola Lands or cease the prohibited activity.
- (b) A Notice of Expulsion must be approved by a resolution adopted by a majority of the members of Council present at a meeting of Council duly convened and at which quorum is present.
- (c) If a Notice of Expulsion is issued to a person under the age of 18 years, the Notice of Expulsion is deemed to also apply to that person's parent or guardian.
- (d) A Notice of Expulsion must be delivered personally to all persons to whom it applies.

Power to Ensure Compliance with the By-Law

- 8.5 Where a person who has been ordered to refrain from violating this By-law within a specified period, fails or refuses to comply with the order, a Police Officer or By-Law Enforcement Officer may take such reasonable measures as necessary to ensure compliance with this By-law.

Obstruction of Duties

- 8.6 A person must not obstruct, interfere with or hinder Council, the Police Officer or By-Law Enforcement Officer in carrying out their duties and responsibilities under this By-law.

Availability of Other Action or Remedy

- 8.7 Nothing in this By-law precludes the Lower Nicola Indian Band from pursuing any other enforcement or remedy provide for in any other law or By-law.

Part 9 – Penalties

Offence

- 9.1 Any person who violates a provision of this By-law or who permits any act or thing to be done in violation of a provision of this By-law, or who neglects to do or refrains from doing any act or thing required to be done by a provision of this By-law, commits an offence under this By-law, and will be liable on conviction to the penalties imposed by this By-law.

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Separate Charge

- 9.2 A Police Officer or By-Law Enforcement Officer may lay a separate charge for each day an offence under this By-law is ongoing.

Penalties

- 9.3 Any person who is found guilty of an offence under this By-law is liable on summary conviction to a fine up to \$1,000 or imprisonment for a term not exceeding thirty (30) days, or both.

Restorative Justice

- 9.4 Council may implement a restorative justice sentencing procedure for persons who consent to participate or who are found guilty of an offence and are ordered to participate.

Responsibility for Damage

- 9.5 In addition to all other penalties provided herein, any person causing damage or loss to any Lower Nicola Indian Band property within Lower Nicola Lands will be responsible for the cost of repairing or replacing such damage or loss.

Part 10 – General Provisions

Forms

- 10.1 Council may by Band Council Resolution establish, correct, revise or update any applicable schedules, forms, protocols or other related documentation that complement and support this By-law, and will post notice of any changes in a public area of the Lower Nicola Indian Band administration building.

Severability

- 10.2 If any section or subsection of this By-law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or subsection will be severed from and not affect the validity of the remaining sections of this By-law.

Coming Into Force and Effect

- 10.3 This By-law comes into force forty days after a copy thereof is forwarded to the Minister of Aboriginal Affairs and Northern Development Canada, or any time declared by the Minister before the expiration of that period.

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BE IT KNOWN that this By-law entitled, the Lower Nicola Indian Band Trespass By-Law is hereby read for the first, second, and third, and final time and is hereby enacted as By-Law NO. 2015 – 01, by the Council of the Lower Nicola Indian Band at a duly convened meeting held on the 3rd day of February, 2015.

Voting in favour of the By-Law are the following members of Council:

I, Aaron Sam, Chief of the Lower Nicola Indian Band, do hereby certify that a true copy of the foregoing By-law was mailed to the Minister of Aboriginal Affairs and Northern Development pursuant to subsection 82(1) of the Indian Act, this 3rd day of February, 2015.


being the majority of those members of the Council of the Lower Nicola Indian Band present at the aforesaid meeting of the Council.

The quorum of the Council is 5 members. The number of members of the Council present at the meeting:


Quorum of Council: 5

Number of members of Council present at the meeting: 5

Signatures:



Aaron Sam, Chief



Clarence Basil, Jr., Councilor



Arthur Dick, Councilor



Harold A. Joe, Councilor

Nicholas Peterson, Councilor



Clyde Sam, Councilor

Robert Sterling, Jr., Councilor



Molly Toodlican, Councilor

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Those voting in favor of by-law no. 2015-01:

Chief Aaron Sam,

Councilor Clarence Basil Jr.

Councilor Arthur Dick

Councilor Harold Joe

Councilor Nicholas Peterson

Councilor Clyde Sam

Councilor Robert Sterling Jr.

Councilor Molly Toodlican

Those voting against by-law no. 2015-01: _____
