

By-law No. 2023-2024-01
Pelican Lake First Nations
BY-LAW RESPECTING TRESPASS
Enacted on the 1st day of June, 2023

WHEREAS the Pelican Lake First Nations is a self-governing Nation with the inherent jurisdiction over its lands and Members;

AND WHEREAS the Chief and Council of the Pelican Lake First Nation Band, as duly elected leaders, are empowered to act on behalf of the Members of the Pelican Lake First Nation Band;

AND WHEREAS the Council of the Pelican Lake First Nation Band is desirous of establishing a by-law to regulate the conduct and activities of Persons entering upon the Reserve and provide for the removal and potential for sanction of Persons trespassing on the Reserve or frequenting the Reserve for Prohibited Purposes;

AND WHEREAS subsection 81(1)(p) of the *Indian Act* authorizes the Council of a Band to enact by-laws for the purpose of the removal and punishment of Persons trespassing on the reserve or frequenting the Reserve for prohibited purposes;

AND WHEREAS subsection 81(1)(r) of the *Indian Act* authorizes the Council of a Band to impose on summary conviction a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty days, or both, for violation of a by-law made under section 81 of the *Indian Act*;

AND WHEREAS subsection 81(2) of the *Indian Act* provides that where any by-law of a band is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the Person convicted;

AND WHEREAS subsection 81(3) of the *Indian Act* provides that where any by-law of a band passed is contravened, in addition to any other remedy and to any penalty imposed by the by-law, such contravention may be restrained by court action at the instance of the band council;

AND WHEREAS the Council of the Pelican Lake First Nation deems it to be expedient and in the best interests of the Pelican Lake First Nation, and necessary for the benefit, comfort, and safety of Members and for the protection of the Reserve, to make a By-law for the purpose of regulating the conduct and activities of Persons entering upon the Reserve and providing for the removal and sanction of Persons trespassing on the Reserve Lands or frequenting the Reserve for Prohibited Purposes;

NOW THEREFORE BE IT RESOLVED THAT, the Council of the Pelican Lake First Nation Band enacts the Pelican Lake First Nations By-law No. _____ as follows:

2023-2024-01

Short Title

1. This by-law may be cited as the "Trespass By-law".

Interpretation

2. In this By-law:

"Band" or **"Nation"** means the Pelican Lake First Nation being a band within the meaning of subsection 2(1) of the *Indian Act*;

"Band Council Resolution" means a written resolution signed and adopted by a quorum of Council at a duly convened meeting;

"Building" means any structure on the Reserve used by a Member for shelter, accommodation, or storage and includes, but is not limited to, houses, trailers, mobile homes, sheds, tents, and barns;

"Council" means the Chief and the Council of the Pelican Lake First Nation;

"Court" means a court of competent jurisdiction within the Province of Saskatchewan;

"Intoxicating Substance" means:

- (a) Glues, adhesives, cements, cleaning solvents, thinning agents, and dyes containing toluene or acetone;
- (b) Petroleum distillates or products containing petroleum distillates, including naphtha, mineral spirits, Stoddard solvent, kerosene, gasoline, mineral seal oil, and other related distillates or petroleum;
- (c) Fingernail or other polish removers containing acetone, aliphatic acetates, or methyl ethyl ketone;
- (d) Any substance that is required pursuant to the *Hazardous Products Act* (Canada) or the regulations pursuant to that Act to bear the label "Vapour Harmful", "Vapour Very Harmful", or "Vapour Extremely Harmful";
- (e) Aerosol disinfectants and other aerosol products containing ethyl alcohol; or
- (f) Any other product or substance that is prescribed in this By-law or any other Nation by-law as an intoxicating substance;

"Member" means a member of the Nation;

"Non-Member" means a Person who is not a Member;

“Notice of Order” means a notice in writing issued by the Council or an Officer that contains:

- (a) The name of the Person or Persons that it is issued to;
- (b) The date and the details of the order; and
- (c) The procedure by which the named Person can apply for a review of the Notice of Order;

“Occupant” means:

- (a) A Person who is in lawful possession of a Premises pursuant to a Band Council Resolution or other form of allocation by Council; or
- (b) 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;

“Officer” means any police officer, peace officer, or other Person charged with the duty to preserve and maintain the public peace, and enforcing and carrying out the provisions of this By-law or otherwise for maintaining law and order on the Reserve under the following:

- (a) *Police Act*, RSA 2000, c P-17;
- (b) *Royal Canadian Mounted Police Act*, RSC, c R-10;
- (c) *Security Services and Investigators Act*, SA 2008, c S-4.7;
- (d) *Peace Officer Act*, SA 2006, c P-3.5; and
- (e) Any By-law, regulation, or another form of legislation enacted by Council;

“Person” means any person, association, society, corporation, or partnership;

“Premises” means a residence of a Person authorized to live on the Reserve and includes the dwelling house and the outdoor portion of the property surrounding the dwelling house that is acknowledged to be for the Member’s private use, or any Building or fenced lot used for a residence or business for or by the Nation;

“Prohibited Activity” means:

- (a) The use or consumption as an intoxicant by any Person of an Intoxicating Substance, or the sale, transfer, or exchange of an Intoxicating Substance if there is a reasonable basis to believe that the recipient will use or consume the

substance as an intoxicant, or cause or permit the Intoxicating Substance to be used or consumed as an intoxicant;

- (b) The possession, growth, use, consumption, sale, transfer, or exchange of a controlled substance, as defined in the *Controlled Drugs and Substances Act* (Canada), in contravention of that Act;
- (c) The possession, growth, use, consumption, sale, transfer, or exchange of cannabis, as defined in the *Cannabis Act* (Canada), in contravention of that Act;
- (d) Child sexual abuse or activities related to child sexual abuse;
- (e) Prostitution or activities related to prostitution;
- (f) The commission or promotion of a criminal organization offence;
- (g) The accommodation, aid, assistance, or support of any nature of a gang or criminal organization or any of its activities or the facilitation of any of its activities;
- (h) The unauthorized use or occupation of any Premises;
- (i) Any activity that is prohibited by federal or provincial law;
- (j) Any activity that is prohibited by Nation By-law; or
- (k) Any other prescribed purpose;

“Removal” means where Council has issued a Band Council Resolution ordering the removal of a Person from the Reserve or a Premises pursuant to this By-law;

“Reserve” means the Pelican Lake First Nation Reserve No. 191 and Premises;

“Trespass” means any act that constitutes trespass under common law, and includes, without limitation, the following:

- (a) Entering or remaining in or on the Reserve without lawful authority or without the permission of either the Council or a Member;
- (b) Entering or remaining in or on a Premises without lawful authority or without the permission of either the Council or a Member;
- (c) Entering or remaining in or on the Reserve or in or on a Premises, with or without the permission of a Member, where Council has issued a Notice of Order

prohibiting the Person from entering or remaining in or on the Reserve or in or on a Premises or where Council has issued a Removal of the Person;

- (d) Entering or remaining in or on the Reserve or in or on a Premises with or without lawful authority or with or without the permission of either the Council or a Member while engaging in Prohibited Activity.

Application of By-law

- 3. This By-law shall apply to any Person present on the Reserve or on any Premises.

Trespass

- 4. No Person shall Trespass on the Reserve or within a Premises.

Prohibited Activities and Trespass

- 5. Other than a Person referred to in Section 6, any Person who engages in any Prohibited Activity on the Reserve or on or in a Premises shall be deemed to be Trespassing.

Right of Access

- 6. The following Persons have a right of access to the Reserve and are not considered Trespassing unless the Person engages in any Prohibited Activity:
 - (a) Members who are conducting lawful activities in an authorized manner or location, except that they have no right of access to areas within the Reserve that Council has designated for the use and occupation of specific individuals or their families, whether or not those individuals are present;
 - (b) A Person invited onto the Reserve by a Member and who, being accompanied by that Member and while obeying all laws of general application, will share that Member's right of access;
 - (c) A Person who has entered onto the Reserve who is carrying Council's written authorization and is conducting him or herself under Council's written authorization;
 - (d) A Person who has been invited or granted access to the Reserve by Council, including under an issued permit, order, or other direction;
 - (e) A Person who has entered onto the Reserve lands that have been designated for commercial uses provided that such Person is engaged in activities consistent with or related to such commercial uses and is otherwise obeying all laws of general application;
 - (f) A Person authorized by federal or provincial law or by Nation By-law;

- (g) A Person travelling on a public road on or through the Reserve;
- (h) A Person participating in activities on the Reserve that are authorized by Council; and
- (i) An Officer in the course of their duty.

Designation of Areas

- 7. Council may, by Band Council Resolution, By-law, regulation, or another form of legislation enacted by Council, designate locations on the Reserve:
 - (a) That are open or restricted to the public; and
 - (b) On which the carrying on of specified activities is permitted or prohibited.

Entry Prohibited

- 8. Other than with the consent of lawful authority, a Person must not enter onto or Trespass on 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 animals on the Premises.

Ability to Give Notice

- 9. A Person has notice not to Trespass or not to engage in a specified activity when they have been given notice by Council or an Officer.

Method of Giving Notice

- 10. A notice under this By-law may be given:
 - (a) Verbally;
 - (b) In writing; or
 - (c) By means of signs posted so that a sign is clearly visible under normal weather conditions from the approach to each ordinary point of access to the Premises or the area of the Reserve to which it applies.

Posting of Signs

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

Destruction of Signs

12. 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

13. A Person may be found guilty of an offence under this By-law regardless of whether notice not to Trespass or not to engaged in a specified activity was given or received.

Removal

14. Where a Member has been found to be engaging in Prohibited Activity or where the Member is found to have aided or abetted any other Member in engaging in Prohibited Activity on the Reserve or in or on a Premises, Council may issue a Band Council Resolution ordering the removal of the Member from the Premises or the Reserve.
15. Where a Member has been found to be aiding or abetting a non-Member in engaging in Prohibited Activity on the Reserve or in or on a Premises, Council may issue a Band Council Resolution ordering the removal of the Member from the Premises or the Reserve.

Enforcement

16. Upon Council issuing a Band Council Resolution ordering the removal of a Person from the Premises or the Reserve for violating any provision of this By-law or upon direction of an Officer, any Person who Trespasses may be ordered to leave the Premises or the Reserve immediately.
17. If an Officer reasonably believes a Person is frequenting the Premises or the Reserve for a Prohibited Activity, the Officer may order that Person to leave the Premises or the Reserve immediately.
18. Where a Person fails or refuses to obey an order made under Section 16 or Section 17, an Officer may take such reasonable measures as may be necessary to remove the Person from the Premises or the Reserve.
19. An Officer may enter any Premises at any time to administer and enforce the provisions of this By-law;
20. An Officer may remove or arrest without warrant any Person found on or in the Premises if the Officer believes on reasonable and probable grounds that the person is committing an offence under this By-law.

21. If an Officer believes on reasonable and probable grounds that a Person has committed an offence under this By-law and has recently departed from the Premises, the Officer may arrest the Person without warrant if:
- (a) The Person refuses to give his or her name and address to the Officer on demand; or
 - (b) The Officer believes on reasonable and probable grounds that the name or address given by the person to the Officer is false.

Notice of Order

22. An order issued under this By-law must be issued:
- (a) Verbally, with details recorded in a Notice of Order; or
 - (b) In writing in a Notice of Order.
23. A Notice of Order under Section 16 must be:
- (a) Given to the Person to whom it applies;
 - (b) Delivered to the last known address of the Person to whom it applies; or
 - (c) Made available at the Nation administration building, or as otherwise designated by Council, to the Person to whom it applies if the address of the Person is unknown.

Power to Ensure Compliance with the By-Law

24. Where a Person has been ordered to refrain from violating this By-law within a specified period, fails, or refuses to comply with the order, an Officer may take such reasonable measures as necessary to ensure compliance with this By-law.

Obstruction of Duties

25. A Person must not obstruct, interfere with, or hinder Council or an Officer in carrying out their duties and responsibilities under this By-law.

Availability of Other Action or Remedy

26. Nothing in this By-law precludes the Nation from pursuing any other enforcement or remedy provided for in any other law or by-law.

Offence

27. A Person who fails or refuses to comply with a provision of this By-law commits an offence.

Separate Charge

28. An Officer may lay a separate charge for each day an offence under this By-law is ongoing or for each separate offence.

Penalties

29. Any Person who is found guilty of an offence under this By-law is liable on summary conviction to a fine not exceeding \$1,000.00, or to a term of imprisonment not exceeding thirty (30) days, or both.
30. Where a Person is in default of payment of a fine under this By-law, the Nation may, in its sole discretion, withhold any amount payable by it to such Person from time to time not to exceed the amount of the unpaid fine, and shall apply such amount to the unpaid fine.
31. In addition to the above penalties, every Person who commits an offence under this By-law may also be subject to the following sanctions:
- (a) Termination of employment with the Nation;
 - (b) Termination or denial of assistance of any kind, including but not limited to social assistance and economic and educational support;
 - (c) Denial of housing on the Reserve;
 - (d) Removal of their name from the housing list;
 - (e) Eviction from housing on the Reserve;
 - (f) Publication of the names of the offenders;
 - (g) Refusal by the Nation and its affiliated or related companies and their agencies to do business with the offender; and
 - (h) Removal from the Reserve.

Responsibility for Damage

32. In addition to all other penalties provided for in this By-law, any Person causing damage or loss to any Nation property or Premises will be responsible for the cost of repairing or replacing such damage or loss.

33. Where a Person is in default of payment for the cost of repairing or replacing such damage or loss, the Nation may, in its sole discretion, withhold any amount payable by it to such Person from time to time not to exceed the amount of the cost of the damage or loss, and shall apply such amount to the cost of the damage or loss.

Miscellaneous

34. Nothing in this By-law relieves a Person from complying with any applicable law, regulation, other Nation by-law, or any requirements of any lawful permit, order, direction, or federal or provincial law.
35. Where this By-law refers to another Act, Regulation, or agency, it includes reference to any Act, Regulation, or agency that may be varied modified, or replaced from time to time.
36. Every provision of this By-law is independent of all other provisions, if any provisions of this By-law is declared invalid for any reason by a Court, all other provisions of this By-law shall remain valid and enforceable.
37. Words and phrases in this By-law importing the singular number only shall include the plural and vice versa, and words importing the masculine gender shall include the feminine gender and neutral.
38. Nothing in this By-law affects the civil liability of a Person who contravenes any provisions of this By-law.

Amendments

39. This By-law may be amended by a Band Council Resolution. Any amendments will come into force on the date of publication in accordance with subsection 86(4) of the *Indian Act*.

Effective Date


40. This By-law comes into force on the date of publication in accordance with subsection 86(4) of the *Indian Act*.

THIS BYLAW IS HEREBY made at a duly convened meeting of the Council of the Pelican Lake Band this 1st day of June, 2023

Voting in favour of this By-law are the following Members of the Council:



Chief



Councillor

[Signature]
Councilor

[Signature]
Councilor

[Signature]
Councilor

Councilor

Councilor

Being the majority of those Members of the Council of the Pelican Lake Band

The quorum of the Council is 4 Members.

Number of Members of the Council present at the meeting: 6