



PENTICTON INDIAN BAND
TRESPASS
BYLAW No. 2023-02

Enacted: August 4, 2023

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WHEREAS

- A. We are *sqilx*^w / *syilx* / *sʔuknaqinx* (Okanagan people) who receive our strength from *timixw* and include what is good for our livelihood. We are committed to our language and the teachings of our *captiklx*^w and respect that everything has value and purpose to come together as one;
- B. As an aspect of the exercise of the inherent right of self-determination, the Penticton Indian Band (PIB) has the jurisdiction to address on our Land, through our own laws, such issues as the right to deter and prevent disorderly or nuisance-like or threatening activities from taking place on our Land, and this inherent right of self-determination is being exercised on our Land through our laws that are paramount to all federal or provincial laws which purport to be contrary to or inconsistent with our laws;
- C. On June 21, 2021, the *United Nations Declaration on the Rights of Indigenous Peoples Act of Canada* (the “Act”) came into force with a goal of implementing the *United Nations Declaration of the Rights of Indigenous Peoples* (“UNDRIP”) in the Canadian context. Some of the key provisions of UNDRIP are as follows:

Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 20(1): Indigenous peoples have the right to maintain and develop their political, economic, and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

Article 23: Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 26 (2): Indigenous peoples have the right to own, use, develop and control the Reserve Lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

Article 32(1): Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their Reserve Lands or territories and other resources.

- D. Federal or provincial laws may not extinguish the PIB's exercise, through our own laws on our Land, of our inherent right of self-determination that is constitutionally protected under Section 35 of the *Constitution Act*, 1982;
- E. In the passage of this *Trespass* bylaw, the PIB relies upon our inherent right of self-determination protected by Section 35 of the *Constitution Act*, 1982 as supplemented by the federal authority under Paragraphs 81(a), (c), (d), (e), (n), (p), (q) and (r) of the *Indian Act*;
- F. PIB wishes to enact a bylaw to regulate access to its Reserve Land and to provide for the safety of its Members, Owner, and Residents on the Reserve Lands, the observance of law and order, the prevention of disorderly conduct and nuisances or threatening activities, and removal and punishment of persons trespassing on its Reserve Lands;
- G. Council have engaged with its Members that support a *Trespass* bylaw and so deems it advisable and in the best interests of the PIB to enact this Bylaw;
- H. PIB, in accordance with the *syilx* tradition, has recognized the importance of the collective rights of the community and the priority of those collective rights over the rights of the individual;
- I. The *syilx* people have historically used banishment to help preserve and promote the order, peace, and safety of the community; and
- J. PIB Chief and Council deems it to be in the best interests of PIB to pass this Bylaw for such purpose.

THEREFORE the Chief and Council of Penticton Indian Band at duly convened Council meeting enacts as follows:

PART 1: GENERAL

TITLE

1.0 This Bylaw may be cited for all purposes as *PIB Trespass* bylaw No. 2023-02.

DEFINITIONS

2.0 In this Bylaw, unless the context otherwise requires:

“**Airspace**” means the high-level airspace starting at approximately 18,000 ft (5,486 meters) above the Reserve Lands;

“**Appeal Tribunal**” means an appeal tribunal formed in accordance with Section 23.0;

“**Band Administrator**” means the person appointed by Council as Band Administrator to be responsible for its overall management of day-to-day operations of the Penticton Indian Band;

“**Bylaw**” means this *Trespass* bylaw;

“**Camping Unit**” means a tent, tent camper, truck camper, travel trailer, motor home, van, station wagon, car, or any other vehicle, shelter, or structure where such is used for sleeping, cooking or any camping or homesteading purpose;

“**Causing a Disturbance**” means making causing, or permitting to be made or caused, any noise in or on the Reserve Lands or Airspace that disturbs the peace, rest, enjoyment, comfort, or convenience of the neighbourhood, or persons in the vicinity;

“**Certificate of Possession**” means a Certificate of Possession issued by the Minister, pursuant to subsection 20(2) of the *Indian Act*, to a member that is lawfully in possession of the Reserve Lands as evidence of that members right to possession of the Reserve Lands described in the Certificate of Possession;

“**Complaint**” means the first formal document filed with the Enforcement Officer to initiate an action under this Bylaw that lists their view of the facts and the reasons why the complainant believes that they have been harmed.

“**Constitution Act**” means the *Constitution Act, 1982*, enacted as Schedule B to the *Canada Act 1982, 1982, c. 11 (U.K.)* that came into force on April 17, 1982;

“**Controlled Drugs and Substances Act**” means the *Controlled Drugs and Substances Act, Canada (1996 c. 19)* as amended or replaced from time to time;

“**Council**” means the lawfully elected government of PIB and includes the Chief;

“**Criminal Code**” means the *Criminal Code of Canada* (R.S., 1985, c. C-46) as amended or replaced from time to time;

“**Disorderly Conduct**” means any act or behaviour, including, without limitation: fighting, making or causing unreasonable noise, using abusive language, using offensive or indecent gestures or indecent displays, being drunk or intoxicated from any substance, Loitering, trespassing, having a firearm in plain sight, firing or discharging any firearm to threaten any person or endanger them by discharge in their closeness, or using, or threatening to use any other article as a weapon against any person; or interfering in any manner with the orderly conduct of a commercial, administrative, educational, recreational, health care, religious, or ceremonial activities on the Reserve Lands or Airspace;

“**Electors**” means those Members who are eighteen (18) years of age or older and entitled to vote in a PIB election or other vote;

“**Enforcement Officer**” means an enforcement officer appointed by Council by Resolution for the purpose of enforcing PIB laws and bylaws, and includes a person or organization authorized or contracted by Council to enforce this Bylaw, such as Royal Canadian Mounted Police (RCMP) First Nations Policing Program (FNPP) officer(s);

“**Hawking**” means soliciting orders for or selling food, goods, or merchandise from residence to residence on the Reserve Lands that does not fit within the definition of peddling or soliciting;

“**Improvements**” means improvements, as determined according to the common law, including any buildings, structures, works, facilities, infrastructure, services, Reserve Landscaping, and other improvements (including any equipment, machinery, apparatus and other such fixtures forming part of or attached to the improvements, but excluding trade fixtures) made by any person and that are, from time to time, situated on the Reserve Lands, including any alterations to any of them;

“**Indian Act**” means the *Indian Act*, R.S.C., 1985, c. I-5;

“**Livestock**” means horses, cattle, sheep, llamas, alpacas, or goats;

“**Loitering**” means to remain in place without due cause;

“**Member**” means a person that is registered on the PIB membership list;

“**Natural Resource**” means a renewable or non-renewable material or component, that can be used and that can be derived from and is located on the Reserve Lands;

“Off-Roading” means riding a bicycle or horse, or driving an all-terrain vehicle, dirt bike, truck, sports utility vehicle, snowmobile or any other motorized vehicle on the Reserve Lands that are made of materials such as sand, gravel, riverbeds, mud, snow, rocks, or other natural terrain and that are not either paved or gravel roads intended to sustain vehicular traffic;

“Owner” means:

- (a) PIB, in relation to Reserve Lands that are not held under a Certificate of Possession;
- (b) a person that has a Certificate of Possession for a portion of the Reserve Lands; and
- (c) a PIB corporate or other entity which holds legal title to those portions of the Reserve Lands set forth in (d) in the definition of “Reserve Lands”;

“Peddling” means operating a temporary stand, display, or similar facility or to travel from house to house, door to door, street to street, or from place to place, carrying, conveying, or transporting goods, wares, merchandise, or services for the purpose of offering or exposing the same for sale on the Reserve Lands;

“Penticton Indian Band” or “PIB” means the Penticton Indian Band, a band within the meaning of section 2(1) of the *Indian Act*;

“Premises” includes:

- (a) a building or Improvement located on the Reserve Lands;
- (b) a car or vehicle on the Reserve Lands that is not in operation and is being used for residential purposes; and
- (c) a trailer or structure that does not constitute an Improvement, located on the Reserve Lands that is designed or used either as a residence or for the operation of a business;

“Prohibited Purposes” means prohibited purposes as set forth in Sections 14.0 to 15.0 of this Bylaw.

“Reserve Lands” means the following:

- (a) Penticton Indian Reserve No. 1;
- (b) Penticton Indian Reserve No. 2;

- (c) Penticton Indian Reserve No. 3A;
- (d) Lands set apart by Canada in the future as Reserve Lands reserved for the use and benefit of the PIB, within the meaning of subsection 91(24) of the *Constitution Act, 1982*; and
- (e) Lands owned in fee simple by a corporation or other entity beneficially or legally owned by the PIB.

"Resident", in relation to premises, means a person entitled to occupy a premise(s) on the Reserve Lands either:

- (a) under a valid land instrument that is registered in the Indian Reserve Lands Registry System (ILRS); or
- (b) with the lawful consent of the Owner(s);

"Resolution" means a Band Council Resolution passed at a duly convened Band Council meeting by a quorum of Council;

"Soliciting" means the seeking or taking of contracts, orders for all goods, wares, services or merchandise, or subscriptions or contributions on the Reserve Lands;

"Unmanned Air Vehicle" means a power-driven aircraft, including a drone, but excluding a model aircraft, that is designed to fly without a human operator on board and does fly within the PIB's Airspace; and

"Waste" means pollutants, hazardous goods, garbage, junk, paper, rubbish, liquid and semi-liquid substances, parts of automobiles or other vehicles or machinery, cast-off clothing, electronic devices, waste paper, plastic, glass or metal scraps, household goods or furnishings or parts thereof, construction material, land-fill and scrap of all kinds and any combinations of any of the foregoing together with any other object that the Council designates as waste.

INTERPRETATION

3.0 This Bylaw must be interpreted in a fair, large, and liberal manner.

4.0 In this Bylaw:

- (a) the use of the word "must" denotes an obligation that, unless this Bylaw provides to the contrary, must be carried out as soon as practicable after this Bylaw comes into effect or the event that gives rise to the obligation;

- (b) unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to”, and the use of the word “includes” means “includes, but is not limited to”;
- (c) headings and subheadings are for convenience only, do not form a part of this Bylaw and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Bylaw;
- (d) a reference to a statute includes every amendment to it, every regulation made under it and any Bylaw enacted in substitution for it or in replacement of it;
- (e) a reference to a government office includes every successor government office;
- (f) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular;
- (g) unless it is otherwise clear from the context, the use of the masculine includes the feminine, and the use of the feminine includes the masculine;
- (h) where a time is expressed to begin or end at, on or with a specified day, or to continue to or until a specified day, the time includes that day;
- (i) where a time is expressed to begin after or to be from a specified day, the time does not include that day; and
- (j) where anything is to be done within a time after, from, of or before a specified day, the time does not include that day.

APPLICATION OF BYLAW

- 5.0 This Bylaw applies to the Reserve Lands and all persons that enter the Reserve Lands.
- 6.0 If any provision of this Bylaw is held invalid by a court of competent jurisdiction, the invalid provision must be severed from and must not affect the remaining provisions of this Bylaw.
- 7.0 The headings given to the sections and paragraphs in this Bylaw are for convenience of reference only, and do not form part of this Bylaw and must not be used in the interpretation of this Bylaw.
- 8.0 Unless otherwise noted, any specific statute named in this Bylaw is a reference to an enactment of Canada and the regulations thereto, as amended, revised, consolidated, or replaced from time to time, and any Law referred to herein is a reference to a bylaw of the PIB, as amended, revised, consolidated or replaced from time to time.

PURPOSE

- 9.0 The purpose of this Bylaw is to:
- (a) provide for the safety of Residents on the Reserve Lands;
 - (b) observe law and order;
 - (c) prevent disorderly conduct and nuisances;
 - (d) support the PIB *Domestic Animal Control Bylaw* as may be amended to protect against and prevent trespass by domestic animals;
 - (e) regulate the conduct and activities of hawkers, peddlers or others who enter the Reserve Lands to buy, sell, or otherwise deal in wares or merchandise;
 - (f) remove and punish persons trespassing on the Reserve Lands; and
 - (g) prevent threats being made to the safety and well-being of Members, Owners, or Residents.

PART 2: ADMINISTRATION

APPOINTMENT OF ENFORCEMENT OFFICER

- 10.0 The Council may, by Resolution:
- (a) Enter into an agreement with a person or organization, such as the Royal Canadian Mounted Police (RCMP) First Nations Policing Program (FNPP), to fulfill the duties and responsibilities of an Enforcement Officer under this Bylaw; or
 - (b) Appoint a person(s) to be an Enforcement Officer for the purposes of enforcing this Bylaw, such as a towing company or bailiff;
 - (c) Provide for reasonable remuneration to be paid from the PIB to a person(s) or organization that enters into an agreement with the PIB under subsection 10.0(a) or a person(s) appointed under subsection 10.0(b).

PART 3: PROHIBITED PURPOSES

TRESPASS

- 11.0 A person that is not a Member, Owner, or Resident is deemed to be in trespass if that person:

- (a) Enters the Reserve Lands not held under a Certificate of Possession, without the prior written consent of PIB Council, the Band Administrator or a person authorized in writing by either the Council or the Band Administrator;
 - (b) Enters the Reserve Lands held under a Certificate of Possession without the permission of the Owner or Resident; or
 - (c) Remains present on the Reserve Lands or Premises after the Member, Owner or Resident who granted them permission to enter those Reserve Lands or Premises, provides them with oral or written notice that they must vacate those Reserve Lands or Premises.
- 12.0 For greater certainty, a person who is not subject to an Exclusion Order, and who is not a Member, Owner, or Resident, that enters the Reserve Lands for the purpose of entering Premises on the Reserve Lands with the permission of the Owner or Resident of the Premises, is deemed not to be trespassing and not to be committing an offence.
- 13.0 For greater certainty, where PIB, a Member, Owner or an Resident invites a person that is not subject to an Exclusion Order onto the Reserve Lands and then provides them oral or written notice to vacate those Reserve Lands, the person that is given notice to vacate must be given at least 24 hours to vacate the Reserve Lands or the Premises on the Reserve Lands, unless they are considered to be an immediate threat to Members, Owners, or Residents, at which case they may be immediately removed.

PROHIBITED PURPOSES

- 14.0 A person, whether or not they are a Member, that enters the Reserve Lands, or while on the Reserve Lands participates in, any of the following activities is deemed to be frequenting the Reserve Lands for a Prohibited Purpose if they:
- (a) Dispose or dump Waste on the Reserve Lands, other than:
 - (i) with the written permission of Council by Resolution or pursuant to a PIB bylaw or law; and
 - (ii) in a garbage bin or other receptacle located on Reserve Lands designated by PIB for public garbage disposal or Member-only garbage disposal.
 - (b) Engage in activities that are contrary to the *Criminal Code* or *Controlled Drugs and Substances Act*.

- 15.0 A person who is not a Member, Owner, or Resident, that enters the Reserve Lands is deemed to be frequenting the Reserve Lands for a Prohibited Purpose and to be Trespassing if they are:
- (a) Loitering;
 - (b) Engaging in Disorderly Conduct;
 - (c) Causing a disturbance or are threatening a person;
 - (d) Soliciting, Hawking, or Peddling;
 - (e) Flying an Unmanned or Manned Air Vehicle;
 - (f) Causing or allowing a Camping Unit to be parked or to remain on the Reserve Lands;
 - (g) Causing or allowing a vehicle to be parked or remain on the Reserve Lands overnight or for an illegal purpose;
 - (h) Grazing Livestock that are not under the ownership or control of the Owner or Resident;
 - (i) Off-Roading;
 - (j) Hunting, fishing, or trapping; or
 - (k) Removing berries, roots, trees, flowers, water, rocks, or any other natural resources from the Reserve Lands.

PART 4: ENFORCEMENT

DUTY TO REPORT

- 16.0 A person who has reasonable grounds to believe that a person is in trespass or is on the Reserve Lands for a Prohibited Purpose, must immediately file a Complaint with an Enforcement Officer.
- 17.0 On the demand of an Enforcement Officer who has reasonable grounds to believe that a person is on the Reserve Lands for a Prohibited Purpose or is in trespass, that person must provide the Enforcement Officer with his or her correct name and address.

FILING A COMPLAINT

- 18.0 If a Member, Owner, or Resident wishes to file a Complaint pursuant to Section 16.0, they must submit a formal written letter of complaint to the Enforcement Officer, including:
- (a) Who is the person you wish to complain about?
 - (b) What are the specific details of your complaint? If your complaint relates to a specific incident or incidents, it is useful to provide approximate dates, times, and records of what was said and who was present as far as you can recall;
 - (c) All relevant documents, including electronic transmissions, to support your complaint;
 - (d) Identify and list if there were any witnesses to any of the events; and
 - (e) How you or someone you know were badly affected by that person's conduct.
- 19.0 If a Member, Owner, or Resident needs to file a complaint verbally due to the urgent need to address either trespassing or prohibited purposes, the Member, Owner, or Resident has up to five (5) business days to file a written Complaint pursuant to Section 18.0 after they have filed a verbal complaint.

NOTICE TO VACATE

- 20.0 Where an Enforcement Officer believes on reasonable grounds that a person found on the Reserve Lands is on the Reserve Lands for a Prohibited Purpose or is in trespass, the Enforcement Officer may demand that person vacate the Reserve Lands.

FORCIBLY REMOVE

- 21.0 Where a person who has been demanded to vacate the Reserve Lands under Section 20.0 fails or refuses to do so, an Enforcement Officer may forcibly remove that person from the Reserve Lands.

VEHICLE TOWING AND IMPOUNDMENT

- 22.0 Where an Enforcement Officer believes on reasonable grounds that a person who is not a Member, Owner, or Resident has used a motor vehicle to enter the Reserve Lands for a Prohibited Purpose, the Enforcement Officer may have the vehicle towed and potentially impounded.

PART 5 – APPEAL PROCESS

- 23.0 The Chief and Council may form an Appeal Tribunal, by way of a Resolution, made up of five (5) members, including a member of Council.
- 24.0 The Appeal Tribunal will have jurisdiction in all matters relating to appeals from the Enforcement Officer's actions or decision related to enforcing this bylaw.
- 25.0 The Appeal must be submitted to the Chief and Council by the offender within five (5) days of the Enforcement Officer's decision and shall be commenced by filing a Notice of Appeal with Band Administrator.
- 26.0 The offender may request the Appeal Tribunal to issue, remove or modify any conditions imposed by the Enforcement Officer.
- 27.0 The Notice of Appeal must contain detailed reasons regarding why the Enforcement Officer's decision should be set aside.
- 28.0 The Band Administrator shall provide the Appeal Tribunal with:
- (a) a copy of the Notice of Appeal; and
 - (b) all documents filed with the Council in relation to the Application.
- 29.0 The Appeal Tribunal shall consider all submissions and documents filed with the Appeal and determine whether there are sufficient grounds to hear an appeal.
- 30.0 In the event the Appeal Tribunal determines that there are not sufficient grounds for an Appeal, it shall give a written decision with reasons. The Appeal Tribunal's decision shall be served on the offender and the person that has filed the Appeal, if that person is not the offender, in person, by registered mail or by electronic means.
- 31.0 In the event the Appeal Tribunal decides to hear the Appeal, it shall schedule the time, date and place for the Appeal Tribunal meeting and provide written notice to the offender and the person that has filed the Appeal, if that person is not the offender.
- 32.0 After considering the evidence, the Appeal Tribunal shall:
- (a) confirm the Enforcement Officer's decision; or
 - (b) vacate the Enforcement Officer's decision; or
 - (c) modify or establish conditions regarding the Enforcement Officer's decision.

- 33.0 The Band Administrator shall deliver a copy of the decision of the Appeal Tribunal within fourteen (14) days of the date of the meeting at which they considered the application to the offender and the person that has filed the Appeal, if that person is not the offender.

PART 6 – OFFENCES AND PENALTIES

OFFENCES

- 34.0 A person commits an offence if they:
- (a) Are in breach of Sections 14.0 through 15.0;
 - (b) Fail to provide an Enforcement Officer with their correct name and address, as required under Section 17.0;
 - (c) Fail or refuse to comply with a demand to vacate the Reserve Lands that is made by an Enforcement Officer under Sections 20.0, 21.0, and 22.0; or
 - (d) Resists or interferes with an Enforcement Officer that is acting under Sections 20.0, 21.0, and 22.0.

PENALTIES

- 35.0 A person that is found guilty of an offence under Section 34.0 is liable to a fine that is issued by the Enforcement Officer, not exceeding \$1,000 per day or to imprisonment, upon conviction, for a term not exceeding three (3) months, or both.
- 36.0 Each day a violation of this Bylaw continues will be deemed to be a separate offence for which a fine or imprisonment may be imposed.
- 37.0 A fine imposed under Section 35.0 is payable directly to PIB.
- 38.0 The Provincial Court of British Columbia, the Supreme Court of British Columbia or the Federal Court of Canada, Trial Division are specifically granted jurisdiction to enforce this Bylaw, including, but not limited to, any penalties.

FEES AND FORMS

- 39.0 The Council may, by Resolution and in accordance with this Bylaw, establish, correct, revise or update the terms of any applicable fee schedules, forms, protocols or other related documentation which complement and support this Bylaw, and will make a copy of same available for viewing free of charge at the administrative offices of the PIB and available for distribution at a nominal charge.

PART 7 - AMENDMENTS

- 40.0 Minor amendments to this Bylaw that do not affect the substantive terms may be made by Resolution.
- 41.0 Amendments to this Bylaw which affect the substantive terms may be initiated by a Resolution.
- 42.0 Once Council approves the draft amendments by way of a Resolution the Council will post the proposed amendments at the PIB administration office and other places on the PIB website at least seven (7) days before the date that it proposes to formally approve the amendments and invite comments.
- 43.0 Council may decide to further amend this Bylaw as a result of comments received, in which case the process set forth in sections 41.0 and 42.0 will be repeated, or approve the amendments. Upon the Council approving the amendments by way of a Resolution those amendments immediately come into effect.
- 44.0 At the meeting, the Council shall explain the proposed amendments and receive comments and recommendations from the Electors and, if they deem it appropriate, have the Electors present vote on the draft amended law.

PART 8 – EFFECTIVE DATE

EFFECTIVE DATE

This Penticton Indian Band *Trespass Bylaw, No. 2023-02* comes into force and effect on the date it is passed by a quorum of Council and published. The Bylaw was:

- Read a first time by Council at a duly convened meeting held on the April 13, 2021;
- Presented to the Membership at an August 10, 2022 Band meeting;
- Read a second time by Council at a duly convened meeting held on the November 8, 2022;
- Read a third time by Council at a duly convened meeting held on the January 17, 2023; and
- Read for a fourth time and received a positive vote from ninety-five (95) percent of registered PIB Membership, 18 years of age or older on July 26th, 2023, attending the Special Band Meeting.

Enacted: August 4, 2023

The Chief and Council of the Penticton Indian Band are empowered to act on behalf of the Penticton Indian Band (PIB) and met in quorum at a duly convened Council meeting the fourth day of August 2023 where we accepted the results of the July 26, 2023 PIB membership vote, and hereby passed this *Trespass Bylaw, No. 2023-02*.

Voting in favour of the Bylaw are the following members of the Council:

yilmíx^wm Greg Gabriel

səx^wk^wínmaʔm Timothy Lezard

səx^wk^wínmaʔm Dolly Kruger

səx^wk^wínmaʔm Suzanne Johnson

səx^wk^wínmaʔm Vivian Lezard

səx^wk^wínmaʔm Fred Kruger

səx^wk^wínmaʔm Charlene Roberds

səx^wk^wínmaʔm Lesley Gabriel

səx^wk^wínmaʔm Clint Gabriel