

# LAX KW'ALAAMS

Lax Kw'alaams Trespassing and Conduct By-Law, No.1

## Being a by-law respecting trespass and disorderly conduct

### PREAMBLE

#### WHEREAS:

A. The people of the Lax Kw'alaams have inherent rights, customs and traditions, and the right to self-government.

B. Subsections 81(1) (c), (d) (p), (q) and (r) of the Act allow the Council of a Band to make certain by-laws for the observance of law and order, the prevention of disorderly conduct and nuisance, removal and punishment of persons trespassing or frequenting the reserve for prohibited purposes, and any matter ancillary thereto.

C. Council for the Lax Kw'alaams deems it to be expedient and necessary, for the benefit, comfort and safety of the Members of Lax Kw'alaams, to provide for the prevention of disorderly conduct on our Lands and removal and punishment of persons trespassing thereon.

**NOW THEREFORE** Council of Lax Kw'alaams hereby enacts this Trespassing and Conduct By-Law, No. 1.

#### 1. SHORT TITLE

This By-Law may be cited as the "Lax Kw'alaams Trespassing and Conduct By-Law".

#### 2. INTERPRETATION

In this By-Law:

- (a) "**Act**" means the *Indian Act*, R.S.C. 1985, c-1-5;
- (b) "**By-Law**" means this Lax Kw'alaams Trespassing By-Law No. 1
- (c) "**Council**" means Council of Lax Kw'alaams, as defined in the *Act*;
- (d) "**Disorderly Conduct**" means any current or past act or behaviour, including, but not limited to:
  - i. Physical fighting;
  - ii. Making or causing unreasonable noise;
  - iii. Using abusive or threatening language;
  - iv. Using offensive or indecent gestures or displays;
  - v. Being drunk on public property;

- vi. Harassment of Members on reserve;
- vii. Exposing, firing or discharging any gun, pistol or other firearm, or using or threatening to use any other article as a weapon, except in the defence of life or property; or
- viii. Interfering in any manner with the orderly conduct of commercial, administrative, educational, recreational, health care, religious or ceremonial activities on the Lands;
- ix. Removing, defacing, destroying, damaging, mutilating, or in any manner whatsoever vandalizing public property on Lands; and
- x. Engaging in fraudulent, deceitful or opportunistic financial transactions with vulnerable Members which exploit the vulnerable status of such individuals,

that disrupts public order on the reserve, scandalizes the community, or cause public inconvenience, annoyance or alarm;

- (e) “**Lands**” means all of those lands defined as “Reserve” within the meaning of the *Act* and set apart for the use and benefit of the Lax Kw’alaams;
- (f) “**Lax Kw’alaams**” means the Lax Kw’alaams, a “band” within the meaning of the *Act*;
- (g) “**Member**” means a person whose name appears on the Band List of the Lax Kw’alaams, or who is entitled to have their name appear on the Band List of Lax Kw’alaams; and
- (h) “**Officer**” means any police officer, police constable or other person charged with the duty to preserve and maintain the public peace, and any person appointed by the Council for the purpose of maintaining law and order on the reserve.

### 3. APPLICATION

This By-Law applies to all persons located on Lax Kw’alaams Lands.

### 4. PROHIBITION ON ACCESS TO LANDS

4.1 A person, other than a person referred to in Section 4.2, who conducts on the Lands any of the following activities, namely:

- (a) hunting, fishing or trapping;
- (b) loitering; or
- (c) soliciting financial assistance.

Shall be deemed to be frequenting the reserve for a prohibited purpose.

4.2 Section 4.1 does not apply to:

- (a) a person who is a Member or lawful resident of the Lands; or
- (b) a person who, under By-Law of the Council, holds a valid license to conduct any activity referred to therein or is otherwise permitted to conduct that activity.

## **5. DISORDERLY CONDUCT**

5.1 A person who commits an act of Disorderly Conduct is guilty of an offence.

## **6. ENFORCEMENT**

6.1 The Council may banish any person from the Lands or other property, including the ferry servicing the Lands, for such periods as they determine in their sole discretion by passing a Band Council Resolution if in the opinion of the Band Council that person has committed or will likely commit Disorderly Conduct.

6.2 Every person who fails or refuses to comply with a provision of Sections 4 or 5 of this By-Law commits an offence.

6.3 An Officer may order any person who is engaging in any Disorderly Conduct to stop such conduct immediately.

6.4 An Officer may order any person who trespasses on the Lands or who engages in Disorderly Conduct to leave the Lands immediately.

6.5 Where a person who has been ordered to refrain from engaging in Disorderly Conduct, within a specified period, fails or refuses to comply with the order, an Officer may take such reasonable measures as are necessary to stop the Disorderly Conduct.

6.6 Where a person has been ordered to leave the Lands fails or refuses to do so, an Officer may take such reasonable measures as may be necessary to remove the person from the Lands.

6.7 No person shall fail or refuse to comply with an order made under subsection 6.3 to leave the reserve, or resist or interfere with an officer acting under subsection 6.4.

## **7. PENALTY**

7.1 Every person who commits an offence under this By-Law is liable on summary conviction:

- (a) For a first offence: from the Lands for 12 months a fine of not more than \$500.00 imposed by Council;
- (b) For a second offence: a fine of not more than \$1,000.00 imposed by Council;
- (c) For a third offence: recommendation by Council to the courts of competent jurisdiction for a jail term not exceeding thirty (30) days.

- (d) And for any alleged offence banishment from Lands for such length of time as the Council may decide.
- 7.2 Each offence of this By-Law will be deemed to be a separate offence for which penalties may be imposed in accordance with Section 7.1.
- 7.3 A person who commits an offence under this By-Law is subject to the penalties in this By-Law in addition to any penalties to which a person may be subject for contravention of any other federal or provincial British Columbia legislation or regulation.
- 7.4 All decisions of the Council in imposing penalties under Section 7.1 of this By-Law shall be documented in a Band Council Resolution (each, a “**Contravention BCR**”) at a duly convened meeting of the Council, which Contravention BCR shall set out the reasons for the penalties imposed. A copy of the Contravention BCR shall be immediately provided to the offender.
- 7.5 In deciding whether to impose the penalties under Section 7.1 of this By-Law, the Council shall consider the severity of the offence, the number and frequency of prior offences made by the offender under this By-Law, any written submission of the offender and any other consideration the Council deems relevant.
- 7.6 Any person penalized under Section 7.1 of this By-Law shall have the right to appeal the Council’s decision to impose such penalty, and such appeal shall be made pursuant to the appeal provisions set out in Section 8 of this By-Law.
- 7.7 Council may make a BCR respecting any matter that Council considers necessary or advisable to meet or further the objectives of this By-Law, including the imposition of additional or different penalties under this By-Law.

## **8. APPEALS**

- 8.1 Any individual who receives a penalty under Section 7.1 and is issued a Contravention BCR may appeal the decision (an “**Appeal**”).
- 8.2 To Appeal the Council’s decision under the Contravention BCR, the offender must, within twenty (20) days of receipt of the Contravention BCR, provide notice in writing to the Council that the offender is exercising their right to Appeal the decision in accordance with this Section 8 of the By-Law (the “**Appeal Notice**”).
- 8.3 Within ten (10) days of Council receiving notice of an Appeal Notice, Council must form an independent and neutral Appeal Committee and notify the Appeal Committee of the appeal.
- 8.4 The members of the Appeal Committee shall be appointed by Council and shall comprise of three (3) Lax Kw’alaams Members.
- 8.5 In the event a person appointed to the Appeal Committee has a real or perceived conflict of interest in the matter coming before the Appeal Committee, the person shall fully

disclose the nature of the interest to Council and Council shall decide if that person need withdraw from adjudicating on the matter.

- 8.6 Within fifteen (15) days of the Appeal Notice being provided to the Appeal Committee, a hearing must be held at which both the offender and Council shall have the opportunity to plead their respective cases. In doing so, the offender and Council shall have the opportunity to present oral and/or written evidence relevant to the decision that is being appealed.
- 8.7 Upon the conclusion of the hearing, the Appeal Committee shall have the unfettered discretion to either:
- (a) Uphold the decision of the Contravention BCR;
  - (b) Overturn the decision of the Contravention BCR; or
  - (c) Change the terms of the penalty under the Contravention BCR.
- 8.8 In making their decision on appeal, the Appeal Committee shall consider the following factors:
- (a) The nature and severity of the offence;
  - (b) Any attempts made by the offender at rehabilitation, at making reparations, or otherwise attempting to repair any harm already done or preventing future harm;
  - (c) The connection of the offender to the Lax Kw'alaams and its Members;
  - (d) The extent to which the penalty in the specific case contributes to the objective of this By-Law; and
  - (e) Any other consideration that the Appeal Committee deems relevant.
- 8.9 The Appeal Committee shall communicate their decision on the appeal within ten (10) days of the hearing date.
- 8.10 Decisions made by the Appeal Committee are final and are not subject to appeal by any court or tribunal.

## **9. GENERAL**

- 9.1 If any portion of this By-Law is for any reason held to be invalid by a decision of a court of competent jurisdiction, the invalid portion will be severed from and not affect the remaining provisions of this By-Law.
- 9.2 The provisions of this By-Law apply to all Lands of Lax Kw'alaams.

**THIS BY-LAW IS HEREBY** made at a duly convened meeting of the Council of the Lax Kw'alaams this 16<sup>th</sup> day of January , 2025.