



SIKSIKA NATION TRESPASS BY-LAW NO. 2021-01

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TRESPASS BY-LAW

BEING A BY-LAW OF THE SIKSIKA NATION WITH A PURPOSE OF ESTABLISHING RULES FOR THE REMOVAL AND PUNISHMENT OF PERSONS TRESPASSING ON THE SIKSIKA NATION RESERVE #146 OR FREQUENTING THE RESERVE FOR PROHIBITED PURPOSES.

WHEREAS the Siksika Nation has and continues to exercise an inherent Aboriginal and Treaty Right of Self-government that is recognized and affirmed by Section 35 of the *Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, 1982 c. 11 and is protected by Treaty No. 7, 1877; and

WHEREAS the Siksika Nation from time immemorial undertook issue of trespassing to maintain Pomiikapi (peace and harmony) with enforcement by Siksika Traditional Societies; and

WHEREAS the Siksika Nation continues to strive to ensure that matters related to trespass are carried out in a conscientious, respectful, peaceful and prompt manner; and

WHEREAS pursuant to Section 81 of the *Indian Act*, R.S.C. 1985, c. I-5 (the "*Indian Act*"), a council may make by-laws not inconsistent with the Indian Act and regulations made thereunder for any or all of the purposes set out in paragraphs 81(1)(c), (d), (p), (q) or (r) thereof; and

WHEREAS the Council of the Siksika Nation deems it to be expedient and in the best interests of the Siksika Nation, and necessary for the benefit, comfort and safety of residents of the Reserve 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 punishment of persons trespassing on the Reserve or frequenting the Reserve for prohibited purposes;

NOW THEREFORE, COUNCIL OF THE SIKSIKA NATION, DULY ASSEMBLED, ENACTS AS FOLLOWS:

PART I – TITLE, DEFINITIONS, AND APPLICATION

1. SHORT TITLE

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

2. DEFINITIONS

2.01 In this By-law, unless the context otherwise requires:

- (a) **"Band Council Resolution"** means a written resolution signed and adopted by a quorum of Council at a duly convened meeting;
- (b) **"Building"** includes any structure used by a Person for shelter, accommodation or storage and includes, but is not limited to houses, trailers, mobile homes, sheds, tents and barns;
- (c) **"By-law"** means this Trespass By-law;
- (d) **"Citizen"** means a citizen of the Nation under the *Siksika Nation Membership Code & Regulations*;
- (e) **"Council"** means the Council of the Nation, comprised of the Chief and Councilors, duly elected from time to time under the *Siksika Nation Customary Election Code*;
- (f) **"Court"** means a court of competent jurisdiction in the Province of Alberta;
- (g) **"Hawking and Peddling"** means and includes going from place to place on the Reserve to buy, sell, or otherwise deal in wares or merchandise or services, or offering or exposing for sale on the Reserve to any Person, by means of samples, patterns, cuts, blueprints, or pictures, merchandise to be afterwards delivered or shipped onto the Reserve;
- (h) **"Non-Citizen"** means a Person who is not a Citizen of the Nation under the *Siksika Nation Membership Code & Regulations*;
- (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 the details of the order, and
 - (iii) the procedure by which the named Person can apply for a review of the Notice of Order;
- (j) **"Occupant"** means:

- (i) a Person who is in lawful possession of a Premises pursuant to a Band Council Resolution, Directive, Motion or other form of allocation by Council, or
 - (ii) 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 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:
- (i) *Police Act*, R.S.A 2000, c. P-17,
 - (ii) *Royal Canadian Mounted Police Act*, R.S.C., c. R-10,
 - (iii) *Security Services and Investigators Act*, S.A. 2008, c S-4.7,
 - (iv) *Peace Officer Act*, S.A. 2006, c P-3.5, and
 - (v) any by-law, regulation or another form of legislation enacted by Council;
- (l) **"Person"** includes an association, society, corporation or a partnership;
- (m) **"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 Citizen's private use, or any Building or fenced lot used for a residence, business for or by the Nation;
- (n) **"Removal"** means where Council has issued a Band Council Resolution, ordering the removal of a Person from the Reserve pursuant to the *Siksika Nation Community Safety By-law*;
- (o) **"Reserve"** means the Siksika Indian Reserve No. 146, or any lands reserved for the Siksika Nation within the meaning of the *Indian Act*;
- (p) **"Nation"** means the Siksika Nation;
- (q) **"Trespass"** means any act that constitutes trespass under common law, and includes, without limitation, the following:
- (i) entering or remaining in or on a Premises without lawful authority or the permission of the Occupant, and
 - (ii) entering or remaining on the Reserve without lawful authority or without the permission of either an Occupant or the Nation,

and includes any injury or damage to the Reserve or a Premises on the Reserve of any type whatsoever caused by or resulting from entering on or remaining on the Reserve without lawful justification; and

- (r) **"Trespassing"** means being engaged in any conduct which constitutes a Trespass.

3. APPLICATION

3.01 This By-law applies on the Reserve.

3.02 Where any federal or provincial law, or any other Nation by-law applies to any matter covered by this By-law, compliance with this By-law will not relieve a Person from also complying with the provisions of any other applicable law, regulation or by-law.

PART II – REGULATION OF TRESPASS

4. TRESPASS

4.01 No Person shall Trespass on the Reserve.

5. PRESUMPTION OF TRESPASS

5.01 A Non-Citizen on the Reserve is presumed to be trespassing until proven otherwise.

6. PROHIBITED PURPOSES AND TRESPASS

6.01 A Non-Citizen, other than a Person referred to in section 7, who conducts any of the following activities on the Reserve:

- (a) hunting, fishing or trapping;
- (b) Hawking and Peddling;
- (c) loitering;
- (d) camping;
- (e) operating an all-terrain vehicle or snowmobile or other motorized or non-motorized vehicle;
- (f) dumping refuse or waste; and
- (g) any other activity that is prohibited by federal or provincial law or by Nation by-law,

shall be deemed to be frequenting the Reserve for a prohibited purpose and to be Trespassing on the Reserve.

7. LAWFUL JUSTIFICATION

- 7.01 Sections 4.01, 5.01 and 6.01 do not apply to the following Persons who have a right of access to the Reserve:
- (a) Citizens, 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 Citizen and who, being accompanied by that Citizen and while obeying all laws of general application, will share that Citizen'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 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.

PART III – NOTICES AND SIGNS

8. DESIGNATION OF AREAS

- 8.01 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.

9. ENTRY PROHIBITED

9.01 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.

10. ABILITY TO GIVE NOTICE

10.01 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.

11. METHOD OF GIVING NOTICE

11.01 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.

12. POSTING OF SIGNS

12.01 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)".

13. DESTRUCTION OF SIGNS

13.01 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.

14. NOTICE NOT REQUIRED

14.01 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 IV – ADMINISTRATION AND ENFORCEMENT

15. ENFORCEMENT

- 15.01 If an Officer reasonably believes a Person is Trespassing on the Reserve the Officer may order that Person to leave the Reserve immediately.
- 15.02 If an Officer reasonably believes a Person is frequenting the Reserve for a prohibited purpose under section 6, the Officer may order that Person to leave the Reserve immediately.
- 15.03 Where a Person fails or refuses to obey an order made under section 15.01 or 15.02, an Officer may take such reasonable measures as may be necessary to remove the Person from the Reserve.

16. NOTICE OF ORDER

- 16.01 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.
- 16.02 A Notice of Order under section 16.01 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.

17. POWER TO ENSURE COMPLIANCE WITH THE BY-LAW

- 17.01 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.

18. OBSTRUCTION OF DUTIES

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

19. AVAILABILITY OF OTHER ACTION OR REMEDY

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

PART V - PENALTIES

20. OFFENCE

20.01 A Person who:

- (a) violates a provision of this By-law;
- (b) is found on the Reserve, after Council has issued a Band Council Resolution ordering their Removal under the *Siksika Nation Community Safety By-law*;
- (c) is found residing on the Reserve without a valid permit under the *Siksika Nation Residency By-law*;
- (d) who permits any act or things to be done in violation of this By-law; or
- (e) who neglects to do or refrains from doing any act or thing required to be done under the provisions 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,

21. SEPARATE CHARGE

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

22. PENALTIES

22.01 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.

22.02 Where a Person is in default of payment of a fine under this By-law, the Nation may, in its sole discretion as it deems appropriate, withhold an 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.

23. RESPONSIBILITY FOR DAMAGE

23.01 In addition to all other penalties provided herein, any Person causing damage or loss to any Nation property within the Reserve will be responsible for the cost of repairing or replacing such damage or loss.

PART VI – GENERAL

24. MISCELLANEOUS

- 24.01 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, or other direction.
- 24.02 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.
- 24.03 Every provision of this By-law is independent of all other provisions, if any provision 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.
- 24.04 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.
- 24.05 Nothing in this By-law affects the civil liability of a Person who contravenes any provision of this By-law.

25. AMENDMENT

- 25.01 This By-law may be amended by Band Council Resolution.

26. EFFECTIVE DATE

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