

A Bylaw to Establish a Trespass Bylaw on the Tk'emlúps te Secwépemc

Bylaw Number 2023-01

Approved by Chief and Council the 14<sup>th</sup> day of August 2023

**WHEREAS** section 35 of the *Constitution Act*, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11 recognizes and affirms the existing aboriginal self-government and treaty rights of the aboriginal peoples of Canada;

**AND WHEREAS** the Council of the Tk'emlúps te Secwépemc desires to make a Trespass and Nuisance Bylaw on the Tk'emlúps te Secwépemc;

**AND WHEREAS** the Council of the Tk'emlúps te Secwépemc is empowered to make such a bylaw pursuant to sections 81(1)(c), (d), (m), (p), (q), and (r) of the *Indian Act*, RSC 1985, c I-5;

**AND WHEREAS** the Council of the Tk'emlúps te Secwépemc did enact Bylaw No. 1974-1 on the 22<sup>nd</sup> day of May 1974, and wishes to repeal the said bylaw No. 1974-1 and replace it with this bylaw;

**NOW THEREFORE** the Council of the Tk'emlúps te Secwépemc hereby makes the following bylaw.

**1. Short Title**

This bylaw may be cited as the *Tk'emlúps te Secwépemc Trespass and Nuisance Bylaw*.

**2. Definitions**

In this law, the following definitions are applied:

- (a) "Band" means the Tk'emlúps te Secwépemc.
- (b) "Band Land" means reserve lands of the Tk'emlúps te Secwépemc that are not held under Certificate of Possession.
- (c) "Banish" means – means to prohibit by Resolution any person from residing on or accessing the Band Lands and has the effect of removing any residence or access rights to which that person may otherwise be entitled.
- (d) "Certificate of Possession Holder" a person entitled to the use and occupation of a parcel of reserve land duly allotted to him/her under Certificates of Possession or Notice of Entitlement.
- (e) "Council" means the Chief and Councilors of the Band duly elected or holding office and sworn into office in good standing under the relevant provisions of the Band's Custom Elections Regulation.
- (f) "Invitee" means a person who:
  - (i) is not a Member;

- (ii) is invited by a Member to reside on or have access to Band Land or Premises; and,
  - (iii) has permission from Tk'emlúps te Secwépemc to reside on or have access to Band Land or Premises.
- (g) "Member" means a person who is a member of the Tk'emlúps te Secwépemc Band and is registered on the Band List as defined in the Indian Act or who is entitled to have his or her name appear on the Band List.
- (h) "Nuisance" means any act, behaviour or condition that:
  - (i) endangers the lives, safety, health, property or comfort of the public or of any person;
  - (ii) materially impairs or obstructs the use and enjoyment of a person's property, otherwise than by direct physical interference; or,
  - (iii) includes any of the acts, behaviours and conditions described in Section 16, unless that act, behaviour or condition is necessary for carrying on a means of livelihood authorized by Council;
- (i) "Occupier" means a person who;
  - (i) pursuant to a Resolution or other form of allocation by Council, lawfully occupies or is in lawful possession of a Premises; or,
  - (ii) 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.
- (j) "Peace Officer" means a peace officer described in the *Criminal Code* (Canada) and includes an officer appointed by the Council to enforce the bylaws of the Tk'emlúps te Secwépemc.
- (k) "Premises" means any place within the Tk'emlúps te Secwépemc, including, but not limited to buildings, structures, and lands.
- (l) "Resolution" means a resolution of the Council.

### **3. Trespass an Offence**

Every person who is not acting under a right or authority conferred by a Tk'emlúps te Secwépemc bylaw or a resolution of Council and who,

- (a) resides on the Band Lands without a right to do so under Section 6;
- (b) accesses the Band Lands without a right to do so under Sections 7 and 8;

- (c) without the express permission of the occupier, the proof of which rests on the person,
  - (i) enters on Premises when entry is prohibited under this bylaw, or
  - (ii) engages in an activity on Premises when the activity is prohibited under this bylaw;
- (d) does not leave the Premises immediately after he or she is reasonably directed to do so by the occupier of the Premises or a person authorized by the occupier; or,
- (e) is reasonably deemed by Resolution to be threatening the peace, health or safety of people lawfully residing on or accessing Band Lands; impeding the ability of the Band to govern; or impeding the ability of the Band or its employees or agents to effectively function,

is guilty of an offence of trespass.

#### **4. Prohibited Purposes**

- (a) A non-member, other than a person referred to in Section 6 or Section 7, who conducts any activity that is prohibited by federal or provincial law, this or any other Tk'emlúps te Secwépemc bylaw, or any court order shall be deemed to be frequenting the Band Land for a prohibited purpose and to be trespassing on the Band Land.
- (b) Prohibited purposes under this bylaw referred to in subsection (a) may include, but are not limited to, the following:
  - (i) hunting, fishing or trapping;
  - (ii) hawking and peddling;
  - (iii) loitering;
  - (iv) hiking or camping;
  - (v) dumping refuse or waste;
  - (vi) para-jumping, parachuting, hang-gliding, or other air resistance sporting activity;
  - (vii) operating an all-terrain vehicle or snowmobile or other motorized or non-motorized vehicle, including a mountain bike; or
  - (viii) operating an unmanned aerial vehicle, remote controlled model aircraft, drone, or any other similar device without prior written authorization of Chief and Council.

## **5. Community Land**

Where the Premises are or include community land, the Tk'emlúps te Secwépemc is the occupier and the rights and powers of the occupier are exercised by Chief and Council or by a person designated by Chief and Council to exercise some or all of its rights or powers under this bylaw.

## **6. Right of Residence**

The following persons have a right to reside on Tk'emlúps te Secwépemc lands:

- (a) members who have been allocated a residential lot by Council, and their spouses and children;
- (b) members with a registered interest in Tk'emlúps te Secwépemc land;
- (c) any invitee of a member referred to in subsection (a) or (b) as a temporary visitor; or,
- (d) lessees and permittees, in accordance with the provisions of the granting instrument.

## **7. Right of Access**

The following persons have a right of access to Tk'emlúps te Secwépemc lands:

- (a) Members and their spouses and children;
- (b) lessees;
- (c) lessee's invitees as a temporary visitor;
- (d) a person granted a right of access under a permit, with proof of permit;
- (e) a person who is authorized by a government body or any other public body, established by or under an enactment of the First Nation Parliament or the Province to establish, operate or administer a public service, to construct or operate a public institution or to conduct a technical survey; or
- (f) a person authorized in writing by the Council or by a Tk'emlúps te Secwépemc bylaw.

## **8. Public Access**

Any individual may have access to Tk'emlúps te Secwépemc land for any social or business purposes, if

- (a) the individual does not trespass on occupied land and does not interfere with any interest in land;
- (b) the individual complies with all applicable bylaws; and
- (c) no resolution has been enacted barring that individual.

**9. Council Permission to Invitees**

- (a) Any person who asserts a right of access as an invitee under Section 6(c) or 7(c) must meet the definition of “Invitee” in Section 2(e).
- (b) Invitees are encouraged to obtain written confirmation of the Band’s permission to reside on or access the Band Lands or Premises.
- (c) Permission of the Band is deemed to exist unless the person affected is notified otherwise in a form of notice from the Band in accordance with Section 12.
- (d) The Band can revoke permission confirmed under subsection (a) or deemed under subsection (b) at any time by providing notice of such revocation in accordance with Section 12.

**10. Defences**

- (a) Except as varied by this bylaw, common law defences to trespass are preserved.

**11. Prohibition of Entry**

Entry on premises may be prohibited by notice to that effect posted on the premises; and entry is prohibited without any notice on premises that:

- (a) is a garden, field or other Band Land that is under cultivation, including a lawn, orchard, vineyard, and premises on which trees have been planted and woodlots on Band Land that used primarily for agricultural purposes; or
- (b) is enclosed in a manner that indicates the occupier's intention to keep persons off the premises or to keep animals on the premises.

**12. Method of Giving Notice**

A notice under this Bylaw may be given:

- (a) orally;
- (b) in writing;

- (c) by means of signs, pursuant to Section 13, 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 to which it applies; or,
- (d) by resolution duly published unless delivery to a person or Member is specifically provided for in this bylaw.

**13. Proof of Receiving Notice Not Required**

A person may be found guilty of an offence under this bylaw regardless of whether notice under Section 12 was received.

**14. Form of Sign**

- (a) A sign naming an activity or showing a graphic representation of an activity is sufficient for the purpose of giving notice that the activity is permitted.
- (b) A sign naming an activity with an oblique line drawn through the name or showing a graphic representation of an activity with an oblique line drawn through the representation is sufficient for the purpose of giving notice that the activity is prohibited.

**15. Destruction of Signs an Offence**

Every person who tears down, removes, damages, defaces, or covers a sign lawfully posted under this bylaw is guilty of an offence.

**16. Nuisance an Offence**

Every person who creates, causes, or permits a Nuisance on Band Lands, including but not limited to any of the following acts, behaviours or conditions:

- (a) the abandonment of cars, vehicles, recreational vehicles or trailers, equipment, household appliances or furniture or parts of cars, vehicles, household appliances or furniture;
- (b) the storage of abandoned cars, vehicles, equipment, household appliances or furniture, or parts of cars, vehicles, household appliances or furniture;
- (c) the dumping or storage of tires, garbage or other refuse except by permit;
- (d) any other littering;
- (e) the burning of tires, garbage, or other refuse;
- (f) the discharge of any substance into the air or water;
- (g) the discharge of dust, smoke, or similar matter without taking proper precautions to prevent interference with neighbouring properties;

- (h) outdoor public urination or defecation;
- (i) unreasonable noise, including loud music, people shouting and noise from animals;
- (j) shining or projecting outdoor lights directly into the living or sleeping areas of adjacent residences or otherwise so as to interfere with the reasonable enjoyment of neighbouring properties;
- (k) soliciting;
- (l) unlawful sale, furnishing or distribution of alcoholic beverages or controlled or illegal substances; or,
- (m) carrying open liquor, except while on Premises property either lawfully occupied by the person or as an invited guest of the lawful occupier,
- (n) fighting;

is guilty of an offence.

#### **17. Council Authority to Regulate Premises**

- (a) Council may make a resolution setting out the rules and regulations for the use of any premises on community land, including arenas, community halls, recreational facilities, pools, baseball and soccer fields, schools, health clinics and similar premises.
- (b) Council may prohibit, by resolution, entry or activity on premises located on community land, provided that notice is given that the entry to the premises is prohibited or one or more activities are prohibited on the premises.
- (c) Council may regulate, by resolution, the hours or seasons in which premises located on Band Land may be used for specific purposes, impose limits on the activities to be engaged in and may impose a requirement for a permit to engage in such activities or purposes.
- (d) Every person who fails to comply with a resolution made pursuant to this section, is guilty of an offence.

#### **18. Council Authority to Impose Remedies**

- (a) This section may apply to any person with respect to any Band Land or Premises, whether or not that person is a member.
- (b) Council may make a Resolution providing that any person who breaches a Resolution, rule or regulation authorized under this bylaw, or who is charged with



a violation of this bylaw, is banned from entering onto or remaining on any or all Premises or Band Lands for such period of time as set out in the resolution.

- (c) Council may make a Resolution to apply one or more of the remedies outlined in subsections (d) – (g) to any person who has caused:
  - (i) any of the circumstances described in Section 4 (Prohibited Purposes) with respect to frequenting Band Lands or any Premises;
  - (ii) any of the circumstances described in Section 16 (Nuisance an Offence) with respect to frequenting Band Lands or Premises;
  - (iii) any circumstance occasioned by violence on Band Lands or any Premises;
  - (iv) any circumstance Council determines to pose a danger to Band Lands, Premises, or the public and personal safety of individuals entitled to the use and occupation of Band Lands or Premises; or,
  - (v) public or private mischief.
- (d) Council may impose a curfew on any person with respect to all or any Band Land or Premises, which may prescribe hours, dates or times when that individual is permitted or prohibited from attending at or on those premises, or restricting that individual to specified premises during specific hours, dates or times, and shall arrange for personal service of a resolution to that effect upon the person unless service can only be effected by other forms of notice pursuant to this bylaw.
- (e) Council may exclude a person at all times from all or any Band Land or Premises on Band Land and shall arrange for personal service of a resolution to that effect upon the person unless service can only be effected by other forms of notice pursuant to this bylaw.
- (f) Council may banish a person permanently or for a specified period of time from all Band Lands.
- (g) Council may direct a person to cease causing a nuisance and direct them to remediate any such nuisance within a reasonable period of time.
- (h) Council shall make best efforts to effect service of resolutions made pursuant to this section, shall arrange for all such resolutions to be posted on Band Land as it sees fit and shall inform bylaw enforcement of such resolutions in a timely manner.
- (i) Every person who fails to comply with a resolution made pursuant to this section, is guilty of an offence.

- (j) A person who is the subject of a resolution under this section and who received or has notice of the resolution may appeal to Council for it to be altered or rescinded. Council will prescribe a form for such an appeal to be commenced and may deal with that appeal on the basis of the representations submitted in writing or direct a personal attendance to give the appellant an opportunity to present his or her case. Council's decision in the matter of an appeal is final and not subject to further review by Council.

## **19. Parties to the Offence of Trespass or Nuisance**

- (a) A person other than an individual who commits an offence under this bylaw, is also guilty of an offence under this bylaw as a party to that offence if that person is shown to be complicit in the commission of the offence by:
  - (i) purporting to give permission for entry to the premises where that person is not, or was not at the relevant time, an occupier or otherwise authorized to give such permission under this bylaw;
  - (ii) being the employer of the individual who committed acts of trespass, directed or counselled him or her to do so as part of their employment; or
  - (iii) being the principal of the individual who committed acts of trespass, directed or counselled him or her to do so as an agent.
  - (iv) being a person in authority over an individual, counsels or directs that Individual to commit and act of trespass;
  - (v) knowing that conduct would be a trespass, assists an individual by providing him or her with the means, tools or equipment to commit the trespass; or,
  - (vi) permitting the nuisance to take place on Premises where that person is an occupier.
- (b) A person may be a party to the offence under this act whether or not the acts subsequent to entry exceeded the scope of such counselling, authorization, direction or assistance and whether or not any other individual was convicted under this bylaw in respect of the same incident of trespass or nuisance.

## **20. Powers and Authority of Peace Officer**

A peace officer has the authority to enforce the provisions of this bylaw. Such enforcement includes, but is not limited to:

- (a) entering the Band Lands or Premises for the purpose of inspecting and determining whether all Resolutions, prohibitions and requirements are being met in relation to any matter for which the provisions of this bylaw apply;

- (b) serving Resolutions made under Section 18
- (c) enforcing any Resolution made under Section 18 by removing any person from, or barring any person's entry to, the Band Lands or Premises
- (d) ordering any person who is trespassing contrary to Section 3 to leave or vacate the Band Lands or Premises immediately;
- (e) ordering any person who is creating, causing, or permitting a nuisance, contrary to Section 16, to cease doing so and remedy the nuisance within a reasonable period of time;
- (f) removing a person from the Band Lands or Premises who fails or refuses to leave the Band Lands or Premises after being ordered by a peace officer to do so;
- (g) arresting without warrant any person found on the Band Lands or Premises if the peace officer believes on reasonable and probable grounds that the person is committing, or has committed, an offence under this bylaw; or,
- (h) any other action reasonable required for enforcement of this bylaw in the reasonable opinion of the peace officer, including the use of reasonable force.

## **21. Obstruction an Offence**

Every person who obstructs, interferes with or hinders Council or a peace officer in carrying out their duties and responsibilities under this bylaw is guilty of an offence.

## **22. Offences and Penalties**

- (a) A person who violates any of the provisions of this bylaw commits an offence and is liable on summary conviction to a fine not exceeding One Thousand Dollars (\$1000) or to imprisonment for a term not exceeding thirty (30) days, or to both.
- (b) Each day that an offence against this bylaw continues shall be deemed a separate and distinct offence.
- (c) Any penalty imposed pursuant to this bylaw shall be in addition to, and not in substitution for, any other penalty or remedy imposed pursuant to any other applicable statute, bylaw, or regulation.

## **23. Availability of Other Action or Remedy**

- (a) Nothing in this Bylaw extinguishes the right of a person, including the Tk'emlúps te Secwépemc, to bring a civil action for damages arising out of a trespass on any premises on Band Land, and all civil remedies for trespass are preserved.

- (b) Nothing in this Bylaw precludes the Tk'emlúps te Secwépemc from pursuing any other enforcement or remedy provided for in any other law or Tk'emlúps te Secwépemc bylaw.

#### **24. Severability**

If any provision of this bylaw is held to be illegal or invalid by a court of competent jurisdiction, such provision may be severed and the illegality or invalidity shall not affect the validity of the remainder of the bylaw.

## BYLAW READING & ADOPTION DATES

1<sup>st</sup> Reading the 2<sup>nd</sup> day of September, 2022

2<sup>nd</sup> Reading the 17<sup>th</sup> day of October, 2022

3<sup>rd</sup> Reading the 4<sup>th</sup> day of April, 2023

Final presentation for signature the 14<sup>th</sup> day of August, 2023

This Bylaw is hereby passed at a duly convened meeting of the Council of the Tkemlúps te Secwépemc the 14<sup>th</sup> day of August, 2023.


Being the majority of those members of the Council of the Tkemlúps te Secwépemc present. There are eight (8) Council members, and a quorum of Council is five (5) members.


Number of members of the Council present at the meeting: **5**.


Voting in favour of this bylaw are the following members of the Council:


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Kúkpi7 Rosanne Casimir


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Tkwenem7íple7 Marie Baptiste

  
\_\_\_\_\_  
Tkwenem7íple7 Thomas Blank

  
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Tkwenem7íple7 Nikki Fraser

  
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Tkwenem7íple7 Joshua Gottfriedsen

  
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Tkwenem7íple7 Justin Gottfriedson

  
\_\_\_\_\_  
Tkwenem7íple7 Dave Manuel

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Tkwenem7íple7 Morning-Star Peters

This Bylaw comes into force on the day on which it is first published.