
WILLIAMS LAKE INDIAN BAND
TRESPASS AND NUISANCE LAW 2019 - 01



Williams Lake Indian Band Trespass and Nuisance Law 2019 - 01

WHEREAS the Williams Lake Indian Band has an inherent right to self-government which emanates from our people, culture and land and which is recognized and affirmed by section 35 of the *Constitution Act, 1982*;

WHEREAS the Williams Lake Indian Band has taken control of its reserve lands and resources pursuant to the *Framework Agreement on First Nation Land Management*, and has enacted the *Williams Lake Indian Band Land Code* which came into force and effect on July 1, 2014;

WHEREAS Council of Williams Lake Indian Band deems it advisable and in the best interests of Williams Lake Indian Band to enact a law to govern the abatement, removal and punishment of persons trespassing on the reserve, creating nuisances on WLIB Lands and frequenting WLIB Lands for prohibited purposes.

NOW THEREFORE Council of the Williams Lake Indian Band enacts the following law.

WILLIAMS LAKE INDIAN BAND TRESPASS AND NUISANCE LAW

1.0 TITLE & PURPOSE

1.1 This Law may be cited as the “WLIB Trespass and Nuisance Law No. 2019 – 01”.

1.2 The purpose of this Law is to provide for the:

- a) abatement, removal and punishment of persons trespassing on WLIB Lands or frequenting WLIB Lands for prohibited purposes; and
- b) abatement of Nuisances, which adversely affect:
 - i) the safety, health or welfare of people in the neighbourhood;
 - ii) people’s use and enjoyment of their property; or
 - iii) the amenity of a neighbourhood.

1.3 This Law supercedes and replaces the WLIB Trespass and Nuisance By-Law enacted pursuant to s 81 of the *Indian Act* on February 12, 2007.

2.0 INTERPRETATION

2.1 In this Law, unless the context otherwise requires:

“Controlled Substance” means a controlled substance as defined and described in Schedules I, II and III of the *Controlled Drugs and Substances Act*, SC 1996, c 19, as may be amended from time to time, but does not include the trade or manufacture of a controlled substance that is permitted under that Act or otherwise lawfully permitted under a WLIB Business License Law, or under a Business Permit issued by WLIB;

“Council” means the governing body of WLIB elected pursuant to the *Williams Lake Indian Band Custom Election Code*;

“Disorderly Conduct” means an act or behavior, including:

- a) fighting;
- b) making or causing unreasonable noise;
- c) using abusive language;
- d) using offensive or indecent gestures or displays;
- e) being intoxicated and / or having open liquor in a public area;

- f) loitering;
- g) exposing, firing or discharging any gun, pistol or other firearm, or using or threatening to use any other article as a weapon, except in defense of life or property;
- h) interfering in any manner with the orderly conduct of commercial, administrative, educational, recreational, health care, religious or ceremonial activities on WLIB lands;
- i) is in possession of a Controlled Substance or drug paraphernalia in a public area;
- j) littering;
- k) disorderly behavior that disrupts public order on WLIB Lands, scandalizes the community, or causes public inconvenience, annoyance or alarm;
- l) refusing to leave a public area when directed to do so by an Officer;

“Highway” means a highway as defined in the *Motor Vehicle Act*, RSBC 1996, c 318;

“Indian Act” means the *Indian Act*, RSC 1985, c I-5;

“Individual Agreement” means the agreement between WLIB and Canada entered into under subsection 6(3) of the *First Nations Land Management Act*, SC 1999, c 24;

“Junked Vehicle” means any automobile, tractor, truck, trailer or other vehicle that

- a) either:
 - i) has no valid license plates attached to it; or
 - ii) is in a rusted, wrecked, partly wrecked, dismantled, partly dismantled, inoperative or abandoned condition; and
- b) is located on private land, but that:
 - i) is not within a structure built in accordance with any law respecting the construction of buildings and structures in force within WLIB Lands; and
 - ii) does not form a part of a business enterprise lawfully being operated on that land; and
- c) represents a hazard to the safety, health or welfare of the community as assessed by the WLIB Lands Department or the WLIB Law Enforcement Officer;

“Land Code” means the *Williams Lake Indian Band Land Code*;

“Livestock” includes cattle, horse, mule, ass, sheep, goat, swine, musk, llama, alpaca, and farmed game, fowl and rabbits;

“Motorcycle” means a motorized vehicle mounted on two or three wheels and includes those motor vehicles commonly known as motorcycles, scooters and power bicycles;

“Motor Vehicle” means a vehicle propelled or driven by power other than muscular power and includes a trailer, but does not include:

- a) an aircraft, a marine vehicle or an Off-Road Vehicle; or
- b) a device that runs or is designed to run exclusively on rails;

“Notice of Prohibition” means the notice set out in Part 5;

“Nuisance” means any act, activity or condition, including:

- a) the dumping or storage of Junked Vehicles;
- b) abandonment or storage of abandoned household appliances or furniture;
- c) the dumping or storage of tires, grass, garbage, leaves or other refuse;
- d) the discharge of any substance into the air or water;
- e) noise;
- f) the creation of noxious smells;
- g) vandalism, including damage to WLIB Land or property;
- h) buildings in a ruinous or dilapidated state of repair;
- i) a damaged and unoccupied building which is an imminent danger to public safety;
- j) untidy or unsightly property;
- k) grass or weeds in excess of 0.2 meters in height which does not form part of a natural garden that has been deliberately planted to produce ground cover, whether native or non-native, consistent with a managed and natural landscape;
- l) open excavations consisting of any basement, drain, ditch, watercourse, pond, surface water, swimming pool or any building or structure which is dangerous to public safety or health;
- m) operating any device that is liable to disturb the quiet, peace, rest, enjoyment, comfort or convenience of any person residing on the WLIB Lands between the

hours of 10:00 pm and 7:00 am the following day (quiet time);

- n) trespass; or
- o) any other act that materially impairs, otherwise than by direct physical interference, the use and enjoyment of a public area or a Registered Holder's Parcel of Land, or that prejudicially affects a person's health, comfort or convenience or the public health, safety or welfare of WLIB,

but does not include any act, activity or condition to the extent that it is unavoidably necessary for carrying out any business or other means of livelihood authorized by Council;

"Occupant" or **"Occupier"** means a person who is legally entitled to occupy or simply occupies a Parcel of Land, building, dwelling or Premises on WLIB Lands;

"Off - Road Vehicle" means a vehicle designed for off-highway use and which does not meet safety standards for on-highway use and includes the following:

- a) Golf Carts
- b) Snow vehicles
- c) Snowmobiles
- d) All-terrain Vehicles (ATV)
- e) Trucksters, and
- f) Restricted Use motorcycles (RUMs)

"Parcel of Land" or **"Parcel"** means any lot, block, manufactured home pad or other area in which real property within WLIB Lands is held or into which real property within WLIB Lands is subdivided and the improvements affixed to it;

"Peace officer" or "Officer" means a member of the local detachment of the Royal Canadian Mounted Police responsible for policing WLIB Lands, the WLIB Law Enforcement Officer and any of their delegates;

"Premises" means lands, foreshore and land covered by water, and anything on the land including:

- a) a building or other permanent structure; and
- b) a trailer or portable structure designed or used as a residence, for shelter or to house a business or Livestock.

“Registered Holder” means a person who is registered in the WLIB Lands Register as the holder of an interest in a Parcel of Land and, where there is no person registered in the WLIB Lands Register as the holder of an interest in the WLIB Lands in question or the property is occupied under a lease or rental arrangement, includes the Occupant;

“WLIB Road” means a common and public road, highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, or any part of which is on WLIB Lands and is intended for the use of the general public,

“Snowmobile” means a vehicle other than an all-terrain vehicle or a motorcycle that:

- a) is designed for travel on snow or ice;
- b) has one or more steering skis;
- c) is self-propelled by means of one or more endless belts driven in contact with the ground; and
- d) has a seat designed for the driver to sit astride.

“Williams Lake Indian Band” or **“WLIB”** means the Williams Lake Indian Band as defined in the *Williams Lake Indian Band Land Code*;

“WLIB Lands” means:

- a) The following WLIB Indian Reserves:
 - i) Williams Lake Indian Reserve No. 1;
 - ii) Asahal Indian Reserve No. 2;
 - iii) Five Mile Indian Reserve No. 3;
 - iv) James Louie Indian Reserve No. 3A;
 - v) Tillion Indian Reserve No. 4;
 - vi) Chimney Creek Indian Reserve No. 5;
 - vii) San Jose Indian Reserve No. 6; and
 - viii) Carpenter Mountain Indian Reserve No. 15

as further described in the Individual Agreement; and

- b) lands set apart by Canada in the future as lands reserved for the use and benefit of WLIB, within the meaning of subsection 91(24) of the *Constitution Act, 1867* and section 2(1) of the *Indian Act*;

"WLIB Member" means a person registered on the WLIB Membership Roll;

"Williams Lake Indian Band (WLIB) Law" means a law enacted pursuant to the *WLIB Land Code* or a WLIB bylaw enacted pursuant to the *Indian Act*;

"WLIB Law Enforcement Officer" means the person or persons appointed by Council, from time to time, to administer and enforce the provisions of Laws enacted by Council, and includes any delegate or any peace officer;

- 2.2 Unless otherwise provided in this Law, words, expressions and rules of construction used in this Law have the same meaning as in the *Williams Lake Indian Band Land Code*.
- 2.3 Wherever the singular, or masculine is used in this Law, it shall be deemed to include the plural or the feminine.
- 2.4 The term "person" includes a natural person, WLIB and any association, household, society, corporation, partnership or party, whether acting by themselves or through a servant, agent or employee, and their successors and assigns, as the context requires.
- 2.5 The headings given to the sections and paragraphs in this Law are for convenience of reference only. They do not form part of this Law and will not be used in the interpretation of this Law.
- 2.6 Unless otherwise noted, any specific statute named in this Law is a reference to the statute 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 law of WLIB, as amended, revised, consolidated or replaced from time to time.

3.0 TRESPASS

Trespass on WLIB Lands

- 3.1 Subject to 3.2, a person who resides, enters onto or remains on WLIB Lands without the express permission of WLIB by a Law or Resolution of Council shall be deemed to be in trespass.

Right of Access

- 3.2 Section 3.1 does not apply to the following persons who have a right of access to WLIB Lands, subject to the other provisions of this Law:
 - a) WLIB Members;

- b) A person who is a lawful resident of WLIB Lands and their invitees, subject to the terms and conditions of the WLIB Housing Agreement or the lease;
- c) A person who has authorization from WLIB;
- d) A person travelling on a Highway or WLIB Road; or
- e) A person participating in authorized activities of WLIB.

Offence

- 3.3 An Officer may order any person who trespasses on the WLIB Lands to leave WLIB Lands immediately.
- 3.4 Where a person fails or refuses to comply with an order made under section 3.3 an Officer may take such reasonable measures as are necessary to remove the person from WLIB Lands.
- 3.5 A person who fails or refuses to comply with an order made under section 3.3 or who resists or interferes with an Officer acting under section 3.4 commits an Offence.

Trespass on Premises

- 3.6 A person who enters onto Premises which are the subject of a Notice of Prohibition under Part 5 or which are enclosed or fenced in a manner that indicates the Occupier's intention to keep persons out of the Premises or to keep animals on the Premises is trespassing on the Premises, unless that person is acting with the express permission of the Occupier or Council, as applicable, or under a right or authority conferred by law.
- 3.7 A person who trespasses on Premises or engages in an activity on Premises when the activity is prohibited by a Notice of Prohibition, or who does not leave a Premises immediately after he or she is directed to do so by the Occupier of the Premise or a person authorized by the Occupier, is guilty of an Offence.

Trespass by Livestock

- 3.8 Livestock leaving their owner's Premises and found on WLIB Lands shall be deemed to be in trespass.
- 3.9 An owner of Livestock referred to in section 3.8 commits an Offence.
- 3.10 An owner of Livestock referred to in section 3.8 shall be solely liable for any and all damage, cost, loss or expense, whether or not arising from or related to any claim, action, suit or other proceeding concerning the trespass.

- 3.11 Nothing in this Law replaces the application of the common law, which continues to apply to owners of Livestock referred to in section 3.8.
- 3.12 Without limiting the generality of sections 3.8 to 3.11, WLIB may take such measures as the Council, in its sole discretion, decides are reasonable and necessary to remedy the trespass, all at the sole cost of the owner.

4.0 FREQUENTING FOR PROHIBITED PURPOSES

Prohibited Purpose

- 4.1 Subject to section 4.2, a person who conducts on WLIB Lands any of the following prohibited activities:
- a) Hunting, fishing or trapping except by WLIB Members exercising their aboriginal rights or by a person who has authorization from WLIB;
 - b) Hawking or peddling of wares or merchandise;
 - c) Disposal of garbage or other refuse on WLIB lands;
 - d) Disposal of animals on WLIB lands;
 - e) Operation of Off-Road Vehicles on roads and trails on WLIB lands without authorization;
 - f) Operation of Off-Road Vehicles contrary to this Law; and
 - g) Loitering or Soliciting;

shall be deemed to be frequenting WLIB Lands for prohibited purpose.

Exception

- 4.2 A person who produces a valid license or express written permission given by WLIB to conduct an activity referred to in subsections 4.1 (a), (b) or (c) is not frequenting WLIB Lands for a prohibited purpose.

Offence

- 4.3 An Officer may order any person who frequents WLIB Lands for a prohibited purpose to leave WLIB Lands immediately and may order any person who engages in a prohibited activity to cease that activity immediately.

4.4 Where a person fails or refuses to comply with an order made under section 4.3, an Officer may take such reasonable measures as are necessary to remove the person from WLIB Lands.

4.5 A person who fails or refuses to comply with an order made under section 4.3 or resists or interferes with an Officer acting under section 4.4 commits an Offence.

5.0 NOTICE OF PROHIBITION

Notice

5.1 For purposes of this Law, Council, an Officer or an Occupier of the Premises, as applicable, may provide a Notice of Prohibition which prohibits trespass on WLIB Lands or on Premises or identifies certain activities as prohibited or certain persons as prohibited from entering or from remaining on WLIB Lands or on Premises, or in the case of an Occupier, on the Occupier's Premises.

Form of Notice

5.2 A Notice of Prohibition under this Law may be given:

- a) Orally or in writing; or
- b) By means of a Notice of Prohibition sign posted so that a sign is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to the Premise or the area of WLIB Lands to which it applies.

5.3 A Notice of Prohibition sign shall bear the words "No Trespassing" or "Carrying on of [activities described] is prohibited within [area described] or "[Name of person] is prohibited from entering [area described]", as applicable.

5.4 A person is deemed to have received a Notice of Prohibition when he or she has been informed of the prohibition orally or in writing by Council, an Officer or an Occupier, as applicable.

Offence

5.5 Every person who tears down, removes, damages, defaces or covers up a sign posted under this Law that has been posted by Council, an officer or an Occupier commits an Offence.

6.0 NUISANCE

- 6.1 Unless otherwise specified, the owner of a property, including land, buildings and structures, shall be responsible for complying with this Law.

Nuisance Prohibited Generally

- 6.2 No person shall cause or permit a Nuisance to occur on or by any property owned by that person.

Dilapidated Buildings

- 6.3 Notwithstanding the generality of Section 6.2, no person shall cause or permit a building or structure to deteriorate into a ruinous or dilapidated state such that the building or structure:
- a) endangers the public health or safety;
 - b) substantially depreciates the value of other land or improvements in the neighbourhood; or
 - c) is substantially detrimental to the amenities of the neighbourhood.

Maintenance of Yards

- 6.4 Notwithstanding the generality of Section 6.2, no person shall cause or permit on any property owned by that person:
- a) an infestation of rodents, vermin or insects;
 - b) any dead or hazardous tree; or
 - c) any sharp or dangerous objects.

Outdoor Storage of Materials

- 6.5 Building materials, lumber, scrap metal, boxes or similar items stored in a yard shall be neatly stacked in piles and elevated off the ground so as not to constitute a nuisance or harborage for rodents, vermin and insects. Materials shall be elevated at least 0.15 metres off the ground and shall be stacked at least 3.0 metres from the exterior walls of any building and at least 1.0 metres from the property line.

Refrigerators and Freezers

- 6.6 Any refrigerator or freezer left in a yard shall first have its hinges, latches, lid, door or doors removed.

Fences

6.7 Fences must be maintained in a safe and reasonable state of repair.

Offence

6.8 An Officer may order any Person who contravenes Sections 6.2 to 6.7 to cease, abate, or cause to cease or abate, such Nuisance or contravention within a reasonable period of time.

6.9 In determining whether a period of time fixed under section 6.8 is reasonable, the Officer shall take into account:

- a) The nature and extent of the Nuisance or contravention;
- b) The methods available to cease or abate the Nuisance or contravention;
- c) The approximate time required to cease or abate the Nuisance or contravention; and
- d) The effect of the order on any business or means of livelihood of the person who is subject of an order.

6.10 Where a person fails or refuses to comply with an order made under section 6.8, an Officer may take such reasonable measures as are necessary to prevent or abate the Nuisance or contravention.

6.11 A person who fails or refuses to comply with an order made under section 6.8, or who resists or interferes with an Officer acting under section 6.10, commits an Offence.

7.0 OPERATION OF VEHICLES

Compliance with Law

7.1 All Motor Vehicles operated on WLIB Lands, including WLIB Roads, must comply with the *Motor Vehicle Act*, RSBC 1996, c 318 and other applicable legislation, as well as this Law.

7.2 All Off-Road Vehicles operated on WLIB Lands, including WLIB Roads, must comply with or the *Off-Road Vehicle Act*, SBC 2014, c 5 and other applicable legislation, as well as this Law.

- 7.3 A person shall not operate an Off-Road Vehicle on WLIB Lands in a manner that disturbs the quiet, peace, rest enjoyment, comfort and convenience of other people or to the public.
- 7.4 Off-Road Vehicles are specifically prohibited from WLIB cemeteries, parks, baseball fields, walking trails, community housing areas, Golf Course, Camp Ground, Gas Station; Pow Wow Arbour or any other community gathering area and from roads and trails on WLIB Lands which are not WLIB Roads, unless they have authorization from the WLIB.
- 7.5 An Off-Road Vehicle shall not be operated on a WLIB Road at a rate of speed greater than:
- a) 20 km per hour, if the speed limit for that part of the WLIB Road is not greater than 50 km per hour; or
 - b) 50 km per hour, if the speed limit for that part of the WLIB Road is greater than 50 km per hour;
- 7.6 No person shall operate an Off-Road Vehicle between the hours of 10:00 pm and 7:00 am the following day in a manner which by reason of disrepair, the use of a muffler that fails to cool and expel exhaust gases from the engine without excessive noise, modified exhaust systems, mode of operation of the vehicle (squealing of tires except during emergency braking to avoid accidents, over revving of engine or excessive acceleration of vehicle) or any other cause, creates noise or sound which disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort or convenience of other people or the public.
- 7.7 No person shall operate an off-Road Vehicle in such a way as to disrupt or destroy the natural environment or private property or any WLIB property.

8.0 GENERAL PROVISIONS

Fees and Forms

- 8.1 Council may, by resolution passed at a duly convened meeting, establish, correct, revise or update the terms of any applicable fee or fine schedules, forms, protocols or other related documentation which complement and support this Law, and will post notice of same in a public area of the WLIB administration building and make a copy of same available for viewing free of charge at the administrative offices of WLIB and available for distribution at a nominal charge.

Offences

- 8.2 No person shall obstruct, interfere with or hinder Council, the WLIB Law Enforcement Officer or any authorized employee, officer or agent in the carrying out of their duties and responsibilities under this Law.
- 8.3 Every person who violates any provision of this Law, or who permits an act or thing to be done in contravention of this Law, or who fails to do any act or thing required by this Law shall be deemed to have committed an Offence and:
- a) shall be liable to a fine of not less than \$50.00 and not greater than \$2,000;
 - b) shall be liable, upon summary conviction, to the penalties provided by the Offence Act; or
 - c) any combination of the above.
- 8.4 Notwithstanding subsection 8.3, Council may determine that all or a portion of a fine may be paid off by way of community service performed by the person subject to that fine.
- 8.5 Each day a violation of this Law continues will be deemed to be a new and separate Offence resulting in liability for a fine or penalty.

9.0 IMMUNITY

- 9.1 No action for damages lies or may be instituted against WLIB, present or past Council, the WLIB Law Enforcement Officer, members, employees, servants or agents of either WLIB or Council:
- a) for anything said or done or omitted to be said or done by that person in the performance or intended performance of the person's duty or the exercise of the person's authority; or
 - b) for any alleged neglect or default in the performance or intended performance of the person's duty or the exercise of the person's authority.
- 9.2 Section 9.1 does not provide a defense if:
- a) Council, WLIB Law Enforcement Officer, members, employees, servants or agents of either WLIB or Council have, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or
 - b) the cause of action is libel or slander.
- 9.3 WLIB, present or past Council, or members, employees, servants or agents of any of WLIB or Council are not liable for any damages or other loss, including economic loss,

sustained by any person, or to the property of any person, as a result of neglect or failure, for any reason, to discover or detect any contravention of this Law or any other WLIB Law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other WLIB Law.

9.4 All actions against WLIB for the unlawful doing of anything that:

- a) is purported to have been done by WLIB under the powers conferred by this Law or any WLIB Law, and
- b) might have been lawfully done by WLIB if acting in the manner established by law,

must be commenced within six (6) months after the cause of action first arose, or within a further period designated by Council in a particular case, but not afterwards.

9.5 WLIB is in no case liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained, is delivered to WLIB, within two (2) months from the date on which the damage was sustained. In case of the death of a person injured, the failure to give notice required by this section is not a bar to the maintenance of the action. Failure to give the notice or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the Court of Appeal believes:

- a) there was reasonable excuse; and
- b) WLIB has not been prejudiced in its defense by the failure or insufficiency.

10.0 APPLICATION OF LAW

10.1 Where any federal Act or regulation or provincial Act or regulation or any other WLIB Law may apply to any matter covered by this Law, compliance with this Law will not relieve the person from also complying with the provisions of the other applicable Act, regulation or law.

10.2 If any section of this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or subsection will be severed from and not affect the remaining provisions of this Law.

11.0 REPEAL

11.0 The WLIB Trespass and Nuisance By-Law enacted pursuant to s 81 of the *Indian Act* on February 12, 2007 is hereby repealed.

BE IT KNOWN that this Law entitled, "*WLIB Trespass and Nuisance Law No. 2019 - 01*" was read:

For the first time at a duly convened meeting of WLIB Council held on the 22nd day of February, 2019.

For the second time at a duly convened meeting of WLIB Council held on the 29th day of July, 2019.

For the third time, and enacted, at a duly convened meeting of WLIB Council held on the 12th day of August, 2019.

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

Chief Willie Sellars



Councillor Rick Gilbert

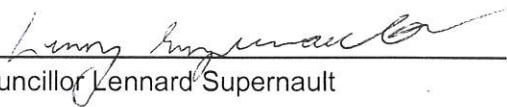
Councillor Andrew Meshue



Councillor JoAnne Moiese



Councillor Shawna Philbrick



Councillor Lennard Supernault

Being a majority of those members of Council of Williams Lake Indian Band present at the aforesaid meeting of Council.

The Quorum of Council is four (4) members.

Number of members of Council present at the meeting: 4.