

YAKWEAKWIOOSE FIRST NATION  
ENFORCEMENT AND TICKETING LAW

*APRIL 2015*



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**WHEREAS:**

Yakweakwioose First Nation (also known as Yakweakwioose Indian Band, “Yakweakwioose”) 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*;

Yakweakwioose has taken control of Reserve lands and resources pursuant to the *Framework Agreement on First Nation Land Management* and has enacted the *Yakweakwioose Land Code* effective the 1st day of May, 2014;

Under the *Yakweakwioose Land Code*, Yakweakwioose Council is authorized to pass laws relating to lands including laws relating to creation, regulation and prohibition of Interests in lands under Part 9 of the Land Code; and

Council wishes to implement a law to enable fair, effective and efficient enforcement of Yakweakwioose laws;

**NOW THEREFORE, THIS YAKWEAKWIOOSE ENFORCEMENT AND TICKETING LAW IS HEREBY ENACTED A LAW OF YAKWEAKWIOOSE.**

**1. TITLE**

1.1 This Law may be cited as the "*Yakweakwioose Enforcement and Ticketing Law*".

**2. PURPOSE**

2.1 The purpose of this Law is to promote fair, effective and efficient enforcement of laws on Yakweakwioose Lands.

**3. WHERE THIS LAW APPLIES**

3.1 The provisions of this Law apply to the whole area of the Reserve and Yakweakwioose Lands as defined in the *Yakweakwioose Land Code*.

**4. DEFINITIONS**

4.1 For the purposes of this Law, terms have the same definitions as in the *Yakweakwioose Land Code*;

4.2 The following definitions apply in this Law:

"Offence Act" means the B.C. Offence Act [RSBC 1996], Chapter 338, or any successor legislation; and

"Person" includes an entity or corporation.

**5. APPOINTMENT OF AUTHORITY OF JUSTICE OF THE PEACE**

5.1 Council may appoint, by Council Resolution, and with the advice of the Yakweakwioose Lands Manager and the Yakweakwioose Lands Management Advisory Committee, and in a manner consistent with the *Yakweakwioose Land Code*, any justices of the peace Council considers necessary to enforce Yakweakwioose Laws.

5.2 Any justice of the peace appointed by Council must:

- a) Be qualified to act as a justice of the peace for the purposes of enforcing Yakweakwioose Laws; and
- b) Swear an oath of office prior to commencing his or her duties as a justice of the peace for enforcing Yakweakwioose Laws.

5.3 A justice of the peace appointed under this Law is empowered and authorized to make decisions regarding the application and enforcement of this Law including:

- a) Decisions regarding whether or not a ticket was validly issued,
- b) Decisions about whether or not a penalty or fine is due, and

- c) Any other related decisions.
- 5.4 If, in the course of a hearing before a justice of the peace under this Law, a matter arises that is within the exclusive jurisdiction of a judge or a court of competent jurisdiction, the justice must terminate the hearing and refer the matter to be heard as a new trial by a judge.
- 5.5 Before the commencement of a hearing by a justice of the peace under this Law, a party to the matter may apply to a judge or a court of competent jurisdiction for an order that the matter be heard by a judge.
- 5.6 In making an order under subsection 5.5, the judge must consider the factors relevant including, without limitation, the following factors:
- a) The objective of respecting Yakweakwioose First Nation law and self-government and encouraging timely, effective and efficient enforcement of Yakweakwioose First Nation Laws;
  - b) The complexity of the factual and legal issues involved in the matter;
  - c) The proposed length of the trial of the matter;
  - d) The severity of the potential outcomes or consequences of the matter; and
  - e) The public interest in the outcome of the matter.
- 5.7 Council may also authorize a justice of the peace or a similar official appointed by the City of Chilliwack or another government to act as a justice of the peace for the purposes of this Law.

## **6. APPOINTMENT AND AUTHORITY OF ENFORCEMENT OFFICERS**

- 6.1 Yakweakwioose designates the following as Enforcement Officers;
- a) Any RCMP officer or Peace Officer; and
  - b) Any individual or company designated by Council by a Council Resolution.
- 6.2 In the performance of their duties, Enforcement Officers may, at any reasonable time,
- a) enter land or unoccupied structures; or
  - b) enter a dwelling with the consent of the occupier or under a court order.
- 6.3 Except in emergencies, prior to entering land or an unoccupied structure under subsection 6.2(a), an Enforcement Officer shall try to obtain the permission of the owner or occupier.
- 6.4 For the purpose of performing their duties under this Law, an Enforcement Officer may;

- a) inspect land, property or relevant records;
- b) take or make copies of documents or records relevant to an investigation; and
- c) make any reasonable inspection, investigation or inquiry that is necessary to determine if a Law or a regulation made under a Law, or a compliance agreement or an order, notice or other instrument issued under this or any other Law or regulation has been complied with or has been contravened.

6.5 On request, and in the course of performing their duties, an Enforcement Officer must show his or her identification as an Enforcement Officer if requested.

6.6 The authority of an Enforcement Officer;

- a) may be limited by their terms or conditions of appointment as an Enforcement Officer; and
- b) may be increased if the Enforcement Officer is, under another law or regulation, appointed or designated to enforce the provisions of any other law or regulation.

## **7. TICKET OFFENCES**

7.1 For any violation of any of the Laws set out in Schedule 1 or their successors or any Law designated by Council by a Council Resolution or their successors, an Enforcement Officer may lay an information by means of a ticket.

7.2 An information laid by means of a ticket is valid whether or not it is taken under oath.

7.3 Yakweakwioose authorizes the use of any reasonable word or expression on a ticket issued under subsection 7.10 to designate an offence against a law.

7.4 The use on a ticket of

- a) any word or expression authorized by law to designate an offence against a Law, or
  - b) a general description of an offence against a Law,
- is deemed sufficient for all purposes to describe the offence designated by that word, expression or general description.

### *Penalties in relation to ticket offences*

7.5 For offences for which a ticket may be issued, Council must establish by Law, Regulation or Council Resolution:

- a) the penalty or fine for the offence,

- b) the discounted amount of the penalty or fine payable is received on or before the 14th day after the date the ticket was received or presumed to have been received, and
  - c) the surcharge if the penalty is paid on or after the 30th day after the day on which the ticket was received or presumed to have been received.
- 7.6 Unless otherwise set out in a more specific provision of a Law, Regulation or Council Resolution, the penalties, discounts and surcharges apply as set out in Schedule 2.
- 7.7 A Law may establish one or more of the following penalties in relation to an offence:
- a) a fine not greater than the amount set out in Schedule 2 of this Law or set by Regulation or Council Resolution; and
  - b) in the case of a continuing offence, for each day that the offence continues, a fine not greater than the amount set out in Schedule 2 of this Law or set by Regulation or Council Resolution.

*This Law Applies Despite Other Offense or Penalty Provisions*

- 7.8 The ticket fines and procedures set out in this Law apply to the specified provisions of all Yakwekwioose Laws set out in Schedule 2 despite the fact that those Laws may set out different fines or procedures for summary convictions.

*Form and content of tickets*

- 7.9 A ticket must be in the form prescribed by Regulation or Council Resolution and when a ticket or compliance notice is issued it must contain the following information:
- a) particulars of the alleged contravention in sufficient detail that a recipient of the notice is able to identify the offence alleged,
  - b) the amount of the penalty, the discounted penalty and the surcharge specified in the regulations,
  - c) the methods of paying the penalty,
  - d) how to dispute the alleged contravention,
  - e) the date the ticket or compliance notice is issued,
  - f) a means of identifying the enforcement officer who issued the notice,
  - g) in the case of a compliance notice, that a screening officer may be asked to review the notice,
  - h) in the case of a ticket, that the Person receiving the ticket may appeal the ticket to a justice of the peace, and

- i) any other information required by the Council Resolution or regulations.

*Laying information and serving ticket*

**7.10** An Enforcement Officer may complete and issue a ticket to any Person in respect of an alleged contravention for which a ticket may be issued.

**7.11** When laying an information by means of a ticket, an Enforcement Officer must indicate on the ticket the offence charged and must sign the ticket.

**7.12** The Enforcement Officer must serve the ticket on the Person alleged to have contravened the Law.

**7.13** Service of a ticket under subsection 7.12 may be effected by:

- a) serving a copy of the ticket on the Person alleged to have contravened the Law immediately after the alleged contravention, or
- b) causing a copy of the ticket to be served in a similar manner as a summons may be served under the *Offence Act*.

**7.14** A ticket or compliance notice may be completed, issued and stored,

- a) in electronic format by electronic means, or
- b) by another means that allows the ticket or notice to be reproduced in intelligible form.

**7.15** Service of a ticket under subsection 7.12 may be proved by:

- a) the oral evidence given under oath of the Person who served it, or
- b) an affidavit or certificate of the Person who served the ticket, if the certificate is endorsed on the ticket or a copy of the ticket or if the Person provides an affidavit of service.

**7.16** The certificate referred to in subsection 7.15(b) is proof of the facts stated in the certificate and of the authority of the Person who signed it without further proof of the Person's appointment or signature.

*Choice of paying fine or disputing ticket*

**7.17** If a fine is indicated on a ticket for an offence charged, the Person on whom the ticket is served may, within 14 days after the date of service,

- a) pay the fine indicated on the ticket to the Yakweawkwoose Lands office in accordance with the prescribed instructions, or
- b) dispute the allegation contained in the ticket by

- (i) delivering or having delivered to the address set out in the ticket a written notice of dispute, or
  - (ii) appearing in Person at the location set out in the ticket to give notice of dispute.
- 7.18 A notice of dispute under subsection 7.17(b) must contain an address for the Person disputing the allegation and sufficient information to identify the ticket and the alleged contravention being disputed.
- 7.19 For the purpose of subsection 7.17(b), a notice of dispute that is delivered by mail is deemed to have been delivered on the date it was mailed.

*Effect of paying fine*

- 7.20 A Person who pays a fine in accordance with subsection 7.17(a) [choice of paying fine or disputing ticket] is deemed to have pleaded guilty to the offence with which the Person was charged and to have paid the fine imposed.
- 7.21 If a Person who is served with a ticket pays the fine as referred to in subsection 7.17(a), no conviction need be drawn up or entered unless it is required under the Law contravened or by the Person convicted or a prosecutor.

*Hearing of dispute*

- 7.22 If notice of dispute is given in accordance with subsection 7.17(b) [choice of paying fine or disputing ticket], the Lands Manager or Council must refer the ticket to a justice of the peace, the Provincial Court, or a municipal-type ticketing court for a hearing.
- 7.23 If a ticket is referred to a justice of the peace or court under subsection 7.22, Yakweakwioose must confirm that the Person who was served with the ticket receives a notice of the hearing specifying a time and place for the appearance of the Person before a justice of the peace or court.
- 7.24 If a Person appears before a justice of the peace or Court at the time and place specified in the notice under subsection 7.23, section 58 of the *Offence Act* does not apply to the Person and the justice of the peace or the court has jurisdiction to hear the dispute without examining the notice of dispute or the notice of the hearing or inquiring into the service of the ticket on the Person.
- 7.25 Despite section 60 of the *Offence Act* but subject to the Supreme Court Civil Rules, a justice of the peace or justice hearing the trial on a ticket may
- a) admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the justice considers is relevant to an issue in the trial and is credible and trustworthy, and



- b) adopt procedures that are conducive to justly and expeditiously determining the matter.

7.26 As a restriction, a justice or justice of the peace may not admit under subsection 7.25(a) anything that is privileged under the laws of evidence.

7.27 If a Person who is served with a ticket

- a) has
  - (i) appeared before a justice of the peace or a court at the time and place specified in the notice under subsection 7.23, and
  - (ii) pleaded guilty to or been found guilty of the offence with which the Person was charged, or
- b) is deemed under subsection 7.28 or 7.29 [Failure to appear at hearing] to have pleaded guilty to the offence with which the Person was charged, no conviction need be drawn up or entered unless it is required under the Law contravened or by the Person convicted or a prosecutor.

*Failure to appear at hearing*

7.28 A Person is deemed to have not disputed a charge if the Person fails to appear before a justice to dispute the charge

- a) at the time and place specified in the notice of the hearing referred to in subsection 7.23[hearing of dispute], or
- b) at a new time and place set under subsection 7.37 [time extensions if Person not at fault in failing to respond or appear].

7.29 If a Person is deemed under subsection 7.28 to have not disputed the charge,

- a) the Person is deemed to have pleaded guilty to the offence with which the Person was charged, and
- b) the fine amount indicated on the ticket is immediately payable to

Yakweawkwoose.

7.30 Nothing in subsection 7.28 is to be construed as abrogating the right of a Person to appeal the conviction under section 102 of the *Offence Act*.

*Failure to respond to ticket*

7.31 A Person served with a ticket under subsection 7.10 [laying information and serving ticket] is deemed to have not disputed the charge if

- a) the Person does not pay the fine or dispute the charge, as provided in subsection 7.17 [choice of paying fine or disputing ticket], and
- b) at least 14 days have elapsed since the ticket was served on the Person.

**7.32** If a Person is deemed under subsection 7.31 to have not disputed the charge, subsection 7.28 [failure to appear at hearing] applies.

**7.33** Nothing in subsection 7.31 is to be construed as abrogating the right of a Person to appeal the conviction under section 102 of the Offence Act.

*Time extensions if Person not at fault in failing to respond or appear*

**7.34** A Person who is served with a ticket and has a valid reason but

- a) does not dispute the charge, or
- b) fails to appear before a justice at the time and place specified in the notice under subsection 7.23 [notice of hearing],

may apply to a justice for a time extension in the circumstances established by this section.

**7.35** In the case of a Person who did not dispute the charge, the Person may only apply for an extension if

- a) the Person has, through no fault of that Person, not had an opportunity to dispute the charge, and
- b) not more than 30 days have passed since the end of the period referred to in subsection 7.17 [choice of paying fine or disputing ticket].

**7.36** In the case of a Person who failed to appear before a justice to dispute the charge, the Person may only apply if

- a) the failure was through no fault of the Person, and
- b) not more than 30 days have passed since the date specified in the notice under subsection 7.23 [notice of hearing].

**7.37** The justice to whom the application is made, on being satisfied by affidavit in the prescribed form and with or without hearing from the applicant, that the applicable conditions set out in subsection 7.35 or 7.36 have been met, may

- a) strike out the conviction, if any,
- b) in the case of a Person who did not dispute the charge, allow the Person 14 days after the date the conviction is struck to dispute the charge in

accordance with subsection 7.17 [choice of paying fine or disputing ticket],  
and

- c) in the case of a Person who failed to appear to dispute the charge, set a new time and place for the appearance of the Person before a justice.

**7.38** If a conviction is struck out under subsection 7.37, the justice must give the Person a certificate of the fact in the prescribed form.

*Collections*

**7.39** If a person fails to pay a fine or penalty under this Law, the Lands Manager is authorized, thirty (30) days after having sent a warning letter to the person, to:

- a) send any unpaid fine or penalty to a collection agency; or
- b) for fines or penalties owed by Yakweakwioose Members, to send a request to the Yakweakwioose Council that moneys be withheld from annual membership distributions or other community grants or benefits.

*Regulations in relation to ticket offences*

**7.40** Council may make regulations or pass Council Resolutions as follows:

- a) prescribing the form and content of the tickets issued under this Law;
- b) prescribing matters that are not subject to ticket offences;
- c) prescribing classes of Persons (ie: members or non-members) for the purpose of ticket offences;
- d) prescribing an amount for the purposes of sections 7.5 and 7.7 [penalties in relation to ticket offences];
- e) prescribing fees for adjudication, including extra administrative or surcharge fees if a person unsuccessfully disputes a ticket;
- f) prescribing the form of a certificate of service for the purpose of subsection 7.15(b) [laying information and serving ticket];
- g) prescribing instructions for paying a fine for the purpose of section 7.17 [choice of paying fine or disputing ticket];
- h) prescribing the form of an affidavit for the purpose of section 7.37 [time extensions if Person not at fault in failing to respond or appear]; and
- i) prescribing the form of a certificate under section 7.38 [time extensions if Person not at fault in failing to respond to ticket].

**8. COMING INTO FORCE**

8.1 This Law shall come into force and effect on the date it is passed by Council Resolution after complying with the requirements of Part 3 of the Land Code.

**BE IT KNOWN** that this Law entitled *Yakweakwioose Enforcement and Ticketing Law* is hereby enacted by a quorum of Council at a duly convened Council of the Yakweakwioose First Nation held on the 19 day of August, 2015.

A quorum is 2


  
.....  
(Chief Frank Malloway)

.....  
(Councillor - Jason Malloway)

.....  
(Councillor - Jenz Malloway)

.....  
(Councillor - Frank Malloway Jr.)

  
.....  
(Councillor - Terry Horne)

  
.....  
(Councillor - Nicole Larock)

## **SCHEDULE 1: LAWS**

- (a) Yakweakwioose First Nation Subdivision Development and Servicing Law
- (b) Yakweakwioose First Nation Spousal Real Property Law
- (c) Yakweakwioose First Nation Certificate of Possession Law; and
- (d) Any laws designated by Council by Resolution.

**SCHEDULE 2: FINES AND PENALTIES**

<b>Law</b>	<b>Section</b>	<b>Offense (Summary)</b>	<b>Discounted Fine if paid in 14 days</b>	<b>Fine</b>	<b>Penalty Fine if not paid in 30 days</b>
<i>Subdivision Development and Servicing Law</i>					
	6.1(a)	Illegal subdivision	\$150	\$200	\$250
	6.1(b)	Illegal stratification or other division of legal interests in lands or structures into strata units, sub-leases or shares	\$150	\$200	\$250
	6.1(c)	Illegal development	\$150	\$200	\$250
	6.1(d)	Illegal installation of roads, intersections, sewer, water and other infrastructure	\$150	\$200	\$250
	6.1(e)	Illegal construction, alteration, enlargement, addition, demolition or removal of industrial, commercial or residential structures, including the installation, demolition or removal of swimming pools and decks	\$150	\$200	\$250
	6.1(f)	Illegal deposit or removal of more than 10 m <sup>3</sup> of soil, gravel or other materials	\$150	\$200	\$250
	6.2(a)	subdivision or partitioning of one or more parcels of Tzeachten Land without subdivision approval by Council	\$150	\$200	\$250
	6.2(b)	stratification or other division of legal interests in lands or structures into strata units, sub-leases or shares without approval by Council	\$150	\$200	\$250
	6.2(c)	construction or use of a street access or exit...within 7.5m of...intersection...when such road allowance intersects at an angle of 135° or less	\$150	\$200	\$250

	<b>8.3(a)</b>	<b>Disregarding a Stop Work Order</b>	<b>\$150</b>	<b>\$200</b>	<b>\$250</b>
	<b>8.3(b)</b>	<b>Failing to remove structures, works or installations carried out in violation of the Law</b>	<b>\$150</b>	<b>\$200</b>	<b>\$250</b>