

**METLAKATLA FIRST NATION
ACCESS, RESIDENCY AND TRESPASS BY-LAW, 2016**

WHEREAS:

A. The reserve lands of the Metlakatla First Nation are set aside for the use and benefit of the members of the Metlakatla First Nation;

B. The Metlakatla First Nation has an inherent right to self-government which is recognized and affirmed by section 35 of the *Constitution Act, 1982* and Article 4 of the United Nations Declaration on the Rights of Indigenous Peoples;

C. The Metlakatla First Nation, as an aspect of its inherent right of self-government and, pursuant to paragraphs 81(1)(p), (p.1), (p.2), (q) and (r) of the *Indian Act*, has the jurisdiction and the responsibility to regulate access to and residency on Metlakatla lands and provide for the removal of persons trespassing on Metlakatla lands;

D. The Governing Council of the Metlakatla First Nation has the authority and the responsibility to ensure the peace, order and good governance of Metlakatla lands and the safety of its members and residents; and

E. The Governing Council of the Metlakatla First Nation deems it to be necessary and in the best interests of Metlakatla to make a by-law for such purposes,

NOW THEREFORE the Governing Council of the Metlakatla First Nation duly enacts as follows:

**PART I
CITATION**

Citation

1. This By-Law may be cited as the *Metlakatla First Nation Access, Residency and Trespass By-Law, 2016*.

**PART II
INTERPRETATION AND APPLICATION**

Definitions and References

2.(1) In this By-Law:

“certificate of possession” means an interest granted by the Minister to a member, in accordance with section 20 of the *Indian Act*;

“child” means and includes a natural child, a child adopted legally or by custom, a child over whom an individual has custody or guardianship, and the child of the person’s spouse;

“COIR” means the Metlakatla First Nation Conflict of Interest Rules, which are attached as a schedule to and which form part of the *Metlakatla First Nation Financial Administration Law, 2015*;

“common-law relationship” means the relationship between two persons who are not married but who have lived together in a marriage-like relationship continuously for a period of not less than one year;

“community land” means any part of Metlakatla lands that is not subject to a certificate of possession, allotment, permit or license granting exclusive use, or to a lease or rental agreement authorized by Metlakatla or a member;

“dependent child” means, in relation to an individual, a child who

(a) has not reached the age of 18 years, or

(b) has reached the age of 18 years, but is primarily dependent on the individual for financial support;

“Governing Council” means the Metlakatla Governing Council, elected in accordance with the *Metlakatla First Nation Election Code*;

“lessee” means a non-member who is leasing, from Metlakatla or from a member, property on Metlakatla lands;

“member” means a person who is listed, or who is entitled to have their name listed, on the membership list for Metlakatla that is maintained in accordance with section 8 of the *Indian Act*;

“Metlakatla” means the Metlakatla First Nation (formerly known as the Metlakatla Indian Band);

“Metlakatla entity” means a corporation, partnership, society or other organization held by Metlakatla;

“Metlakatla Justice Tribunal” means the body created by the Governing Council pursuant to the “Metlakatla Justice Tribunal Terms of Reference”;

“Metlakatla lands” means and includes all reserves of Metlakatla within the meaning of the *Indian Act*;

“Minister” means the Minister of Indigenous and Northern Affairs;

“occupier” means

- (a) the Governing Council, in regards to Metlakatla premises,
- (b) a person who is in lawful possession of premises, pursuant to a certificate of possession, allotment, lease, rental agreement, permit or license, and
- (c) a person who has the responsibility for and control over the condition of a premises or the activities carried on within the premises, or control over persons allowed to enter the premises;

“peace officer” means a police officer, police constable, bailiff, constable, or other person employed for the preservation and maintenance of the public peace or for the service or execution of civil process, and includes a person appointed by the Governing Council for the purpose of maintaining law and order on Metlakatla lands;

“person” includes a partnership, syndicate, association, corporation and the personal or other legal representatives of a person;

“premises” means a residential home, building, improvement, structure, trailer, portable structure or lot used for residential or business purposes, or used by Metlakatla or a Metlakatla entity, and the land on which the building, improvement, structure or trailer is situated;

“removal order” means an order issued by the Governing Council under Part VI;

“reserve” means any land set apart for the sole use and benefit of Metlakatla within the meaning of the *Indian Act*;

“residency administrator” means the person appointed by the Governing Council under section 9 who is responsible for receiving and administering applications for residency entitlement under section 11;

“resolution” means a motion passed and approved by a majority of Governing Council members present at a duly convened meeting;

“respondent” means a person who receives a notice of proposed removal order under paragraph 18(a);

“spouse” means an individual who is

- (a) married to another, whether by a custom, religious or civil ceremony, or
- (b) is in a common-law relationship; and

“trespass” has the meaning given to that term at section 15.

(2) Except as otherwise provided, all references to named enactments in this By-Law are to enactments of the Parliament of Canada.

Interpretation

3.(1) In this Law, the following rules of interpretation apply:

- (a) words in the singular include the plural, and words in the plural include the singular;
- (b) if a word or expression is defined, other parts of speech and grammatical forms of the same word or expressions have corresponding meanings;
- (c) the expression “shall” is to be construed as imperative, and the expression “may” is to be construed as permissive;
- (d) unless the context indicates otherwise, “including” means “including, but not limited to”, and “includes” means “includes, but not limited to”;
- (e) where a provision in this By-Law is expressed in the present tense, the provision applies to the circumstances as they arise;

(f) a reference to an enactment includes any amendment to it, any enactment that replaces it, and every regulation made under it; and

(g) headings form no part of the enactment and shall be construed as being inserted for convenience of reference only.

(2) This By-Law shall be considered as always speaking and where a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to this By-Law according to its true spirit, intent and meaning.

(3) The provisions of this By-Law are severable, and where any provision of this By-Law is for any reason held to be invalid by a decision of a court of competent jurisdiction, the invalid portion shall be severed from the remainder of this By-Law and the decision that it is invalid shall not affect the validity of the remaining portions of this By-Law.

(4) This By-Law shall be construed as being remedial and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objectives.

Application

4. This By-Law applies to all Metlakatla lands.

5. All persons authorized under this By-Law to access or reside on Metlakatla lands shall comply with all Metlakatla laws and by-laws and all other applicable laws.

PART III

ACCESS

Rights of Access

6. The following persons have a right of access to Metlakatla lands, subject to section 7 and Part V:

- (a) members and their spouses and children;
- (b) invitees of members;
- (c) lessees and their invitees, subject to the terms and conditions of the lease;
- (d) taxpayers as defined in the *Metlakatla First Nation Property Taxation Law, 2013*;
- (e) employees of Metlakatla or Metlakatla entities;
- (f) occupiers and their invitees;
- (g) persons authorized by the Governing Council;
- (h) emergency responders;
- (i) persons traveling on a public road through Metlakatla lands; and
- (j) persons authorized by a Metlakatla law or by-law, or other applicable law.

Restricted Areas

7. The Governing Council may, by resolution, designate locations on community lands or Metlakatla premises to which entry is restricted and at which "No Trespass" or "No Unauthorized Access" notices shall be installed.

PART IV

RESIDENCY

Rights of Residency

8.(1) The following persons have the right to reside on Metlakatla lands, subject to Parts V and VI:

- (a) members holding certificates of possession, leases, allotments, rental agreements, or authorization from the Governing Council, and their spouses and dependent children;
 - (b) persons holding a residency permit; and
 - (c) persons lawfully authorized to reside on Metlakatla lands prior to the coming into force of this By-Law.
- (2) For greater certainty, a former member whose name has been removed from the Metlakatla membership list

is not entitled to reside on Metlakatla lands.

Applications for Residency Permits

9.(1) The Governing Council shall, by resolution, appoint a residency administrator to administer applications for residency entitlement under this By-Law, on the terms and conditions set out in the resolution.

(2) The duties of the residency administrator include:

- (a) receiving and administering applications for residency entitlement under section 10;
- (b) maintaining records of residency entitlement applications and related correspondence, reports, and minutes of relevant Governing Council meetings;
- (c) maintaining a list of persons who have been issued residency permits and the locations at which they reside;
- (d) serving as a liaison between applicants for residency entitlement applications and the Governing Council;
- (e) serving as a liaison between Metlakatla and peace officers and other external organizations and agencies;
- (f) notifying applicants under section 11 of the outcome of the Governing Council's decision;
- (g) maintaining a record of all removal orders issued under Part VI; and
- (h) other duties as required under this By-Law or as assigned by the Governing Council.

10.(1) The following persons may apply for a residency permit in accordance with section 11, subject to subsection (2):

- (a) employees of Metlakatla or Metlakatla entities;
 - (b) any of the following persons not already authorized under subsection 8(1):
 - (i) residential taxpayers under leases with Metlakatla or a member,
 - (ii) lessees, subject to the terms and conditions of the lease, and
 - (iii) occupiers;
 - (c) adult non-member children of members;
 - (d) non-members who have demonstrated a respect for and commitment to the culture, customs, and community standards of Metlakatla; and
 - (e) non-members with a family, cultural or other connection to Metlakatla.
- (2) A person who has been convicted of any of the following indictable offences under the *Criminal Code of Canada* or the *Controlled Drugs and Substances Act* is not eligible to apply for a residency permit:
- (a) murder;
 - (b) attempted murder;
 - (c) aggravated assault;
 - (d) aggravated sexual assault;
 - (e) a sexual offence involving a minor; and
 - (f) an offence relating to drug trafficking or manufacturing.

11.(1) A non-member who wishes to reside on Metlakatla lands, and who is eligible in accordance with section 10, may apply to the Governing Council for a residency permit, by submitting to the residency administrator, in writing:

- (a) the name of the applicant;
- (b) the grounds of eligibility to apply, in accordance with subsection 10(1);
- (c) the reason for applying;
- (d) at least one signed letter of reference, if the applicant is 18 years of age or older;
- (e) information about the applicant's proposed residence on Metlakatla lands;

- (f) the duration of the proposed residency;
- (g) a criminal record check, if the applicant is 18 years of age or older;
- (h) copies of at least one of the following pieces of identification:
 - (i) drivers' license or provincial identification card,
 - (ii) birth certificate, or
 - (iii) status card; and
- (i) a commitment to be of good behavior, maintain the peace, respect Metlakatla culture and practices, and comply with all Metlakatla laws and by-laws and all other applicable laws,

together with

- (j) a non-refundable application fee of \$50; and
- (k) the one-time residency fee of \$300, which fee shall be refunded if the application is denied.

(2) The Governing Council may, in its discretion, waive the application and residency fees at paragraphs 11(1)(j) and (k).

Residency Permit Hearings

12.(1) The Governing Council shall conduct a hearing *in camera* to consider each application under section 11.

(2) Within 30 days of receiving an application under section 11, the residency administrator shall acknowledge receipt of the application and notify the applicant of the date of the hearing at which the Governing Council will consider the application.

13. Applicants under section 11 shall be given at least seven days' notice of the hearing at which their application is being considered, and may attend the hearing to explain their reasons for applying for a residency permit and respond to questions from the Governing Council.

14.(1) In determining whether to issue a residency permit to an applicant, the Governing Council may consider the following:

- (a) the degree of the applicant's connection to Metlakatla;
- (b) the applicant's criminal record, if any;
- (c) the applicant's employment status, including whether the applicant is or will be an employee of Metlakatla or a Metlakatla entity;
- (d) whether the applicant has previously been removed from Metlakatla lands;
- (e) whether the applicant poses a danger to the health or safety of Metlakatla and its members; and
- (f) the availability of adequate land, housing, social services and other services.

(2) Within 14 days of a hearing under this Part, the Governing Council shall

- (a) approve the issuance of a residency permit for a fixed period of time, with or without conditions;
- (b) approve the issuance of a residency permit for an indeterminate period of time, subject to Part VI; or
- (c) deny the application.

(3) The residency administrator shall notify the applicant of the Governing Council's decision under subsection (2) within seven days of the Governing Council reaching a decision.

PART V

TRESPASS

Trespass Prohibited

15.(1) A person commits the offence of trespass and is in contravention of this By-Law if the person

- (a) enters or resides on Metlakatla lands without authorization under this By-Law;
- (b) enters or remains in a premises without authorization from the occupier;

- (c) enters Metlakatla lands in contravention of a removal order under Part VI;
- (d) enters Metlakatla lands or premises in contravention of a notice under section 7;
- (e) dumps garbage or other waste on Metlakatla lands; or
- (f) is a non-member and is not authorized to reside on the reserve under section 8, and engages in any of the following activities:
 - (i) hunting, fishing, logging or trapping,
 - (ii) unauthorized selling of wares, services or merchandise,
 - (iii) loitering,
 - (iv) camping,
 - (v) accessing the foreshore,
 - (vi) operating a motorized or non-motorized vehicle in areas, including roads and trails, that are not accessible to the public, ,
 - (vii) soliciting financial assistance,
 - (viii) disorderly conduct or nuisance; or
 - (ix) engaging in any other activity that is prohibited by a Metlakatla law or by-law or any other applicable law,

unless the person holds a licence or permit authorizing the activity or the activity is otherwise authorized by the Governing Council.

- (2) A person who has been directed, either orally or in writing, by the occupier to
 - (a) leave Metlakatla lands or premises, or
 - (b) stop engaging in an activity on Metlakatla lands or on premises

commits an offence if the person

- (c) does not leave Metlakatla lands or the premises, or stop the activity, as applicable, as soon as possible after receiving the direction, or
- (d) re-enters Metlakatla lands or the premises or resumes the activity on Metlakatla lands or in the premises.

16. Every person who removes, damages, defaces or covers a "No Trespass" sign posted by an occupier commits an offence under this By-Law.

PART VI REMOVAL ORDERS

Grounds for Removal

17. The Governing Council may, after conducting a hearing under section 19, issue a removal order against a person in accordance with this Part

- (a) if the person is convicted of any of the following indictable offences under the *Criminal Code of Canada*:
 - (i) murder,
 - (ii) attempted murder,
 - (iii) aggravated sexual assault, or
 - (iv) a sexual offence involving a minor;
- (b) if the person is a non-member and is convicted of any of the following indictable offences under the *Criminal Code of Canada* or the *Controlled Drugs and Substances Act*:
 - (i) aggravated assault,
 - (ii) armed robbery,
 - (iii) an offence relating to gang activity, or

- (iv) an offence relating to drug trafficking or manufacturing; and
- (c) if the person is no longer a member but continues to reside on Metlakatla lands without authorization.

Notice to Respondent

18. At least ten days before a hearing under section 19, the residency administrator shall
- (a) by personal service or registered mail, send a notice to the respondent, setting out the date, time and location for the hearing, and the right of the respondent to make representations to the Governing Council at the hearing;
 - (b) publish a copy of the notice described in paragraph (a) in a Metlakatla newsletter or in a newspaper with circulation on Metlakatla lands; and
 - (c) post a copy of the notice described in paragraph (a) in a public place on Metlakatla lands.

Hearing

- 19.(1) The Governing Council shall conduct a hearing to consider each proposed removal order.
- (2) A respondent shall have the opportunity at the hearing to make representations to the Governing Council regarding the proposed removal order.
- (3) The Governing Council may hear representations from any person who may have information that is relevant to the hearing, including
- (a) peace officers; and
 - (b) family members of the respondent.
- 20.(1) Hearings under this Part shall be open to the public, subject to subsection (2).
- (2) The Governing Council may exclude any members of the public from all or part of a hearing under this Part if the Governing Council determines that an open hearing
- (a) could compromise confidential information;
 - (b) could prejudice the ability of any party to make representations;
 - (c) could adversely affect the maintenance of order and the proper administration of justice; or
 - (d) would not be in the best interests of Metlakatla.
- (3) During a hearing held under this Part, the Governing Council may ask of any person making representations for information regarding
- (a) future plans of the respondent, including any proposed steps for improvement, reparation or restitution;
 - (b) the character, behaviour and attitude of the respondent and their willingness to change; and
 - (c) any other information relevant to the respondent's background, conduct, or connection to Metlakatla.
- (4) The Governing Council may make a decision under section 21 regardless of whether the respondent attends or participates in the hearing under this Part.

Decision

- 21.(1) The Governing Council shall take into consideration all representations made and all information provided at a hearing held under this Part and, within ten days of the conclusion of the hearing, shall determine whether to issue a removal order to the respondent.
- (2) A removal order may be for a fixed or indefinite period of time, and may include conditions.
- (3) Within five days of the Governing Council making a determination under this section, the residency administrator shall, by personal service or registered mail, notify the respondent of the outcome of the hearing.

Notice of Removal Order

22. Within 48 hours of the issuance of a removal order, the residency administrator shall
- (a) by personal service or registered mail, provide a copy of the removal order to the respondent;
 - (b) post a copy of the removal order in a public place on Metlakatla lands; and

- (c) notify peace officers that the removal order has been issued.

Appeal

23. A person against whom a removal order has been issued may, within 14 days of receiving a removal order under paragraph 22(a), appeal the decision to the Metlakatla Justice Tribunal.

PART VII

OFFENCES AND ENFORCEMENT

Enforcement

24. A peace officer may

- (a) order any person who is in trespass to leave Metlakatla lands or the premises immediately; and
- (b) order any person who engages in prohibited activity to cease immediately.

25. If a person fails or refuses to obey an order under section 24, a peace officer may take such reasonable measures as may be necessary to remove the person from Metlakatla lands or the premises.

26. No person shall

- (a) fail or refuse to comply with an order under section 24; or
- (b) resist or interfere with a peace officer acting under section 25.

Penalty

27. A person who violates any provision of this By-Law commits an offence and is liable on summary conviction by a court of competent jurisdiction to

- (a) a fine of up to \$1000;
- (b) imprisonment for a term of up to 30 days; or
- (c) both.

28. In addition to the penalties under section 27, a court of competent jurisdiction may

- (a) impose any additional remedies within its authority, including community service, education and restorative justice measures; and
- (b) make an order prohibiting the continuation or repetition of the offence by the person convicted.

29. The Governing Council may apply to a court of competent jurisdiction for an order restraining the contravention of this By-Law.

Civil Remedies

30. Nothing in this By-Law extinguishes the right of a person, including Metlakatla, to bring a civil action for damages arising out of a trespass on Metlakatla lands or on any premises and all civil remedies for trespass are preserved.

PART VIII

GENERAL PROVISIONS

Disclosure of Information

31.(1) The Governing Council, residency administrator, and any other person who has custody or control of information or records obtained or created under this By-Law shall not disclose the information or records except

- (a) in the course of administering this By-Law or performing functions under it;
- (b) in proceedings before a court of competent jurisdiction or pursuant to a court order; or
- (c) as required by law.

Conflicts of Interest

32. The COIR applies to all decisions, actions and orders made under By-Law.

Notices

33.(1) Where in this By-Law a notice is required to be given by mail or where the method of giving the notice is not otherwise specified, it shall be given

- (a) by mail to the recipient's ordinary mailing address;
 - (b) where the recipient's address is unknown, by posting a copy of the notice in a conspicuous place on the recipient's property; or
 - (c) by personal delivery or courier to the recipient or to the recipient's ordinary mailing address.
- (2) Except where otherwise provided in this By-Law,
- (a) a notice given by mail is deemed received on the fifth day after it is posted;
 - (b) a notice posted on property is deemed received on the second day after it is posted; and
 - (c) a notice given by personal delivery is deemed received upon delivery.

Repeal

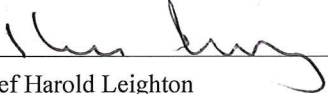
34. The *Metlakatla Band Trespassing By-Law No, 1997-01* is hereby repealed in its entirety.

Force and Effect

35. This By-Law comes into force and effect on the day after it is approved by the Governing Council.

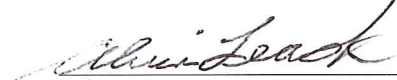
THIS BY-LAW IS HEREBY DULY ENACTED by the Governing Council on the 5 day of May, 2016, at Prince Rupert, in the Province of British Columbia.

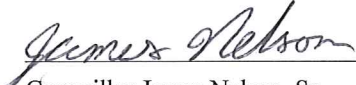
A quorum of the Governing Council consists of four (4) members of the Governing Council.



Chief Harold Leighton

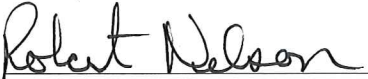

Councillor Wayne Haldane


Councillor Alrita Leask


Councillor Alvin Leask, Jr.


Councillor James Nelson, Sr.


Councillor Cynthia Smith


Councillor Robert Nelson, Sr.

