

Algonquins of Pikwakanagan First Nation

2020

Enforcement Law

DRAFT

PREAMBLE

Whereas the Algonquins of Pikwakanagan First Nation assert our inherent sovereignty which emanates from our people, our culture and our Aboriginal rights, and as a natural corollary, hereby exercise our power to enforce our Laws as recognized and affirmed by the Framework Agreement;

And whereas, governing effectively requires not only enacting Algonquins of Pikwakanagan Laws but also properly enforcing Algonquins of Pikwakanagan Laws.

And whereas, the Algonquins of Pikwakanagan First Nation entered into the Framework Agreement with Canada on March 25, 2013, which was ratified by the Government of Canada through the *First Nations Land Management Act* and by the Algonquins of Pikwakanagan through the *Land Code* enacted on August 1, 2019;

And Whereas s.20 of the Algonquins of Pikwakanagan First Nation's *Land Code* includes the power to pass laws related to various matters related to land, land interests, land use, land management, division of family property, land zoning, environmental protects, local services;

And Whereas sections s.7.2(e) specifically recognizes Council's power to enact a law for the enforcement of Algonquins of Pikwakanagan First Nation Land Laws, and s.7.1(c) allows for necessary or ancillary to other Land Laws;

Now therefore, this *Enforcement Law* is hereby enacted to provide an administrative structure for the enforcement of the *Land Code*, and all laws created thereunder.

1 PRELIMINARY MATTERS

Title

1.1 The title of this enactment is the Algonquins of Pikwakanagan First Nation *Enforcement Law*.

Short Title

1.2 This Law may be cited as the *Enforcement Law*.

2 DEFINITIONS

Clarification

2.1 In this *Enforcement Law*:

- (a) Any words or terms which are defined in the Framework Agreement shall have the same meaning as in the Framework Agreement, unless the context requires otherwise;
- (b) Any words or terms which are defined in the Algonquins of Pikwakanagan First Nation *Land Code* shall have the same meaning as in the *Land Code*, unless the context requires otherwise.

Definitions

2.2 The following definitions apply in this *Enforcement Law*:

“Appeal Board” “Appeal Board” means the Appeal Board created in the Land Code

“Compliance notice” means a notice issued in accordance with Part 4 of this Law which imposes some non-monetary obligation on a person;

“Council” means the Council, as defined by the Custom Election Code of the Algonquins of Pikwakanagan First Nation;

“Discounted Penalty” means the prescribed amount of the penalty if payment is received on or before the 14th day after the date a ticket was served;

“Community Peace Officer” means a person appointed as a Community Peace Officer in accordance with Part 3 of this Law and includes a Peace officer as defined in the Criminal Code;

“Land Code” means the Algonquins of Pikwakanagan *Land Code* enacted on August 1, 2019, and as may be amended, or any successor law to that Land Code;

“Manager” means the Manager with the Pikwakanagan First Nation administration to whom the Community Peace Officer reports to;

“Offence” means a breach of a Pikwakanagan Law commenced by way of Information, with penalties outlined in s.6.2 of this Law.

“Peace Officer” means a Peace Officer as defined by the *Criminal Code of Canada*;

"Person" includes an individual, a partnership, a corporation or a First Nation;

“Surcharge” means an additional fee if the prescribed amount is not paid on or before the 30th day after the ticket was served;

“Ticket” means a ticket issued in accordance with Part 5 of this Law which imposes a monetary obligation on a named person;

3. INTERPRETATION

3.1 In this Enforcement Law:

- a) The *Enforcement Law* shall be interpreted in a fair, large, and liberal manner as best ensures the attainment of its objects;
- b) The word “shall” signifies an obligation that, unless this *Enforcement Law* provides language to the contrary, must be carried out as soon as practicable after the event that gives rise to the obligation;
- c) Unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to”, and the use of the word “includes” means “includes, but is not limited to”;
- d) Unless it is otherwise clear from the context, the use of the masculine includes the feminine, and the use of the feminine includes the masculine;
- e) All references to a number of days means consecutive days and not business days;
- f) Where the time limit for the doing of an act expires or falls on a Saturday or Sunday, or a First Nation, federal or provincial holiday, the act may be done on the next day that is not a Saturday, Sunday, or holiday;
- g) Where the time limit for the completion of an act in the Algonquins of Pikwakanagan First Nation Administration Office falls on a day when the office is not open during regular business hours, the act may be completed on the next day that the office is open; and,
- h) The principles set out in the Preamble to this *Enforcement Law* may be used to interpret this *Enforcement Law*.

Culture, Traditions and Purpose

3.2 The purpose of this *Enforcement Law* is to set out the principles, procedural rules, and administrative structures that apply to the enforcement of Algonquins of Pikwakanagan First Nation Laws in accordance with the *Framework Agreement*. Without limiting the forgoing, this law is intended to provide administrative structures and power for the enforcement of the *Land Code* and any and all laws passed by Council under the *Land Code*.

3.3 The structures and procedures established by or under this Enforcement Law shall be interpreted in accordance with the culture, traditions and customs of the Algonquins of Pikwakanagan First Nation, unless otherwise provided.

4. GENERAL PROVISIONS

Protection from personal liability

- 4.1 No action or other proceeding shall be instituted against Community Peace Officer for any act done in good faith in the execution or intended execution of any duty imposed or power conferred by this Act, the *Land Code*, or for any alleged omission in the execution in good faith of that duty or power.
- 4.2 Subsection 4.1 does not relieve the First Nation of liability for a Community Peace Officer's acts or omissions, and the First Nation is liable as if that subsection had not been enacted and as if the Community Peace Officer was the First Nation's employee.

5. SEVERABILITY

- 5.1 Should any section of this Law be declared by a Court of competent jurisdiction to be *ultra vires* or illegal for any reason, the remaining parts shall nevertheless remain valid and binding, and shall be read as if the offending section or part had been struck out.

6. COMMUNITY PEACE OFFICERS

Appointment of Community Peace Officers By Council

- 6.1 Council may appoint by Council Resolution persons as a Community Peace Officer to enforce Algonquins of Pikwakanagan Laws and maintain public peace. This appointment by Council shall prescribe the duties and responsibilities of the appointed Community Peace Officer.

Authority of Community Peace Officers

- 6.2 Unless limited by the terms of appointment issued under s.6.1 or any other limitations outlined in any Algonquin of the Pikwakanagan Law, the Community Peace Officer is authorized to:
- (a) Issue and serve Contravention notices, Compliance Notices, tickets or orders that under applicable Algonquins of Pikwakanagan Laws are authorized to be enforced by a Community Peace Officer
 - (b) Issue and serve compliance notices in accordance with Part 4 of this Law;
 - (c) Issue and serve tickets in accordance with Part 4 and Part 5 of this Law;
 - (d) With approval of the Lands manager swear out, issue and serve an information and summons in accordance with the with the Summary Conviction Procedures of the *Criminal Code*.

Conduct of Community Peace Officers

Identification

- 6.3 A Community Peace Officer must, upon request, show appropriate identification confirming his or her credentials as a Community Peace Officer.

Duty

- 6.4 It is the duty of Community Peace Officer to respond in a timely fashion to complaints, carry out inspections, investigations, involving allegations of offences against Algonquins of Pikwakanagan Laws, promote compliance, apply remedies in accordance with those customs and traditions that are allowed under Algonquins of Pikwakanagan Laws and carry out assignments as assigned by the Lands Manager.

*Complaints about Conduct of Community Peace Officers
General*

- 6.5 Any person may file a written complaint with the Lands Manager regarding the conduct of a Community Peace Officer while carrying out their duties as a Community Peace Officer within 30 days of the alleged conduct.

Appointed Community Peace Officers

- 6.6 All complaints regarding a Community Peace Officer who derives their authority from s.6.1 must be filed with the Manager and must describe in detail the facts that give rise to the complaint and any potential witnesses to the incident.

Preliminary Review

- 6.7 The Manager will conduct a preliminary review of all s.6.6 complaints. Upon completion of that review, then,
- (a) if some merit to the complaint then the Manager forward it to the Appeal Board conduct a review hearing; and,
 - (b) if the complaint is frivolous, vexatious, or made in bad faith, dismiss the complaint.

Findings of the Appeal Board

- 6.8 The Appeal Board shall conduct such hearings as it deems necessary to render a decision on the complaint submitted to it, and then shall issue findings on a s.6.6 complaint that may include:
- (a) dismissal of the complaint; or,
 - (b) uphold the complaint and issue a statement setting out their findings of fact. Once the appeal board has issued their findings, the Manager shall consider and apply any appropriate employer response in accordance with the Pikwakanagan Personnel Policy in place at that time.

7. OFFENCES

Description of Algonquins of Pikwakanagan First Nation Laws

- 7.1 Laws that may be enforced under this *Enforcement Law* include laws under the *Land Code* and other Algonquins of Pikwakanagan First Nation Laws and by-laws, in accordance with the *First Nations Land Management Act*.

*Contraventions and Offences Generally
Item*

- 7.2 A person contravenes Algonquins of Pikwakanagan Law by:
- (a) doing anything forbidden under that Algonquins of Pikwakanagan Law; or
 - (b) failing to do anything required of them by that Algonquins of Pikwakanagan Law.

Initiating Proceedings Against a Person

- 7.3 When a Community Peace Officer believes, on reasonable grounds, that a contravention of law has occurred, he/she may,
- (a) initiate a charge by swearing out an information;
 - (b) issue to the defendant a compliance or contravention notice or issue a ticket; and,
 - (c) issue to the defendant a summons pursuant to the Summary Conviction Procedures of the Criminal Code.

Penalties

- 7.4 Unless the specific Algonquin First Nation law states otherwise, the penalties for each offence will be outlined in each land law.
- 7.5 When sentencing a member of the Algonquins of Pikwakanagan, the court may consider the advice and recommendations from a sentencing circle or other consultative mechanism, with the agreement and consent of the prosecutor, defendant and the Algonquins of Pikwakanagan First Nation.

8. COMPLIANCE NOTICES

Issuing Compliance Notices

When can a notice be issued?

- 8.1 A Community Peace Officer may issue a compliance notice to any person if the Community Peace Officer has reasonable grounds to believe that the person has committed or is committing a contravention of Pikwakanagan Law. A compliance notice must be issued within 30 days of the officer becoming aware of the contravention. Council may set, from time to time, a prescribed form for compliance notices by Band Council Resolution.

Contents of Compliance Notices

General

- 8.2 A compliance notice will identify the contravention with a brief description of the allegation made against the person. The contravention notice must also include a statement of what the person must do to stop or rectify the contravention. Council may set, from time to time, a prescribed form for compliance notices by Band Council Resolution.

Particulars

- 8.3 A compliance notice must at least contain the following information:
- (a) The law that is alleged to have been contravened;
 - (b) The facts of the alleged contravention in sufficient detail to permit the named person to identify the contravention;

- (c) The time period or date by which the named person must comply with the requirements set out in the compliance notice;
- (d) The date and time the compliance notice was issued;
- (e) A description of the location where the contravention took place;
- (f) The name and signature of the Community Peace Officer who issued the compliance notice;
- (g) How the person can dispute the notice and have it reviewed by the Appeal Board;
- (h) Where allowable by Law, a provision which states that if the named person does not comply with the requirements set out in the compliance notice, another person authorized by the Council may take action to rectify the offence at the expense of the named person; and,
- (i) Any other prescribed information.

9. SERVICES OF COMPLIANCE NOTICES AND TICKETS

Service to an Individual

- 9.1 A compliance notice or ticket may be served:
- (a) by person service on the named person;
 - (b) If the individual cannot conveniently be found, by service upon a person who appears to be at least 18 years of age at the last or usual place of residence of the individual; or,
 - (c) By mailing a copy of the compliance notice or ticket to the actual or last known address of the named person.

Service on a Vehicle

- 9.2 A compliance notice or ticket relating to a contravention involving a vehicle may be served by:
- (a) Leaving a copy of the compliance notice or ticket with the person who appears to have care and control of the vehicle;
 - (b) Affixing the compliance notice or ticket to the vehicle in a conspicuous place; or,
 - (c) Serve a copy on the registered owner within 10 days of the contravention or mailing the compliance notice or ticket to the address of each registered owner of the vehicle involved.

Service on a Corporation

- 9.3 A compliance notice or ticket may be served to a corporation by:
- (a) Leaving a copy with an officer or director or the person at any place of business of the corporation who appears to be in control or management of the place of business; or
 - (b) Sending a copy of it by registered mail to the head office of the corporation.

Certificate of Service

- 9.4 A Community Peace Officer who serves a compliance notice or ticket shall complete and sign a certificate of service stating that the compliance notice or ticket was, on the day set out in the certificate, served on the person or vehicle of the person who the Community Peace Officer believes committed the contravention. The certificate is evidence of service of the compliance notice or ticket on the named person on the date specified.

Service by Mail

- 9.5 Service by registered mail is effective on the seventh day after the compliance order or ticket is mailed.

Additional Methods of Service

- 9.6 Council may, by Band Council Resolution, make regulations prescribing a method of service in addition to the methods described in this section and prescribing a period within which a person is presumed to have received the ticket or compliance notice.

When Failure to Serve does not Invalidate

- 9.7 If a compliance notice is not served in accordance with Part 9 herein, a proceeding or an action in relation to the compliance notice will remain valid if and only if:
- a) It can be demonstrated that the content of the compliance notice was known by the named person within the time allowed for service; and
 - b) The failure to serve in accordance with this section does not result in injustice.

10. COMPLYING WITH OR DISPUTING A COMPLIANCE NOTICE

Receiving a Compliance Notice

- 10.1 A person who receives a compliance notice must:
- a) Comply with the requirements set out in the compliance notice on or before the 14th day after the compliance notice was served, or any specific time period specified on the compliance notice under s.8.5(c); or
 - b) Dispute the compliance notice in accordance with s.10.2.

Disputing a Compliance Notice

- 10.2 To dispute a compliance notice, the named person must return their compliance notice with the written notice of dispute to the Manager by appearing in person at the Algonquins of Pikwakanagan Administration Office or by following any other method indicated on the compliance notice as per s.8.5(g).

Timing for Dispute

- 10.3 Notices of dispute must be received by the Algonquins of Pikwakanagan Administration Office on or before the 14th day after the date the compliance notice was served, or by such other time as may be specified on the compliance notice under s.8.5(c).

Content of Dispute

- 10.4 The notice of dispute must provide an address for the person disputing the allegation and sufficient information to identify the compliance notice and the alleged contravention that is disputed.

No Suspension of Compliance Notice During Dispute

- 10.5 A dispute that proceeds to the Appeal Board does not limit Council's ability to authorize someone to rectify the alleged contravention as set out in the compliance notice. If someone authorized by Council to do so has rectified the alleged contravention, the review will determine whether Council or the person named in the compliance notice bears the expense of carrying out the requirements of the compliance notice.

11. FAILURE TO RESPOND TO A COMPLIANCE NOTICE

- 11.1 If a person fails to respond to a compliance notice within the specified time, Council may authorize someone to rectify the contravention at the expense of the named person, as outlined on the compliance notice in accordance with 8.6(h). A ticket will be issued to the named person with the amount owed for this expenditure.

12. LIMITATION PERIOD FOR TICKETS

- 12.1 A ticket may not be issued more than 90 days after the contravention in respect of which it is issued is alleged to have occurred.

13. TICKETING

Issuing Tickets

When can a ticket be issued?

- 13.1 A Community Peace Officer may issue a ticket in the prescribed form to any person if the Community Peace Officer has reasonable grounds to believe that the person has committed or is committing a contravention.

Who is a notice issued to?

- 13.2 A ticket must be issued to a person unless it is issued with respect to an offence involving a vehicle, in which case it may be issued to:
- (a) The vehicle's licence plate; or
 - (b) the registered owner with service upon that owner within 10 days of the contravention or mailing the compliance notice or ticket to the address of each registered owner of the vehicle involved; or,
 - (c) The vehicle's identification number, temporary operation permit, or interim permit under any applicable law.

Notice's to vehicles

- 13.3 If a ticket is issued under 13.2 then it is deemed to have been issued to each registered owner of the vehicle as contained in the records of the applicable government. Each registered owner of the vehicle is thereby a named person in relation to the ticket.

Content of Tickets

General

- 13.4 A ticket requires a person to pay a specified amount in response to an alleged contravention, as set by the law being enforced, and must be in the form prescribed by regulations made by Council.

Particulars

- 13.5 A ticket must contain the following information:
- (a) The name, address and date of birth of the person whom the allegation is made, and in the case of a business or corporation the business name and address;
 - (b) The law and offence, set out in short wordings, that is alleged to have been contravened and the facts of the alleged contravention in sufficient detail to permit the named person to identify the contravention;
 - (c) The penalty, discounted penalty, and surcharge applicable if the penalty is not paid on time;
 - (d) The methods for paying the penalty;
 - (e) The date and time the ticket was issued;
 - (f) Description of the location;
 - (g) The name and signature of the Community Peace Officer who issued the ticket;
 - (h) A description of how the accused can dispute the ticket and have it reviewed by the Appeal Board; and,
 - (i) Any other prescribed information.

14. COMPLYING WITH OR DISPUTING A TICKET

Receiving a Ticket

- 14.1 A person who receives a ticket must either:
- a) Pay the specified sum to the Algonquins of Pikwakanagan Administration Office by a method described on the ticket. The discounted penalty will only apply if payment is received on or before the 14th day after date that the ticket was served. The surcharge will apply if payment is received on or after the 30th day after the date that the ticket was served; or,
 - b) Dispute the ticket in accordance with 14.2.

Disputing a Ticket

- 14.2 To dispute a ticket the person must return their ticket with the written notice of dispute to the Manager by appearing in person at the Algonquins of Pikwakanagan Administration Office or by following any other method indicated on the ticket as per 13.5(h).

Timing of Dispute

- 14.3 Notices of dispute must be received by the Algonquins of Pikwakanagan Administration Office on or before the 30th day after the date the ticket was served.

Contents of Dispute

- 14.4 The notice of dispute must contain an address for the person disputing the allegation and sufficient information to identify the ticket and the alleged offence that is disputed.

Suspension of Ticket

- 14.5 A dispute that proceeds to the Appeal Board suspends the operation of the ticket until the review is resolved.

Decision of Appeal Board

- 14.6 The Appeal Board shall hold and conduct such hearings as it deems necessary and appropriate to fairly consider the dispute over the ticket, and may,
- (a) Dismiss the dispute;
 - (b) Uphold the dispute and set aside the ticket;
 - (c) Uphold the dispute in part, and may amend the ticket to bring it into compliance with Pikwakanagan Law;

15. FAILURE TO RESPOND TO A TICKET

Prosecution

- 15.1 If a named person fails to pay the amount of the ticket on or before the 30th day after,
- (a) the date the ticket was served, or
 - (b) the Appeal Board renders their decision if the ticket was disputed,
- then the Algonquins of Pikwakanagan may commence a prosecution of the offence by laying an Information in Provincial Court under the summary conviction procedures of Part XXVII of the *Criminal Code*, as amended from time to time and serving it on the named person.

Non-Essential Services

- 15.2 If a named person fails to pay the full amount of the ticket on or before the 60th day after the date the ticket was served, the Algonquins of Pikwakanagan **Lands Manager** may direct that non-essential services provided by the Algonquins of Pikwakanagan to that person, other than services provided pursuant to a contract with that person, may be suspended until the fees are paid. These measures may include, where the person is not a member of the First Nation, revoking their consent to attend on Band Lands, and issuing a direction to the police that the First Nation will consider them to be a trespasser.

Collection Agency

- 15.3 If a named person fails to pay the full amount of the ticket on or before the 60th day after the date the ticket was served, the fine may also be collected by the Algonquins of Pikwakanagan through a debt collection agency, which may result in legal collection proceedings being brought against the named person.

16. OFFENCES

More Serious Offences

- 16.1 Offences with penalties defined in s.6.2 will be commenced and dealt with by the Provincial Court. They will commence by way of Information and the issuance of a Summons following the Summary Conviction Procedures under Part XVII of the *Criminal Code*.

17. REVIEW HEARING

Review Procedure

Review Hearing

- 17.1 A person may appeal their ticket or compliance notice to the Appeal Board, as created under the Land Code, as a “dispute” under the Land Code, with such changes to the procedures as the Appeal Board determines necessary to ensure procedural fairness and fundamental justice to the parties. Without limiting the foregoing, the Community Peace Officer and the First Nation shall be considered parties to the dispute.

Issues at Review Hearing

- 17.2 After considering all relevant evidence and submissions, the Appeal Board shall decide;
- a) whether the charge was issued to the correct person;
 - b) whether the charge issued was the correct charge;
 - c) what is the appropriate penalty for the charge, including restorative justice principles where appropriate;
 - d) the appropriate amount of time to be given for the named person to fulfil the obligations imposed on them by the ticket or compliance notice; and,
 - e) any other matter that is necessary for a just outcome of the case.

Considerations

- 17.3 In making its determination the Appeal Board shall consider the individual circumstances of the named person, the specific facts of the contravention, the best interests of the Algonquins of Pikwakanagan.

Timing of Hearing

- 17.4 When necessary, Appeal Board reviews will be conducted on a specific day each month which shall be determined by Council. In all cases, the Appeal Board shall ensure that all parties have reasonable notice of the date and time of their appeal hearing.

Failure to Comply

- 17.5 If a named person fails to comply with the outcome of the Appeal Board’s review, then the Algonquins of Pikwakanagan may undertake any step outlined in s.15.2 and 15.3 of this Law.

18. COMMENCEMENT

- 18.1 This Enforcement Law shall take effect upon a quorum of Chief and Council at a duly convened Council meeting confirming and signing of this Law by Band Council Resolution, or at any date specified by Council in their Resolution.

This Enforcement Law is hereby approved at a duly convened meeting of the Algonquins of Pikwakanagan First Nation Council by motion # .

Chief

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

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