

## LAW OF FORT WILLIAM FIRST NATION

### STATE OF EMERGENCY AND RESTRICTING ACCESS TO RESERVE BY-LAW (THE "COVID-19 TRESPASS BY-LAW")

**WHEREAS** Fort William First Nation is a band as defined in the provisions of the *Indian Act*, R.S.C. 1985, C. I-5;

**AND WHEREAS** Fort William First Nation's lands consist of those certain lands vested in Her Majesty the Queen and held in trust for the use and benefit of Fort William First Nation situated within Fort William Indian Reserve No. 52 (the "Reserve");

**AND WHEREAS** Fort William First Nation is making every effort to ensure the safety of its members and community members against the spread of the COVID-19 virus;

**AND WHEREAS** the geographical location of the Reserve, being adjacent to the City of Thunder Bay in the Province of Ontario, results in the community being more vulnerable to the spread of the COVID-19 Virus with the frequency of vehicular and pedestrian traffic within the community;

**AND WHEREAS** the Council of the Fort William First Nation is empowered to make the current by-law pursuant to subsections 81(1)(a), (c), (p), (p. 1), (q) and (r) of the *Indian Act*, R.S.C., 1985, c.I-5;

**AND WHEREAS** pursuant to section 30 of the *Indian Act*, R.S.C., 1985, c.I-5, anyone who trespasses on the Reserve is guilty of an offence and is liable to a fine or imprisonment, or both;

**AND WHEREAS** subsection 81(1)(r) of the *Indian Act*, R.S.C., 1985, c.1-5 makes violation of a by-law punishable by a fine or imprisonment, or both;

**AND WHEREAS** Fort William First Nation has deemed it expedient and necessary to exercise its right pursuant to section 81(1)(a) and 81(1)(p) of the *Indian Act* to initiate a By-Law for the purpose of the protection of the health of Band Members on the Reserve and to prevent the spreading of contagious and infectious diseases by the removal and punishment of persons trespassing on the Reserve or frequenting the reserve for prohibited purposes;

**NOW THEREFORE** it is hereby enacted pursuant to section 81(1) of the *Indian Act*, R.S.C., 1985, c.1-5:

1. Effective at 6:01 P.M. Friday April 3, 2020, Fort William First Nation hereby initiates a trespass order against all persons, other than Authorized Persons, as more particularly set out in sections 2 and 4 herein.

## **PUBLIC ACCESS**

2. Between the hours of 6:01 A.M. and 5:59 P.M., no person other than an Authorized Person or an individual who enters upon the Reserve for a Business Purpose (as defined below) shall enter upon, be situate upon, or travel upon the Reserve. Any person violating this requirement shall be on the Reserve without legal authority or colour of right to do so.
3. For the purposes of section 2 above, "Business Purpose" means (i) purchasing and acquiring goods or services from a business situated on Reserve, (ii) delivering materials and/or supplies to a business situated on Reserve, (iii) providing support services to a business situated on Reserve, (iv) performing repair or maintenance work on Reserve, and (v) such other commercial transactions of a similar nature to the foregoing.

## **TRESPASS CURFEW**

4. Between the hours of 6:00 P.M. and 6:00 A.M. (the "Trespass Curfew"), no person other than an Authorized Person shall enter upon, be situate upon, or travel upon the Reserve. Any person violating this requirement shall be on the Reserve without legal authority or colour of right to do so.

## **TRESPASS CONDUCT**

5. Any person, other than an Authorized Person, who conducts any of the following on the Reserve:
  - (a) Loitering;
  - (b) Entering or remaining on the Reserve for any purpose that is not a Business Purpose;
  - (c) Violating the Trespass Curfew; or
  - (d) Any other activity that is prohibited by federal or provincial law or by the Band;

shall be deemed to be frequenting the Reserve for a prohibited purpose, to be on the Reserve without permission or lawful right or authority, and to be trespassing on the Reserve.

## **CONSEQUENCES OF FAILURE TO COMPLY WITH TRESPASS CURFEW**

6. Any person, when requested orally to comply with this By-Law by (i) a Police Officer; (ii) Chief and Council; or (iii) any person designated by Chief and Council to issue a Trespass Notice; and who fails to do so, or thereafter continues to engage in a prohibited activity on the Reserve, or re-enters the Reserve while said Trespass Curfew is in effect, shall be considered a Trespasser and is guilty of an offence under this By-Law and subject to punishment as set out herein.

## ENFORCEMENT

7. A Police Officer shall have the right, on behalf of the Band, to
  - (a) interview and/or question persons in order to identify Trespassers;
  - (b) request identification from a person upon reasonable suspicion the person is a Trespasser;
  - (c) orally request that a person comply with this By-Law;
  - (d) require compliance with this By-Law including said enforcement rights as set out in the *Indian Act*;
  - (e) remove any person from the Reserve (or any portion thereof) that is present contrary to this By-Law; and
  - (f) use reasonable force to defend himself or another person.
8. Any person designated by Chief and Council to issue a Trespass Notice may:
  - (a) orally request that a person comply with this By-Law;
  - (b) issue a Trespass Notice to any person not complying with this By-Law, either orally or in writing; and/or
  - (c) request, from time to time, the assistance of a Police Officer in connection with the issuance of any Trespass Notice.

## OFFENCE

9. A person who does not act under a right or authority conferred by law and who, without the express permission of Chief and Council, whichever is applicable,
  - (a) engages in any prohibited activity on Reserve,
  - (b) fails to comply with the Trespass Curfew, or
  - (c) fails to leave the Reserve when requested by a Police Officer under section 7 hereof or fails to leave the Reserve when issued a Trespass Notice,commits an offence.
10. A person who commits an offence under this By-Law is liable on summary conviction to a fine not exceeding one thousand (\$1,000.00) dollars or to imprisonment for a term not exceeding thirty (30) days, or to both.

11. In addition to any other rights and remedies available to the Band, the Band may also:
  - (a) bring an application to any court of competent jurisdiction for injunctive relief requiring any Trespasser to refrain from entering upon the Reserve and seek any damages or costs resulting from any breach of this By-Law; and/or
  - (b) notify a Police Officer of the Trespass conduct and request enforcement under Ontario's *Trespass to Property Act*, R.S.O. 1990, c. T.12.

#### **OTHER RIGHTS NOT IMPEDED**

12. The provisions of this By-Law are in addition to and not in substitution of any rights of the Band and/or Chief and Council with respect to persons trespassing on Reserve, and whether under the *Indian Act* or otherwise.

#### **SEVERABILITY**

13. Should a court of competent jurisdiction determine that a provision of this By-Law is invalid for any reason, the provision shall be severed from the By-Law and the validity of the rest of the By-Law shall not be affected. The Band shall replace the severed provision with another provision, if necessary, in order to maintain the intent of this By-Law.

#### **COMING INTO FORCE**

14. This By-Law comes into force immediately upon publication on the Fort William First Nation's internet site or other valid form of publication pursuant to section 86 of the *Indian Act*.
15. This By-Law shall remain in effect until such time that the Chief and Council rescinds this By-Law by motion.

#### **INTERPRETATION**

16. In this By-Law:

"Authorized Person" means a person who (i) is a Band Member of Fort William First Nation, or a dependant family member of a Band Member and who resides with same Band Member, or a person who has received written authorization from Chief and Council to Reside on Reserve and such written authorization has not been revoked; (ii) has authority to be on the Reserve pursuant to legal authority granted by an Act of Parliament or Act of the Legislature of Ontario; (iii) is a Tenant and provided such Tenant is solely situate within their respective Leased Space or making direct ingress or egress with vehicles to and from their respective Leased Space; (iv) a person authorized by a government body or any other public body, established by or under an enactment of the Province of Ontario to provide or administer health care services to a Band Member; or (v) is authorized in writing by the Chief and Council or by the Band;

"Band" means the Fort William First Nation, as represented by its duly elected Chief and Council;

"Band Member" means a member of the Band, having the same meaning as "member of a band" under the *Indian Act*;

"Chief and Council" means the duly elected Chief and Council of Fort William First Nation and has the same meaning as "council of the band" under the *Indian Act*;

"*Indian Act*" means the *Indian Act*, R.S.C., 1985, c. 1-5, a statute of the Federal Crown governing registered Indians, bands and reserves;

"Leased Space" means an area on the Reserve leased, or licensed, to a Tenant in accordance with the provisions of the granting instrument;

"Police Officer" means a police officer employed by Anishinabek Police Services and/or any police services being engaged by the Band from time to time or other person appointed and identified by Chief and Council from time to time to enforce this By-Law;

"Reserve" means all those lands defined as a "Reserve" within the meaning of the *Indian Act* and set apart for the use and benefit of the Fort William First Nation;

"Reside" means being resident in a dwelling or a structure capable of being a dwelling, all for the purpose of domestic day to day activities;

"Tenant" means a tenant, lessee or licensee of the Band, and the directors, officers and employees of such tenant, lessee and licensee;

"Trespasser" for the purpose of this By-Law, means a person that is present on Reserve contrary to sections 2, 4 and/or 5 herein;

"Trespass Curfew" has the meaning set out in section 4 herein; and

"Trespass Notice" means a notice provided either orally or in writing that the person's presence on Reserve is contrary to this By-Law and requiring the person to immediately leave the Reserve.

17. In this By-Law, the following rules shall apply to the interpretation thereof:

- (a) words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders or no gender;
- (b) the words "include", "includes" and "including" and other similar words and expressions shall in all cases be deemed to be followed by the words "without limitation"; and

- (c) any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided.

**THIS BY-LAW IS HEREBY** made at a duly convened meeting of the Band this 3<sup>rd</sup> day of APRIL, 2020

  
Chief

  
Councillor


  
Councillor


  
Councillor

  
Councillor

  
Councillor

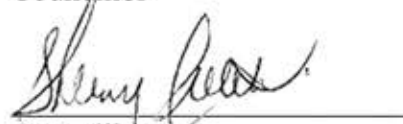
  
Councillor

  
Councillor

  
Councillor

  
Councillor

  
Councillor

  
Councillor

being the majority of those members of the Council of the Band present at the aforesaid meeting of the Council.

The quorum of the Council is 5 members.

Number of members of the Council present at the meeting: 12.