



Wahnapitae First Nation

Trespassing By-Law No. 20/21-02

Whereas the Chief and Council of the Wahnapitae First Nation (WFN) desires to establish a by-law to prohibit trespassing on the Reserve and to provide an enforcement mechanism for the removal and punishment of persons trespassing on the reserve or frequenting the reserve for prohibited purposes;

And Whereas the WFN Reserve land has been set apart for the use and benefit of WFN members; and the exclusive use of the Reserve land for WFN members is an inherent right and is an aboriginal treaty right that is recognized and affirmed pursuant section 35(1) of the Constitution Act, 1982; and WFN Constitution;

And Whereas the Chief and Council of WFN has the inherent authority, to govern its own affairs, including with respect to who may or may not enter their Reserve;

And Whereas the Chief and Council of WFN is empowered to make such by-law as a 'Council of a band under the Indian Act; and WFN Constitution;

And Whereas it is deemed to be expedient and necessary, for the benefit, comfort, and safety of the inhabitants of the WFN Reserve to provide for the removal and punishment of persons trespassing on the Reserve or frequenting the Reserve for prohibited purposes;

And Whereas WFN has a land regime based on custom and traditional land use and occupation; and any use or occupation of land on WFN by a person that has not been approved of by the WFN Chief and Council is deemed to be a trespass;

And Whereas any person, other than WFN Members, who enters onto the Reserve land without the express authority of WFN, is a trespasser and any implied or express invitation to him or her is revoked until he or she obtains the necessary authorization;

Now Therefore; the Chief and Council of Wahnapitae First Nation hereby enacts By-law No.20/21-02



1. Short Title

This By-law may be cited as the "Wahnapitae First Nation Trespassing By-law"

2. Interpretation

In this By-law,

"Council" means the elected members of Wahnapitae First Nation Government namely the Chief and Councillors.

"Wahnapitae First Nation" or "WFN" means the Wahnapitae First Nation Indian Reserve #11.

"Member" means a registered band member of Wahnapitae First Nation

"Minister" means the Minister of Crown-Indigenous Relations and Northern Affairs Canada and Indigenous Services Canada;

"Officer" means any police officer, police constable or other person charged with the duty to preserve and maintain the public peace, or any other person appointed by the Chief and Council for the purpose of maintaining law and order on the Reserve;

"Person" means any person, corporation, government agency, or other legal or illegal entity.

"Reserve" means the Reserve land of the Wahnapitae First Nation #11.

"Trespass" or "Trespassing" means the entry onto, or presence on or over (including airspace), the Reserve by any person:

- a) Banished from the Reserve by Chief and Council pursuant to this by-law;
- b) Banished from the Reserve by Chief and Council pursuant to any other by-law of Wahnapitae First Nation;
- c) Deemed by Chief and Council to be a danger to the Members;
- d) Deemed by Chief and Council to be interfering with the Members' quiet enjoyment of the Reserve;
- e) Without lawful justification;
- f) Without an invitation from either Chief or Council or a Member; or
- g) Engaging in a Prohibited activity on the Reserve.

3. Application

This by-law applies on the Reserve.



4. Compliance with other Laws

Where any applicable federal or provincial law, act, regulation, or WFN by-law applies to any matter covered by this by-law, compliance with this by-law will not relieve the person from also complying with the provisions of any other applicable law, act, regulation, or by-law.

5. Trespass

5.1 No person shall Trespass on the Reserve

5.2 Any Person on the Reserve who is not a member or a banished member is presumed to be Trespassing, unless;

- a) The person can show cause that they have a valid reason for being on the reserve or
- b) The person is transiting through the Reserve and is not committing any Prohibited activity pursuant to this by-law.

6. Parties of the Offence of Trespass

6.1 A person other than the Trespasser under this by-law, shall be guilty of Trespass under section 5 where that person is complicit in the commission of, or has facilitated, the Trespass by;

- a) Purporting to give the Trespasser permission to enter the Reserve where that person was not, at the relevant time, authorized to give the Trespasser permission to enter the Reserve;
- b) Being the employer of the Trespasser who directed or counseled the trespasser to Trespass in the course of their duties as an employee;
- c) Being the principal of the Trespasser who directed or counseled the Trespasser to trespass in the course of their role as an agent;
- d) Being a person in authority over the Trespasser who directed or counseled the Trespasser to Trespass; or
- e) Knowing that conduct would be a Trespass, assists the Trespasser with he means, tools or equipment to commit the Trespass.

6.2 A person may be the party to the Trespass whether or not the acts subsequent to entry exceeded the scope of such counseling, authorization, direction or assistance and whether or not any individual was convicted under this by-law in respect of the same Trespass.

7. Prohibited Activities

7.1 Where the person, other than a person referred to in subsection 2. Conducts any of the following activities on the reserve without prior



written permission from the First Nation, they shall be deemed to be Trespassing on the Reserve:

- a) Hunting, fishing or trapping;
- b) Hawking or peddling of wares or merchandise;
- c) Vandalism;
- d) Loitering;
- e) Soliciting financial assistance;
- f) Soliciting or distributing alcohol, or other substances that produce an intoxicating effect including Cannabis products containing THC or CDL;
- g) Photographing, interviewing or conducting research or surveys;
- h) Distributing written materials;
- i) Camping;
- j) Operating an all-terrain vehicle (ATV) or snowmobile or other motorized or non-motorized vehicle;
- k) Dumping refuse or waste;
- l) Placing or abandoning any structure, object or material;
- m) Allowing, encouraging or failing to prevent any domestic animal or invasive species in the person's possession to enter onto Reserve land;
- n) Constructing any temporary or permanent structures;
- o) Cutting trees, drilling, digging, removing materials or resources or otherwise disturbing the earth or natural environment; or
- p) Any other activity that is prohibited by any applicable legislation or by-law of WFN.

7.2 Subsection 1 does not apply to:

- a) A Member who is conducting lawful activities in an authorized manner or location;
- b) A person on the Reserve who is not a Member but who has Chief and Council's authorization to be on the Reserve and is conducting themselves in accordance with Chief and Council's authorization;
- c) A person on the Reserve who is not a Member participating in public activities authorized by Chief and Council;
- d) A person who is not a Member but is lawful resident on the Reserve who is conducting lawful activities in an authorized manner or location;
- e) A person who not a Member but who holds a valid written license or permit to conduct any activity referred to therein or is otherwise permitted by Chief and Council to conduct the activity; and



f) An officer in the course of his or her duties.

8. Enforcement

- 8.1 An officer may order any person who Trespasses on the Reserve to leave the Reserve immediately and may order any person who engages in a prohibited activity to cease immediately.
- 8.2 Where a person who has been ordered to leave the Reserve fails or refuses to do so, an Officer may take such reasonable measures as may be necessary to remove the person from the Reserve.
- 8.3 A person who fails or refuses to comply with an order made under subsection 1 to leave the Reserve, or who resists or interferes with an officer acting under subsection 2, commits an offence and any Officer may take such reasonable measures as may be necessary to remove the person from the Reserve.

9. Penalty

- 9.1 A person who violates any provision of this by-law commits an offence and is liable on summary conviction to a fine not exceeding \$1000.00 or to imprisonment for a term not exceeding thirty (30) days, or both.
- 9.2 An officer may lay a separate charge for each day an offence under this by-law is ongoing or for each separate offence.
- 9.3 The Chief and Council may banish from the Reserve any individual who violates any provision of this by-law, in accordance with the provisions provided herein.
- 9.4 In addition to all other penalties provided herein, any person causing damage or loss to any Reserve property as a result of an offence under this by-law will be responsible for the cost of repairing or replacing such damage or loss.

10. Notice

- 10.1 A person has notice not to Trespass or engage in a specific activity when he or she has been given notice by Chief and Council or by an Officer.
- 10.2 Any person entering the Reserve is presumed to have received notice of this by-law.
- 10.3 Notice under this Part may be given:
 - a) Orally;



- b) In Writing
 - c) Through a Band Council Resolution
 - d) By means of signs that are clearly posted and visible in the daylight under normal conditions from the approach to an ordinary point of access to the Reserve or to a specific location on the Reserve; or
 - e) By means of a marking system set out in section 10.5.
- 10.4 A sign naming an activity or showing a graphic representation of an activity with an oblique line drawn through the representation is sufficient for the purpose of giving notice that the activity is prohibited.
- 10.5 Markings made and posted in accordance with this section are sufficient for the purpose of giving notice:
- a) Red markings made and posted in accordance with subsections (c) and (d) are sufficient for the purpose of giving notice that attendance at a specific activity are prohibited for any person other than a Member or invited guest;
 - b) Yellow markings made and posted in accordance with subsection (c) and (d) are sufficient for the purpose of giving notice that entry is prohibited except for the purpose of certain activities and shall be deemed to be notice of the activities permitted;
 - c) Markings under this section shall be at least a size that ten (10) centimeters in diameter circle can fit within it; and
 - d) markings under this section shall be placed so that they are clearly visible in daylight under normal conditions from the approach to each ordinary point of access to the premises to which it applies.

11. Council Authority

- 11.1 Council may make a resolution setting out the rules and regulations for the use of any premises on community land, including community hall, marina, beach, trail, baseball field, health clinic and similar premises.
- 11.2 Council may make a resolution providing that a person on the Reserve who breaches a resolution, rule, regulation or the terms of any permit authorized under this section, or who is charged with a violation of this by-law, is banned from entering onto or remaining on the Reserve for such a period of time as set out in the resolution.



- 11.3 Council may prohibit, by resolution, entry or activity on premises located on community land provided that notice is given that the entry to the premises is prohibited or one or more activities are prohibited on the premises
- 11.4 Council may regulate, by resolution, the hours or seasons in which premises located on community land may be used for specific purposes, impose limits on the activities to be engaged in and may impose a requirement for permit to engage in such activities or purposes.

12. Banishment

- 12.1 The provision applies to any person on the Reserve, whether they are a Member or not.
- 12.2 The Council may banish any individual who violates any provision of this by-law, in accordance with the provisions herein.
- 12.3 The Council may chose to banish an individual from the Reserve, or from a specified buildings or locations on the Reserve, subject to the provisions of this by-law.
- 12.4 The Council may choose to banish an individual permanently or for such a period of time from the Reserve.
- 12.5 A banishment under this by-law shall be conducted by way of a band council resolution, notifying the individual of their prohibited conduct and duration of their banishment.
- 12.6 The Council may banish an individual under this by-law whether or not the individual was convicted of an offence under this by-law.
- 12.7 The Council shall make best efforts to effect service of resolutions made pursuant tot his section, shall arrange for all such resolutions to be posted on the Reserve, and shall inform Officers of such resolutions in a timely manner.

13. Civil Liability Unaffected

- 13.1 Nothing in this by-law affects the civil liability of a person who contravenes any provision of this by-law or the regulations and the question of liability of damages.



14. Severability

- 14.1 Should a court determine that a provision of this by-law is invalid for any reason, the provision shall be severed from the by-law and validity of the remainder of the by-law shall not be affected.

15. By-law coming into force

- 15.1 This by-law shall be published on the Wahnapitae First Nation official website, newsletter and social media platforms.
- 15.2 The Council shall be required to provide a hardcopy of the by-law to any person that request a copy and has not received a copy.
- 15.3 This by-law comes into force seven (7) days after the by-law has been posted on the Wahnapitae First Nation Website.



THIS LAW IS HEREBY made at a duly convened meeting of Council of Wahnapitae First Nation this 1st day of June 2020.
Voting in favor of the;

Wahnapitae First Nation Trespassing By-law No. 20/21-02

Are the following members of Chief and Council:

Chief Larry Roque

Councillor Bob Pitfield

Councillor Ted Roque

Councillor Craig Tyson

Councillor Mary Nicholls Russell

L. Roque
Bob Pitfield
Ted Roque
Craig Tyson
Mary Nicholls Russell

Being the majority of those members of the Council of Wahnapitae First Nation in present at the aforesaid meeting of the Council.

The quorum of the Council is 3 members.

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

