

Fort McKay First Nation

PO BOX 5360, Fort McMurray, AB, T9H 3G4, 780-828-4220

**NOTICE OF TRESPASS LAW**

**WHEREAS** the Aboriginal and Treaty rights of the Fort McKay First Nation government were recognized and affirmed in Treaty No. 8 entered into between Her Majesty the Queen and Fort McKay First Nation and confirmed by section 35 of the Constitution Act, 1982; and

**WHEREAS** the Trespass Law is an exercise of Aboriginal and Treaty rights and nothing in this Law may be construed as to abrogate or derogate from any Aboriginal and Treaty rights of Fort McKay First Nation; and

**WHEREAS** the Indian Act, R.S.C. 1985, c.1-5 further provides in sections 81(c), (p), (p.1), and (p.2) that Council may make laws: respecting rights of residency; for the removal and punishment of persons trespassing on the reserve or frequenting the reserve for prohibited purposes; and, generally, for the peace, order and good governance of Fort McKay First Nation; and

**WHEREAS** the Council has determined that it is desirable and necessary to establish laws regulating access to Fort McKay First Nation Lands and Premises;

**NOW THEREFORE THE COUNCIL OF FORT MCKAY FIRST NATION ENACT AS FOLLOWS:**

**Part 1  
Interpretation**

**1 Short Title**

1.1 This Law may be cited as the Trespass Law.

**2 Definitions**

2.1 In this Law:

- (a) "Access" means to enter upon land including buildings or structures on the land;
- (b) "Council" means the Chief and Council elected to public office pursuant to the Election Code of Fort McKay First Nation as amended or replaced from time to time;
- (c) "First Nation" means the body of persons comprising the Fort McKay First Nation recognized by Her Majesty the Queen in right of Canada as a band as defined in the Indian Act, R.S.C. 1985, c. I-5, as amended and any successor to the First Nation;
- (d) "First Nation Lands and Premises" means the lands set apart by Her Majesty the Queen in right of Canada as reserves for the use and benefit of the First Nation and includes all lands deemed to be reserves pursuant to the Indian Act, R.S.C. 1985, c. I-5, as amended and includes all public buildings or structures on the lands such as the Administration Offices of the First Nation;
- (e) "Just Cause" means engaging or threatening to engage in conduct which constitutes a danger or a potential danger to property or persons; or which threatens the health, safety, security, or the peace, order, and good governance of the First Nation or any person lawfully on First Nation Lands and Premises;
- (f) "Member" means a person admitted to membership or citizenship with the First Nation pursuant to the Fort McKay First Nation Membership Code as amended or replaced from time to time;

- (g) "Non-Member Rights Holder" means a person who has been granted a right to Occupy or Access First Nation Lands and Premises pursuant to a valid and enforceable instrument granting an interest in or right of access to First Nation Lands and Premises;
- (h) "Occupy" means to take possession of land for the purposes of establishing a residence or a business;
- (i) "Resident Member" means a Member who has been granted a right to Occupy:
  - (i) a housing unit pursuant to the laws or policies governing housing allocations from time to time, including the Residential Premises Act of Fort McKay First Nation and any other applicable laws as amended or replaced from time to time; or
  - (ii) a business premise pursuant to the laws or policies governing business premises on First Nation Lands and Premises as amended or replaced from time to time.

## **Part 2 Trespass, Access, and Occupancy**

### **3 Trespass**

- 3.1 Any person who Occupies, Accesses, attempts to Occupy or Access, or otherwise enters or remains on First Nation Lands and Premises other than in accordance with this Law is guilty of the offence of trespass.

### **4 Occupying First Nation Lands and Premises**

- 4.1 Subject to the terms of any laws or the instrument granting a right to Occupy First Nation Lands and Premises and section 7 of this Law, the following persons have a right to Occupy and Access First Nation Lands and Premises:
  - (a) Resident Members;
  - (b) minor or dependent children of Resident Members; and
  - (c) Non-Member Rights Holders.

### **5 Access to First Nation Lands and Premises**

- 5.1 Subject to section 7, the following persons may Access First Nation Lands and Premises:
  - (a) Members other than Resident Members;
  - (b) Non-Member spouses;
  - (c) Non-Member adult children of Members;
  - (d) Authorized agents of a Non-Member Rights Holders;
  - (e) invitees of a Member or Non-Member Rights Holder;
  - (f) persons granted Access by the Council;
  - (g) a person authorized by the Council to perform a public function, to establish, operate, or administer a public service or operate a public installation, or to conduct a technical survey;

- (h) persons who are part of an emergency service including fire suppression or ambulance services; or
- (i) a member of the public who has been invited onto First Nation Lands and Premises by the Council for a short term social or business purpose.

## **6 Removal of Persons from First Nation Lands and Premises**

- 6.1 Any person who is not a Member or a Non-Member Rights Holder must leave the First Nation Lands and Premises immediately upon being directed to do so by the Council or any person authorized by the Council to enforce this Law including members of the local law enforcement detachment having jurisdiction on the First Nation Lands and Premises.
- 6.2 Any other person who Occupies or Accesses First Nation Lands and Premises (including Members, Resident Members and Non-Member Rights Holders) may be ordered to leave or vacate First Nation Lands and Premises in accordance with:
  - (a) the law or instrument which granted the person the right to Occupy or Access First Nation Lands and Premises; or
  - (b) by a resolution of the Council in accordance with section 7 of this Law.
- 6.3 No person may Access or Occupy First Nation Lands and Premises if an order has been made barring or banishing the person from entering on First Nation Lands and Premises in accordance with section 7 of this Law.

## **7 Banishment or Barring Entry to First Nation Lands and Premises**

- 7.1 A person may be made the subject of an order banishing or barring the person from entering on, Accessing, or Occupying First Nation Lands and Premises if there is Just Cause for the order.
- 7.2 If the Council has reasonable grounds to believe that there is Just Cause to seek an order under this section, then it shall appoint an investigator, by Band Council Resolution, who shall conduct an investigation into the matter and report back to Council on their findings.
- 7.3 The investigator:
  - (a) Shall be licensed under the *Security Services and Investigators Act*, SA 2008, c. S-4.7 as amended or replaced from time to time; and
  - (b) Shall be a member of the Alberta Association of Private Investigators or a similar organization that requires the investigator to comply with a Code of Ethics reflecting best practices in the industry.
- 7.4 The investigator shall gather material and evidence related to the issue of Just Cause and shall provide a report to the Council outlining and summarizing the evidence.
- 7.5 If the investigation report merits proceeding further, which shall be determined in the sole discretion of the Council, then the investigation report shall be referred to an arbitrator appointed by Band Council Resolution who shall review the report and determine whether there is Just Cause for an order banishing or barring a person from First Nation Lands and Premises.
- 7.6 The arbitrator shall be:
  - (a) A lawyer qualified to practice law in the Province of Alberta; or

- (b) A Chartered Arbitrator whose designation has been awarded by the ADR Institute of Canada or its Alberta affiliate.

7.7 The arbitrator has the following powers:

- (a) To make findings of fact and legal conclusions respecting the existence of Just Cause for an order banishing or barring a person from entering on, Accessing, or Occupying First Nation Lands and Premises;
- (b) To determine the procedure to be followed having regard for the right to fairness and natural justice to the person affected by the proceedings;
- (c) To determine the nature and scope of disclosure to a person affected by the proceedings including giving proper consideration to the safety and security of persons who have provided information, materials, or evidence to the investigator and without limiting the generality of the foregoing may require that the names and identities of informants be kept confidential and not subject to disclosure;
- (d) To determine questions of law arising in the course of the proceedings;
- (e) To rule on any objections made in the course of proceedings before the arbitrator;
- (f) To order production of documents which are material and relevant to the proceedings;
- (g) To determine the relevance and weight to be given to evidence and, for greater certainty, the arbitrator is not bound by rules of evidence;
- (h) To determine whether or not to hold a hearing and the time, date, and place of such hearing;
- (i) To determine whether a hearing is public or private and who can attend or be present at a hearing; and
- (j) To do such further or other things as may be reasonably necessary to make a determination as to the existence of Just Cause for an order under this section.

7.8 Upon review of the investigation report and upon hearing any evidence which the affected person has put before the arbitrator, the arbitrator shall determine whether or not Just Cause is established for an order under this section. The determination of Just Cause shall be on the civil standard, being a balance of probabilities.

7.9 The arbitrator shall provide written reasons for his or her conclusion and shall deliver those reasons to the Council.

7.10 The arbitrator's decision shall be enforceable as a judgment of the Court and the First Nation is entitled to apply for a judgment of the Alberta Court of Queen's Bench to enforce the arbitrator's award in accordance with the *Arbitration Act*, RSA 2000, c. A43 as amended or replaced from time to time and the First Nation shall be further entitled to injunctive relief to enforce the arbitration award.

7.11 The Council may, in lieu of an investigation or a hearing before an arbitrator, establish conditions to which the person must abide to maintain the ability to Access or Occupy First Nation Lands and Premises.

### **Part 3 Enforcement**

## **8 Forcible Removal**

8.1 Upon the request of Council, members of the local law enforcement detachment with jurisdiction on the First Nation Lands and Premises, including the Royal Canadian Mounted Police, shall be authorized to remove a person in respect of whom section 6 applies or in respect of whom an order has been made under section 7 from the First Nation Lands and Premises and to apprehend without warrant, arrest and detain the person according to this and any other applicable law.

**9 Injunctive Relief**

9.1 In addition to any other remedy available to the First Nation, the First Nation shall be entitled to apply to the Court of Queen's Bench of Alberta for an order in the nature of an injunction requiring a person to leave First Nation Lands and Premises and for any other relief that may be just in the circumstances.

**10 Penalties**

10.1 A person who is guilty of trespass is liable to fine of up to \$1,000.00 or to a term of imprisonment not to exceed 30 days, or both, in respect of each act of trespass.

**11 Other Remedies Preserved**

11.1 Nothing in this Law shall be deemed to limit any other remedies available to the First Nation, including remedies in the civil courts.

**Part 4  
General**

**12 Coming into Force**

12.1 This Law is in force and effective as of the date it has been approved and passed by the Council.


**13 Regulations**

13.1 The Council may, by resolution, enact regulations respecting any matter necessary to carry out the intent of this Law.

**APPROVED AND PASSED** at a duly convened meeting of the Chief and Council of Fort McKay First Nation held at Fort McKay in the Province of Alberta this 1st day of March, 2017.

  
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Chief Jim Boucher

  
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Councillor Gerald Gladue

  
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Councillor Peggy Lacorde

  
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Councillor Crystal McDonald

  
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Councillor Raymond Powder

A COPY OF THE PROPOSED LAWS may be obtained from: Communications Department, Fort McKay.

CONTACT INFORMATION: For further information or questions regarding the Proposed Laws, this Notice or the making of written representations to Council, please contact Communications Department at Fort McKay First Nation, by telephone at 780-828-4220 or by email at [communications@fortmckay.com](mailto:communications@fortmckay.com).

Dated: March 1<sup>st</sup>, 2017