

Using This Sample Service Fee Law

The Commission provides sample laws to assist First Nations in developing their own laws. When using sample laws, the First Nation should ensure that its law reflects its circumstances and that it obtains legal and other advice as necessary. If you have any questions as you are preparing this law, please do not hesitate to contact the FNTC staff.

Under paragraph 5(1)(a.1) of the *First Nations Fiscal Management Act* (FMA), a First Nation may make laws respecting the charging of fees for the provision of services or the use of facilities on reserve lands, or for a regulatory process, permit, licence or other authorization, in relation to the provision of local services. This sample law has been developed for First Nations wishing to use their FMA fee powers to recover certain costs related to the provision of a service provided to property, for example a water service or a sewer service.

The following are some notes about the substance and format of the sample law:

1. The fee categories provided for in this sample law represent options for the First Nation to consider. The sample law will need to be modified to reflect the specific types of fees the First Nation wishes to impose in respect of the service.
2. The fees imposed under this law should be coordinated with the First Nation's applicable regulatory law or by-law.
3. Instructions are shown in square brackets and bold. All instructions should be deleted from the final version of the law.
4. Underlines indicate that information is to be entered. Insert the information needed, and delete the underlines from the final version of the law.
5. Where new sections are added, or sample sections are deleted, the remaining sections need to be renumbered consecutively.
6. If the First Nation is located in Quebec, please contact the Commission for assistance with modifying the sample law to reflect the civil law jurisdiction.

Please refer to the *Standards for First Nation Fee Laws, 2017* for additional requirements for service fee laws.

that Act;

“billing period” means [Note to First Nation: Insert time period for billing the fee, e.g. annual, semi-annual, quarterly, or monthly];

[Note to First Nation: If you are located in British Columbia, consider including references to the civil resolution tribunal in sections 16 and 18 as indicated. If the references are included, the following additional definition is required: “civil resolution tribunal” means the civil resolution tribunal established under the *Civil Resolution Tribunal Act*, S.B.C. 2012, c. 25;”.]

“fee” means a fee charged under this Law;

“First Nation” means the _____ First Nation, being a band named in the schedule to the Act;

“holder”, in relation to an interest in reserve lands, means a person

- (a) in possession of the interest,
- (b) entitled through a lease, licence or other legal means to the interest,
- (c) in actual occupation of the interest, or
- (d) who is a trustee of the interest;

“interest”, in relation to reserve lands, means any estate, right or interest of any nature in or to the lands, including any right to occupy, possess or use the lands, but does not include title to the lands that is held by Her Majesty;

“reserve” means a reserve of the First Nation within the meaning of the *Indian Act*;

“service” means the [Note to First Nation: describe the service] service provided to or made available to residents of the reserve;

“tax administrator” means the person appointed by Council to that position under the Taxation Law; [Note to First Nation: Alternatively, the Law could provide for Council to appoint a person to this position.]

“Taxation Law” means the _____ *First Nation Property Taxation Law*, 20__; and

“year” means a calendar year.

(2) For greater certainty, an interest, in relation to reserve lands, includes improvements.

(3) In this Law, references to a Part (e.g. Part I), section (e.g. section 1), subsection (e.g. subsection 2(1)), paragraph (e.g. paragraph 5(1)(a)) or Schedule (e.g. Schedule I) is a reference to the specified Part, section, subsection, paragraph or Schedule of this Law, except where otherwise stated.

PART III ADMINISTRATION

Application of Law

3. This Law applies to the entire reserve. [Note to First Nation: Modify this wording if the fee applies only to part of the reserve.]

Tax Administrator

4.(1) The tax administrator must fulfill the responsibilities given to the tax administrator under this Law.

(2) The tax administrator must oversee the day-to-day administration and the enforcement of this Law.

(3) The tax administrator may, with the consent of [insert title], assign the performance of any duties of the tax administrator under this Law to any officer, employee, contractor or agent of the First Nation.

Records and Reporting

5.(1) The tax administrator must keep the following records in respect of the administration of this Law:

- (a) the amount of all fees levied;
- (b) the amount of all fees collected;
- (c) the amount of all refunds paid;
- (d) any complaints received; and
- (e) any enforcement proceedings taken.

(2) On or before [insert date] in each year, the tax administrator must report to Council on the administration of this Law in the previous fiscal year, which report must include each of the items referenced in subsection (1).

Provision of a Report

6.(1) The tax administrator must make available to any person, either on the First Nation's website or at the First Nation's administration offices, a report respecting how the fees levied under this Law were determined.

(2) The report referenced in subsection (1) must include the projected cost of the service, how the cost of the service was determined, and the proportion of the total cost of the service that is to be recovered through the fee.

Revenues and Expenditures

7.(1) All revenue collected by the First Nation from the fees levied under this Law, and interest earned on those revenues, must be used only for the provision of the service.

(2) The tax administrator must account separately for the fee revenues collected under this Law.

(3) An expenditure of revenue raised under this Law must be made under the authority of an expenditure law made under paragraph 5(1)(b) of the Act, or in accordance with section 13.1 of the Act.

Information and Access

8.(1) The tax administrator may deliver a request for information to any person, including a current or former holder of an interest in reserve lands receiving the service, and that person must provide to the tax administrator, within fourteen (14) days or a longer period as specified in the notice, information, including the production of records, for any purpose related to the administration or enforcement of this Law.

(2) A person authorized by the First Nation may at all reasonable times enter onto lands to which the service is provided for any purposes related to the administration or enforcement of this Law.

PART IV FEE LEVIES

[Note to First Nation: The following sets out sample wording for fees for a water service, as an example. For options respecting the setting of fees for different types of services, refer to section 3 of the *Standards for First Nation Fee Laws, 2017*.]

Connection, Disconnection and Reconnection Fees

9.(1) The holder of an interest in reserve lands to be connected to the service must pay in full, at the time of an application to connect to the service, the applicable connection fees set out in Part 2 of Schedule I.

(2) The holder of an interest in reserve lands must pay in full the applicable fee set out in Part 2 of Schedule I at the time a request is made to disconnect or reconnect to the service.

User Fees

10.(1) The fees set out Part 1 of Schedule I are hereby levied on each holder of an interest in reserve lands receiving the service, for the provision of the service to the interest.

(2) The tax administrator must determine the fees payable for each billing period by applying the applicable fees set out in Part 1 of Schedule I to the amount of water provided to a holder's interest in reserve lands, as measured by the water meter during that billing period. [OR, for a flat rate: The tax administrator must determine the applicable fees set out in Part 1 of Schedule I for each interest for a billing period.]

(3) A holder of an interest in reserve lands receiving the service must pay all fees levied in accordance with this Law.

[Note to First Nation: No sample wording for exemptions is included. If a First Nation wishes to include an exemption, specific wording can be developed that is consistent with the *Standards for First Nation Fee Laws, 2017.*]

PART V INVOICING AND PAYMENT

[Note to First Nation: These provisions will need to be tailored to reflect the First Nation's approach to invoicing, and whether it will collect fees concurrently with property taxes.]

Invoicing and Payment

11.(1) The tax administrator must invoice the fees levied under section 10 on each holder of an interest in reserve lands receiving the service.

(2) The tax administrator must mail the invoices for each billing period on or about the [insert day] of the month following the end of each billing period.

(3) The tax administrator must mail each invoice to the holder at the address of the interest receiving the service, or to such other address provided to the First Nation by the holder in writing from time to time.

(4) Fees are due and payable in full on receipt of the invoice, and not later than thirty (30) days after the date of the invoice or such later date specified in the invoice.

[Note to First Nation: If the fee will be invoiced annually and the holders are also taxpayers under the Taxation Law, the Law can instead provide for the invoice to be included in the annual property tax notice. The following wording can be modified to reflect the approach the First Nation wishes to take:

11.(1) The tax administrator must include the fee levied under section 10 in the tax notice for the interest in reserve lands given under the Taxation Law.

(2) Where the fee is included in a tax notice, the tax administrator must

(a) note on the tax roll that the fee is included in the tax notice for that interest; and

(b) show the fee separately from the taxes on the tax notice and indicate that the fee is levied for the service.

(3) Where the fee is included in a tax notice,

(a) the mailing of the tax notice constitutes a statement of and demand for payment of the fee; and

(b) the fee is due and payable on the same date as the property taxes for the interest, unless a different due date is set out in the tax notice.]

Payment of Fees

12.(1) All fees must be paid at the office of the First Nation during normal business hours by cheque,

money order or cash, or may be paid by electronic payment.

(2) Payment of fees made by cheque or money order must be made payable to the _____ First Nation.

(3) Fees paid by electronic payment must be paid as directed by the tax administrator.

(4) The tax administrator must apply payments of fees first against any unpaid fees from previous billing periods, including interest and penalties, and then to current amounts due.

Adjustments to Fees

[Note to First Nation: These provisions may not be applicable to all types of services or invoicing approaches. Delete or modify as appropriate.]

13.(1) The tax administrator must adjust a fee imposed under this Law as follows:

(a) where the service is disconnected or turned off partway through a billing period, the invoice will include the time period to the end of the last month in which the service was provided;

(b) where the service is connected partway through a billing period, the invoice will include the time period beginning on the first day of the month in which the connection was made;

(c) where two (2) or more interests in reserve lands receiving the service are consolidated during a billing period, the consolidated interest will receive a single invoice effective on the invoice for the subsequent billing period;

(d) where an interest receiving the service is subdivided during a billing period, each new interest will be invoiced separately effective on the invoice for the subsequent billing period.

(2) For clarity,

(a) there will be no adjustments to fees where the service is temporarily shut off for maintenance, emergencies or for any other reason; and

(b) fees that are invoiced before an interest is subdivided or consolidated will not be adjusted.

Refund of Fees

14.(1) Where a person has

(a) paid a fee in circumstances where a fee was not payable, or

(b) made an overpayment of a fee,

the tax administrator must refund to that person the fee or any excess fee paid by that person, as applicable, including interest calculated in accordance with subsection (2).

(2) The tax administrator must calculate interest payable on a refund given under subsection (1) as follows:

(a) interest accrues from the date that the fee was originally paid to the First Nation;

(b) the interest rate during each successive three (3) month period beginning on January 1, April 1, July 1 and October 1 in every year is two percent (2%) below the prime lending rate of the principal banker to the First Nation on the 15th day of the month immediately preceding that three (3) month period;

(c) interest will not be compounded; and

(d) interest stops running on the earliest of the day payment of the money owed is mailed, delivered or actually received by the person to whom it is owed.

PART VI

PENALTIES, INTEREST AND ENFORCEMENT

Penalties and Interest

15. If all or part of a fee remains unpaid after it is due,

(a) a one-time penalty of ten percent (10%) of the unpaid portion of the fee will be added to the unpaid fee on the day after it was due, and the amount so added is, for all purposes, deemed to be part of the fee; and

(b) the unpaid portion of the fee accrues interest at fifteen percent (15%) per year, starting from the day after it was due until paid or recovered.

Enforcement

[Note to First Nation: If the First Nation is located in British Columbia, consider including the following alternate wording for subsection (1) to enable the collection of fees using the Civil Resolution Tribunal: (1) Fees charged under this Law, together with any applicable interest and penalties, are a debt owed to the First Nation that is recoverable by the First Nation in any court of competent jurisdiction, in a proceeding before the civil resolution tribunal, or in any manner permitted by law and, unless otherwise provided, the use of one method does not prevent seeking recovery by one or more other methods.]

16.(1) Fees charged under this Law, together with any applicable interest and penalties, are a debt owed to the First Nation that is recoverable by the First Nation in a court of competent jurisdiction or in any manner permitted by law and, unless otherwise provided, the use of one method does not prevent seeking recovery by one or more other methods.

(2) A copy of an invoice showing the fees payable by a person, certified as a true copy by the tax administrator, is evidence of that person's debt for the fees.

(3) **[Note to First Nation: This clause can be included only where the First Nation has a taxation law and the properties receiving the service are subject to taxation. If the First Nation is providing services to properties that are not subject to taxation, consider instead including provisions for enforcement directly in this law.]** Fees overdue and remaining unpaid on December 31 in each year may be collected in the same manner and with the same enforcement remedies as taxes levied under the Taxation Law, and the tax administrator may enter the unpaid amounts on the tax roll for that interest in reserve lands under the Taxation Law as unpaid taxes.

PART VII COMPLAINTS

Complaints to Tax Administrator

17.(1) A holder of an interest in reserve lands may, within fourteen (14) days of receipt of an invoice under this Law, make a complaint respecting a fee on the basis that the holder has paid a fee when a fee was not payable, or has made an overpayment of a fee.

(2) A complaint must

(a) be made in the form set out in Schedule II;

(b) be delivered to the tax administrator; and

(c) include any reasons in support of the complaint.

(3) Within fourteen (14) days after receipt of a complaint, the tax administrator must review the matter and attempt to resolve the complaint directly with the holder.

(4) If the tax administrator determines that the holder has paid a fee when a fee was not payable, or has made an overpayment of a fee, as the case may be, the tax administrator must advise the holder of the

determination and mail an amended invoice to the holder.

(5) If the tax administrator determines that the holder has not paid a fee when a fee was not payable, or has not made an overpayment of a fee, as the case may be, the tax administrator must notify the holder of this determination and the reasons for the determination.

PART VIII GENERAL PROVISIONS

Disclosure of Information

18.(1) The tax administrator or any other person who has custody or control of information or records obtained or created under this Law must not disclose the information or records except

- (a) in the course of administering this Law or performing functions under it;
- (b) in proceedings before a tribunal having jurisdiction [**Note to First Nation: Add “including the civil resolution tribunal,” if this change was made to subsection 16(1).]** or a court of law; or
- (c) in accordance with subsection (2).

(2) The tax administrator may disclose to the agent of a holder confidential information relating to the holder’s interest in reserve lands or fees owing in respect of the service, if the disclosure has been authorized in writing by the holder.

(3) An agent must not use information disclosed under subsection (2) except for the purposes authorized by the holder in writing referred to in that subsection.

Disclosure for Research Purposes

19. Notwithstanding section 18,

- (a) the tax administrator may disclose information and records to a third party for research purposes, including statistical research, provided the information and records do not contain information in an individually identifiable form or business information in an identifiable form; and
- (b) Council may disclose information and records to a third party for research purposes, including statistical research, in an identifiable form where
 - (i) the research cannot reasonably be accomplished unless the information is provided in an identifiable form, and
 - (ii) the third party has signed an agreement with Council to comply with Council’s requirements respecting the use, confidentiality and security of the information.

Validity

20. Nothing under this Law must be rendered void or invalid, nor must the liability of any person to pay a fee under this Law be affected by

- (a) an error or omission in a determination made by the tax administrator;
- (b) an error or omission in any invoice or notice given under this Law; or
- (c) a failure of the First Nation or the tax administrator to do something within the required time.

Limitation on Proceedings

21.(1) No person may commence an action or proceeding for the return of money paid to the First Nation, whether under protest or otherwise, on account of a demand, whether valid or invalid, for fees paid under this Law, after the expiration of six (6) months from the date the cause of action first arose.

(2) If a person fails to start an action or proceeding within the time limit prescribed in this section, then money paid to the First Nation must be deemed to have been voluntarily paid.

Notices

22.(1) Where in this Law an invoice or notice is required to be given by mail or where the method of giving a notice is not otherwise specified, it must be given

- (a) by mail to the recipient's ordinary mailing address, or the address for the recipient shown on the tax roll made under the Taxation Law if applicable;
- (b) where the recipient's address is unknown, by posting a copy of the notice in a conspicuous place on the interest in reserve lands to which the service is provided; or
- (c) by personal delivery or courier to the recipient or to the recipient's ordinary mailing address or the address for the recipient shown on the tax roll made under the Taxation Law if applicable.

(2) Except where otherwise provided in this Law, a notice or invoice

- (a) given by mail is deemed received on the fifth day after it is posted;
- (b) posted on the interest in reserve lands is deemed received on the second day after it is posted; and
- (c) given by personal delivery is deemed received upon delivery.

Interpretation

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

(2) Where a provision in this Law is expressed in the present tense, the provision applies to the circumstances as they arise.

(3) Words in this Law that are in the singular include the plural, and words in the plural include the singular.

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

(5) Reference in this Law to an enactment is a reference to the enactment as it exists from time to time and includes any regulations made under the enactment.

(6) Headings form no part of this Law and must be construed as being inserted for convenience of reference only.

Coming into Force

24. This Law comes into force and effect on the day after it is approved by the First Nations Tax Commission.

THIS LAW IS HEREBY DULY ENACTED by Council on the ____ day of _____, 20 ___, at _____, in the Province of _____.

A quorum of Council consists of _____ () members of Council.

[Name] _____
Chief [please spell out the name]

[Name] _____
Councillor [please spell out the name]

[Name] _____
Councillor [please spell out the name]

[Name] _____
Councillor [please spell out the name]

SCHEDULE I
FEES FOR SERVICE

[Note to First Nation: The types of fees set out below provide examples of possible approaches. This schedule will need to be modified to reflect the specific approaches and fees the First Nation wishes to impose.]

SAMPLE LANGUAGE FOR WATER FEES:

PART 1- WATER USER FEES

[Note to First Nation: Three approaches for water meter fees are set out below, as examples. Other approaches may be used.]

Option 1:

Water Metered Fees

The holder must pay the amount determined by applying the rate of \$ _____ per cubic metre to the amount of water used in each billing period.

Option 2:

Water Metered Fees

The holder must pay the amount determined by applying the rate set out in paragraph (a) to the amount of water used in the billing period, plus the applicable base fee set out in paragraph (b).

- | | |
|--|----------|
| (a) Fee per cubic metre | \$ _____ |
| (b) Water use base fee based on service connection size, per billing period: | |
| 25 mm or less | \$ _____ |
| 25–37 mm | \$ _____ |
| 37 mm or greater | \$ _____ |

Option 3:

Water Metered Fees

The holder must pay the amount determined by applying the applicable rate to the amount of water used in the billing period.

- | | |
|--|-----------------|
| (i) Residential | Per cubic metre |
| Single family | \$ _____ |
| Single family with suite | \$ _____ |
| Dwelling unit in duplex or triplex | \$ _____ |
| Dwelling unit in multi-family building | \$ _____ |
| Manufactured home | \$ _____ |
| (ii) Non-residential | \$ _____ |

[Note to First Nation: A number of different approaches can be used for flat rate fees. What follows is an example for consideration.]

Flat Rate Fees

The holder must pay the applicable rate per billing period.

Residential

- (a) Per single family \$ _____
- (b) Per single family with suite \$ _____
- (c) Per dwelling unit in duplex or triplex \$ _____
- (d) Per dwelling unit in multi-family building \$ _____
- (e) Per manufactured home \$ _____

Non-residential based on service connection size to the interest:

- 25 mm or less \$ _____
- 40 mm \$ _____
- 37 mm \$ _____

PART 2- OTHER FEES

- 1. Pipe connection size
 - 19 mm \$ _____
 - 25mm \$ _____
 - 37mm \$ _____

The connection fee includes: **[insert details respecting the pipe and connection to the property line]**

2. Additional connection fees

In addition to the connection fee, the following additional fees apply where required:

- (a) On a street with a curb and gutter, for resulting repairs due to the connection installation \$ _____
- (b) Where a concrete sidewalk, for additional repair costs \$ _____
- (c) For repair costs where cutting pavement required \$ _____
- (d) Inspection fee, where First Nation permits a third party to install the connection \$ _____

3. Other fees:

- Disconnecting the service at the water main \$ _____
- Disconnecting the service at the property line \$ _____
- Reconnecting the service at the property line \$ _____
- Turning off/on the service \$ _____

SCHEDULE II
COMPLAINT TO TAX ADMINISTRATOR RESPECTING
SERVICE FEE

TO: Tax Administrator for the _____ First Nation
[address]

PURSUANT to the provisions of the _____ *First Nation* _____ *Service Fee Law*, 20__ , I hereby make a complaint respecting the fee as follows:

This complaint is based on the following reasons:

- (1)
- (2)

(describe the reasons in support of the complaint in as much detail as possible)

Applicant's mailing address to which a reply to the complaint is to be sent:

Name of Complainant (please print)

Signature of Complainant
(or representative)

Dated: _____, 20__ .