

**BUFFALO RIVER DENE NATION  
TRESPASS BYLAW**

**Being a Bylaw of the Buffalo River Dene Nation to provide for the removal and punishment of persons trespassing on the Buffalo River Dene Nation or for the frequenting of the reserve for prohibited purposes, pursuant to section 81(1)(p) of the *Indian Act*.**

**BUFFALO RIVER DENE NATION TRESPASS BYLAW**BYLAW NO. 4

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**WHEREAS** the Buffalo River Dene Nation Reserve has been set apart for the exclusive use and benefit of members of the Buffalo River Dene Nation;

**AND WHEREAS** the Buffalo River Dene Nation affirms the authority to establish a system of governance for and on behalf of its members;

**AND WHEREAS** the Buffalo River Dene Nation Chief and Council has the inherent right and legal authority to govern its lands and also to exercise its powers of a "council of a band" under the *Indian Act*, including the power to make bylaws regarding the removal and punishment of persons trespassing on the reserve and regarding the residence of persons on the reserve, pursuant to section 81(1)(p) of the *Indian Act*;

**AND WHEREAS** the Buffalo River Dene Nation has a land regime based on custom and ancestral land use and occupation, and any use, occupation, right to enjoy, or enter upon by a person that has not been lawfully approved by the Buffalo River Dene Nation Chief and Council is deemed to be a trespass;

**AND WHEREAS** no person, other than members of the Buffalo River Dene Nation, have the right to possess, occupy, enjoy or enter upon the Buffalo River Dene Nation reserve and lands reserved for the Buffalo River Dene Nation, unless explicitly granted by the Chief and Council of the Buffalo River Dene Nation;

**AND WHEREAS** the Buffalo River Dene Nation Chief and Council has deemed it expedient and necessary for the benefit, comfort and safety of its members to provide for the removal and punishment of persons trespassing on the Reserves and to regulate the residence of persons living on the reserve;

**AND WHEREAS** section 81(1)(r) of the *Indian Act* provides for the penalties which may be imposed for contravention of this Bylaw as follows:

"81(1)(r) the imposition of summary conviction of a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty (30) days, or both, for violation of a by-law made under this section"

**AND WHEREAS** section 81(2) and 81(3) of the *Indian Act* allows for further remedies to be provided by the court as follows:

"81(2) Where any by-law of a band is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted."

"81(3) Where any by-law of a band passed is contravened, in addition to any other remedy and to any penalty imposed by the by-law, such contravention may be restrained by court action at the instance of the band council."

**NOW THEREFORE BE IT RESOLVED** that the Buffalo River Dene Nation hereby enacts the Buffalo River Dene Nation Trespass Bylaw.

## 1. SHORT TITLE

This Bylaw may be cited as the *Buffalo River Dene Nation Trespass Bylaw*.

## 2. INTERPRETATION

In this Bylaw:

- (a) "Band" means the Buffalo River Dene Nation, and a "Band" as defined by the *Indian Act*, R.S.C. 1985, c. I-5;
- (b) "Band Member" means any registered member of the Buffalo River Dene Nation, who's name appears on the Band Membership List and is registered with the Band in accordance with the *Membership Code* of the First Nation and/or as may be established and maintained by the First Nation from time to time;
- (c) "Band Council Resolution" means a formal, written expression of the will of the Chief and Council. Such a resolution is passed by the quorum of the Councillors present at a duly-convened meeting of Council;
- (d) "Council" means the duly-elected Chief and Council of the Buffalo River Dene Nation;
- (e) "Common-Law Spouse" means a relationship where two persons, regardless of sexual orientation, have cohabited in a conjugal relationship for a period of at least one (1) year, as defined in the *Indian Act*.
- (f) "Dependent Children" means the biological, legally or traditionally adopted children, or children of which a band member has legal custody or guardianship over, who is under the age of 18 years, or 21 years if disabled;
- (g) "Disturbance" means disturbing the peace and quiet of band members, unreasonable or excessive noise, fighting, screaming, shouting, swearing, public intoxication or causing a disturbance at any meeting of the Chief and Council; cultural event, band meeting, or an assemblage of the First Nation held for a lawful purpose.
- (h) "Domestic Violence" means the physical, emotional, or psychological abuse of a spouse (or any combination of the same);
- (i) "Nuisance" means an unreasonable, unwarranted or unlawful interference with a right common to the general community.
- (j) "Prohibited Acts" is the conduct of a non-band member who engages in any of the following acts on the reserve of the Buffalo River Dene Nation, without lawful authority or justification:
  - i. Hunting, fishing or trapping;
  - ii. Hawking, peddling wares or merchandise;
  - iii. Loitering;
  - iv. Soliciting;
  - v. Photographing, interviewing or conducting research or surveys;
  - vi. Distribution of written materials;
  - vii. Dumping refuse or waste;
  - viii. Any activity deemed to be a source of nuisance and/or disturbance to band members;
 or

- ix. Any other activity that is prohibited by federal or provincial law or by a law or bylaw of the Buffalo River Dene Nation;
- (k) "Prohibited Person" is any non-band member, including the spouse of a band member or non-member dependent child of a band member, who has been charged with committing any of the Criminal Code of Canada offences listed below and is awaiting disposition of the charge by a court of competent jurisdiction, or has been convicted of such an offence:
- Sexual interference, invitation to sexual touching, sexual exploitation, incest, bestiality, child pornography, parent or guardian procuring sexual activity, exposure, sexual assault, sexual assault with a weapon, aggravated sexual assault, or attempt or conspiracy to commit any of these sexual offences;
  - Murder, attempted murder, assault of any kind, abduction of a young person, criminal harassment, uttering threats, making indecent or harassing phone calls, trespassing at night, mischief, extortion, or attempt or conspiracy to commit any of these offences;
  - failure to provide necessities of life or abandoning a child or attempt or conspiracy to commit these offences; or
  - criminal negligence of any kind.
- (l) "Reserve" means any lands set apart for the exclusive use and benefit of the Buffalo River Dene Nation and its band members;
- (m) "Spouse" means the life partner, established through marriage, civil union, or common-law relationship with a band member;
- (n) "Trespassing" is when a non-band member enters onto, or is presence on, the reserve of the Buffalo River Dene Nation, without lawful justification or authority or for prohibited acts and intentions.

### 3. **APPLICATION**

This Bylaw applies to any person who is *not* a band member and is on lands forming part of the reserve of the Buffalo River Dene Nation, held for the exclusive use and benefit of the First Nation and its members.

### 4. **COMPLIANCE WITH OTHER LAWS**

- (a) The enforcement and penalty provisions of this Bylaw does not relieve a person from also complying with or being subject to enforcement measures and penalties under the provisions of any other applicable federal or provincial Act, law or regulation, which is meant to ensure public and personal safety and provide for the prosecution and punishment of persons accused or convicted of criminal offences.
- (b) The enforcement and penalty provisions of this Bylaw does not relieve a person from also complying with or being subject to enforcement measures and penalties under the provisions of any other bylaw that may be enacted by the Buffalo River Dene Nation.

### 5. **RESIDENCY AND TRESPASS**

- (a) Lands forming the reserve of the Buffalo River Dene Nation have been set aside for the exclusive use, benefit and enjoyment of the members of the First Nation, including the

right to occupy, establish and maintain residence. The Chief and Council of the First Nation have the exclusive authority to determine who resides on the reserve lands of the First Nation.

- (b) Any rights and privileges of residence on reserve lands, granted to any non-member, who may wish to take up residence on the reserve for work or business purposes, must obtain prior, written authorization from the Chief and Council.
- (c) Any rights and privileges of residence granted to a non-member spouse, is contingent upon the continuation of the spousal or common-law relationship with a band member *and* the prior, written authorization from the Chief and Council to reside on the reserve.
- (d) The rights of residence of a dependent child who is not a band member of the First Nation shall expire the day after the child turns 18 years of age, unless the dependent child is disabled.
- (e) Notwithstanding (c) and (d), a court of competent jurisdiction may grant residency rights to a non-band member, pursuant to the *Family Homes On-Reserves and Matrimonial Interests or Rights Act*.

#### **6. PROHIBITED PERSONS**

- (a) Any non-band member who has been charged with committing a Criminal Code offence listed in section 2(k) and is awaiting disposition of the criminal charge by a court of competent jurisdiction, or is convicted of a Criminal Code offence listed in section 2(j) is trespassing on the reserve.

#### **7. PROHIBITED ACTS**

- (a) Any non-band member who conducts or engages in any of the activities listed in section 2(j) on the reserve shall be deemed to be frequenting the reserve for a prohibited act or purpose and is trespassing on the reserve.

#### **8. NOTICE OF TRESPASS**

- (a) At any time, the Chief and Council may issue notice to a non-band member that he or she is deemed to be trespassing. Notice shall be given by Band Council Resolution, in a manner, form and format established by the Chief and Council from time to time.
- (b) A copy of the Band Council Resolution shall forthwith be provided to the trespasser either in person or by registered mail. Should service not be effected after reasonable efforts, a copy of the Band Council Resolution may be posted in public places throughout the reserve to effectively provide service of this notice upon the trespasser.
- (c) A copy of the Band Council Resolution shall be provided to the local and any other detachment of the Royal Canadian Mounted Police (RCMP), as necessary.

**9. PENALTY AND ENFORCEMENT**

- (a) Any non-band member who trespasses on the reserve commits an offence and is liable on summary conviction to a fine of \$1000 and/or to imprisonment for a term not exceeding 30 days.
- (b) In addition to the possible fine and term of imprisonment, the Chief and Council may order to removal of the trespasser for a specified or definite period of time.
- (c) An officer will act to enforce this bylaw and order any person who is trespassing to leave the reserve immediately, and may order any person who engages in a prohibited activity on the reserve to cease immediately.
- (d) Any person who fails or refuses to obey an order may under this bylaw commits a further offence.
- (e) An officer may take any reasonable and lawful measure to remove a person from the reserve who is deemed to have contravened this bylaw.
- (f) For any offence arising from the application of this bylaw, an officer may lay a separate charge for each day an offence under this bylaw has occurred or for each separate offence.
- (g) For any offence arising from the application of this bylaw, the local court of competent jurisdiction shall preside and dispense justice.

**10. APPEAL**

An appeal of a Notice issued pursuant to this bylaw will be held in the following manner:

- (a) Within 30 days of receiving the Notice, or of the date of service having been deemed to be executed, a person who has been provided Notice will provide a written request to the Chief and Council requesting that the matter be revisited.
- (b) Within 7 days of receiving the written request of an appeal, the Chief and Council shall establish a tribunal to hear and decide upon any appeal.
- (c) The tribunal shall consist of 3 elders, none of whom are family members of the person who received the Notice.
- (d) Within 14 days of providing the written request for an appeal, the person appealing the Notice shall provide to the tribunal any information or documents that may be requested by the tribunal that will assist the tribunal in making a fair and informed decision, including:
  - A copy of the person's CPIC and Vulnerable Sector Check;
  - Letters of support, attesting to the person's character, behavior, etc.;
  - A personal appearance by the person, allowing them a make answer and defence; or
  - Any other information requested by the tribunal.
- (e) The tribunal shall receive and consider any information provided by the person and within 30 days deliver their decision in writing to the Chief and Council, who will then reaffirm notice previously issued by Band Council Resolution or rescind the Band Council Resolution.
- (f) Any decision of the tribunal is considered final and binding.


**11. GENERAL**

- (a) Nothing in this bylaw, except as specifically provided, shall abrogate or derogate the authority and autonomy of the First Nation, nor the inherent, aboriginal and treaty rights of its members.
- (b) Should a court determine that any provision of this bylaw is invalid for any reason, the provision shall be severed from the bylaw and the validity of the rest of the bylaw shall not be affected.

**12. EFFECTIVE DATE**

This bylaw comes into force and is effective on the date on which it is first published in accordance with section 86 of the *Indian Act*.

**THIS BYLAW IS HEREBY** made at a duly convened meeting of the Chief and Council of the Buffalo River Dene Nation, this 23 day of March 2020.




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**CHIEF ELMER CAMPBELL**




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**COUNCILLOR GRAYSON JANVIER**




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**COUNCILLOR LOUIE CHANALQUAY**




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**COUNCILLOR DEBBIE BILLETTE**




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**COUNCILLOR CHRIS LAPLANTE**




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**COUNCILLOR SYLVIA BEKKATTLA**