



ANIMAKEE WA ZHING #37

TRESPASSING BY-LAW

No. 01-2019

WHEREAS the Council of the Animakee Wa Zhing #37 (“AWZ”) 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 AWZ Reserve land has been set apart for the use and benefit of AWZ members; and the exclusive use of the Reserve land for AWZ members is an inherent right and is an aboriginal and treaty right that is recognized and affirmed pursuant to subsection 35(1) of the *Constitution Act, 1982*;

AND WHEREAS the Council of AWZ has the inherent authority, protected and confirmed in Treaty Three, to govern its own affairs, including with respect to who may or may not enter their Reserve;

AND WHEREAS the Council of AWZ is empowered to make such by-law as a “council of a band” under the *Indian Act*, and any matter ancillary thereto pursuant to paragraphs 81(1)(p), (q) and (r) of the *Indian Act*;

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

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

AND WHEREAS any person, other than AWZ members, who enters onto the Reserve land without the express authority of AWZ, 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 Council of Animakee Wa Zhing #37 hereby enacts By-law No. 01-2019.

Title

1. This by-law may be cited as the “Animakee Wa Zhing #37 Trespassing By-law”.

Interpretation

2. In this by-law,

“**Council**” means the Council of the AWZ as defined in the *Indian Act*;

“**Animakee Wa Zhing #37**” or “**AWZ**” means the Animakee Wa Zhing #37 band, which is a band as defined by the *Indian Act*;

“**Member**” means a registered band member of Animakee Wa Zhing #37;

“**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 person appointed by the Council for the purpose of maintaining law and order on the reserve

“**Person**” means any means any person, corporation, government agency, or other legal entity.

“**Reserve**” means the Reserve land of the Animakee Wa Zhing #37.

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

- (a) banished from the Reserve by Council pursuant to this by-law;
- (b) banished from the Reserve by Council pursuant to any other by-law of Animakee Wa Zhing #37;
- (c) deemed by Council to be a danger to the Members;
- (d) deemed by Council to be interfering with the Members’ quiet enjoyment of the Reserve;
- (e) without lawful justification;
- (f) without an invitation from either the Council or a Member; or
- (g) engaging in a Prohibited Activity on the Reserve.

Application

3. This by-law applies on the Reserve.

Compliance with Other Laws

4. Where any applicable federal or provincial law, act, regulation, or AWZ by-law applies to any matter covered by this bylaw, 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.

Trespass

5. No person shall Trespass on the Reserve.
6. Any person on the Reserve who is not a 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.

Parties to the Offence of Trespass

7. 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 a Trespasser with the means, tools or equipment to commit the Trespass.
8. A person may be a 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 other individual was convicted under this by-law in respect of the same Trespass.

Prohibited Activities

9. (1) Where a 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;
 - (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 structure;
 - (o) cutting trees, drilling, digging, removing natural 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 AWZ.
- (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 Council's authorization to be on the Reserve and is conducting themselves in accordance with Council's authorization;
- (c) a person on the Reserve who is not a Member participating in public activities authorized by Council;
- (d) a person who is not a Member but is a lawful resident on the Reserve who is conducting lawful activities in an authorized manner or location;
- (e) a person on the Reserve who is not a Member but who holds a valid written licence or permit to conduct any activity referred to therein or is otherwise permitted by Council to conduct that activity; and
- (f) an Officer in the course of his or her duties.

Enforcement

10. (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.
- (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.
- (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.

Penalty

11. A person who violates any provision of this by-law commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.00 or to imprisonment for a term not exceeding thirty (30) days, or to both.
12. An Officer may lay a separate charge for each day an offence under this by-law is ongoing or for each separate offence.
13. The Council may banish from the Reserve any individual who violates any provision of this by-law, in accordance with the provisions provided herein.
14. 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.

Notice

15. A person has notice not to Trespass or engage in a specific activity when he or she has been given notice by Council or by an Officer.
16. Any person entering the Reserve is presumed to have received notice of this by-law.
17. Notice under this Part may be given:
 - (a) Orally;
 - (b) In writing;
 - (c) Through a band council resolution;
 - (d) By means of signs posted so that a sign is clearly 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 19.
18. 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.
19. 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 subsections (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) Marking under this section shall be at least a size that ten centimeters in diameter circle can be 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.

Council Authority

20. Council may make a resolution setting out the rules and regulations for the use of any premises on community land, including arenas, community halls, recreational facilities, pools, baseball and soccer fields, schools, health clinics and similar premises.

21. Council may make a resolution providing that a person 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 period of time as set out in the resolution.
22. 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.
23. 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 a permit to engage in such activities or purposes.

Banishment

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

Civil Liability Unaffected

31. 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 for damages.

Severability





32. 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 the validity of the remainder of the by-law shall not be affected.

By-law Coming into Force

- 33. This by-law shall be published on the *First Nations Gazette*.
- 34. The Council shall be required to provide a hardcopy of the by-law to any person that requests a copy and has not before received a copy.
- 35. This by-law comes into force ten (10) days after the by-law has been published on the *First Nations Gazette*.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Band Council of the Animakee Wa Zhing #37 this 12 day of December, 2019.

Voting in favour of the by-law are the following members of the Council:

 _____ Councillor Donald Kavanaugh	 _____ Chief Jim Major	 _____ Councillor Deanna Major
 _____ Councillor Lorraine Major	 _____ Councillor Linda McVicar	

being the majority of those members of the Band Council of the Animakee Wa Zhing #37 present at the aforesaid meeting of the Council.

The quorum of the Council: 3 members.

Number of Council members present at the meeting: 5 members.