

BY-LAW NO. 2018-001
of the Waywayseecappo First Nation
A By-law for Curfew

WHEREAS the Council of Waywayseecappo First Nation desires to establish a By-law establishing a curfew for children residing or visiting on Reserve;

AND WHEREAS the Council of Waywayseecappo First Nation is empowered to make such By-law, and any matter ancillary thereto pursuant to paragraphs 81(1) (c), (d), (q) and (r) of the *Indian Act*, R.S.C. c. I-5,

AND WHEREAS it is considered necessary for the benefit, comfort and safety of the inhabitants of the Waywayseecappo First Nation Reserve to regulate the time after which children shall not be in a public place at night without proper guardianship on the Reserve;

AND WHEREAS a curfew by-law will assist parents and legal guardians in exercising their authority over their children to keep children safe from harm; and

AND WHEREAS the Waywayseecappo First Nation Council is committed to preserving a community quality of life which emphasizes individual safety and well-being as well as the protection from harm of public and private property;

NOW THEREFORE the Council of Waywayseecappo First Nation hereby makes the following By-law:

Short Title

1.1 This By-law may be cited as the "Waywayseecappo First Nation Curfew By-law".

Interpretation

2.1 In this By-law,

"*Accompanied by a Parent or Guardian*" means within eyesight of the parent or guardian.

"*Band*" means the Waywayseecappo First Nation;

"*Child*" means a person who is under the age of sixteen (16) years;

"*Council*" means the Chief and Council of the Waywayseecappo First Nation;

"*Curfew Period*" means the period of time between 10:00 p.m. one day and 6:00 a.m. the following day.

"*Emergency*" means an unforeseen combination of circumstances or the resulting event that requires immediate action. This includes but is not limited to a fire, natural disaster, a motor vehicle collision, or any situation that is beyond the control of anyone and requiring immediate action to prevent injury or death.

"*By-Law Enforcement Officer*" means a person appointed by the Waywayseecappo First Nation authorized to enforce the provisions of this By-Law.

"*Parent*" means the biological parent, adoptive parent, or guardian of a Child;

"*Public Place*" means any place to which the public have or are permitted to have access to including, but not limited to, roads, land, public buildings or facilities, or any private property which the public has access to.

"*Reserve*" means the Waywayseecappo First Nation Indian Reserve and any other reserve lands under the authority of Council.

"*Violation Notice*" means a notice in a form approved by the Council setting out information of violation of this By-Law.

General

- 3.1 No Child shall be in a Public Place during the Curfew Period unless accompanied by a Parent or guardian.
- 3.2 No Parent shall permit or allow any Child who is in his or her custody, care or control, to be in a Public Place during the Curfew Period unless that Child is accompanied by a Parent.
- 3.3 Notwithstanding anything contained herein, it shall not be a violation of this By-Law for a Child to be in a Public Place during the Curfew Period when:
 - (a) involved in an Emergency as defined in this By-Law or within the definition of Emergency as established by a Peace Officer.
 - (b) in a motor vehicle travelling from one point directly returning home without any detour;

(c) acting in the interests of the band or an employer or voluntary organization or while directly returning home, without detour, as soon as reasonably practicable, from an organized band, public, school, religious, sporting, or cultural event, or any other recreational activity, as determined by a By-Law Enforcement Officer, which has been supervised by at least one (1) adult.

Administration

- 4.1 The Council may appoint a person to act as the By-Law Enforcement Officer as the Council deems necessary.
- 4.2 The By-Law Enforcement Officer is authorized and directed to carry out the provisions set out in this By-law.
- 4.3 The Council may from time to time enter into agreement with a person, a Company or an authorized agent of any corporation, society, governmental body or other organization to:
 - a) Carry out the provisions set in this By-law;
 - b) Enforce the provisions set in this By-law;
- 4.4 The Council may, by resolution, establish a charge or fees payable in respect of any matter administered under this By-law.
- 4.5 The Council shall have the final decision-making authority on the enforcement of violations under this By-Law.

Defence

- 5.1 It is a defence to a violation under section 3.2 of this By-law if a Parent establishes to the satisfaction of Council that he or she:
 - (a) was exercising reasonable supervision over the Child at the time the Child was found to be in violation of the provisions of this By-Law; and

(b) made reasonable efforts in good faith to prevent or discourage the Child from breaching the provisions of this By-Law.

5.2 The onus of establishing a defence under section 5.1 rests with the Parent.

5.3 In determining whether a Parent exercised reasonable supervision over a Child or made reasonable efforts to prevent or discourage the Child violating the provisions of this By-Law, Council may consider:

(a) the circumstances of the Parent(s);

(b) the age of the Child;

(c) the prior conduct of the Child;

(d) the physical or mental capacity of the Child;

(e) any psychological or other medical disorders of the Child;

(f) whether the Parent was responsible for the care and control of the Child at the time when the Child engaged in the violation of the provisions of this By-Law;

(g) if the Child was temporarily out of the care and control of the Parent when the Child engaged in the activity that resulted in the violation of the By-Law, whether the Parent made reasonable arrangements for the supervision of the Child in the temporary location;

(h) whether the Parent has sought to improve his or her parenting skills by attending parenting courses or otherwise;

(i) the number of past violations of this By-Law;

(j) any other matter that Council considers relevant to the determination.

Penalty

6.1 Enforcement of this By-Law relating to the issuance of Violation Notices lies within the discretion of the By-Law Enforcement Officer.

- 6.2** Notwithstanding any provision of this By-Law, a Child who violates this By-Law will not receive a monetary penalty.
- 6.3** Where a Child is found to be in contravention of this By-Law, a By-Law Enforcement Officer may:
- (a) advise the Child to go directly to his or her home;
 - (b) take the Child to his or her home and deliver the Child into the care of the Child's Parent(s);
 - (c) phone the Child's Parent(s) and request that the Parent(s) attend at a mutually agreed upon location to receive the Child into the care of the Parent(s).
- 6.4** A By-Law Enforcement Officer is hereby authorized to issue a Violation Notice to any Parent whose Child has contravened any provision of this By-Law.
- 6.5** A Violation Notice may be issued to such person:
- (a) either personally, or
 - (b) by mailing a copy to such person at his or her last known post office address.
- 6.6** The Violation Notice shall be in a form approved by the Council and shall state:
- (a) the name of the Child and the Child's Parent(s);
 - (b) the offence;
 - (c) the appropriate penalty for the offence as set out in this By-Law;
 - (d) that the penalty shall be paid within thirty (30) days of the issuance of the Violation Notice;
 - (e) any other information as may be required by the Council.
- 6.7** Where a contravention of this By-Law is of a continuing nature, further Violation Notices may be issued by a By-Law Enforcement Officer,

provided that no more than one Violation Notice shall be issued for each day that the contravention continues.

6.8 Upon being served with a Violation Notice, the person who is named on the Violation Notice may, during regular office hours, voluntarily pay the penalty as stated below to the band office during regular office hours, and upon payment as so provided, that person shall not be liable to prosecution of the offence.

(a) 1st Offence – Warning

(b) 2nd Offence - \$ 50.00

(c) 3rd Offence - \$100.00

(d) After the 3rd Offence if there are any other reoccurrences the penalty will double to \$200.00.

(e) Where a person is issued five (5) or more Violation Notices within a six (6) month period, Council may prosecute the violator to the maximum allowable penalty under section 6.9 of this By-Law.

6.9 Any person who contravenes this By-Law is guilty of 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.

6.10 A By-Law Enforcement Officer may notify West Regent Child and Family Services of any Parent whose Child has contravened any provision of this By-Law if they deem it is in the best interests of the Child.

General

7.1 Words within this By-Law importing the male gender include the female gender and vice versa, and words importing the singular number include the plural number and vice versa.

7.2 This By-Law shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objectives.

7.3 Head notes, marginal notes and provision headings form no part of this By-Law but shall be construed as being inserted for convenience of reference only.

- 7.4 A finding by a court of competent jurisdiction that a section or provision of this By-law is *ultra vires*, void or invalid, shall not affect or bear upon the validity or invalidity of any other section or part of this By-Law, or this By-Law as a whole.
- 7.5 Where a provision of this By-Law is expressed in the present tense, future tense or in the past tense, the provision applies to the circumstances as they arise.
- 7.6 Any section of this By-Law, including any schedules, may be amended from time to time by a By-Law adopted by Council and approved in accordance with the *Indian Act*.

Coming Into Force

- 8.1 This By-Law shall come into force upon it being first published pursuant to subsection 86(1) of the *Indian Act*.
- 8.2 All previous By-Laws establishing a curfew for children residing or visiting on Reserve are hereby revoked and are of no force or effect.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the Waywayseecappo First Nation this 6th day of September, 2018.

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


 Chief Murray Clearsky


 Councillor Chantel Wilson


 Councillor Tim Cloud


 Councillor Travis Cloud


 Councillor Mel Wabash


 Councillor Joe Gambler


 Councillor Anthony Longclaws

being the majority of those members of the Band Council of the Waywayseecappo First Nation present at the aforesaid meeting of the council.

The quorum of the Band Council is three members.
 Number of members of the Band Council present at the meeting: