

BY-LAW NO. 2020.02
OF THE WHITEFISH RIVER FIRST NATION BAND COUNCIL
A BY-LAW RESPECTING TRESPASSING ON RESERVE

WHEREAS the Reserve has been set aside for the First Nation's use and benefit;

AND WHEREAS the Council of Whitefish River First Nation has deemed it expedient and necessary for the peace, safety and good governance of its members, to establish a by-law to provide for the removal and punishment of persons trespassing on the Reserve;

AND WHEREAS the Council has the authority to make by-laws regarding the removal and punishment of persons trespassing on the Reserve, and regarding the residence of band members, pursuant to section 81(1)(p), (p.1), (q) and (r) of the *Indian Act*;

AND WHEREAS pursuant to section 30 of the *Indian Act*, anyone who trespasses on the Reserve is guilty of an offence and is liable to a fine or imprisonment, or both;

AND WHEREAS section 81 of the *Indian Act* makes violation of a by-law punishable by a fine or imprisonment, or both;

AND WHEREAS the Council wishes to replace the By-Law respecting trespassing on the Reserve passed on March 22, 2016 with this By-Law;

NOW THEREFORE, it is hereby enacted pursuant to section 81(1) of the *Indian Act*:

Short Title

This By-Law may be cited as the *Whitefish River First Nation Trespassing By-Law 2020*.

Interpretation

In this By-Law:

“Band” means Whitefish River First Nation, as represented by its duly elected Chief and Council;

“Council” means the Chief and Council of the Whitefish River First Nation;

“Band Council Office” means the office where the Band Council conducts its business;

“Dependent Family Member” means any of a natural or adopted/adoptive child; or a parent, grandparent, or sibling if any such person is dependent on the resident Band member for care or financial support; or a spouse whether married or common law;

“emergency” means the period of time when a state of emergency declared by the Council of the Whitefish River First Nation is in effect, including, for example, the state of emergency declared by the Council because of the COVID-19 pandemic;

“Notice to Vacate the Reserve” means a notice of Trespass and order to vacate the Reserve issued under section 7;

“Notice to Vacate Premises” means a notice of Trespass and order to vacate Premises on the Reserve issued under section 8;

“Officer” or "officer" means any police officer, police constable or other person charged with the duty to preserve and maintain the public peace, and any person appointed by Council for the purpose of maintaining law and order on the Reserve;

“Premise on the Reserve” means a building or structure on the Reserve owned, controlled or occupied by the Whitefish River First Nation or a business owned or controlled by the First Nation, that is not a dwelling;

“Reserve” means the reserve of the Whitefish River Nation set apart for the use and benefit of Whitefish River First Nation;

“reside” means being resident in a dwelling or erecting a structure capable of being a dwelling in which one could be resident, all for the purpose of domestic day to day activities;

“Trespassing” or “Trespass” means, in accordance with the common law of Canada, the entry onto, or the presence on, the Reserve or a Premise on the Reserve, by a person without lawful authority or justification;

“Trespass Notice Recipient” has the meaning set out in section 14.

Residence on Reserve

1. The Reserve has been set aside for Whitefish River First Nation’s use and benefit, and is available for residency by Band members and any resident Band member’s Dependent Family Members, subject to sections 18.1, 20, 24, 28(2), 58(3) and any other applicable provisions of the *Indian Act*, and subject to this or any other By-Law of the Band.
2. Subject to section 3, all persons require written authorization from the Band, through the Band Council or the Lands Office or a legal instrument recognized by the *Indian Act* and the Band (such as a certificate of possession) to reside on the Reserve, and such authorization may be given to a Band member for himself or herself and his or her Dependent Family Members. All persons who do not have such authorization to reside on the Reserve, must have other authorization under the *Indian Act*, such as a permit issued under section 18 or 28 of the *Indian Act*, to use and occupy the Reserve or a portion of the Reserve for more than a passing purpose.

3. During an emergency, only Band members and Dependent Family Members of resident Band members may reside on the Reserve, and other persons who have authorization under the *Indian Act* to reside on the Reserve are deemed to be Trespassing during an emergency.

Trespass Conduct

4. Any person residing on the Reserve who does not do so in accordance with sections 1 or 2 is Trespassing on the Reserve, and may be removed pursuant to the procedure referred to in this By-Law, regardless of whether they have also engaged in any conduct referred to in section 5 (a), (b) or (d). Council may also require removal of persons not authorized to be on the Reserve under sections 1, 2 or 3 in the event of an emergency which, in Council's reasonable opinion, requires the removal of such persons in order to seek to protect the health or safety of Band members and their Dependent Family Members.
5. A person who conducts any of the following activities on the Reserve, or in or on a Premise on the Reserve, namely:
 - a. persons other than Band members and Dependent Family Members of Band members resident on the Reserve, engaged in hunting, fishing, trapping, or other harvesting, for sustenance or commercial purposes, without a valid permit or licence;
 - b. persons reasonably deemed to be: threatening to the peace or safety of Band members or those lawfully on Reserve; impeding the ability of Council to govern; or impeding the ability of the Council or Band's employees or agents to effectively function; or
 - c. during an emergency, persons other than Band members and Dependent Family Members of Band members who are present on the Reserve to conduct an activity of any kind, including for greater certainty residing in a dwelling, visiting or working, regardless of the purpose of that activity, and who do not have authorization to be present on the Reserve either from the Chief or the Chief's designate, or from the Incident Commander under a Whitefish River First Nation emergency response plan; or
 - d. any other activity that is prohibited by law or any other By-Law of the Band or order made under such By-Law,

shall be deemed to be on the Reserve for a prohibited purpose and in Trespass, and may be removed pursuant to the procedure referred to in this By-Law.

6. Persons who reside on or visit the Reserve and who do not receive a written Notice to Vacate the Reserve under section 7 or a written Notice to Vacate Premises under section 8 are deemed to have permission to remain on the Reserve or the Premise/Premises on the Reserve as applicable, unless and until
 - a. they receive such written notice; or

- b. reasonable efforts have been made, by persons authorized to do so under section 7 or 8, to provide them with such written notice. In the event of an emergency, reasonable efforts means delivering a written notice to a Premise on the Reserve where the person authorized under section 7 or 8 to deliver such notice reasonably believes the Trespass Notice Recipient had recently visited or was residing.

Procedure for Removal of Trespassers

7. At any time, Council may, at a duly convened Council meeting, pass a Band Council Resolution authorizing an Officer, a Councillor, an administrator, an employee or an agent of Whitefish River First Nation or the Council, to issue and deliver a written notice of Trespass and order to vacate the Reserve (a “Notice to Vacate the Reserve”) to any person who is Trespassing on the Reserve. The Band Council Resolution may specifically name persons who are Trespassing on the Reserve or may describe a class of persons who are Trespassing on the Reserve. Council may, through this Band Council Resolution, authorize any Officer, Councillor, administrator, employee or agent of Whitefish River First Nation or the Council, to remove any structure that is built, erected, or installed by any person who is Trespassing on the Reserve, or that a person Trespassing on the Reserve causes to be so built, erected, or installed. Any such Notice to Vacate the Reserve shall take into account the urgency of the issue, the existence of an emergency if applicable, the seriousness of the conduct of the person declared in Trespass (being such conduct referenced in sections 4 and 5), the effect of such conduct on Band members and Council, and the time required for such person acting reasonably to vacate. Council may acquire an opinion from legal counsel prior to passing such a Band Council Resolution on the legal merits of such Band Council Resolution in the circumstances.

8. At any time, Council may, at a duly convened Council meeting, pass a Band Council Resolution authorizing an Officer, a Councillor, an administrator, an employee or an agent of Whitefish River First Nation or the Council, to issue and deliver a written notice of Trespass and order to vacate a Premise or Premises on the Reserve (a “Notice to Vacate Premises”) to any person who is Trespassing on the Reserve in order to conduct any activities referenced in subsections 5(b) or (d). Any such order may prohibit such person from entering, or in any way impeding or obstructing access by others to, any Premise or Premises on the Reserve, subject to the following exceptions:
 - a. Where permission has been obtained from Council; or
 - b. Where entry is necessary to access services and 48 hours notice has been given of the need to enter such Premise for access to services, where possible; or
 - c. In a situation where the Premise or Premises or its contents could be seriously damaged if entry to the Premises were prohibited.

Council may acquire an opinion from legal counsel prior to passing such a Band Council Resolution on the legal merits of such Band Council Resolution in the circumstances.

9. For greater certainty Council may pass either Band Council Resolution referenced in sections 7 or 8 in respect of any incident or occurrence of Trespass prohibited by this By-law, depending on whether the Trespass was in respect of the Reserve or a Premise/Premises on the Reserve.

10. The person authorized under sections 7 or 8 to issue and deliver a written Notice to Vacate the Reserve or Notice to Vacate Premises shall, if he or she is unable to deliver such written notice after reasonable efforts to do so have been made, complete a written document describing the efforts made to provide such written notice, which he or she shall certify to be true.
11. Officers are hereby authorized to enforce written Notices to Vacate the Reserve or Notices to Vacate Premises issued pursuant to this By-Law, and to use such reasonable measures as may be necessary to remove from the Reserve, or a Premise/Premises on the Reserve:
 - a. any person to whom a written Notice to Vacate the Reserve or Notice to Vacate Premises has been delivered, after section 18 has been complied with, and any structure that is built, erected, or installed by any person who is Trespassing on the Reserve, or that a person Trespassing on the Reserve causes to be so built, erected, or installed; or
 - b. any person in respect of whom a person authorized under sections 7 or 8 to issue and deliver a written Notice to Vacate the Reserve or Notice to Vacate Premises has been unable to deliver such written notice after reasonable efforts to do so have been made, and the written document referred to in section 10 has been completed and certified as true, and section 18 has been complied with, and any structure that is built, erected, or installed by any person who is Trespassing on the Reserve, or that a person Trespassing on the Reserve causes to be so built, erected, or installed.
12. Any costs incurred in the removal of any structure referred to in section 11 may be charged to the person Trespassing on the Reserve. In addition, in the event that there is any damage caused to the structure by or in its removal, the Band, or any Officer, Councillor, administrator, employee or agent of Whitefish River First Nation or the Council authorized by the Band to remove such structure, cannot be held liable for such damage caused.
13. Any Notice to Vacate the Reserve or Notice to Vacate Premises shall indicate the specific time period that the person has to either:
 - a. vacate the Reserve or the Premises; or
 - b. within which such person may request:
 - (i) except in an emergency, a meeting before Council; or
 - (ii) in an emergency, an opportunity to send written representations to Council,to dispute that the notice should be enforced (ie: to dispute that the conduct or situation referenced in sections 4 or 5 occurred or to seek to justify such conduct), and such time period shall be reasonable in the circumstances. In the event of an emergency, 6 hours is deemed to be a reasonable period for the person to either vacate the Reserve or to request an opportunity to send written representations to Council, though Council may decide to provide more time.

14. If a meeting before Council referenced in section 13(b)(i) is requested within the specified time period, then Council shall as soon as possible after receipt of such request, convene a meeting, giving reasonable notice of such meeting to the person to whom the Notice to Vacate the Reserve or Notice to Vacate Premises was delivered or in respect of whom reasonable efforts were made to provide them with such written notice (the "Trespass Notice Recipient"). Until the meeting is held and Council has rendered a decision at or after such meeting, Council shall defer enforcement of the Notice to Vacate the Reserve or Notice to Vacate Premises. A written record of the meeting including what each person spoke to shall be made by someone appointed by Council to do so.
15. At a meeting under section 14, the Trespass Notice Recipient and any agents and witnesses he or she wishes to call, and any witnesses that Council wishes to call, shall be permitted a reasonable time, as determined by Council, to make submissions or provide evidence in respect of what led to the delivery of the Notice to Vacate the Reserve or Notice to Vacate Premises.
16. In an emergency, if an opportunity to send written representations to Council referenced in section 13(b)(ii) is requested within the specified time period, then these written representations, which may include letters or evidence from the Trespass Notice Recipient and others, shall be delivered within 12 hours of the Trespass Notice Recipient requesting that opportunity. Written representations shall be provided by way of email sent to the Chief, or be hand-delivered to the Chief. At a meeting of Council, the Council shall consider any written representations received within that time period. The Chief shall have sole discretion to determine the method of holding such meeting, which may be convened by video or telephone conference. Until the meeting is held and Council has rendered a decision at or after such meeting, Council shall defer enforcement of the notice and order.
17. Council shall render its decision about whether the Notice to Vacate the Reserve or Notice to Vacate Premises shall be enforced or rescinded, at or as soon as possible after the meeting held under section 14 or 16. In its decision, if it decides to enforce the Notice to Vacate the Reserve or Notice to Vacate Premises, it shall stipulate a reasonable period of time thereafter for the person to vacate the Reserve or a Premise/Premises on the Reserve, which in the case of an emergency shall be a minimum of 3 hours. If the Trespass Notice Recipient fails to attend the meeting under section 14 or provide written representations under section 16, Council may decide, without more steps being taken, to enforce the Notice to Vacate the Reserve or Notice to Vacate Premises, and this fact shall be included in the notice to such person about the outcome of such meeting. Council may acquire an opinion from legal counsel prior to rendering such decision.
18. If no request for a meeting or opportunity to send written representations is made by the Trespass Notice Recipient within the time period stipulated in the Notice to Vacate the Reserve or Notice to Vacate Premises, then Officers may enforce the Notice to Vacate the

Reserve or Notice to Vacate the Premises at the expiry of such time period. If a request for a meeting or opportunity to send written representations was made by the Trespass Notice Recipient within the time period stipulated in the Notice to Vacate the Reserve or Notice to Vacate Premises, and Council decides at or after such meeting, pursuant to section 14 or 16, that the Notice to Vacate the Reserve or Notice to Vacate the Premises shall be enforced, then Officers may enforce such notices immediately or on the expiry of a period of time that Council may stipulate in its decision. If, however, after such meeting, Council decides pursuant to section 17 that a Notice to Vacate the Reserve or Notice to Vacate Premises is not to be enforced, Council shall pass a Band Council Resolution rescinding such notice.

19. A person who has been declared in Trespass pursuant to this By-Law may at any time hence be permitted to enter, be present on, or reside on, the Reserve or a Premise/Premises on the Reserve, if Council, at a duly convened Council meeting, passes a Band Council Resolution providing this permission. Council shall issue such permission when Council, acting reasonably, determines that the reason for requiring the individual to vacate the Reserve has been resolved, which may occur upon the expiry of the emergency requiring their removal, or if the conduct of such person referenced in sections 4 or 5 is no longer occurring and is not likely to recur, or if such person has provided justification for such conduct to the satisfaction of Council acting reasonably. For greater certainty, this section applies regardless of whether there was a meeting under section 14 or 16 or any decision by Council pursuant to section 17.
20. Except during an emergency, if a decision was made by Council under section 17 that a Notice to Vacate the Reserve or Notice to Vacate Premises shall be enforced, Council shall, if the Trespass Notice Recipient requests, permit the Trespass Notice Recipient to re-enter the Reserve or the Premise/Premises on the Reserve, as applicable, once, or more often as Council acting reasonably determines, after the Notice to Vacate the Reserve or Notice to Vacate Premises are enforced, to collect personal belongings, which re-entry shall occur under the supervision of an Officer.
21. In an emergency, Council may refuse to permit any re-entry on the Reserve by the Trespass Notice Recipient after the Notice to Vacate the Reserve has been enforced. In such cases, Council shall permit the Trespass Notice Recipient to retrieve their belongings following the expiry of the emergency, and may take steps to secure such belongings in a safe location in the interim, if possible without risk or unreasonable cost or inconvenience to Council. If the belongings at issue are animals, Council shall make best efforts to ensure that such creatures are reasonably cared for until they can be reclaimed.
22. In an emergency, Council has the discretion to shorten the timeframes set out in sections 13 and 16 or make other procedural modifications, where in Council's reasonable opinion compliance with these timeframes or procedures would pose an immediate risk to the health and welfare of the members and other residents on the Reserve.

Offence

23. A person who fails or refuses to comply with a Notice to Vacate the Reserve or Notice to Vacate Premises issued pursuant to sections 7 or 8:

- a. after receiving such notice and after section 14 or 16 has been complied with;
- b. after reasonable efforts have been made by a person acting pursuant to sections 7 or 8 to deliver such notice; or
- c. who resists or interferes with an Officer acting pursuant to section 11,

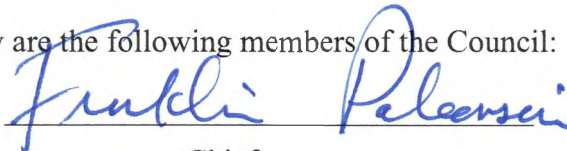
commits an offence.

24. A person who commits an offence under section 23 is liable on summary conviction to a fine not exceeding \$1, 000 or to imprisonment for a term not exceeding thirty (30) days, or to both.

25. 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 rest of the By-Law shall not be affected. Council shall replace the severed provision with another provision, if necessary, in order to maintain the intent of this By-Law.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the Whitefish River First Nation this 9th day of April, 2020.

Voting in favour of the By-Law are the following members of the Council:



Chief



Councillor



Councillor



Councillor



Councillor

Councillor



Councillor

being the majority of those members of the Council of the Whitefish River First Nation present at the aforesaid meeting of the Council.

The quorum of the Council is 4 members.

Number of members of the Council present at the meeting: 8.