

BYLAW NO. 1-2022 OF LITTLE GRAND RAPIDS FIRST NATION

BYLAW RELATING TO INTOXICANTS

WHEREAS Little Grand Rapids First Nation ("LGRFN") has and continues to exercise an inherent right to self-government;

AND WHEREAS the Council of Little Grand Rapids First Nation, as leadership, recognizes their responsibility to provide a safe and healthy Community;

AND WHEREAS sections 81 and 85 of the *Indian Act* empower the Council of Little Grand Rapids First Nation to make certain bylaws for certain purposes, including:

- a) to provide for the health of residents,
- b) the observance of law and order,
- c) the prevention of disorderly conduct and nuisances,
- d) the removal and punishment of persons trespassing on the Reserve or frequenting the Reserve for prohibited purposes, and
- e) relating to Intoxicants.

AND WHEREAS the abuse of Intoxicants is a major contributor to ill-health, social disorder, and breaches of the public peace within the Community;

AND WHEREAS the Council of Little Grand Rapids First Nation deems it necessary to prohibit (with some exceptions):

- a) bootlegging, which is the illegal sale, barter, supply or manufacture of Intoxicants on Reserve;
- b) any person being Intoxicated on Reserve; and
- c) any person having Intoxicants in their possession on Reserve;

NOW THEREFORE the Council of the Little Grand Rapids First Nation hereby makes the following bylaw:

1. TITLE

1.01 This bylaw may be cited as the *LGRFN Intoxicants Bylaw*.

1.02 Any previous bylaw of the LGRFN relating to Intoxicants, including those relating to drugs, inhalants, and/or alcohol shall hereby be repealed.

2. DEFINITIONS

2.01 In this Bylaw, unless the context otherwise requires:

"Band" means Little Grand Rapids First Nation.

“Band Council Resolution” means a resolution in writing of Council, passed by the majority of the Councillors present at a duly convened meeting.

“Band Member” means a person whose name appears on the Band List of Little Grand Rapids First Nation, or who is entitled to have her or his name appear on the Band List of Little Grand Rapids First Nation.

“Community” means the Little Grand Rapids First Nation Reserve.

“Council” means the duly elected Chief and Councillors of the Band.

“First Nation Safety Officer” has the meaning ascribed in *The Police Services Act* (Manitoba), C.C.S.M. c. P94.5, and means a person appointed and employed, pursuant to *The First Nation Safety Officers Regulation, 229/2015* under that Act, by the Band for enforcing the bylaws of the Little Grand Rapids First Nation.

For greater certainty, First Nation Safety Officers do not have the powers and protections of Peace Officers when enforcing Band bylaws but do have the powers and protections of Peace Officers when enforcing provincial enactments as specified in *The First Nation Safety Officers Regulation*.

“Intoxicant” means any substance, including liquid or the vapours thereof, which is used to produce a state of Intoxication, and includes but is not limited to:

- a) All substances listed in the Schedules of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, as may be amended from time to time;
- b) Alcohol, alcoholic, spirituous, vinous, fermented malt or other intoxicating liquor or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise intoxicating and all drinks, drinkable liquids and all preparations or mixtures capable of human consumption that are intoxicating;
- c) Cannabis which means cannabis within the meaning ascribed in the *Cannabis Act*, S.C. 2018, c. 16;
- d) Gasoline, naphtha and other fuels or vapours thereof;
- e) Glues, cements and similar compounds, and the vapours thereof;
- f) Cleaning solvents, disinfectants, anti-freeze, de-icers, perfumes, hair sprays, mouth-washes containing Intoxicants, and the vapours thereof; and
- g) Home-made mixtures capable of producing a state of Intoxication, and/or the yeast utilized to make such mixtures.

“Intoxicated” means being under the influence of an Intoxicant.

"Intoxication" means drunkenness or inebriety, that is, the mental and physical condition induced by consuming Intoxicants.

"Non-Band Member" means any person whose name does not appear on the Little Grand Rapids First Nation Band List and is not entitled to have her or his name appear on the Little Grand Rapids First Nation Band List.

"Peace Officer" means a peace officer as described in the *Criminal Code of Canada*, R.S.C., 1985, c. C-46 as may be amended from time to time.

"Person" in addition to its ordinary meaning, includes any association, household, society, corporation, or partnership, whether acting by themselves or by a servant, agent or employee, and the successors, assigns and personal or other legal representatives of such person to whom the context can apply according to law.

"Possession" means possession within the meaning of Subsection 4(3) of the *Criminal Code of Canada* as may be amended from time to time.

"Reserve" shall have the meaning ascribed in the *Indian Act* and shall include lands that have been set aside by Her Majesty for the use and benefit of Little Grand Rapids First Nation, including Little Grand Rapids 14, and any lands that may be set aside for the use and benefit of the Band as additions to reserve from time to time.

"Traffic", with respect to an Intoxicant or Intoxicants, means:

- a) to buy, sell, administer, give, manufacture, transfer in any manner, transport, send or deliver; or,
- b) to offer to do anything mentioned in sub-paragraph (a);

otherwise than under the authority of this bylaw.

3. APPLICATION

3.01 This bylaw applies to all Persons on the Little Grand Rapids First Nation Reserve, whether Band Members or Non-Band Members.

4. PROHIBITIONS

4.01 Unless authorized under this bylaw, it is prohibited on the Reserve:

- a) For a person to be Intoxicated;
- b) For a person to be in Possession of an Intoxicant;
- c) For a person to produce or manufacture an Intoxicant;
- d) For a person to Traffic in an Intoxicant;
- e) For a person to operate a motor vehicle while Intoxicated; and

- f) For a person to harbour an offender who has been removed or banished pursuant to section 5.10 of this bylaw.

5. OFFENCES AND PENALTIES

- 5.01 A person who commits an offence under this bylaw is subject to the penalties in this bylaw in addition to any penalties to which a person may be subject for contravention of any other federal or provincial Manitoba legislation or regulation.
- 5.02 The process for the issuance of summary convictions and fines under this bylaw shall be conducted pursuant to *The Provincial Offences Act (Manitoba) C.C.S.M. c. P160* and Regulations as may be amended from time to time, subject to the fines and penalties as set out herein.
- 5.03 A First Nation Safety Officer or Peace Officer who believes on reasonable grounds that a person has committed an offence pursuant to this bylaw may commence a prosecution of that offence by completing a ticket in the form prescribed in *The Provincial Offences Act (Manitoba)*, which ticket shall set out the applicable fine or penalty.
- 5.04 In the event a fine is not paid, and/or community service is not completed, within the time specified on the ticket, the ticket shall be filed for prosecution in the Manitoba Court of Queen's Bench or another court of competent jurisdiction.
- 5.05 Any person who is Intoxicated on the Reserve is guilty of an offence and is liable on summary conviction to a fine of not more than \$100.00, and/or community service as Council decides is appropriate in the circumstances, or imprisonment for a period not exceeding three months, or a combination of penalties.
- 5.06 Any person who is in Possession of an Intoxicant on the Reserve is guilty of an offence and is liable on summary conviction to a fine of not more than \$100.00, and/or community service as Council decides is appropriate in the circumstances, or imprisonment for a period not exceeding three months, or a combination of penalties.
- 5.07 Any person who, on the Reserve:
- a) Traffics in an Intoxicant;
 - b) Supplies an Intoxicant to a minor; or,
 - c) Is in possession of an Intoxicant for the purpose of Trafficking,
- is guilty of an offence and is liable on summary conviction to a fine of not more than \$1,000.00, and/or community service as Council decides is appropriate in the circumstances, or imprisonment for a period not exceeding six months, or a combination of penalties.

- 5.08 Any person who, on the Reserve, harbours an offender who has been removed or banished from the Reserve pursuant to section 5.10 of this bylaw is guilty of an offence and is liable on summary conviction to a fine of not more than \$5,000.00, or imprisonment for a period not exceeding one year, or both.
- 5.09 In the absence of other evidence, or by way of corroboration of other evidence, a summary conviction court may infer from the evidence of a First Nation Safety Officer or a Peace Officer relating to the conduct of a person or persons, whether ascertained or not, that an offence under this bylaw has occurred.
- 5.10 In addition to the penalties set out above, every person who commits an offence under this bylaw may also be subject to one or more of the following sanctions as decided by Council:
- a) mandatory attendance in a treatment program of Council's choice,
 - b) termination of employment with the LGRFN,
 - c) publication of the offender's name as an offender under this bylaw,
 - d) refusal by the LGRFN and its affiliated or related companies and their agencies to do business with an offender,
 - e) denial of or eviction from housing on Reserve, and
 - f) removal or banishment from the Reserve for a definite or indefinite term, with or without conditions.
- 5.11 Before imposing sanctions under section 5.10 of this bylaw, Council shall inform the offender in writing that additional sanctions are being considered. The offender shall have the opportunity to make a written submission to Council, which written submission shall be considered by Council in coming to its decision.
- 5.12 All decisions of Council in imposing sanctions under section 5.10 of this bylaw shall be documented in a Band Council Resolution at a duly convened meeting of Council, which BCR shall set out the reasons for the sanctions imposed. A copy of the BCR shall be immediately provided to the offender.
- 5.13 In deciding whether to impose sanctions under section 5.10 of this bylaw, Council shall consider the severity of the offence, the number and frequency of prior offences made by the offender under this bylaw, any written submission of the offender and any other consideration Council deems relevant.
- 5.14 Any person removed or banished from the Reserve pursuant to section 5.10 of this bylaw shall have the right to appeal Council's decision to impose removal or banishment, and such appeal shall be made pursuant to the appeal provisions set out in section 9 of this bylaw.

- 5.15 Unless appealed, removal or banishment pursuant to section 5.10 of this bylaw shall take effect upon the expiry of thirty (30) days after notice of the decision has been communicated to the offender.
- 5.16 Council may make Band Council Resolutions respecting any matter that Council considers necessary or advisable to meet or further the objectives of this bylaw, including the imposition of additional or different penalties under this bylaw.

6. EXCEPTIONS

6.01 No offence is committed against this bylaw where an Intoxicant is used or intended to be used:

- a) For medicinal purposes. Whether an Intoxicant is possessed, used, or intended to be used for medical purposes shall be determined by a certificate from a medical doctor stating the need for such Intoxicant.
- b) For personal, domestic or commercial purposes that do not involve human consumption or producing a state of Intoxication; or,
- c) For traditional, sacred or other similar purposes. Whether an Intoxicant is used, or intended to be used for traditional, sacred or other similar purposes shall be determined by an Elder of the Community.

6.02 No offence is committed against this bylaw where:

- a) The Intoxicant is alcohol, and:
 - i. A person is not in possession of more than, either:
 - 1) 24 bottles or cans of beer;
 - 2) 40 ounces of hard liquor; or,
 - 3) 4 bottles or one box of wine; or
- b) The Intoxicant is cannabis, and:
 - i. A person is not in possession of more than one or more classes of cannabis the total amount of which, as determined in accordance with Schedule 3 of the Cannabis Act, is equivalent to more than 30 g of dried cannabis; and
- c) The alcohol or cannabis has been bought and sold in compliance with the relevant regulations enacted by the Province of Manitoba; and,
- d) The alcohol or cannabis is used, or intended to be used, for personal consumption in a dwelling house or other place authorized by Council and/or the relevant regulations enacted by the Province of Manitoba

6.03 In any prosecution under this bylaw, the burden of proving that an exception prescribed under this bylaw operates in favour of the accused is on the accused.

7. ENFORCEMENT

7.01 First Nation Safety Officers and/or Peace Officers are hereby empowered to enforce the provisions of this bylaw.

8. POWERS OF SEARCH, SEIZURE AND DETAINMENT

8.01 In furtherance of the objective of this bylaw, LGRFN may engage in drug testing of its employees if there are reasonable and probable grounds to believe that an employee has committed an offence against this bylaw. It is an offence under this bylaw for an employee of LGRFN to be Intoxicated while at work. Refusal to participate in drug testing when requested is an offence under this bylaw.

8.02 If a First Nation Safety Officer or Peace Officer has reasonable and probable grounds to believe that a person on the Reserve is committing, has committed, or may commit an offence against this bylaw, and the First Nation Safety Officer or Peace Officer has reason to believe a search of that person will reveal evidence to support such belief, the First Nation Safety Officer or Peace Officer shall conduct a reasonable search of the person suspected of committing an offence and any items immediately in her or his possession.

8.03 Council may, in their discretion, establish checkpoints on the Reserve for the purpose of searching any Persons or vehicles entering the Reserve or crossing through such checkpoints for Intoxicants.

8.04 A First Nation Safety Officer or a Peace Officer is empowered by this bylaw, without discretion, to search every person entering or exiting the Reserve by any manner, to determine whether she or he has in her or his possession any Intoxicant, chattel or goods relating to an offence under this bylaw, whether on her or his person or among the luggage, bags, packages or other containers being brought to or removed from the Reserve.

8.05 It is an offence for any person to refuse to allow a search provided for in this section. Upon such an offence, Council has the discretion to deny the person entry into the Reserve.

8.06 A First Nation Safety Officer or Peace Officer may, without warrant, conduct a reasonable search of any building situated on the Reserve including offices and dwelling houses, where the First Nation Safety Officer or Peace Officer has reasonable grounds to believe that an offence against this bylaw has been, will be, or is being committed.

- 8.07 A search conducted by a First Nation Safety Officer pursuant to this section of this bylaw shall include only a visual, auditory, and/or smell inspection and does not involve the touching, moving or manipulation of objects.
- 8.08 Council, or a member thereof, may assist a First Nation Safety Officer or Peace Officer with gaining access to any building situated on the Reserve for the purposes of conducting a reasonable search pursuant to this section of this bylaw.
- 8.09 In the event a First Nation Safety Officer or Peace Officer believes on reasonable grounds that an offence pursuant to this bylaw has been, will be, or is being committed, the First Nation Safety Officer or Peace Officer may seize goods or chattels in direct relation to which she or he believes on reasonable grounds the offence was committed. If the good or chattel seized is an Intoxicant it shall be held as evidence until it is no longer required for enforcement or prosecutorial purposes, after which it shall be disposed of in a safe manner.
- 8.10 All goods seized pursuant to this bylaw may be detained subject to the following restrictions:
- a) Such detention shall be for a period of three (3) months following the day of seizure unless proceedings are undertaken under this bylaw in respect of the offence, in which case the seized goods may be further detained until the proceedings have been concluded; and,
 - b) All goods and chattels that have been seized that are not Intoxicants and that have not been identified as a good or chattel suspected to relate to an offence under this bylaw shall be returned to the owner upon request.
- 8.11 A First Nation Safety Officer who witnesses a person apparently committing an offence under this bylaw may arrest and detain the person without a warrant, but only if detaining the person is necessary to:
- a) establish the person's identity;
 - b) secure or preserve evidence relating to the offence; or
 - c) prevent the continuation or repetition of the offence or the commission of another offence.
- 8.12 A First Nation Safety Officer who arrests and detains a person without a warrant under this bylaw must:
- a) release the person as soon as it is no longer necessary to detain the person for a purpose set out in section 8.11; or
 - b) deliver the person to a Peace Officer if the First Nation Safety Officer believes on reasonable grounds that detention is necessary for such a purpose.

9. APPEAL OF A DECISION TO REMOVE OR BANISH AN OFFENDER

- 9.01 Any person who has been removed or banished from the Reserve pursuant to section 5.10 of this bylaw has an automatic right to appeal that decision.
- 9.02 To appeal Council's decision to remove or banish an offender, the offender must, within twenty (20) days of Council communicating the decision to remove or banish the offender, provide notice in writing to Council that the offender is exercising their right to appeal the decision.
- 9.03 Within ten (10) days of Council receiving notice of an appeal of a decision to remove or banish an offender, Council must strike an independent and neutral Appeal Committee and notify the Appeal Committee of the appeal.
- 9.04 The members of the Appeal Committee shall be appointed by Council and shall comprise the following six (6) members:
- a) One male elder from the Community.
 - b) One female elder from the Community.
 - c) One male Community member.
 - d) One female Community member.
 - e) One youth of the Community who shall be at least seventeen (17) years old.
 - f) One individual with an education/knowledge in law.
- 9.05 In the event a person appointed to the Appeal Committee has a real or perceived conflict of interest in a matter coming before the Appeal Committee, the person shall fully disclose the nature of the interest to Council and Council shall decide if that person need withdraw from adjudicating on the matter.
- 9.06 Within fifteen (15) days of notice of the appeal being provided to the Appeal Committee, a hearing must be held at which both the offender and Council shall have the opportunity to plead their respective cases. In doing so, the offender and Council shall have the opportunity to present oral and/or written evidence relevant to the decision that is being appealed and may be represented by legal counsel if the offender so chooses.
- 9.07 Upon the conclusion of the hearing, the Appeal Committee shall have the unfettered discretion to either:
- a) Uphold Council's decision to remove or banish the offender;
 - b) Overturn Council's decision to remove or banish the offender; or
 - c) Change the terms of the removal or banishment.

- 9.08 In making their decision on appeal, the Appeal Committee shall consider the following factors:
- a) The nature and severity of the offence.
 - b) Any attempts made by the offender at rehabilitation, at making reparations, or otherwise attempting to repair any harm already done or preventing future harm.
 - c) The connection of the offender to the Community and its members, including whether the individual has any dependents for whom their removal or banishment from the community could be detrimental.
 - d) The extent to which removal or banishment in the specific case contributes to the objective of this type of sanction, specifically whether removal or banishment of the individual would be in the best interests of the safety and protection of the Community.
 - e) Any other consideration that the Appeal Committee deems relevant.
- 9.09 The Appeal Committee shall communicate their decision on the appeal within ten (10) days of the hearing date.
- 9.10 In the event the Appeal Committee upholds Council's decision to remove or banish an offender, the removal or banishment shall take effect upon the expiry of ten (10) days after notice of the decision on appeal has been communicated to the offender.
- 9.11 Decisions made by the Appeal Committee are final and are not subject to appeal by any court or tribunal.
- 9.12 All hearings conducted by the Appeal Committee shall be open to the public.
- 9.13 Offenders who have been removed or banished pursuant to section 5.10 of this bylaw may apply in writing to Council to have the removal or banishment lifted after five (5) years. Applications shall outline the reasons why Council ought to overturn this decision, including why the offender is no longer a threat to re-offend and/or further jeopardize the safety and security of the Community.
- 9.14 Council may use their discretion in deciding whether or not to lift a removal or banishment, and in deciding may consider anything Council deems relevant. Council's decision on an application to lift a removal or banishment shall be communicated in writing to the offender within twenty (20) days of receipt of an application and may or may not include written reasons.
- 9.15 Offenders may request in writing, and Council may use their discretion in providing conditions on or exceptions to offenders who have been removed or banished pursuant to section 5.10 including allowing the removed or banished individual to temporarily re-enter the Reserve in specified circumstances such as a funeral, or any other circumstance Council see fit.

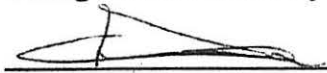
10. GENERAL

- 10.01 Should a court of competent jurisdiction determine that a provision or provisions of this bylaw is or are invalid for any reason, the provision or provisions shall be severed from the bylaw and the validity of the rest of this bylaw shall not be affected.
- 10.02 Nothing in this bylaw shall derogate or abrogate from existing Indigenous Aboriginal or inherent Treaty Rights.

11. DATES OF ADOPTION

The Little Grand Rapids First Nation Intoxicants Bylaw No. 4-2022 is hereby passed at a duly convened meeting of the Council of the Little Grand Rapids First Nation the 25 day of Feb, 2022.


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



Chief



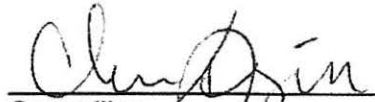
Councillor




Councillor



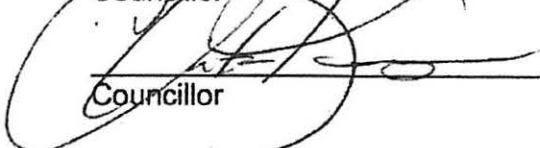
Councillor



Councillor



Councillor



Councillor

Being the majority of those members of the Council present at the aforesaid meeting.

The quorum of the Council is four (4) members.

The number of members of the Council present at the meeting: 7

12. COMING INTO FORCE

This bylaw comes into force:

- 1. having been assented to by a majority of the electors of Little Grand Rapids First Nation who voted at a special meeting of the Band called by the Council of Little Grand Rapids First Nation for the purpose of considering the bylaw and held on March 23, 2022; and,

2. on the day on which it is first published on an Internet site, in the *First Nations Gazette* or in a newspaper that has general circulation on the Reserve of the Band, whichever the Council considers appropriate in the circumstances.