

BY-LAW NO. 20
OF THE GARDEN RIVER FIRST NATION BAND COUNCIL
A BY-LAW RESPECTING TRESPASSING ON RESERVE

WHEREAS the Reserve has been set aside for the collective use and benefit of the members of Garden River First Nation;

AND WHEREAS the Council of Garden 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;

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 *Garden River First Nation Trespassing By-Law*.

Interpretation

In this By-Law:

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

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

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

“Band Council Resolution” means a resolution of a quorum of the Band Council, passed at a duly convened Band Council meeting.

“Band Member” means a person who is a member of Garden River First Nation.

“Dependent Family Member” means a Band Member’s natural or adopted/adoptive child, parent, grandparent, or sibling if any such person is dependent on the resident Band

member for care or financial support, and also means a Band Member's spouse, whether married or common-law.

"Dispute" means a dispute about a Notice of Trespass and Order to Vacate, filed and heard as provided for under this By-Law.

"Notice of Trespass and Order to Vacate" means a declaration of the Band Council passed by a Band Council Resolution in accordance with this By-Law.

"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;

"Premises on Reserve" means a building or structure on the Reserve owned, controlled or occupied by the Garden River First Nation or a business owned or controlled by the First Nation, that is not a dwelling;

"Reserve" means the reserve of the Garden River First Nation set apart for the use and benefit of Garden River First Nation and its Band Members;

"Trespassing" or "Trespass" means the entry onto, or the presence on, the Reserve or a Premise on the Reserve, by a person without lawful authority or justification.

Residence on Reserve

1. The Reserve has been set aside for Garden River First Nation and its Band Members' 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 this or any other By-Law of the Band.
2. Persons who are not Band members or Dependent Family Members of Band members resident on the Reserve may reside on the Reserve in accordance with this By-Law and any other By-Law of the Band.

Trespass Conduct

3. Any person residing on Reserve who does not do so in accordance with sections 1 or 2 is Trespassing, and may be removed pursuant to the provisions of this By-Law.
4. The following persons are deemed to be in Trespass on the Reserve:
 - a. persons other than Band members and Dependent Family Members of Band Members resident on the Reserve who engage 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 other people 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. persons who engage in any other activity that is prohibited by law or any other By-Law of the Band, and are subject to removal under this By-law.
5. Persons who reside on or visit the Reserve and who do not receive a Notice of Trespass and Order to Vacate are deemed to have permission to remain on the Reserve or to remain in certain Premises on Reserve, unless and until:
- a. they receive a Notice of Trespass and Order to Vacate; or
 - b. reasonable efforts have been made, by persons authorized to do so under section 10, to provide them with a Notice of Trespass and Order to Vacate.

Notice of Trespass and Order to Vacate

6. The Band Council may, by Band Council Resolution, pass a Notice of Trespass and Order to Vacate, thereby declaring a person in Trespass and ordering any person who is Trespassing to vacate the Reserve or to vacate certain Premises on Reserve.
7. In considering whether to pass a Notice of Trespass and Order to Vacate, the Band Council must consider:
 - a. the seriousness of the conduct of the person declared in Trespass (being the conduct referenced in sections 3 and 4);
 - b. the effect of such conduct on Band Members and Band Council, and;
 - c. the time required for such person, acting reasonably, to vacate the Reserve or a Premises on Reserve.
8. A Notice of Trespass and Order to Vacate may:
 - a. prohibit a person from entering onto or being on Reserve;
 - b. prohibit a person from entering certain Premises on Reserve, or;
 - c. prohibit a person from impeding or obstructing access to certain Premises on Reserve.
9. A Notice of Trespass and Order to Vacate shall state:
 - a. the specific time by which a person must vacate the Reserve or certain Premises on Reserve;

- b. that the recipient of the Notice of Trespass and Order to Vacate may dispute the Notice of Trespass and Order to Vacate by requesting a hearing, and the time period and method for filing a Dispute;
 - c. that the following are not violations of the Notice of Trespass and Order to Vacate:
 - i. entry to a Premises where necessary to access services, and 48 hours notice has been given, where possible, by the person in receipt of a Notice of Trespass and Order to Vacate, to the Band Council or its designate;
 - ii. presence on the Reserve or on a Premises on Reserve is required by the person in receipt of a Notice of Trespass and Order to Vacate because of an emergency situation; or
 - iii. if and as specified in the Notice of Trespass and Order to Vacate, particular permission to be on Reserve or a Premises on Reserve within a particular time period, is granted.
10. Any person who has been issued a Notice of Trespass and Order to Vacate may continue to make use of Highways 17 and 17B as a means of crossing the Reserve, but shall not leave the highway for any reason whatsoever, unless ordered to do so by a police officer or other lawful authority.
11. A person who is the subject of a Notice of Trespass and Order to Vacate and who enters the reserve while travelling on Highway 17 or 17B through the Reserve shall take the most direct and fastest route out of the Reserve, and shall not remain in the Reserve for longer than is reasonably necessary to travel from entrance to exit.
12. A person described in sections 10 and 11 herein who remains on the reserve for longer than is reasonably necessary, who stops or leaves the highway other than at the order of a police officer or lawful authority, or who does not proceed directly from entrance to exit, commits an offence as described at section 27 herein.
13. At any time, Band Council may pass a Band Council Resolution authorizing an Officer, a Councillor, an administrator, an employee or an agent of Garden River First Nation to deliver a Notice of Trespass and Order to Vacate to any person who is Trespassing on Reserve.
14. The person authorized under section 13 to issue and deliver a Notice of Trespass and Order to Vacate shall, if he or she is unable to deliver the Notice of Trespass and Order to Vacate after making reasonable efforts, complete a written document describing the efforts made to deliver such written Notice, which he or she shall certify to be true.

Dispute of Notice of Trespass and Order to Vacate

15. A quorum of the Band Council may hear and decide a Dispute under this By-Law.

16. If a recipient of a Notice of Trespass and Order to Vacate files a Dispute, then Band Council shall convene a hearing to hear the Dispute within 14 days of receipt of the filing of the Dispute.
17. Notice of the date, time, and place of hearing of a Dispute shall be given to the recipient of a Notice of Trespass and Order to Vacate, at least 48 hours in advance of the date and time of the hearing.
18. At the hearing of a Dispute, a Recipient of a Notice of Trespass and Order to Vacate may be permitted to make a presentation to Band Council. The length and nature of the presentation, including whether witnesses may be called, shall be determined by Band Council acting reasonably.
19. Band Council shall render its decision about whether the Notice of Trespass and Order to Vacate shall be upheld, rescinded or varied within three (3) days after the hearing of the Dispute, and shall pass a fresh Band Council Resolution to reflect that decision.
20. If the recipient of the Notice of Trespass and Order to Vacate fails to attend the hearing of the Dispute, Council may decide the Dispute in his or her absence.
21. Council shall, to the extent reasonable, seek advice from qualified legal counsel in respect of any Dispute, including:
 - a. procedural and evidentiary matters; and
 - b. the decision to be rendered.
22. Unless the Notice of Trespass and Order to Vacate stipulates that it is not enforceable until any Dispute is decided and such decision confirms its enforceability or otherwise the time period for notifying Council of a Dispute has expired, then the Notice of Trespass and Order to Vacate shall be in force and effect unless and until Council renders a decision on a Dispute to the contrary or rescind or varies the Notice of Trespass and Order to Vacate in accordance with section 25.
23. A written record of the hearing of the Dispute shall be taken by a person appointed by Council.
24. The Council shall permit persons to whom a Notice of Trespass and Order to Vacate was delivered to re-attend on Reserve or at the Premises on the Reserve, as applicable, to collect personal belongings under the supervision of an Officer, if such person so requests.
25. The Council may, by Band Council Resolution, rescind or vary a Notice of Trespass and Order to Vacate at any time, for such reasons and under such conditions as Council may determine, acting reasonably.

Enforcement of Notice of Trespass and Order to Vacate

26. Officers are hereby authorized to enforce a Notice of Trespass and Order to Vacate and to use such reasonable measures as may be necessary to remove any person from the Reserve or a Premises on Reserve who:
- a. has received a Notice of Trespass and Order to Vacate, after section 13 has been complied with; or
 - b. is the subject of a Notice of Trespass and Order to Vacate, but did not receive the Notice of Trespass and Order to Vacate, as long as section 14 has been complied with.


Offence

27. A person who fails or refuses to comply with a Notice of Trespass or an Order to Vacate issued pursuant to this By-Law,
- a. after receiving such Notice and if applicable after sections 16 to 21 have been complied with;
 - b. after reasonable efforts have been made by a person acting pursuant to section 14 to deliver such notice and if applicable after sections 16 to 21 have been complied with; or
 - c. who resists or interferes with an Officer acting pursuant to this By-Law, commits an offence.
28. A person who commits an offence under section 27 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.
29. 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 Garden River First Nation this 25 day of September, 2018.

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

Chief



Councillor

Councillor

Caroline Barry
Councillor

[Signature]
Councillor

[Signature]
Councillor

[Signature]
Councillor

Andy Richard
Councillor

[Signature]
Councillor

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

The quorum of the Council is 7 members.

Number of members of the Council present at the meeting: 11.

[Signature]
[Signature]