



Mikisew Cree First Nation  
Community Protection By-Law

# MIKISEW CREE FIRST NATION COMMUNITY PROTECTION BY-LAW No. 2023-1

Effective Date: 26-04-2023

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## 1. PREAMBLE

- 1.1 Mikisew Cree First Nation ("MCFN"), through its Chief and Council, has the authority and inherent right to govern its ancestral lands, reserves, Government Industry Relations, and other band-owned entities.
- 1.1.1 MCFN's Chief and Council ("**Council**") have powers to enact community protection laws. These powers are affirmed by paragraphs 81 (1) (c), (d) (p), (q) and (r) of the Indian Act, RSC 1985 c-I-5;
- 1.1.2 The within by-law respects and acknowledges the *Charter of Rights and Freedoms*, including Section 25.
- 1.1.3 The Council of the MCFN desires to make a by-law governing the observance of law and order, the prevention of disorderly conduct and nuisances, and the regulation of residence/trespass of persons on reserve.
- 1.1.4 The Council honours their obligations to protect their members from all disorderly conduct, including from illicit drug use and trafficking;
- 1.1.5 The MCFN entered into a Community Tripartite Agreement for the Use of the Royal Canadian Mounted Police (RCMP) First Nations Community Policing Services and has the authority to enter into other policing agreements and/or establish its own police force. Nothing in this by-law will impede the establishment of First Nations' policing at MCFN.
- 1.1.6 On May 25, 2022, at a duly convened meeting, a quorum (four) of Council approved the by-law to the by-law on disorderly conduct, nuisances, trespass, drug use, prohibited conduct and residence, "**Community Protection By-Law**", as outlined herein.
- 1.1.7 February 24, 2023, at a duly convened meeting, a quorum (four) of Council approved the by-law and consequential amendments as outlined herein, directing that the by-law be published forthwith
- 1.1.8 Nothing in this by-law shall alter, diminish, derogate, or abrogate Treaty No. 8, including the spirit and intent of Treaty Rights and the inherent right as understood by the Elders of Treaty No. 8.
- 1.1.9 The Council honours their obligations to protect MCFN members from all disorderly conduct, including from illicit drug use and trafficking. The Council is committed to combatting the effects of intergenerational trauma that manifest in substance abuse.

**NOW THEREFORE THE MIKISEW CREE FIRST NATION, PURSUANT TO, *INTER ALIA*,  
SECTION 81 OF THE *INDIAN ACT* AND THROUGH COUNCIL, ENACT:**

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## 2. CITATION

- 2.1 This by-law may be cited as "Mikisew Community Protection By-Law".

## 3. COMING INTO FORCE

- 3.1 The by-law comes into force when a copy of it is published on the MCFN website, in the First Nations Gazette, or in a newspaper that has general circulation on reserve, whichever the Council considers appropriate.
- 3.2 The by-law shall be published in two public locations, including online. The online posted shall by-law remain online for the duration of the by-law, until repealed or amended

## 4. APPLICATION

- 4.1 The by-law applies on all MCFN Nation reserves.
- 4.2 The by-law applies to all individuals over eighteen (18) years of age, including Members and non-Members of the MCFN, on MCFN reserves.
- 4.3 The by-law applies until duly repealed or amended by Council.
- 4.4 To the extent of any inconsistency with previously enacted MCFN by-laws under Section 81 of the Indian Act, this by-law, the Mikisew Community Protection By-law shall prevail.

## 5. DEFINITIONS

In this by-law:

**"Appeal"** means an appeal under this by-law.

**"Band Council Resolution"** means a decision passed under this by-law by a quorum (four) of Council.

**"Council"** means the Chief and six (6) Councilors elected in accordance with *Mikisew Cree First Nation's Customary Election Regulation*, as amended in accordance with the provisions therein. For clarity, any reference to Council herein refers to at least a quorum of Council (4).

**"Housing Committee"** means the Committee and/or person appointed by Council to review and accept residency application under Section 6.

**"Member"** means a Member of Mikisew Cree First Nation and included on the Member List maintained by Mikisew.

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“**Mikisew**” or “**MCFN**” means Mikisew Cree First Nation.

“**Non-Member**” means a person not included on the MCFN Member List.

“**Officer**” means any Police Officer, Police Constable or other person charged with the duty to preserve and maintain the public peace, and a By-Law Enforcement Officer or any other person appointed by the Council for the purpose of maintaining law and order.

“**Principal Residence**” means the place at which a person resides on a more permanent basis than at any other place at which the person may reside from time to time.

“**RCMP**” means the Royal Canadian Mounted Police.

“**Removal Order**” means a decision of Council, by Band Council Resolution, banning a person from the reserve(s). The removal order must specify which reserves are covered by it.

“**Reserve**” means the reserves of the Mikisew Cree First Nation.

“**Reside**” means to live in a dwelling, otherwise than as a visitor to the Mikisew Cree First Nation.

“**Resident**” means a person who is entitled to reside on the reserve, including provided by Section 6.

“**Senate**” means the Senate of Elders or Senate, as the case may be appointed or elected in accordance with the election code in force at the time, to hear any appeals under this by-law. The Council may appoint one person on the Senate designated with hearing the appeals in this by-law. This person and/or the Senate may be removed by a quorum of Council for the purposes of this by-law.

## 6. RESIDENCY

6.1 A person is entitled to reside on reserve only if they meet the following criteria:

- a. Has their Principal Resident on a Reserve at the time this by-law comes into force;
- b. Is authorized to reside on a reserve pursuant to the within by-law and/or one of the following provisions of the *Indian Act*: Sections 18.1, 20, 28(2) and 58(3); and/or
- c. Is the spouse or common-law partner or child of a person who meets the criteria in Sections 6.1.a. or 6.1.b.

6.2 Council maintains the residual power to control and regulate residency on reserve. Council may require any individual to apply or re-apply to become a resident of any reserve.

6.3 An application for residency shall be made to the Council or the Housing Committee/ Housing Manager.

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- 6.4 An application for residency shall include:
- a. A place for MCFN Housing Committee, Housing Manager to sign to confirm the date of receipt;
  - b. The name of the applicant(s);
  - c. Whether the applicant(s) are MCFN Members;
  - d. The reasons the applicant(s) wish to reside on Reserve;
  - e. The dwelling/location at which the applicant intends to reside;
  - f. The name of the applicant's spouse/common-law partner and/or children, if any, who will reside with the applicant(s);
  - g. Any additional information the applicant wishes to provide relating to the considerations listed in Section 8.2;
  - h. At least one (1) reference letter;
  - i. A criminal records' check from the RCMP for the applicant and any family member over eighteen (18) who will reside with the applicant(s).
- 6.5 If applying for an MCFN owned home, the applicant must comply with MCFN's Housing Policy application process.
- 6.6 Council or the Housing Committee must decide on an application for residency within sixty (60) days of receiving the same in accordance with section 6.4(a). During this time, Council or the Senate may request information as outlined in Section 6.4.
- 6.7 Council or the Housing Committee may refuse an application for residency on the following grounds:
- a. It is incomplete and/or non-compliant with Section 6.4;
  - b. The applicant(s) has/have not demonstrated that they are willing to abide by this by-law;
  - c. There is inadequate housing, land and/or services on reserve to accommodate the applicant(s);
  - d. The applicant(s) or their spouse, common-law partner, or child who will reside with them, have engaged in serious criminality, including a violent offence, sexual offence, offence for trafficking in illicit substances, and/or an indictable offence which was punished by a sentence exceeding 2 (two) years.
- 6.8 A decision under Section 6.6 regarding an MCFN Member, is deemed to expire after one (1) year unless the Council or the Housing Committee extends the decision or earlier reverses it.

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If extended, Council or the Housing Committee, must provide notice and an opportunity to respond.

- 6.9 If a decision under Section 6.6 is made by the Housing Committee, it must be affirmed by Band Council Resolution.
- 6.10 The Council maintains the residual discretion to vary a decision made under Section 6.6 of the Housing Committee, on notice to the applicant(s), but must do so with reasons.

## 7. PROHIBITED CONDUCT

- 7.1 Notwithstanding an application accepted under Section 6.0, any person on a reserve, whether residing or visiting, must not engage in any Prohibited Conduct, which means:
- a. Engaging in conduct which poses a danger or a potential danger to persons or property on reserve;
  - b. Engaging in disorderly conduct or nuisance;
  - c. Engaging in conduct which seriously threatens the health, safety, security of those on Mikisew reserves;
  - d. Engaging in illicit drug use or trafficking on reserve contrary to the *Controlled Drugs and Substances Act*;
  - e. Hunting, fishing, trapping, except by Members who have the exclusive right to hunt, fish and trap on reserve;
  - f. Loitering;
  - g. Hawking (i.e. pawning) or peddling of wares or merchandise.

## 8. TRESPASS

- 8.1 Every person who engages in Prohibited Conduct under Section 7.1, whether or not they are residents of the Reserve, engages in an offence of Trespass.
- 8.2 Where Council has credible evidence to establish that a person has engaged in an offence under Section 8.1, they may issue a Trespass order identifying the Prohibited Conduct and the contravention.
- 8.3 If issued, a Trespass order must be effected by Band Council Resolution.
- 8.4 Notice of a potential trespass order must be provided to the affected person at least ten (10) days prior to the decision being made under Section 8.2. Notice must be provided in the form in **Appendix A**.

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8.5 A Notice under Section 8.4 issued to a Member must provide the opportunity for an oral presentation by the individual, on reasonable notice, before Council unless the subject of the Notice declines such a hearing. Council may decide an emergency hearing is necessary. This presentation may take place by telephone or secured video-link.

8.6 Council may refer a Trespass order to an Officer for investigation and/or enforcement under this by-law.

## 9. REMOVAL

9.1 Every person who engages in Prohibited Conduct contrary to Section 7.1 may be subject to a Removal Order.

9.2 Council may issue a Removal Order based on:

- a. independent and credible information of prohibited conduct under Section 7.1;
- b. a trespass decision under Section 8.2; and/or
- c. an Officer's charge under this by-law.

9.3 Prior to issuing a Removal Order, Council will provide a notice of ten (10) days to the subject of the removal order in the form outlined in **Appendix B**.

9.4 A Removal Order will provide reasons.

9.5 A Removal Order against an MCFN Member is deemed to expire after one (1) year, unless renewed on reasonable notice to the Member.

## 10. APPEALS

10.1 Any decision made under this by-law by Council or the Housing Committee may be subject to an appeal by the Senate (s). Enforcement measures and decisions by Officers are not subject to appeal.

10.2 Any appeal must be filed within ten (10) days of the final decision, whether a residency decision, Trespass order or Removal Order, being rendered. Appeals are subject to a \$250 filing fee to be made payable to Mikisew Cree First Nation. An appeal will only be deemed filed once the \$250 is paid.

10.3 Notice of an appeal will be provided to Council, the subject(s) of the decision, the decision-maker, and any other interested party.

10.4 An appeal will be heard by the Senate within 30 days of filing, upon receipt of the \$250 fee, and in accordance with the principles of natural justice. The Senate may summarily dismiss an appeal where it does not comply with this by-law.

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- 10.5 If accepted, an appeal must be decided within 60 days of filing of the appeal. If the appeal is refused and not summarily dismissed, reasons for the refusal must be provided.
- 10.6 The Senate(s) has/have the power to hear evidence and regulate the proceeding in a fair and expeditious manner.
- 10.7 The Senate (s) will be entitled to independent legal advice on request to Council. Council will not be privy to this legal advice.

## **11. JUDICIAL REVIEW**

- 11.1 Senate appeal decisions are final and binding and only subject to judicial review in Federal Court.
- 11.2 On judicial review, deference is owed to the Senate.

## **12. ENFORCEMENT**

- 12.1 This by-law may be enforced by an Officer or decision of Council under Sections 8.2 and 9.2.
- 12.2 The RCMP will enforce any offences relating to prohibited conduct (illicit drug use or trafficking) under Section 7.1.d. and Section 14.1. Any enforcement under this section shall not fetter Council's discretion to make decisions under this by-law, including under Sections 8.2 and 9.2.

## **13. OFFENCES**

- 13.1 Every person who contravenes Section 7.1, is subject to a Trespass order under Section 8.2 and or fails to comply with a Removal Order under Section 9.2 is guilty of an offence, punishable by a fine not exceeding \$1,000 or imprisonment not exceeding thirty (30) days, or both.

## **14. AMENDMENTS**

- 14.1 Council may amend this by-law at any duly convened Council meeting. Amendments shall be published in accordance with this by-law.

## **15. OTHERS**

- 15.1 If a Member is removed, the manner of what happens to their house will be dealt with under the updated Housing Policy/Law. Nothing in this by-law authorizes the seizure of a Member's/Members' home on reserve.

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15.2 Chief and Council may review this by-law annually.

**16. ENACTMENT**

16.1 The by-law is hereby enacted by the Council of the Mikisew Cree First Nation at a duly convened meeting held on the 1<sup>st</sup> day of March, 2023.

16.2 The Council hereby directed the publication of this by-law forthwith, including on the First Nations Gazette.

**The quorum for this First Nation consists of Four (4) Council members.**

Chief – Billy-Joe Tuccaro

Councillor, Bonnie Fraser

Councillor, Roxanne Marcel

Councillor, Sherri McKenzie

Councillor, Ronald Campbell

Councillor, Russell Kaskamin

Councillor, Lydia Courteoreille



**APPENDIX A - NOTICE OF TRESPASS**

**Re: [TRESPASSER NAME] and Place of Delivery/Service.**

In accordance with section 7.3 of the Mikisew Cree First Nation Community Protection By-Law, please be advised that Council will be considering a trespass order against you. The issue will be decided by Council on \_\_\_\_\_.[Year]. You may present your response to this Notice in writing before that date.

The Trespass order is sought on the reasonable and probable grounds that you engaged in Prohibited Conduct, including, under Section 7.1 (below): [May include attachment with Reasons]

Engaging in conduct which poses a danger or a potential danger to persons or property on reserve;

- a. Engaging in disorderly conduct or nuisance;
- b. Engaging in conduct which seriously threatens the health, safety, security of those on Mikisew reserves;
- c. Engaging in illicit drug use or trafficking on reserve contrary to the *Controlled Drugs and Substances Act*;
- d. Hunting, fishing, trapping, except by Members who have the exclusive right to hunt, fish and trap on reserve;
- e. Loitering;
- f. Hawking or peddling of wares or merchandise.

\_\_\_\_\_  
Individual Name and Signature

\_\_\_\_\_  
Person who Served Notice

\_\_\_\_\_  
Date and Time of Service

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## APPENDIX B - NOTICE OF REMOVAL

**Re: [NAME] and Place of Delivery/Service.**

In accordance with Section 8.3 of the Mikisew Community Protection By-law, please be advised that Council will be considering a removal order against you. The issue will be decided by Council on \_\_\_\_\_, Year. You may present your response to this Notice in writing, before that date, and/or with an oral presentation. If you do not respond and/or attend, a decision may be made in your absence.

The removal order is sought under Section 8.2 on the reasonable and probable grounds that you engaged in prohibited conduct, including, under section 8.2: [May include attachment with Reasons]

- a. independent and credible information of Prohibited Conduct under section 6.1;
- b. a trespass decision under Section 7.2; and/or
- c. an officer's charge under this by-law;

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Individual Name and Signature

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Person who Served Notice

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Date and Time of Service

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**APPENDIX C - NOTICE OF APPEAL**

**Re: Senate**

I am in receipt of a decision dated \_\_\_\_\_, [Year].

I received this decision on \_\_\_\_\_.

By this Notice, I apply to appeal \_\_\_\_\_.

On \_\_\_\_\_, [Year] the applicant paid \$250 filing fee.

The Grounds for the appeal include:

[May include attachment with grounds]

\_\_\_\_\_  
Individual Name and Signature

\_\_\_\_\_  
Person who Served Notice

\_\_\_\_\_  
Date and Time of Service

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