

York Factory First Nation Intoxicants By-law

By-law No. 2025-02-49 of the York Factory First Nation

Being a by-law to provide for the control of the use of intoxicants on the York Factory
First Nation Reserve No 06440.

Enacted on the 10th day of February, 2025

WHEREAS The York Factory First Nation (hereafter "the First Nation") has and exercises an inherent, Aboriginal, and Treaty Right of self-determination that is recognized and affirmed by Articles 3, 4, 5, 34 and 35 of the *United Nations Declaration on the Rights of Indigenous Peoples*, Section 35 of the *Constitution Act, 1982* and is recognized, affirmed, and protected by the terms of Treaty Number 5;

AND WHEREAS the use, possession and selling of intoxicants on the Reserve lands of the First Nation is causing misery, disorder and devastation to the people and families of the First Nation and is a major source of serious social concerns and turmoil in the community including the neglect of children and abuse of Elders;

AND WHEREAS the abuse of intoxicants represents a major threat to the collective well-being of the First Nation and to the lives of its citizens and has been demonstrated to be a major contributor to ill-health, addictions, and social disorder within the community;

AND WHEREAS the First Nation considers it necessary to implement measures for the protection and safety of the community and residents of the First Nation;

AND WHEREAS under subsection 85.1(1) of the *Indian Act*, RSC 1985, c. I-5, the First Nation as represented by the Council may make by-laws, not inconsistent with the *Indian Act* or with any regulation made by the Governor in Council or the Minister, for any or all of the following purposes:

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- (a) Prohibiting the sale, barter, supply, or manufacture of intoxicants on the reserve of a band;
- (b) Prohibiting any person from being intoxicated on the reserve;
- (c) Prohibiting any person from having intoxicants in his/her possession on the reserve; and
- (d) Providing for exceptions to any of the prohibitions established pursuant to paragraph (b) or (c);

AND WHEREAS subsection 85.1(4) of the *Indian Act* provides that every person who contravenes a by-law made under this section is guilty of an offence and is liable on summary conviction, in the case of a by-law made under paragraph 85.1(1)(a), to a fine of not more than \$1,000 or to imprisonment for a term not exceeding six (6) months or to both; and in the case of a by-law made under paragraph 85.1(1)(b) or paragraph 85.1(1)(c), to a fine of not more than \$100 or to imprisonment for a term not exceeding three (3) months, or to both;

AND WHEREAS subsections 81(1), (a), (c), (d), (q) and (r) of the *Indian Act* empower the Council of the First Nation to make bylaws to provide for the health of residents, the observance of law and order, the prevention of disorderly conduct and nuisances, with respect to any matter arising out of or ancillary to the exercise of powers under section 81, and the imposition on summary conviction of a fine or imprisonment for violation thereof;

AND WHEREAS subsection 81(1)(p) of the *Indian Act* provides for the removal and punishment of persons trespassing on the Reserve or frequenting the Reserve for prohibited purposes;

AND WHEREAS a majority of the electors of First Nation who attended a special meeting of the First Nation convened by the York Factory First Nation Council and taking place on February 10th, 2025 which was called for the purpose of considering the contents of this by-law, assented to this by-law.

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NOW THEREFORE in accordance with s.85.1(1), s.85.1(4) and s.81(1) (a)(c)(d)(q)(p) and (r) of the *Indian Act*, the Council of the York Factory First Nation hereby enacts as a by-law thereof as follows:

Part 1: Name

1.1 This by-law may be cited as the *York Factory First Nation Intoxicants By-law No. 2025-02-10.*

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Part 2: Publication

2.1 Upon enacting this by-law, Council shall publish in the *First Nations Gazette*:

- (a) this by-law; and
- (b) a certified copy of a statutory declaration confirming a majority of electors of the First Nation who voted at a special meeting pursuant to section 85.1(2) of the *Indian Act* assented to the enactment of this by-law.

2.2 Upon the official publication of the by-law pursuant to section 2.1(a), Council may:

- (a) Post this by-law on an Internet site maintained by the First Nation, to remain accessible at least until such date that it is repealed;
- (b) Post this by-law in a public area in the First Nation Administration Building including a notice containing:
 - i. The date on which this by-law is in force; and
 - ii. A summary of this by-law
- (c) Provide a copy of this by-law as soon as reasonably possible to the relevant Enforcement Officers, and to the Public Prosecution Service of Canada (Manitoba Regional Office); or

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- (d) Post a copy of this by-law and the signage providing notice of this by-law referred to at 6.3 at the terminals and places of business of all air service, ferry, delivery and courier services, transportation services and similar entities which provide services to the First Nation and at junctions of road accesses to the First Nation.

Part 3: Interpretation

3.1 In this by-law

- (a) **“Council”** means the Council of the First Nation as defined under subsection 2(1) of the *Indian Act*;
- (b) **“Enforcement Officer”** means an officer of the Royal Canadian Mounted Police, a First Nation Safety Officer or any officer or person appointed or recognized as having the powers and protections of a Peace Officer under the common law, an act of Parliament or an act of the Legislative Assembly of Manitoba;
- (c) **“First Nation”** means the York Factory First Nation as recognized by the Governor in Council as a “band” pursuant to section 2(1) of the *Indian Act*;
- (d) **“First Nation Safety Officer”** means a First Nation Safety Officer within the meaning of *The Police Services Act*, C.C.S.M. c. P94.5, part 7.2, as amended, and appointed by the First Nation further to a First Nation Safety Officer Operating Agreement;
- (e) **“First Nation Safety Officer Operating Agreement”** means the Operating Agreement for a First Nation Safety Officer Program between The Government of Manitoba, as represented by the Minister of Justice and Attorney General of Manitoba, the Royal Canadian Mounted Police (RCMP) and the First Nation in accordance with Part 7.2 of *The Police Services Act*, as amended or extended;

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- (f) **"Intoxicant"** includes alcohol, alcoholic, spirituous, vinous, fermented malt, or other intoxicating liquor, or a combination of liquors and mixed liquor, a part of which is spirituous, vinous, fermented or otherwise, intoxicating, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption that are intoxicating, but does not include substances necessary for the purposes of the functioning or maintenance of commercial or business equipment or machinery;
- (g) **"Intoxication"** means when a person is in a state where his or her mental or physical capabilities are significantly affected by any intoxicant;
- (h) **"Member"** means a person whose name appears on the membership list of the First Nation or who is entitled to have their name appear on the membership list of the First Nation;
- (i) **"MKO First Nations Justice Strategy Program"** means the Program established through the Contribution Agreement for the MKO First Nations Justice Strategy Program between the Government of Manitoba, as represented by the Minister of Justice and Attorney General of Manitoba and the Manitoba Keewatinowi Okimakanak Inc., as may be amended and renewed;
- (j) **"Possession"** means "possession" within the meaning of subsection 4(3) of the *Criminal Code*, R.S.C. 1985, c C-46;
- (k) **"Reserve"** means all those tracts of lands the legal title to which is vested in Her Majesty, that has been set apart for the use and benefit of the First Nation;
- (l) **"Resident"** means those persons living on a Reserve, or entitled to live on a Reserve, including a Member, their spouse or common law partner and dependent children or any other person authorized by Council to live on the Reserve;

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- (m) **"Supply"** means to give, provide, sell, manufacture, barter or trade an intoxicant;
- (n) **"Trespass"** means the entry onto, or the presence on, the Reserve by a person for a prohibited purpose or without lawful justification.

Part 4: Authorization and Application

- 4.1 Pursuant to its inherent Indigenous and Treaty Right of self-determination and to the authority pursuant to sections 85.1(1) and (4), and section 81(1)(p) of the *Indian Act*, the Council at a duly convened meeting hereby enacts this York Factory First Nation Intoxicants By-law 2025-02-10.
- 4.2 This by-law applies to the Reserves of the First Nation.
- 4.3 This by-law applies to all persons on the Reserve, including Members, Residents, and non-residents of the Reserve.

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Part 5: Prohibitions

Unlawful Consumption of Intoxicants

- 5.1. No person shall consume intoxicants or be intoxicated within the boundaries of a Reserve of the First Nation.

Unlawful Possession of Intoxicants

- 5.2 No person shall be in possession of an intoxicant within the boundaries of a Reserve of the First Nation.

Unlawful Purchase of Intoxicants

- 5.3 No person shall purchase an intoxicant within the boundaries of a Reserve of the First Nation.

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- 6.3 The First Nation may prominently post signs at points of access and egress to the Reserve lands to provide reasonable notice to all persons entering or who are present on the Reserve lands for any reason, including to Members, Residents and non-Residents, of the expectation that all persons will make the declaration set out at 6.2 and that a search of all persons may be conducted in the circumstances set out at 6.1;
- 6.4 Following a declaration under section 6.2, or a failure to declare under section 6.2, if an Enforcement Officer believes, on reasonable and probable grounds, that a person is contravening this by-law, that Enforcement Officer may:
- (a) Detain that person for a period of time sufficient to conduct a search for any intoxicant; and
 - (b) Detain the luggage, bags, packages, or other containers being brought to or removed from the Reserve for a period of time sufficient to apply for a search warrant under section 103 of the *Indian Act* and for a period of time sufficient to execute a warrant issued by a Justice of the Peace under section 103.
- 6.5 The name of any Member, Resident, non-Resident or other person who is found to have any intoxicant on their person after a search is conducted and who pleads guilty or is convicted of an offence under this by-law shall be reported to the Chief and Council.

Part 7: Offences, Penalties and Enforcement

Offences

- 7.1 Except under section 6.2, a person who contravenes a provision of this by-law is guilty of an offence under this by-law.

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Penalties

- 7.2 Any person who contravenes sections 5.1, 5.2 or 5.3 of this by-law is guilty of an offence and liable on summary conviction to:
- (a) a fine of not more than \$100 (One Hundred Dollars).
- 7.3 Any person who was previously found guilty of contravening sections 5.1, 5.2 or 5.3 of this by-law on at least three occasions is guilty of an offence and liable on summary conviction to:
- (a) a fine of not more than \$100 (One Hundred Dollars); or
 - (b) imprisonment for a term not exceeding three months or to both.
- 7.4 A person who contravenes section 5.4 of this by-law is guilty of an offence and liable on summary conviction to:
- (a) a fine of not more than \$1,000 (One Thousand Dollars); or
 - (b) imprisonment for a term not exceeding six months or to both.
- 7.5 Unless determined otherwise, all fines under this section shall be set in accordance with the Schedule of Fines attached to and which forms a part of this by-law.

Enforcement

- 7.6 Enforcement Officers may issue a ticket in accordance with *The Provincial Offences Act*, CCSM c P160 to any person who the Enforcement Officer has reasonable grounds to believe has contravened any provision of this by-law;
- 7.7 All offences are subject to enforcement under *The Provincial Offences Act*, CCSM c P160 and all relevant regulations, as enacted or amended;

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7.8 In addition to the penalties established in Section 7 of this by-law, the First Nation may take legal action necessary to bring about compliance with this by-law.

Part 8: Restorative Justice

8.1 Pursuant to Section 81(1)(a), (c), (r) and (q) of the *Indian Act*, and in keeping with the principles and objectives of the MKO First Nations Justice Strategy Program which provides the MKO First Nation communities with an alternative program that supports court diversions from the court system for youth and adults facing criminal charges, including summary conviction offences:

(a) all offences by a Member under this by-law may be examined in accordance with the principles and objectives of the MKO First Nations Justice Strategy Program regarding the appropriate penalties for the offence and to determine whether to:

(i) undertake restorative justice measures consistent with the MKO First Nations Justice Strategy Program; or

(ii) pursue a summary conviction and impose penalties in accordance with the applicable provision of this by-law;

8.2 Notwithstanding section 8.1, any person who commits or is convicted of an offence under this by-law may have their tickets or charges diverted to an appropriate alternative restorative justice program.

Part 9: Non-residents of the Reserve in Contravention of this By-law

9.1 Pursuant to the authority of the Council flowing from section 81(1)(p) of *The Indian Act*:

(a) a person who is not a Member or Resident of the Reserve, who pleads guilty or is convicted of an offence under this by-law may be deemed to be trespassing and on the Reserve for a prohibited purpose and without lawful

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authorization;

- (b) may be ordered by the Enforcement Officer to immediately leave the Reserve lands;
- (c) should the person who is not a Member or Resident of the Reserve fail to leave the Reserve pursuant to this section, an Enforcement Officer may take immediate steps to remove the person from the Reserve; and
- (d) any person removed subject to this section remains liable for the applicable penalty for the contravention and offence.

Part 10: Authorizations

- 10.1 The Province of Manitoba may designate and authorize First Nation Safety Officers appointed by the First Nation to enforce this by-law pursuant to *The Police Services Act*, CCSM c P150, and associated regulations as enacted or amended.
- 10.2 The Province of Manitoba may designate this by-law as subject to relevant provisions of *The Provincial Offences Act*, CCSM c P160, and associated regulations as enacted or amended.
- 10.3 The First Nation authorizes First Nation Safety Officers to enforce this by-law, pursuant to *The Police Services Act*, *The Provincial Offences Act*, and associated regulations as enacted or amended.

Part 11: General

- 11.1 This by-law may be amended in accordance with s. 85.1(2) of the *Indian Act* and Council shall promptly publish and may post or distribute any amended by-law in accordance with section 2 of this by-law.

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11.2 To the extent of any inconsistencies with any previously enacted by-law or other by-laws of the First Nation, this York Factory First Nation Intoxicants By-law No. 2025-02-10 shall prevail. ⁰¹ D.W RC

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11.3 Should a court determine that a provision of this by-Law is invalid for any reason, the provision may be read down or be severed from the By-Law and the validity of the rest of the By-Law shall not be affected.

Part 12: Effective Date and Term

12.1 This York Factory First Nation Intoxicant By-law No. 2025-02-10⁰¹ comes into force on the day on which it is first published in the First Nations Gazette and shall remain in force unless this by-law is terminated through the repeal of or an amendment to this by-law.

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THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the First Nation this 10th day of February 2025.

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

Darryl Wastesicoot
Chief Darryl Wastesicoot

Councillor Wayne Redhead

Louisa Constant
Councillor Louisa Constant

Councillor Frank Wastesicoot

Evelyn Beardy
Councillor Evelyn Beardy

being the majority of those members of the Council of the York Factory First Nation present at the aforesaid meeting of the Council.

The quorum of the Council is 3 members.

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SCHEDULE OF FINES

This Schedule authorizes and sets out the fine payable for offences issued on a ticket under the York Factory First Nation Intoxicants By-Law No. 2025-02-10.

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Section	Description	Fine Amount
5.1	Consumption of Intoxicants	\$50
5.2	Possession of Intoxicants	\$100
5.3	Purchase of Intoxicants	\$100
5.4	Supply of Intoxicants	\$1,000

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Number of members of the Council present at the meeting: 32

I, Chief Darryl Wastesicoot of the York Factory First Nation, do hereby certify that a copy of the foregoing by-law was published on the *First Nations Gazette*, pursuant to subsection 86(1) of the *Indian Act*, on the 10th day of February 2025.

Handwritten signature of witness

(Witness)

Victoria Cloutis

(Print name)

Handwritten signature of Chief

(Chief/Councillor)

DARRYL WASTESICOOT

(Print name)

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Declaration under Section 85.1 of the *Indian Act*

IN THE MATTER OF section 85.1 of the *Indian Act*, RSC 1985, c I-5;

AND IN THE MATTER OF *York Factory First Nation Intoxicants By-law No. 2025-02-01*

I, Darryl Wastesicoot, Chief of York Factory First Nation, in the community of York Landing, in the PROVINCE OF MANITOBA,

Do solemnly and voluntarily declare that pursuant to section 85.1(2) of the *Indian Act*;

1. On the 10th day of February, 2025, a special meeting of the electors of Northlands Denesuline First Nation was held at the Band Hall;
2. The above-mentioned meeting commenced at 1:00pm and was held for the purpose of voting on the form and contents of the *York Factory First Nation Intoxicants By-law No. 2025-02-⁰¹~~10~~*;
3. The number of electors in attendance at this special meeting was 32;
4. The number of votes in favour of the *York Factory First Nation Intoxicants By-law No. 2025-02-⁰¹~~10~~* was 31;
5. The number of votes opposed to the *York Factory First Nation Intoxicants By-law No. 2025-02-⁰¹~~10~~* was 0;
6. The number of electors who abstained from voting was 1.

I, Chief Darryl Wastesicoot, make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

Declared before me:

<p>at the community of York Landing in the Province of Manitoba, this 10th day of February, 2025.</p>  <hr/> <p>Commissioner of Oaths</p> <p>Victoria Cloutis Commission Expires - June 27, 2025</p>	 <hr/> <p>(Signature of Declarant)</p>
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