



ANIMAKEE WA ZHING #37

DANGEROUS PERSON BY-LAW

No. 02- 2019

WHEREAS the Council of the Animakee Wa Zhing #37 (“AWZ”) desires to establish a by-law to protect band members from Dangerous Persons and to provide an enforcement mechanism for the removal and punishment of those persons endangering the health and safety of members;

AND WHEREAS AWZ’s Reserve land has been set apart for the use and benefit of AWZ members; and the exclusive use of the Reserve land for AWZ members is an inherent right and is an aboriginal and treaty right that is recognized and affirmed pursuant to subsection 35(1) of the *Constitution Act, 1982*;

AND WHEREAS AWZ has the inherent right, protected and confirmed in Treaty 3 to govern its own affairs, including with respect to the administration of justice;

AND WHEREAS section 81 paragraphs (c), (d), (p), (p.1), (q), (r), 81(2); and 81(3) of the *Indian Act* empowers the Council of AWZ as a “council of a band” under the *Indian Act*, to pass by-laws to provide for the health of residents on the reserve, the observance of law and order, the prevention of disorderly conduct and nuisance, and the removal and/or punishment of persons frequenting the reserve for prohibited purposes, and the imposition of a penalty for the violation of any such by-law;

AND WHEREAS it is deemed to be expedient and necessary, for the benefit, comfort, and safety of the inhabitants of AWZ to provide for the removal and management of Dangerous Persons and the observance of law and order by Members and other persons on the Reserve;

NOW THEREFORE the Council of the AWZ hereby enacts By-law No. 02-2019.

Title

1. This by-law may be cited as the “Animakee Wa Zhing #37 Dangerous Person Bylaw”

Purpose

2. The purpose of this by-law is to provide for the observance of law and order on reserve and the removal of Dangerous Persons trespassing on Animakee Wa Zhing #37 or frequenting the Reserve, and to protect the Members, their property and property of the First Nation from death, injury, damage and destruction.

Interpretation

3. In this by-law,

“**Council**” means the Council of the AWZ as defined in the *Indian Act*;

“**Criminal History Information Check**” means a search being made by a police enforcement agency such as the Ontario Provincial Police of a relevant data base made pursuant to the *Police Record Checks Reform Act*, 2015, S.O. 2015, c. 30;

“**Criminal History Information Request**” means a request issued by Council for an individual to obtain a Criminal History Information Check from an appropriate policing agency;

“**Dangerous Person**” means a person that:

- (a) has been convicted, without receiving a pardon or a record suspension, of one or more of the following offences:
 - (i) offences listed in s. 752 of the *Criminal Code* as a “designated offence” or a “designated primary offence”;
 - (ii) Section 229 of the *Criminal Code*: Murder;
 - (iii) Section 230 of the *Criminal Code*: Murder in commission of offences;
 - (iv) Section 234 of the *Criminal Code*: Manslaughter;
 - (v) Sections 5(1), 5(2) and 7(1) of the *Controlled Drugs and Substances Act* S.C. 1996, c. 19;
 - (vi) Any offences involving a victim 18 years of age or younger or person with disability; or
- (b) has been convicted, without receiving a pardon or a record suspension, of any other offence that, in the sole discretion of Council, is deemed to endanger the health, safety or well-being of the community or members; and
- (c) has been designated as a Dangerous Person pursuant to this by-law;

“**Days**” means calendar days, including weekends and holidays;

“**Member**” means a registered band member of AWZ;

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

“**Reserve**” means the Reserve land of the AWZ; and

“Trespass” or “Trespassing” has the meaning ascribed to it in the Animakee Wa Zhing #37 Trespass By-Law.

Application

4. This by-law applies on the Reserve.

Compliance with Other Laws

5. Where any applicable federal or provincial law, act, regulation, or AWZ by-law applies to any matter covered by this bylaw, compliance with this by-law will not relieve the person from also complying with the provisions of any other applicable law, act, regulation, or by-law.

Criminal History Information Production Order

6. If Council reasonably believes that the presence of a person on the Reserve may pose a threat to the observance of law and order on the Reserve, Council may, by Band Council Resolution (“Resolution”), order a Criminal History Information Request requiring that person provide to Council, within fourteen (14) days of receiving the Order a complete Criminal History Information Check (also referred to as a Police Information Check) provided by the appropriate policing agency.
7. Council may, at its sole discretion, extend the 14-day period indicated above.

Designation of a Dangerous Person

8. Council may, by Resolution pursuant to this by-law, designate a person as a “Dangerous Person” where:
 - (a) that person meets the definition of a “Dangerous Person” in this by-law; or
 - (b) that person fails or refuses to comply with an Order to complete a Criminal Information Request pursuant to this by-law.

Dangerous Person on Reserve

9. Subject to the limitations imposed by law and subject to the limitations imposed herein, Council may, by Resolution:
 - (a) Post the name of a Dangerous Person in a public place, or otherwise inform Members of the presence of a Dangerous Person on the Reserve;
 - (b) Issue a direction to:
 - (i) prohibit or restrict the Dangerous Person from attending specific locations or events on the Reserve;
 - (ii) prohibit a Dangerous Person from being within a prescribed distance from a particular person or persons;

- (iii) limit the duration for which a Dangerous Person may occupy the Reserve on a given visit;
 - (iv) limit the number of times a Dangerous Person may frequent the Reserve within a specified period of time;
 - (v) remove a Dangerous Person from housing on Reserve;
 - (vi) banish a Dangerous Person from the Reserve for a period of one (1) year;
 - (vii) restrict a Dangerous Person from using, occupying, or possessing land on the Reserve either for a specified duration or until express permission is granted to return in the form of a Resolution;
 - (viii) impose conditions or requirements for re-integration onto the Reserve with the lifting or expiration of banishment;
 - (ix) obtain a court Order, pursuant to subsection 81(3) of the *Indian Act*, restraining a person from acting in contravention of this by-law.
10. The Resolution shall clearly state the reasons for the restriction or prohibition.
11. A person who fails or refuses to comply with an order made under section 9 or who resists or interferes with an officer acting pursuant to this by-law commits an offence and is subject to the penalties contained herein.
12. If a Dangerous Person has been banished from the reserve, or if they have been directed to comply with any conditions indicated in 9(b) above, and they do not comply with said direction then:
- (a) they will be in violation of this by-law and subject to the penalties contained herein; and
 - (b) they will be deemed to be trespassing and in violation of the Animakee Wa Zhing #37 Trespassing Bylaw.
13. For greater certainty, an exercise of authority pursuant to section 10(b)(vi) to banish a Dangerous Person from the Reserve for a period of one year, may be renewed by council on a yearly basis, subject to sections 14 and 15.
14. In determining if the banishment should be renewed, Council shall consider:
- (a) all of the factors listed in section 15; and
 - (b) the conduct of the individual since the banishment including:
 - (i) any and all new charges and convictions since the banishment
 - (ii) rehabilitative efforts taken.

Considerations

15. When considering whether to impose any prohibitions or conditions pursuant to section 9 Council may consider the following:
 - (a) Whether the behaviour for which the conviction was received, if repeated, poses any threat to the peace or safety of Members or to the Council's ability to ensure the observation of law and order on the Reserve;
 - (b) The circumstances and the particulars of the offence or offences for which the Dangerous Person has been convicted including:
 - (i) whether the offence or offences occurred on the Reserve;
 - (ii) whether the offence or offences involved a member, including:
 - (A) whether the offences or offences was committed with the assistance of other Members and whether these Members continue to reside on the Reserve;
 - (B) whether the victim or victims of the offence or offences resided on the Reserve and whether those victims continue to reside on the Reserve;
 - (iii) the views and concerns of the community, with special regard to those of the victim of the offence;
 - (iv) the age of the Dangerous Person when the offence or offences occurred;
 - (v) the age of the victim or victims when the offence or offences occurred;
 - (vi) the length of the time that has elapsed between the commission of the offence or offences, including:
 - (A) what the Dangerous Person has done during that period of time;
 - (B) whether the Dangerous Person has shown any tendencies to repeat the kind of behaviour for which he or she received the conviction or convictions;
 - (vii) whether the Dangerous Person has expressed remorse over the incident;
 - (viii) whether the Dangerous Person has shown a firm intention to rehabilitate himself or herself;
 - (ix) whether the Dangerous Person has a history of convictions;
 - (x) whether the Dangerous Person has failed to comply with previous Orders;
 - (xi) any extenuating circumstances; and

- (xii) any other factor that Council reasonably believes is relevant to the determination of whether the presence of the Dangerous Person on the Reserve represents a threat to the peace and safety of Members or to the observance of law and order on the Reserve.
16. Prior to imposing any prohibitions or conditions, Council shall give a reasonable opportunity for and shall consider the views of the Dangerous Person and Members concerning whether the Dangerous Person represents a threat to the peace and safety of Members or to the observance of law and order on the Reserve.

Appeal

17. A Member may appeal the restrictions or prohibitions imposed by a Resolution passed pursuant to section 9 within fifteen (15) days of being provided notice of Council's decision. If Council is unable to locate the individual to provide them with a copy of the Resolution, the individual will be deemed to have received notice ten (10) days after the Resolution is posted in a public place including but not limited to the band office, a community center, a newspaper of general circulation or community website.
18. An appeal can only be initiated by the individual named in the Resolution. To appeal the decision the individual must file a notice of intent to appeal which must contain the following information:
- (a) the grounds for the appeal;
 - (b) any relevant supporting documents;
 - (c) the appellant's signature; and
 - (d) the date.
19. All appeals must be conducted within thirty (30) days of receiving the appellant's appeal documents.
20. Once a notice of intent to appeal has been received three Elders shall be selected by way of Band Council Resolution to review the decision. At least one Elder from each of the communities making up AWZ will be selected to review the decision. Council, by way of Band Council Resolution may amend the total number of Elders selected review the decision.
21. In assessing the appeal, the Elders shall review the appellants notice of intent to appeal, the Resolution and any additional supporting documentation provided by Council and the appellant.
22. After the Elders' have completed their review, they will provide a recommendation to Council. Any subsequent decision shall be final.

Conflict of Interest

23. Councillors and Elders involved in issuing a decision pursuant to this by-law must disclose any and all conflicts of interest at the earliest possible opportunity.

24. A conflict of interest arises where a member of Council, or for the purposes of appeal, an Elder has a real or perceived conflict of interest.
25. For the purposes of this bylaw a conflict of interest means:
 - (a) the person being designated as a Dangerous Person is a family member, close relative, spouse or common law partner of the Councillor or Elder; or
 - (b) the individual has a financial, business, political or other conflict, competition or feud with the Councillor or Elder, or that Councillor's or Elder's immediate family member, close relative, spouse or common law partner.
26. Once a conflict of interest has been declared, the Councillor or Elder making the declaration must not be involved in making any decisions involving the individual who is the subject of the conflict.

Enforcement

27. An Officer may undertake any reasonable measure that is necessary to ensure compliance with this by-law.

Penalty

28. A person who violates any provision of this by-law commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.00, or to imprisonment for a term not exceeding thirty (30) days, or to both.
29. An Officer may lay a separate charge for each day an offence under this by-law is ongoing or for each separate offence.
30. In addition to all other penalties provided herein, any person causing damage or loss to any Reserve property as a result of an offence under this by-law will be responsible for the cost of repairing or replacing such damage or loss.

Civil Liability Unaffected

31. Nothing in this by-law affects the civil liability of a person who contravenes any provision of this by-law or the regulations and the question of liability for damages.

Severability

32. 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 remainder of the by-law shall not be affected.

By-Law Coming into Force

33. This by-law shall be published on the *First Nations Gazette*.
34. The Council shall be required to provide a hardcopy of the by-law to any person that requests a copy and has not before received a copy.

35. This by-law comes into force ten (10) days after the by-law has been published on *First Nations Gazette*.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Band Council of the Animakee Wa Zhing #37 this 12 day of December, 2019.

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

 _____ Councillor Donald Kavanaugh	 _____ Chief Jim Major	 _____ Councillor Deanna Major
 _____ Councillor Lorraine Major	 _____ Councillor Linda McVicar	

being the majority of those members of the Band Council of the Animakee Wa Zhing #37 present at the aforesaid meeting of the Council.

The quorum of the Council: 3 members.

Number of Council members present at the meeting: 5 members.