

PHEASANT RUMP NAKOTA FIRST NATION

BYLAW NO. 01-2018

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WHEREAS the Pheasant Rump Nakota First Nation Reserves have been set apart for the use and benefit of members of the Pheasant Rump Nakota First Nation; and the exclusive use of the Pheasant Rump Nakota First Nation Reserves for Pheasant Rump Nakota First Nation 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 the Pheasant Rump Nakota First Nation affirms the authority to establish a system of governance for and on behalf of members of the Pheasant Rump Nakota First Nation;

AND WHEREAS the Pheasant Rump Nakota First Nation Council has the inherent right to govern the Pheasant Rump Nakota First Nation and also exercises the powers of a "council of a band" under the *Indian Act* including the power to make bylaws regarding the removal of and punishment of persons trespassing on the Reserve, and regarding the residence of persons on the Reserve, pursuant to section 81(1)(p) of that *Act*;

AND WHEREAS the Pheasant Rump Nakota First Nation has a land regime based on custom and traditional land use and occupation, and any use, occupation, right to enjoy, or enter upon by a person that has not been approved of by the Pheasant Rump Nakota First Nation Council is deemed to be a trespass;

AND WHEREAS no person, other than members of the Pheasant Rump Nakota First Nation, possess any right to use, occupy, enjoy, or enter upon Pheasant Rump Nakota First Nation Reserves and lands reserved for the Pheasant Rump Nakota First Nation.

AND WHEREAS the Pheasant Rump Nakota First Nation Council has deemed it expedient and necessary for the benefit, comfort and safety of its members to provide for the removal and punishment of persons trespassing on the Reserves and to regulate the residence of persons living on the Reserves;

AND WHEREAS section 81(1)(r) provides for the penalties which may be imposed for contravention of this Bylaw:

"81(1)(r) the imposition on summary conviction of a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty days, or both, for violation of a by-law made under this section."

AND WHEREAS section 81(2) and 81(3) of the Indian Act allows for further remedies to be provided by the Court as follows:

"81(2) Where any by-law of a band is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted."

"81(3) Where any by-law of a band passed is contravened, in addition to any other remedy and to any penalty imposed by the by-law, such contravention may be restrained by court action at the instance of the band council."

NOW THEREFORE the Pheasant Rump Nakota First Nation enacts the Pheasant Rump Nakota First Nation Trespass Bylaw.

INTRODUCTORY MATTERS

1. **Short Title**

This Bylaw may be cited as the *Pheasant Rump Nakota First Nation Trespass Bylaw, 2018*.

2. **Interpretation**

In this Bylaw:

"Band" and "First Nation" means the Pheasant Rump Nakota First Nation, as represented by its duly elected Chief and Councillors;

"Council" means the Chief and Councillors acting as a governing body of the First Nation, and further acting as a quorum of Council members;

"Dependent child(ren)" means the biological and legally or traditionally adopted child(ren), under the age of 18 years, or 21 years if disabled, of a member of the First Nation;

"Domestic violence" means the physical, emotional, or psychological (or any combination of physical, emotional, and psychological) abuse of a spouse;

"Officer" means any police or peace officer, constable, or other person charged with the duty to preserve and maintain the public peace, including members of the Royal Canadian Mounted Police, and any person appointed by the Council for the purpose of maintaining law and order on the Reserve;

"Member" means a person whose name appears on the list of the Pheasant Rump Nakota First Nation as maintained by Indigenous and Northern Affairs Canada, or by the First Nation, if the First Nation assumes control of their membership registration;

"Reserve" means any lands set apart for the use and benefit of the First Nation and its members;

"Spouse" means a life partner established through holy matrimony, marriage, civil union, domestic partnership, or common-law marriage, and someone with whom a registered member of the First Nation enjoys a more than casual intermittent intimate relationship;

"Trespassing" means the entry onto, or the presence on, the Reserve by a person without lawful justification, or for prohibited purposes or intentions.

3. **Application**

This Bylaw applies to any person who is not a member of the First Nation and on lands forming part of any Reserve held for the use and benefit of the First Nation.

4. **Compliance with other laws**

Enforcement and penalties pursuant to this Bylaw does not relieve a person from also complying with, or being subject to enforcement measures and penalties under the provisions of any other applicable Act, law, regulation, or bylaw including those enacted by the Federal and Provincial governments meant to ensure public and personal safety and provide for the prosecution and punishment of persons accused or convicted of criminal offences.

TRESPASS

5. **Residence on Reserve**

A. Lands forming the Reserve have been set aside for the exclusive use, benefit, and enjoyment of the members of the First Nation, including the right to occupy, establish, and maintain residence.

Any rights and privileges of residence include a non-member spouse of such member, and is contingent upon the continuation of the matrimonial relationship, marriage, civil union, domestic partnership, or common-law marriage with the said member. The rights of residence of a dependent child who is not a member of the First Nation, shall expire the day after that child turns 18 (eighteen) years of age.

B. Any person who is not a member, or the spouse of a member, or a dependent child of a member requires written authorization from the Council to reside on the Reserve. This authorization is provided by Band Council Resolution executed in a manner, form and format established by the elected Council from time to time.

6. Prohibited persons

- A. Any person who is not a member, including the spouse of a member or non-member dependent child of a member who has been charged with committing a Criminal Code offence listed below and is awaiting disposition of the criminal charge by a court of competent jurisdiction, or is convicted of a Criminal Code offence listed below is trespassing on the Reserve.
- sexual interference
 - invitation to sexual touching
 - sexual exploitation
 - incest
 - bestiality(including compelling the commission of; and in presence of or by a child)
 - child pornography(including making, possession, distribution)
 - parent or guardian procuring sexual activity
 - exposure
 - sexual assault
 - sexual assault with a weapon(including threats to a third party or causing bodily harm)
 - aggravated sexual assault
 - select offences where it can be proven that the offence was committed with the intent to commit an offence of a sexual nature
 - attempt or conspiracy to commit any of the above named offences
- B. Any person who is not a member, including the spouse of a member or non-member dependent child of a member who has been charged with committing a Criminal Code offence listed below and is awaiting disposition of the charge by a court of competent jurisdiction, or convicted of a Criminal Code offence listed below is trespassing on the Reserve, when the victim of such offence is a member.
- assault (and included offences)
 - abduction of a young person
 - criminal harassment
 - uttering threats
 - making indecent and harassing phone calls
 - trespassing at night
 - mischief
 - failure to provide necessities of life
 - abandoning child
 - criminal negligence
 - extortion
- C. Any person who is not a member, and most particularly the spouse of a member who has been suspected of committing or inflicting domestic violence upon a member is trespassing on the Reserve. Disclosure of any incident of domestic violence must come from the victim member, or a witness to any incident of domestic violence, and must be presented to a member of the Council and shall be held in strict confidence, except for the purposes of issuing a notice pursuant to this Bylaw.

7. Prohibited Purpose

- A. A person, other than a person referred to in section 7.B., who conducts or engages in any of the following activities on the Reserve shall be deemed to be frequenting the Reserve for a prohibited purpose and is trespassing on the Reserve.
- hunting, fishing, trapping
 - hawking or peddling wares or merchandise
 - loitering
 - soliciting
 - photographing, interviewing, or conducting research or surveys
 - distribution of written materials
 - camping
 - operating an all terrain vehicle (ATV) or snowmobile or other motorized or non-motorized recreational vehicle
 - dumping refuse or waste

- any other activity deemed to be of a source of nuisance and/or disturbance to members in general
 - any other activity that is prohibited by federal or provincial law or by the First Nation
- B. Section 7.A. does not apply to the following persons:
1. Pheasant Rump Nakota First Nation members exercising their inherent and Treaty right to hunt, fish, trap and gather within the Reserve in a manner that does not disrespect another members exercise of their own inherent and Treaty right to hunt, fish, trap, and gather within the Reserve
 2. A person granted written authorization by the Council to conduct or engage in an activity listed in 7.A.
 3. A person participating in any public activities, functions, and events, and cultural and traditional ceremonies, except those prohibited by section 2.A., 2.B., and 2.C.
 4. An officer in the course of his/her duties

NOTICE

8. Notice

- A. At any time, the Council may issue notice to a person that they are deemed to be trespassing by Band Council Resolution executed in a manner, form and format established by the elected Council from time to time.
- B. A Band Council Resolution executed pursuant to 8.A. shall include the following:
 - name, and other identifying information deemed necessary, of the trespassing person
 - nature of the allegation
 - applicable section herein which confirms the offence of trespass
 - effective date of order to vacate the Reserve
- C. A copy of a Band Council Resolution executed shall be provided to the trespasser forthwith.
 - a) If service upon the trespasser of this Band Council Resolution is not able to be effected after reasonable efforts, then all efforts made shall be documented in writing and sworn to be true and provided to the Royal Canadian Mounted Police as in section 8.D.
 - b) A Band Council Resolution executed pursuant to this Bylaw may be posted in public places throughout the Reserve to effectively provide service of this notice upon the trespasser.
- D. A copy of a Band Council Resolution executed pursuant to this Bylaw shall be provided to the local and any other detachment of the Royal Canadian Mounted Police, as necessary.

ENFORCEMENT

9. Enforcement

- A. An officer will act to enforce this Bylaw and order any person who is trespassing to leave the Reserve immediately, and may order any person who engages in a prohibited activity on the Reserve to cease immediately.
- B. A person who fails or refuses to obey an order made under section 9.A. commits an offence.
- C. An officer may take any reasonable and lawful measure to remove a person from the Reserve deemed to have contravened this Bylaw.

COURT JURISDICTION AND PENALTY

10. Court of competent jurisdiction

- A. For any offence arising from the application of this Bylaw, the local Court of Queen's Bench shall preside and dispense justice.
- B. Nothing in this Bylaw, except as specifically provided, shall abrogate or derogate the authority and autonomy of the First Nation, nor its inherent, Aboriginal, and Treaty Rights or that of its members.

11. Penalty

- A. Any person who trespasses on the Reserve commits an offence and is liable on summary conviction to a fine of \$1,000.00 (one thousand dollars) and/or to imprisonment for a term not exceeding 30 (thirty) days.

B. An officer may lay a separate charge for each day an offence under this Bylaw is ongoing or for each separate offence.

APPEAL

12. Appeal

An appeal of a notice issued pursuant to section 4 will be held in the following manner:

- A. Within 30 (thirty) days of receiving notice, or of the date of service having been deemed to be executed as described in section 8.C.a), a person who has been provided notice will provide a letter to the Council requesting that the matter be revisited;
- B. Within 7 days of receiving the letter requesting an appeal, the Council shall establish a Tribunal to hear and decide upon any appeal;
- C. The Tribunal shall consist of 3 Elders, none of whom are directly related to the person who received the notice, nor to the victim(if notice concerns contravention of section 6.B., or 6.C.).
- D. Within 14 days of serving his/her letter upon the Council, the person appealing their notice shall provide any information the Tribunal deems necessary and fair to make an informed decision, including:
 - original of Canadian Police Information Centre (CPIC) database check
 - copy of their Saskatchewan Ministry of Social Services (or other relevant jurisdiction) Automated Client Index (ACI) database check
 - letters of support, indicating the person's character, behaviour, involvement in cultural, traditional, ceremonial activities, etc
 - any other information requested by the Tribunal
- E. The Tribunal shall receive and consider any information provided by the appellant and within 30 days deliver their decision in writing to the Council who will then reaffirm notice previously issued by Band Council Resolution, or rescind Band Council Resolution providing notice.
- F. Any decision of the Tribunal is final and no further appeal is provided herein.

SEVERABILITY

13. Severability

Should a court determine that any provision of this Bylaw is invalid for any reason, the provision shall be severed from the Bylaw and the validity of the rest of the Bylaw shall not be affected.

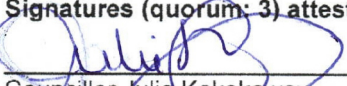
EFFECTIVE DATE

14. Coming into force

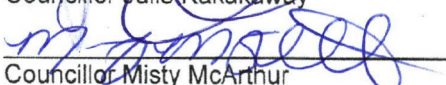
This Bylaw comes into force and is effective on the date on which it is first published in accordance with s. 86 of the *Indian Act*.

THIS BYLAW IS HEREBY made at a duly convened meeting of the Council of the Pheasant Rump Nakota First Nation this 30th day of January, 2018.

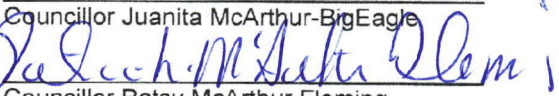
Signatures (quorum: 3) attesting to the approval and validity of this Bylaw:



Councillor Julie Kakakaway



Councillor Misty McArthur

Councillor Juanita McArthur-BigEagle

Councillor Patsy McArthur Fleming

Approval and witness to signatures:



Chief Ira McArthur