



BAND COUNCIL RESOLUTION

Chronological no.
File reference no.

NOTE: The words "from our and Funds" "capital" or "revenue", which is the case, must appear in all resolutions requesting expenditures from Band Funds.

The council of the Stz'uminus (Chemainus) First Nation				Cash free balance	
				Capital Account	\$ _____
Date of duly convened meeting	D-J 13	M 06	Y-A 12	Province BC	Revenue account \$ _____

DO HEREBY RESOLVE:

**By-law No. 2012.03
Being a By-law Respecting the
Control of Animals on the Reserve.**

WHEREAS section 81, paragraph (a), (d), (e), (q) and (r), of the *Indian Act* empower the Council of an Indian Band to pass by-laws to provide for the health of residents on the reserve, the prevention of nuisances, the protection against and the prevention of trespass by domestic animals, matters arising out of or ancillary to the exercise of powers under this section, and the imposition of a penalty for the violation of any such by-law;

AND WHEREAS the Council of the Stz'uminus First Nation is of the opinion that the uncontrolled ownership, breeding, and running at large of dogs may be detrimental to the health of the residents on the reserve, and a nuisance to such residents;

THEREFORE, the Council of the Stz'uminus First Nation enacts this Animal Control Bylaw, Number 2012.03, as follows:

SHORT TITLE

1. This by-law may be cited as the "Stz'uminus First Nation Animal Control By-law".

INTERPRETATION

2. In this by-law: "**council**" means the Council of the Stz'uminus First Nation, as defined in the *Indian Act*; "**dog**" means any dog, male or female and includes an animal that is a cross between a dog and a wolf; "**muzzle**" means to secure a dog's mouth in such a fashion that it cannot bite anything; "**officer**" means any police officer, police constable or other person charged with the duty to preserve and maintain public peace, and a by-law officer or any other person, including a band by-law officer, appointed by the Council for the purpose of maintaining law and order on the reserve pursuant to By-Law No. 2012.03 relating to Law and Order; "**owner**" of a dog includes a person who possesses or harbors a dog, and the terms "**owns**" and "**owned**" have a corresponding meaning; "**at large**" or "**running at large**" means off the premises of the owner and not muzzled or under the control of any person; "**reserve**" means the Stz'uminus First Nation Indian Reserve(s) No.10, 11, 12 and 13.

- 3.1 Subject to subsection (2), every owner of a dog shall keep the dog under control at all times.
- 3.2 No owner shall allow his dog to remain unfed or without water whereby it either amounts to cruelty or causes the dog to become a nuisance.
- 3.3 No person shall punish or abuse a dog in a manner or to an extent that is cruel or unnecessary.
- 3.4 No owner shall permit a dog to bark, yelp, growl or otherwise annoy or disturb the peace of residents on the reserve.
- 3.5 No owner shall permit a female dog in heat to be off the owner's premises.
- 3.6 (a) The Council may at any time prohibit the keeping of dogs within any area of the reserve. (b) Notice of any prohibition made by Council pursuant to par. (a) shall be posted in the Band office and after the date of the posting of such notice, no person shall keep or have a dog within the prohibited area.

Seizure

- 4.1 An officer may seize a dog from any person whom he has reasonable cause to believe is violating or has violated or is about to violate any of the provisions of this by-law.
- 4.2 Subject to subsection (4), an officer who has seized a dog pursuant to subsection (1) shall restore possession of the dog to its owner where: (a) the owner claims possession of the dog within five (5) days after the date of seizure, and (b) the owner pays to the officer all expenses incurred in securing, caring for and feeding the dog;
- 4.3 Where a dog has not been reclaimed within five (5) days after seizure, pursuant to subsection (2), the officer may humanely destroy or dispose of the dog as he seems fit and no damages or compensation may be recovered as a result of the destruction or disposal of the dog by the officer.

4.4 Where, in the opinion of the officer, a dog is seized under this section is injured, diseased or should be destroyed without delay for humane reasons or for reasons of health or safety, the officer shall destroy the dog as soon after seizure as he thinks fit and no damages or compensation may be recovered as a result of the destruction of the dog by the officer.

5.1 Where an officer, after reasonable effort, is unable to seize a dog that is running at large, contrary to the provisions of this by-law, he may destroy the dog.

5.2 No damages or compensation may be recovered as a result of the destruction of a dog by an officer pursuant to subsection (1).

Protection from dogs

6.1 Any person may kill a dog that is running at large and is in the act of pursuing, attacking, injuring, damaging, killing or destroying: (a) a person, (b) another dog that is tethered, or (c) a cache, harness or other equipment;

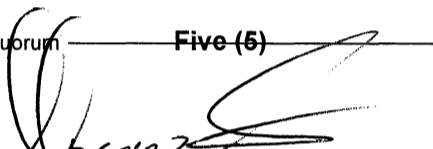
6.2 No damages or compensation may be recovered as a result of the killing of a dog by an officer pursuant to subsection (1)

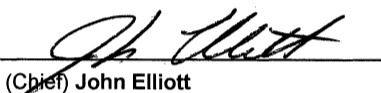
Penalty

7.1 Every person who contravenes any of the provisions of this by-law is guilty of an offence and is liable on summary conviction to a fine of not more than five hundred dollars (\$500) or to imprisonment for a term of 30 days, or both.

THIS BY-LAW IS HEREBY enacted by the Council of Stz'uminus First Nation at a duly convened meeting of the Council dated on the 13th day of June 2012.

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

Quorum Five (5)

 (Councillor) **George Seymour Sr.**

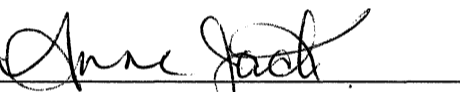

 (Chief) **John Elliott**

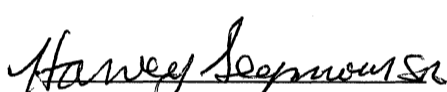

 (Councillor) **Herb Seymour**

(Councillor) **Terry Sampson**

(Councillor) **Timothy Harris**


 (Councillor) **Kevin Frenchy**


 (Councillor) **Anne Jack**


 (Councillor) **Harvey Seymour Sr.**


 (Councillor) **Roxanne Harris**

FOR DEPARMENTAL USE ONLY - RÉSERVÉ AU MINISTÈRE					
Expenditure- Dépense	Authority (Indian Act Section) Autorité (Article de la Loi sur Les Indiens)	Source of funds Source des fonds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue Revenu	Expenditure- Dépense	Authority (Indian Act Section) Autorité (Article de la Loi sur Les Indiens)	Source of funds Source des fonds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue Revenu
Recommending officer- Recommandé par			Recommending officer- Recommandé par		
Signature _____		Date _____	Signature _____		Date _____
Approving officer - Approuvé par			Approving officer - Approuvé par		
Signature _____		Date _____	Signature _____		Date _____





JUL 10 2012

Notre référence - Our file

Votre référence - Your file
E4216/641

Chief and Council
Stz'uminus First Nation
12611A Trans Canada Highway
LADYSMITH BC V9G 1M5

**BY-LAW NO. 2012.03 BEING A BY-LAW RESPECTING THE CONTROL
OF ANIMALS ON THE RESERVE**

Dear Chief and Council:

We are pleased to inform you that by-law no. 2012.03 being a by-law respecting the control of animals on the reserve will come into force on July 25, 2012. However, upon review of the said by-law, we would like to provide the following comments for your consideration.

In the Interpretation section under the definition of the word "officer", a reference is made to By-Law No. 2012.03 as relating to Law and Order. We believe this being a clerical error that should be amended since this by-law is in fact relating to the control of animals on reserve.

We also suggest removing the starting segment of section 3.1 "Subject to subsection (2)" since section 3.2 deals with animal cruelty which is not related to section 3.1; this would ensure ease of interpretation and clarity within the by-law.

In regards to section 3.5, you may want to consider adding the opportunity for the dog owner to have his/her dog off premises if the dog is tethered and under the owner's control. Otherwise, it gives the impression that no female dog can be walked or brought outside the owner's premises while in heat.

.../2

Nothing in section 81(1) (r) of the *Indian Act* (Act) provides for an enforcement officer with the power to seize and/or destroy an animal. In the interest of fairness and relations between community members, we recommend that you include, in each of the pertinent sections, a duty to make reasonable efforts to find or notify the owner before destroying the dog. As such, consideration should be given to add an obligation for any person acting upon section 6.1 to immediately report the incident to the Band Council or officer and notify the dog's owner.

As a general comment, in the by-law the expression "... no damages or compensation may be recovered ..." is used. Please note that there is no provision in the Act that offers protection from civil liability. Only a judge of a court of competent jurisdiction in a province may determine civil liability and award damages subsequent to the finding of such liability. The Act does not give authority to the Band Council to provide for the finding of, or protection from, civil liability upon the members or dog owners of the First Nation.

Please retain at least one copy of your original by-laws for your records and provide your local law enforcement agency, judge or magistrate with a copy of these by-laws. In order to provide assurance to these agencies that these by-laws have been properly enacted according to the statutory requirements, it may be useful to provide them with a copy of this letter stating the coming into force date, along with certified true copies of the by-laws. The original by-laws submitted to our office will be sent to you shortly through the Aboriginal Affairs and Northern Development Canada regional office in order to produce certified true copies, as described in section 86 of the Act.

Please note that the comments made should not be treated as a legal opinion. They are intended as suggestions only, and neither the Minister nor this department can guarantee that a by-law based upon them would be upheld in court. Only a court of competent jurisdiction has the power to rule on a by-law's validity. Furthermore, a submission of any by-law in accordance with our suggestions does not automatically ensure that the by-law will come into force. Any by-law submitted to our office must first be considered in its entirety.

By-laws made under the *Indian Act* are subject to the *Statutory Instruments Act*. As such, no person may be convicted of an offence for contravening an unpublished by-law unless the Band Council proves that the by-law is exempted from publication in the *Canada Gazette* and that reasonable steps were taken to bring the by-law to the attention of persons who may be affected by it. An individual has the right to inspect and obtain copies of by-laws.

Although not a requirement, we recommend that First Nations submit their by-laws to our office in draft form prior to enactment whenever possible. An initial review of the draft of a proposed by-law gives First Nations an opportunity to discuss it and also assists in avoiding any major difficulties prior to enactment.

If you wish to discuss this matter or require further information, please contact me at (819) 997-6450 or Véronique Frappier, By-Law Advisor responsible for this file, at (819) 997-1559.

Sincerely,



Marie-Eve Martel
Manager, By-law Advisory Services Unit
Band Governance Directorate

c.c.: David Lorenzen, Manager, Governance and Capacity
Development, British Columbia Region