

SWAN LAKE FIRST NATION
BY-LAW NUMBER 01/06

**BEING A BY-LAW OF THE SWAN LAKE FIRST NATION
TO REGULATE SMOKING IN PUBLIC PLACES**

PREAMBLE:

Being a By-Law of the Swan Lake First Nation to regulate smoking on the Swan Lake First Nation Indian Reserve No. 7, Swan Lake First Nation Indian Gardens Indian Reserve No. 8 and Swan Lake First Nation Indian Reserve No. 8A.

WHEREAS the Council of the Swan Lake First Nation has determined that tobacco smoke is a health hazard, is a nuisance to or detriment to persons, and that it is necessary to regulate the health hazard and safety, health and wellbeing of both residents and visitors;

AND WHEREAS the Council of the Swan Lake First Nation is empowered to make a by-law pursuant to paragraphs 81(1)(a), (q) and (r) of the *Indian Act* RSC 1985 Chapter I-5, in order to carry out such purposes, and desires to make a by-law to provide for the health of residents of the Swan Lake First Nation Indian Reserve No. 7, Swan Lake First Nation Indian Gardens Indian Reserve No. 8 and Swan Lake First Nation Indian Reserve No. 8A, with respect to any matter arising out of or ancillary to the exercise of powers under section 81, and for the imposition of a penalty for a violation thereof;

NOW THEREFORE the Council of the Swan Lake First Nation duly assembled enacts this By-Law as follows:

1. **TITLE:**

This By-Law shall be known as the "Swan Lake First Nation Smoking By-Law".

DEFINITIONS:

2. **IN THIS BY-LAW:**

"Enclosed Public Place" means a place that is normally open to members of the public and located in an enclosed area, including but without restricting the generality of the foregoing,

- a) Any part of
 - i) An office building; or
 - ii) A retail store or other commercial establishment, that is normally open to members of the public.
- b) Any part of a health care facility.

- c) Any part of a day care centre or nursery school.
- d) Any part of an educational institution or educational facility.
- e) Any part of a restaurant, whether or not the restaurant is licensed premises or portion of a licensed premises that is normally open to members of the public.
- f) In the case of licensed premises that are not and do not contain a restaurant, any part of the licensed premises that is normally open to members of the public.
- g) In the case of licensed premises containing a restaurant, any part of the licensed premises other than the restaurant portion that is normally open to members of the public; and
- h) Any motor vehicle used for the public commercial transportation of persons or property and includes a bus, taxi or limousine.

“Health Care Facility” means a place where a person may receive medical examination, treatment or care, and includes a hospital, clinic and medical practitioner’s office.

“Licensed Premises” means a “licensed premises” as defined in *The Liquor Control Act (Manitoba)*, C.C.S.M. c. L160.

“Proprietor” means the owner or operator of an enclosed public place, and includes a person who carries on or manages the activities carried on in an Enclosed Public Place and includes any person in a supervisory position at any time.

“Reserve” means the Swan Lake First Nation Indian Reserve No. 7, Swan Lake First Nation Indian Gardens Indian Reserve No. 8 and Swan Lake First Nation Indian Reserve No. 8A, including any reserve lands designated within the said Reserve.

“Smoking” means an act of inhaling or exhaling the smoke from a cigarette, cigar or pipe, and including having control of a lighted cigarette, cigar, pipe or other equipment used for smoking tobacco.

“Smoking Area” means an area marked and identifiable by a sign indicating that smoking is permitted in that area.

3. **NO SMOKING IN PUBLIC PLACES:**

Subject to Section 4, no person shall smoke in an Enclosed Public Place.

4. **DESIGNATED SMOKING AREAS:**

- 1) Subject to Section 3 and 5 and with the permission of the Council of the Swan Lake First Nation, a proprietor may designate a smoking area within an Enclosed Public Place.
- 2) The size of any smoking area designated under Subsection (1) for a restaurant whether or not the restaurant is a Licensed Premises shall be determined by Council but shall not exceed 80% of the total seating area.

5. **SUBSECTION 4(1) DOES NOT APPLY TO ANY:**

- a) Day Care Centre or Nursery School
- b) Elementary School or Secondary School
- c) Instructional Facility other than a Post-Secondary Educational Institution
- d) Retail Store or Shopping Mall
- e) Banking Institution
- f) Child and Family Service Offices

6. **DUTIES OF PROPRIETOR:**

A Proprietor of an Enclosed Public Place shall post signs to indicate where smoking is prohibited or permitted in the Enclosed Public Place. A Proprietor of an Enclosed Public Space shall ensure that sufficient ashtrays or similar receptacles are placed in any designated area in which smoking is permitted pursuant to this By-law.

7. **CIGARETTE SALES TO MINORS:**

No retailer shall knowingly sell or give any cigarettes, cigars or tobacco, or any cigarette or tobacco products, to a person who is under the age of 18 years.

8. **ELEVATING DEVICES, STAIRWAYS AND STAIRWELLS:**

No person shall smoke in an elevator or on an escalator in any building or part thereof, nor shall any person smoke while on a stairway or in a stairwell within any building or part thereof.

9. **WAITING AREAS:**

No person shall smoke in any portion of a waiting area such area has been designated as a smoking area by the proprietor. Such waiting area must be of sufficient size and configuration that an effective separation of smoking and non-smoking areas can be achieved. Such smoking area must be appropriately signed and must not exceed 80% of the waiting areas floor space.

10. **FOOD SERVICE ESTABLISHMENTS:**

Every proprietor of a food service establishment shall ensure that no smoking whatsoever is allowed in any area where food is prepared.

11. **VOLUNTARY DESIGNATION:**

Any proprietor or managing body of a business or institution not covered by the mandatory provisions of this by-law may nevertheless designate any part or all such premises as a "NO SMOKING" area and, if such area is appropriately signed, will enjoy the force and authority of this by-law.

12. **TRADITIONAL ABORIGINAL PRACTICES**

Nothing in this By-law shall prohibit an aboriginal person or a non-aboriginal person with an aboriginal person from using tobacco if the use of the tobacco is carried out for a traditional aboriginal spiritual or cultural practice or ceremony.

13. **POSTING SIGNS:**

Every Proprietor or managing body of a business or institution to which the By-law applies shall post signs at the entrances to the facility carrying the text "SMOKING PERMITTED IN DESIGNATED AREAS ONLY" or similar clear wording, and shall post such designated areas with a sufficient number of signs as prescribed hereinafter which signs shall be clearly discernible by persons within the place or area to which the sign relates.

14. **SIGNS TO BE IN ACCORDANCE WITH SECTION 13 SHALL CARRY THE TEXT AS FOLLOWS:**

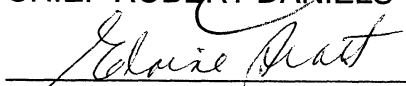
- a) For areas where smoking is permitted: "SMOKING PERMITTED IN THIS AREA" or similar, clearly understandable language.
- b) For areas where smoking is not permitted: "NO SMOKING" or "NO SMOKING AREA", or similar clearly understandable language.
- c) The signs referred to in this section shall consist of two contrasting colours and the lettering must not be less than a letter height of 2.54 centimetres.

- d) The signs referred to in this section must include the text at the bottom of each sign "Swan Lake First Nation By-Law No. 01/06 MAXIMUM FINE \$1000.00, in letters not less than 2 centimetres in height.
15. Notwithstanding Sections 13 and 14, a graphic symbol may be used either alone or in conjunction with signs in accordance with Sections 13 and 14 to indicate "SMOKING" and/or "NON SMOKING" areas. The use of any other "SMOKING" or "NO-SMOKING" graphic symbol is allowed so long as such symbol is clearly understandable. The text contained in paragraph 14(d) must be included in any signs utilizing a graphic symbol.
16. **ENFORCEMENT:**
- Upon receipt of a complaint pursuant to the provisions of this by-law, the Council of the Swan Lake First Nation or it's appointed representative shall investigate such complaint and enforce the applicable provisions of the by-law.
17. **OFFENCE AND PENALTY:**
- Every person who contravenes a provision of this by-law is guilty of an offense and liable on summary conviction to a fine of not more than \$1,000.00 or imprisonment for a term not exceeding 30 days or both fine and imprisonment.
18. **SEVERABILITY:**
- A decision of a court that one or more provisions of this by-law are invalid in whole or in part does not affect the validity, effectiveness, or enforceability of the other provisions or parts of the provisions of this by-law.

THIS BY-LAW IS HEREBY APPROVED AND ADOPTED AT A DULY CONVENED MEETING OF THE COUNCIL OF THE SWAN LAKE FIRST NATION THIS 3rd DAY OF NOVEMBER, 2006.

Voting in favour of the By-Law are the following members of the Council:


CHIEF ROBERT DANIELS


COUNCILLOR ELAINE SCOTT

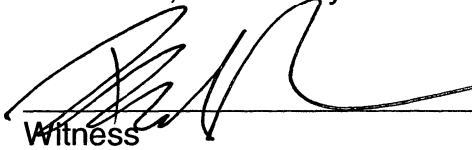

COUNCILLOR LAWRENCE WALKER

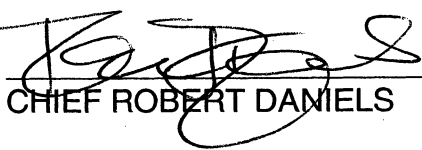
being a majority of those members of Council of the Swan Lake First Nation present at the aforesaid meeting of the Council.

The quorum of the Council is 3 members.

The number of members of the Council present at the meeting: 3

I, Robert Daniels, Chief of the Swan Lake First Nation, do hereby certify that a true copy of the foregoing By-Law was **mailed** to the Minister of Indian Affairs and Northern Development pursuant to subsection 82(1) of the *Indian Act*, this 3rd day of November, 2006.


Witness


CHIEF ROBERT DANIELS