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**MEMBERTOU BAND CODE NO. 2010-1**  
**Being a Code Respecting the Control of Animals**

**WHEREAS** paragraphs 81(1)(a), (d), (e), (q) and (r) of the Indian Act, R.S.C. 1985, c. I-5 empower the council of a band to make laws to provide for the health of residents on the reserve, the prevention of nuisances, the protection against and prevention of trespass by domestic animals, matters arising out of or ancillary to the exercise of power under this section, and the imposition of a penalty for the violation of any such law;

**AND WHEREAS** the Council of the Membertou Band has determined that the uncontrolled ownership, breeding, and running at large of animals on the reserve may be detrimental to the health of the residents on the reserve, and a nuisance to such residents;

**AND WHEREAS** the Council of the Membertou Band did enact the Membertou Band Animal Control By-Law on the 10<sup>th</sup> day of November, 1997 and wishes to repeal the said By-law and replace it with this by-law;

**NOW THEREFORE** the Council of Membertou Band at a duly convened meeting of a quorum on the Council, without prejudice to but in express affirmation of its right of self-government hereby enacts the following by-law:

**TITLE**

1. This Code may be called the "Membertou Band Animal Control Code".

**INTERPRETATION**

2. In this Code:

**"Animal Control Officer"** means an Animal Control Officer appointed pursuant to section 3, an officer of the Cape Breton Regional Police, or a person appointed by the Council for the purpose of enforcing the provisions of by-laws enacted pursuant to the Indian Act

**"At large"** or **"Running at large"** means being away from the dwelling of the owner and not under the control of any person.

**"Band"** means the Membertou Band, as defined in the Indian Act.

**"Council"** means the Council of Membertou Band, as defined in the Indian Act.

**"Dog"** includes any dog, male, female or neutered more than one (1) day old, and includes an animal that is the result of the breeding of a dog and any other animal.

**“Dwelling”** means each single unit being a fully detached home, a semi-detached home, a multiple attached home, and apartment home and any building used or intended to be used for human habitation and in which normal domestic functions may be carried on.

**“Muzzle”** means to secure a dog’s mouth in such fashion that it cannot bite anything.

**“Owner”** means any person who owns, possesses or harbours a dog or dogs, and shall include a registered owner under this By-law. Where the person is a minor, owner includes a person with custody of the minor. “Owns” and “owned” have a corresponding meaning.

**“Pit Bull Breed”** means any dog that is of the American Pit Bull Terrier, Staffordshire Bull Terrier, Japanese Tosa, or Douge de Bordeaux breed.

**“Reserve”** means the Membertou Indian Reserve(s) No. 28B and No. 29.

**“Villainous Dog”** includes:

- i. Any dog that demonstrates any ferocious, vicious, or aggressive behaviour;
- ii. Any dog that an Animal Control Officer, upon reasonable and probable grounds, believes to be a villainous dog;
- iii. Any dog which has been the cause of a prosecution under this Code within the previous six (6) months where a conviction against anybody has been entered concerning that specific dog; or
- iv. Any dog which has bitten another animal or human without provocation.

#### **ANIMAL CONTROL OFFICER**

3. (1) The Council may appoint Animal Control Officers by resolution to provide for the administration and enforcement of this Code and more specifically to receive registrations and to issue identification tags under this Code.
- (2) The Council may, in the resolution, provide for reasonable remuneration to be paid to the Animal Control Officers.

#### **REGISTRATION AND IDENTIFICATION OF DOGS**

4. (1) On or before the first day of January in each calendar year, the owner of any dog on the reserve shall register the dog and obtain an identification tag with the registration number and the year for which it was issued stamped thereon.
- (2) The application for registration and identification tag shall be filed with an Animal Control Officer and include:
  - a. The applicant’s name;

- b. The applicant's address or lot number;
- c. The applicant's home telephone number;
- d. A description of the dog sought to be registered, including age, sex, name, and breed if known;
- e. The number of dogs in the household; and
- f. Any other information deemed by an Animal Control Officer to be necessary for the proper administration of this Code.

(3) The charge for registration and identification tags shall be FIVE DOLLARS (\$5.00) per year.

(4) An Animal Control Officer or a person designated by the Council to receive registrations shall issue the identification tag upon registration and payment of the annual fee.

(5) The identification tag shall be securely attached to the collar or harness of the dog and shall be worn by the dog at all times.

(6) The registration and identification tag issued by the Animal Control Officer shall be valid until December 31<sup>st</sup> of the year for which it was issued.

#### **RECORDS**

5. (1) The Animal Control Officers shall keep a record of all registered dogs including the date of registration, the registration number and all of the information required to be provided by subsection 4(2).

(2) The Animal Control Officers shall keep a record of every dog owner who is charged with an offence or whose dog is impounded under this Code. The record shall include the name and description of the dog and the name, address, and telephone number of the owner.

#### **LIMIT ON NUMBER OF DOGS PER DWELLING**

6. (1) No person, being the occupier of a dwelling on the reserve, shall keep or allow to be kept more than two (2) dogs on the premises of the dwelling.

(2) The provisions of subsection (1) do not apply where the dog is less than eight (8) months of age.

(3) An Animal Control Officer, who has reasonable grounds to believe that an owner has contravened subsection (1), shall forward a written notice to the said owner, to remove from the premises of the dwelling that number of dogs exceeding the limit of two (2), within forty-eight hours of receipt of the notice.

## **GENERAL PROHIBITIONS**

7. (1) subject to subsection (2), every owner of a dog shall keep the dog safely tethered or penned up at all times.  
  
(2) a dog need not be tethered or penned up as provided in subsection (1) if the dog:
  - a. Is held on a leash by a person capable of restraining the dog's movements;
  - b. Is being used by a person for the purpose of hunting; or
  - c. Is used by a visually impaired person as a guide dog.  
(3) No owner shall permit his dog to bark, yelp, growl, or otherwise annoy or disturb the peace of residents of the reserve.
8. No owner shall allow a female dog in heat to remain in any public place unless such a female dog is attached to a leash and is accompanied by and is under the observation and control of the owner or his agent.
9. The owner of a dog which inflicts an unprovoked bite upon a person or animal is guilty of an offence.
10. The owner of a dog which causes damage to any property including moveable property, lawns, flower gardens, flower beds, bushes or plants, or other parts of property, is guilty of an offence.
11. The owner of a dog shall, when the dog is on property other than the dwelling of the owner, immediately pick up and thereafter dispose of, any feces, vomit, or any other waste left by the dog on the said property.

## **PROHIBITIONS OF SPECIFIC BREEDS OF DOGS**

12. No person shall keep or have a dog of the pit bull breed within any area of the reserve.
13. Any person who, before this 9<sup>th</sup> day of February, 2010 has a dog of the pit bull breed within the reserve shall have a microchip identification implanted and registered at their own expense.

## **PROHIBITIONS WITHIN SPECIFIC AREAS OF THE RESERVE**

14. (1) The Council may at any time prohibit the keeping of animals within any area of the reserve.

(2) Notice of any prohibition made by the Council pursuant to subsection (1) shall be posted in the band office and after the date of the posting of such notice, no person shall keep or have an animal within the prohibited area.

(3) No person may establish, own or operate an establishment or facility for the boarding or treatment of animals within the limits of the reserve, without express written authorization to that effect from the Council, by way of resolution.

### **VILLAINOUS DOGS**

15. The owner of a villainous dog shall post a clearly visible sign notifying the public of the presence of the dog.
16. The owner of a villainous dog shall ensure that the dog is muzzled at all times and that it is kept on a secure leash whenever it is away from the owner's dwelling.
17. The owner of a villainous dog shall ensure that while the dog is at the owner's dwelling, it is kept securely tethered or in a restricted area that shall be constructed so as to prevent any escape by the dog and prevent the entry by children.

### **SEIZURE AND IMPOUNDING**

18. (1) A dog found at large on the reserve may be seized by an Animal Control Officer without notice to or complaint against the owner or any such dog and shall be impounded in accordance with the provisions of section 19.  
  
(2) A dog of the pit bull breed found at large on the reserve may be seized by an Animal Control Officer without notice or complaint against the owner.  
  
(3) An Animal Control Officer may seize a dog from any person when he has reasonable cause to believe there is a violation, has been a violation or is about to be a violation of any of the provisions of this Code and the dog shall be impounded in accordance with the provisions of section 19.  
  
(4) While pursuing any dog in accordance with the performance of his duties under this Code, and Animal Control Officer may pass over the property of any person, but this subsection is not to be construed so as to provide immunity against action for actual damage to the property of any person.
19. (1) An Animal Control Officer shall forthwith make every reasonable effort to notify the registered owner of an impounded dog bearing a tag, that the dog has been impounded and that the dog may be destroyed or otherwise disposed of unless the dog is claimed by the owner within 72 hours of an Animal Control Officer first taking possession of the dog.

(2) The owner of any dog that has been impounded for the third time within 24 months may not claim the dog and the dog shall be sold, adopted out or destroyed.

(3) Where a dog of the pit bull breed has been seized pursuant to subsection 18(2), an Animal Control Officer shall dispose of the dog, either by selling it for the best price obtainable or, if the dog cannot be sold, by destroying it in a humane manner and no damages or compensation may be recovered as a result of the destruction or disposal of a dog by an Animal Control Officer.

(4) Subject to subsection (2), an Animal Control Officer who has seized a dog pursuant to section 18 shall restore possession of the dog to its owner where:

- a. The owner claims possession of the dog within 72 hours after the time of seizure;
- b. The person claiming to be the owner is not under the age of 19 years;
- c. The owner pays to an Animal Control Officer the sum of \$10.00 per day for the care and feeding of the dog;
- d. The owner pays any veterinary expenses incurred during the impoundment: and,
- e. Where the owner has failed to purchase an identification tag in accordance with this Code, he purchased the required identification tag from an Animal Control Officer before he obtains the release of his dog.

(5) Where a dog has not been claimed within 72 hours after seizure pursuant to subsection (4), an Animal Control Officer shall dispose of the dog, either by selling it for the best price obtainable or, if the dog cannot be sold, by destroying it in a humane manner and no damages or compensation may be recovered as a result of the destruction or disposal of a dog by an Animal Control Officer.

(6) Where, in the opinion of an Animal Control Officer, a dog seized under section 18 is injured or should be destroyed without delay for humane reason or for reasons of health or safety to persons or animals, an Animal Control Officer, without notice or impounding, may destroy the dog as soon after seizure as he thinks fit without permitting any person to reclaim the animals and no damages or compensation may be recovered on account of such action.

(7) A written report of each such incident as described in this section shall be filed with the Council.

#### **DESTRUCTION WHERE UNABLE TO SEIZE**

20. (1) Where an Animal Control Officer, after reasonable effort, is unable to seize a dog that is running at large contrary to the provisions of this Code, he may destroy the dog.

(2) No damages or compensation may be recovered as a result of the destruction of a dog by the Animal Control Officer pursuant to subsection (1).

#### **PROTECTION FROM DOGS**

21. (1) An Animal Control Officer may kill a dog that is running at large and is in fact in the act of pursuing, attacking, injuring, damaging, killing or destroying:
- a. A person,
  - b. Another dog that is tethered; or
  - c. A food cache, harness or other equipment.
- (2) An Animal Control Officer may kill any dog, without any notice or impounding, that is rabid, appears to be rabid, or exhibits the symptoms of canine madness.
- (3) No damages or compensation may be recovered as a result of the killing of a dog by any person pursuant to subsections (1) or (2)
- (4) Any animal found to be infected with rabies shall be destroyed by its owner or by an Animal Control Officer at the expense of the owner.

#### **PENALTY**

22. Every person who contravenes any of the provisions of this Code, other than those offenses for which specific penalties have been provided in Appendix I, is guilty of an offence and is liable on summary conviction to a fine of not more than ONE THOUSAND DOLLARS (\$1,000.00) or to imprisonment for a term not exceeding thirty (30) days or both.
23. Every person who contravenes any of the provisions of this Code for which specified penalties have been provided in Appendix I, is guilty of an offence and is liable on summary conviction to a fine according to the specified penalties set out in Appendix I and in default of payment to a term of imprisonment not exceeding 15 days.

#### **EVIDENCE**

24. A court of law may take judicial notice of this Code if it is certified in writing by the Chief, a Councilor or the chief administrative officer of the Membertou Band to be a validly enacted Code of the Membertou Band.

### **PROSECUTIONS**

25. In addition to the summary conviction procedures set out in the Criminal Code (Canada), proceedings under this Code may also be conducted according to the provisions of the Summary Proceedings Act, Revised Statutes of Nova Scotia, 1989, Chapter 450, any Regulations enacted pursuant to that Act and amendments to that Act or Regulations.

### **REPEAL**

26. The Membertou band Animal Control By-Law enacted on the 10<sup>th</sup> day of November, 1997 be and the same is hereby repealed.

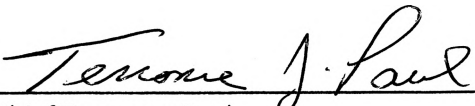


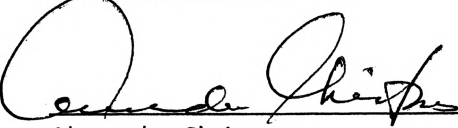
**APPENDIX I**

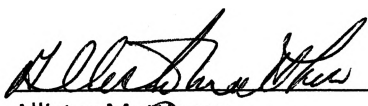
<b>SECTION</b>	<b>OFFENCE</b>	<b>OUT OF COURT SETTLEMENT</b>
4.(1)	Owner failing to register dog	\$78.75
6.(1)	Keeping more than two dogs	\$78.75
7.(1)	Owner failing to keep dog tethered or penned	\$135.00
7.(3)	Owner of dog which disturbs the peace	\$107.50
8.	Owner of female dog in heat founding a public place unleashed and unaccompanied	\$135.00
9.	Owner of a dog which inflicts unprovoked bite	\$307.50
10.	Owner of dog which causes damage to property	\$307.50
11.	Owner failing to pick up dog defecation	\$78.75
12.(2)	Keeping an animal within a prohibited area	\$135.00
12.(3)	Establishing animal facility without authorization	\$307.50
13.	Owner of villainous dog failing to post sign	\$135.00
14.	Owner of villainous dog failing to ensure that dog muzzled and on leash	\$307.50
15.	Owner of villainous dog failing to keep dog tethered or in a restricted area	\$307.50

This by-law is hereby made at a duly convened meeting of the Council of the Membertou Band this 9<sup>th</sup> day of **February, 2010**.

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

  
 Chief Terrance Paul

  
 Alexander Christmas

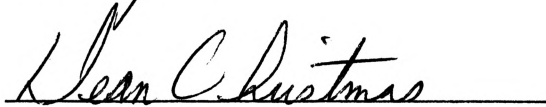
  
 Allister Matthews

  
 Anthony Paul

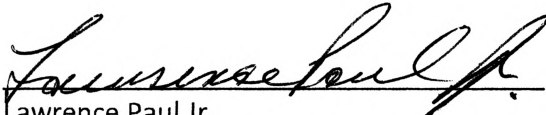
  
 Dan Christmas

  
Darrel J. Bernard

  
David Marshall

  
Dean Christmas

  
Johanna LaPorte

  
Lawrence Paul Jr.

  
Lee Gould

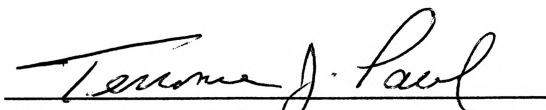
  
Robin Googoo

being the majority of those members of the Council of the Membertou Band present at the aforesaid meeting of the Council.

The quorum of the Council is 6 members.

Number of members of the Council present at the meeting: 12

I, Terrance Paul, Chief of the Membertou Band, do hereby certify that a true copy of the foregoing by-law was mailed to the Minister of Indian Affairs and Northern Development at the Atlantic Regional Office in Amherst, Nova Scotia pursuant to subsection 82(1) of the *Indian Act*.

  
Chief Terrance Paul

  
Witness