

By-Law No. _____
of the Kingsclear First Nation or Band
**A BY-LAW TO PROVIDE FOR THE HEALTH AND WELLNESS
OF RESIDENTS OF THE KINGSCLEAR FIRST NATION RESERVE**

WHEREAS the Band Council of the Kingsclear First Nation desires to make a by-law to provide for the health and wellness of its residents on the Kingsclear First Nation Reserve;

AND WHEREAS the Council of Kingsclear First Nation is empowered to enact a by-law providing for the health of its residents on reserve land, the regulation of the use of buildings, the control of amusements, and with respect to any matter arising out of or ancillary to the exercise of those powers, and for the imposition of a penalty for a violation thereof, pursuant to paragraphs 81(1)(a), (h), (m), (q) and (r) of the *Indian Act*;

AND WHEREAS exposure to tobacco smoke, including second hand smoke, has been linked to health hazards such as cancer, stroke, heart disease and respiratory illness;

AND WHEREAS it is desirable for the health and wellness of the residents and non-residents of the Kingsclear First Nation that exposure to tobacco smoke be limited on the Kingsclear First Nation Reserve;

NOW THEREFORE the Band Council of the Kingsclear First Nation, Band 006, hereby enacts the following by-law:

TITLE

1. This by-law may be cited as the ***“Kingsclear First Nation Smoking By-Law.”***

INTERPRETATION

2. In this by-law:
 - (a) “band” means the Kingsclear First Nation, Band 006, as defined by section 2 of the *Indian Act*;
 - (b) “band council” means the elected Band Councillors of the Kingsclear First Nation, including the Chief of the said Band, being a council of the band within the meaning of section 2 of the *Indian Act*;
 - (c) “by-law enforcement officer” means any person, including a peace officer, designated by the Band Council to enforce the provisions of this by-law;
 - (d) “designated smoking area” means a place or facility, owned or operated by the band or the band’s wholly owned corporations, or corporations in which the band holds

a controlling interest and which is accessible to the public and designated by virtue of this by-law as a place in which smoking is permitted;

- (e) “eating/drinking establishment” means a place or facility, owned or operated by the band or the band’s wholly owned corporations, or corporations in which the band holds a controlling interest, and which is fully licensed and primarily devoted to the service and sale of food and alcoholic beverages for consumption on the premises by its patrons;
- (f) “entertainment center” means a place or facility owned or operated by the band or the band’s wholly owned corporations, or corporations in which the band holds a controlling interest, and which hosts or operates bingo games and other authorized games of chance including video lottery terminals;
- (g) “indoor public place” means places, premises and facilities owned or operated by the band or the band’s wholly owned corporations, or corporations in which the band holds a controlling interest and used as a place for the purpose of public access or assembly, exclusive of eating/drinking establishments and entertainment centers, but which includes the public areas of retail stores, retail outlets, convenience stores, grocery stores and all band offices including, but not limited to, reception areas, foyers, hallways, public wash rooms, entrance ways, elevators and public corridors;
- (h) “person” includes a business or corporation;
- (i) “reserve” means the Kingsclear Indian Reserve or First Nation;
- (j) “retail store and retail outlet” means a building or part thereof, owned or operated by the band or the band’s wholly owned corporations, or corporations in which the band holds a controlling interest and used for the purposes of retail trade or services;
- (k) “smoke” or “smoking” means to give off, draw in or exhale tobacco smoke and includes the carrying of a lighted cigar, cigarette, pipe or any other lighted smoking equipment, but shall not include the conduct of legitimate and/or sacred First Nations ceremonies or the carrying of traditional items used for the purposes of conducting legitimate and/or sacred First Nations ceremonies and related activities.

APPLICATION

3. This by-law applies to all indoor public places on the Kingsclear First Nation Reserve accessible to residents and the general public.
4. For greater certainty, this by-law does not apply to any private residence or privately owned

or operated business establishment on the Kingsclear First Nation Reserve.

ADMINISTRATION

5. No person shall smoke in an indoor public place unless that place is a designated smoking area.
6. No ashtrays or cigarette receptacles shall be placed in an indoor public place except within a place that is a designated smoking area.
7. All eating/drinking establishments and entertainment centers on the Kingsclear First Nation Reserve are hereby designated as smoking areas.
8. All indoor public places which are not designated as smoking areas pursuant to paragraph 7 hereof shall post a clear and visible "no smoking" sign at each entrance to the facility and at other appropriate locations within the indoor public place.

PENALTY

9. 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 one hundred dollars (\$100.00).
10. This by-law may be enforced by a by-law enforcement officer designated by the Band Council.

GENERAL

11. Should a court of competent jurisdiction determine that any provision of this by-law is invalid for any reason, the invalid provision shall be severed from the by-law and the validity of the remainder of the by-law shall not be affected.
12. This by-law comes into force forty (40) days following the date of mailing to the Minister of Indian Affairs and Northern Development as required by section 82 of the *Indian Act*.
13. In this by-law, words importing the singular include the plural and vice versa, and words importing the masculine, feminine or neuter gender include such gender as the context requires.
14. This by-law shall not abrogate, derogate from, define or limit in any manner the Aboriginal or Treaty rights of Aboriginal Peoples living, working or visiting on the Kingsclear First

Nation Reserve.

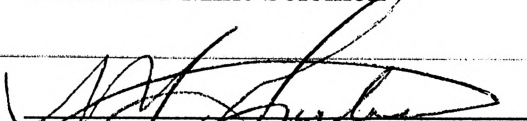
THIS BY-LAW IS HEREBY MADE at a duly convened meeting of the Chief and Council of the Kingsclear First Nation, Band 006, this 29 day of September, 2004.

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


Chief Robert Atwin


Councillor Mike Solomon

Councillor Patrick Polchies


Councillor Michelle Gruben


Councillor Nelson Solomon


Councillor Vicki Sabattis


Councillor Jason Polchies



Councillor Barb Atwin



Councillor Paul Tomer

representing a majority of those members of the Council of the Kingsclear First Nation, Band 006, present at the aforesaid meeting of the Council.

A quorum of the Council is 5 members. The number of members of the Council present at the meeting was 8.

I, Robert Atwin, Chief of the Kingsclear First Nation or 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 of the Department in accordance with subsection 82(1) of the *Indian Act* this 29 day of September, 2004.


Witness


Chief Robert Atwin

JOSEPH NELSON SABATTIS
COMMISSIONER OF OATHS
MY COMMISSION EXPIRES
DECEMBER 31, 2005

BAND COUNCIL RESOLUTION

KINGSCLEAR FIRST NATION

77 French Village Road, Kingsclear First Nation, NB E3E 1K3

The Council of the Kingsclear First Nation

Date of duly convened meeting: September 29, 2004.

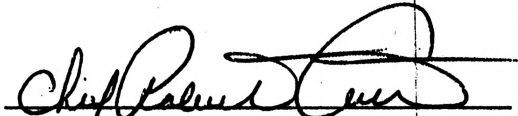
DO HEREBY RESOLVE:

WHEREAS the Council of the First Nation desires to enact a by-law to provide for the health and wellness of its residents on the Kingsclear First Nation Reserve by limiting their exposure to tobacco smoke;

AND WHEREAS on the date set out therein the Council of the First Nation did consider the hereto attached **By-law To Provide For The Health And Wellness Of Residents Of The Kingsclear First Nation Reserve** (also cited as the Kingsclear First Nation Smoking By-law) marked "A";

NOW THEREFORE be it resolved that the Kingsclear First Nation, Chief and Council accept the Kingsclear First Nation Smoking By-law attached hereto and marked "A".

Quorum: 5



Chief Robert Atwin



Councillor Mike Solomon

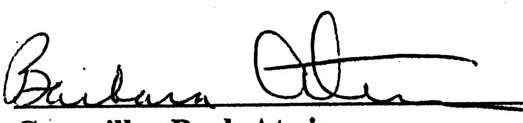
Councillor Patrick Polchies



Councillor Michelle Gruben


Councillor Nelson Solomon


Councillor Vicki Sabattis


Councillor Jason Polchies


Councillor Barb Atwin


Councillor Paul Tomer

FOR DEPARTMENTAL USE ONLY - RÉSERVÉ AU MINISTÈRE					
Expenditure - Dépenses	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	Expenditure - Dépenses	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
Recommending officer - Reconnu par			Recommending officer - Reconnu par		
_____ Signature		_____ Date	_____ Signature		_____ Date
Approving officer - Approuvé par			Approving officer - Approuvé par		
_____ Signature		_____ Date	_____ Signature		_____ Date