

LAW NO. 20-01

ERMINESKIN CREE NATION  
EMERGENCY MEASURES AND PUBLIC ACCESS LAW

BEING A LAW OF THE ERMINESKIN CREE NATION WITH A PURPOSE OF ESTABLISHING AND ENFORCING EMERGENCY MEASURES AND RULES RESPECTING PUBLIC ACCESS ON THE ERMINESKIN CREE NATION RESERVE NO. 138.

**WHEREAS** the Ermineskin Cree Nation has and continues to exercise an inherent Aboriginal and Treaty Right to govern its citizens and lands that is recognized and affirmed by the *Ermineskin Tribal System Constitution (1983)*, as amended or replaced from time to time, Articles 3, 4, 5, 20, 25, 26, 27 and 35 of the *United Nations Declaration on the Rights of Indigenous Peoples* and Section 35 of the *Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, 1982, c 11, and is protected by Treaty No. 6, 1876; and

**WHEREAS** on March 22, 2020, Council of the Ermineskin Cree Nation declared a state of emergency due to pandemic COVID-19 (the “**Emergency**”); and

**WHEREAS** Council of the Ermineskin Cree Nation enacted a curfew law effective October 5, 1992 (the “**1992 Curfew Law**”); and

**WHEREAS** Council of the Ermineskin Cree Nation deems it to be in the best interests of Ermineskin Cree Nation to amend the 1992 Curfew Law to respond to the Emergency, to secure the health and safety of individuals attending at or residing on the Ermineskin Cree Nation’s reserve lands, to encourage the observation of law and order and to prevent disorderly conduct and nuisances on its reserve lands.

**NOW THEREFORE, COUNCIL OF THE ERMINESKIN CREE NATION, DULY ASSEMBLED, ENACTS AS FOLLOWS:**

**PART I - TITLE, DEFINITIONS AND INTERPRETATION**

**1. SHORT TITLE**

1.1 This law may be known as the “Emergency Measures Law”.

**2. DEFINITIONS**

2.1 In this Law, unless the context requires otherwise:

- (a) “**Committee**” means the committee appointed by the Council pursuant to section 8.3;
- (b) “**Council**” means the Council of the Ermineskin Cree Nation, comprised of the Chief and Councillors, duly elected from time to time in accordance with the Ermineskin Tribal Election Custom Law;
- (c) “**Curfew Period**” means the period of time between 10:00 p.m. MST and 6:00 a.m. MST;

- (d) **"Dwelling"** means any place situated on the Reserve that is used as a private residence, including:
  - (i) a house, a condominium, an apartment, a mobile home, a trailer, a camper, a tent, a cottage, a cabin and any other building or structure that is used as a private residence, and any part of any of the foregoing, and any land on which the same is located; and
  - (ii) any other place prescribed by the Council by way of a Band Council Resolution from time to time;
- (e) **"Ermineskin"** means the Ermineskin Cree Nation #443;
- (f) **"Essential Service"** means those services and functions considered essential to preserving life, health, law and order, and basic society functioning, including but not limited to, the functions performed by first responders, health care workers, critical infrastructure workers, and workers who are essential to supply critical goods such as food and medicines;
- (g) **"Offence"** means an offence under this Law;
- (h) **"Peace Officer"** means a peace officer, police officer, member of the Royal Canadian Mounted Police, or any person appointed by Council by way of a resolution in writing for the purpose of enforcing and carrying out the provisions of this Law;
- (i) **"Public Place"** means any part of the Reserve that is not used or occupied as a Dwelling;
- (j) **"Referral Notice"** means a referral notice in the form prescribed by the Tribal Administrator from time to time;
- (k) **"Reserve"** means the geographic area of the Ermineskin Cree Nation Reserve #138 and such other lands that become tribal lands of Ermineskin from time to time;
- (l) **"Resident"** means a person who is ordinarily resident on the Reserve; and
- (m) **"Tribal Administrator"** means the Tribal Administrator of Ermineskin or their delegate.

2.2 In this Law, unless otherwise expressly stated or the context requires otherwise, any reference to a section or subsection is to such section or subsection of this Law.

2.3 In this Law, unless the context requires otherwise:

- (a) words importing the singular number shall include the plural number and *vice versa*, and words importing any gender shall include all genders and the neuter; and
- (b) any reference to a statute shall include the statute and any regulations made pursuant thereto, all amendments to the statute or any such regulations in force from time to time and any statute or regulation which supplements or supersedes the statute or any such regulations.

### **3. PROHIBITION**

3.1 No person shall be in a Public Place during the Curfew Period unless the person is:

- (a) travelling to or from their place of employment; or
- (b) performing an Essential Service.

### **4. POWERS OF PEACE OFFICERS**

4.1 If a person, other than a person authorized under subsections 3.1(a) or (b), is in a Public Place during the Curfew Period, a Peace Officer may take the following immediate actions:

- (a) in the case of a Resident, direct the person to immediately return to their residence; or
- (b) in the case of a non-Resident, direct the person to immediately vacate the Reserve.

4.2 If:

- (a) a Resident fails to comply with the direction in subsection 4.1(a); or
- (b) a non-Resident fails to comply with the direction in subsection 4.1(b);

then the Peace Officer may use reasonable force as is necessary to escort such person to their residence, in the case of a Resident, or off the Reserve, in the case of a non-Resident.

4.3 As soon as practicable after a Peace Officer escorts a person to a location under section 4.2, as applicable, they shall submit to the Tribal Administrator a written report setting out:

- (a) the address or other description sufficient to identify the location to which the Peace Officer escorted the person;
- (b) the name of the person(s) escorted and any other relevant person(s), if applicable;
- (c) the basis for escorting the person to a location;
- (d) any particulars of the applicable Offence; and
- (e) any other matter that the Officer considers necessary or advisable.

4.4 Without restricting any other power, duty or function granted by this Law, the Peace Officer may:

- (a) carry out or direct whatever inspections, or request any information or documents, that are reasonably required to determine compliance with this Law; and
- (b) delegate any of their powers and authorities under this Law to any person or organization as they deem appropriate, provided that the Peace Officer shall at all times remain accountable to ensure that the power and authorities under this Law are carried out properly.

**5. ENFORCEMENT – OFFENCES AND PENALTIES**

- 5.1 A person who contravenes any provision of this Law by doing any act or thing which the person is prohibited from doing, or by failing to do any act or thing the person is required to do, is guilty of an Offence and liable on summary conviction to a fine of not more than one thousand (\$1,000.00) dollars or to imprisonment for a term of not more than thirty (30) days, or both.
- 5.2 All fines imposed under this Law belong to Ermineskin, and shall be used for purposes to advance the community interests of Ermineskin as determined by the Council by way of a Band Council Resolution from time to time.

**6. ENFORCEMENT – EVICTION AND BANISHMENT**

- 6.1 If a Resident has been convicted of an Offence under this Law and Council considers it in the best interests of Ermineskin, its citizens and the Residents, or otherwise in the public interest to do so, Council may:
- (a) restrict or deny the right of the Resident to reside on the Reserve in a Dwelling owned by Ermineskin;
  - (b) otherwise restrict or deny the right of the Resident to reside on the Reserve; or
  - (c) restrict or deny the right of the Resident to enter onto, and to be on, the Reserve.
- 6.2 In the event that Council makes a determination pursuant to section 6ARTICLE 1 (the "**Determination**"), it shall serve the Resident with notice of such restriction or denial (the "**Determination Notice**") by personal service or by posting such written notice on the front door of the Resident's Dwelling.
- 6.3 The Determination Notice must:
- (a) be in writing;
  - (b) state the grounds for the restriction or the denial;
  - (c) the date on which the restriction or the denial becomes effective; and
  - (d) information relating to the person's right to refer the Determination in accordance with article 9.
- 6.4 If the Person does not refer the Determination in accordance with section 9.2, the restriction or the denial takes effect on the later of:
- (a) the expiry of the Referral Period; or
  - (b) any other date set out in the Determination.
- 6.5 If the person refers the Determination in accordance with section 9.2, and the Committee confirms or varies the Determination, the Determination takes effect on the date determined by the Committee.

**7. ENFORCEMENT – VOLUNTARY PAYMENT TICKET**

7.1 The Peace Officer is hereby authorized and empowered to issue a voluntary payment ticket to any person who the Peace Officer has reasonable and probable grounds to believe has contravened any provision of this Law.

7.2 A voluntary payment ticket may be issued to such person:

- (a) either personally; or
- (b) by mailing a copy to such person at their last known postal address.

7.3 The voluntary payment ticket shall state:

- (a) the name of the person;
- (b) the date and nature of Offence;
- (c) the appropriate penalty for the offence as specified by the Tribal Administrator from time to time;
- (d) that the penalty shall be paid within thirty (30) days of the issuance of the voluntary payment ticket; and
- (e) any other information as may be required by the Peace Officer.

7.4 Where a contravention of this Law is of a continuing nature, further voluntary payment tickets may be issued by the Peace Officer provided that no more than one (1) voluntary payment ticket shall be issued for each calendar day that the contravention continues.

7.5 Where a voluntary payment ticket is issued pursuant to this Law, the person to whom the voluntary payment ticket is issued may, in lieu of being prosecuted for the offence, pay to Ermineskin the penalty specified on the voluntary payment ticket within thirty (30) days of receipt of the voluntary payment ticket.

**8. ENFORCEMENT – OTHER**

8.1 Where this Law has been contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by this Law, the court or judge in which the conviction has been entered, and any court of competent jurisdiction or judge thereafter, may make an order prohibiting the continuation or repetition of the Offence by the Person convicted.

8.2 Where this Law has been contravened, in addition to any other remedy and to any penalty imposed by this Law, such contravention may be restrained by court action at the instance of the Council.

8.3 Where a person is in default of payment of a fine or any other fees, charges or costs under this Law, Ermineskin may, in its sole discretion as it deems appropriate, withhold an amount payable by it to such person from time to time not to exceed the amount of the unpaid fine, fee, charge or cost, and shall apply such amount to the unpaid fine, fee, charge or cost, as the case may be.

**9. RESTORATIVE JUSTICE REFERRAL**

- 9.1 Within thirty (30) days after a person has been charged with an Offence, the person may refer such charges to the Committee by submitting a Referral Notice to the Tribal Administrator.
- 9.2 Within thirty (30) days after the Council makes a Determination (the "**Referral Period**"), the Resident may refer the Determination to the Committee by submitting Referral Notice to Council.
- 9.3 On receipt of a Referral Notice pursuant to sections 9.1 or 9.2, Council shall appoint, by way of a Band Council Resolution, three (3) individuals to be members of the Committee.
- 9.4 To be appointed a member of the Committee, an individual must:
- (a) be at least eighteen (18) years of age;
  - (b) a citizen of Ermineskin;
  - (c) not have been found by a court of competent jurisdiction to lack capacity;
  - (d) not have the status of bankrupt; and
  - (e) not have been convicted of an indictable offence.
- 9.5 Within ten (10) days of being constituted pursuant to section 9.4, the Committee shall establish the rules of procedure regarding the referral, including the filing of evidence, the exchange of written arguments, the hearing of the referral, if any, and the payment of any fees and disbursements, as applicable.
- 9.6 The Committee may, in its sole discretion, confirm, reverse or vary the charge, the penalty or the Determination, as applicable.
- 9.7 Within ten (10) days of making a decision, the Committee shall serve the appellant and Council with a written copy of its decision and the reasons for that decision.

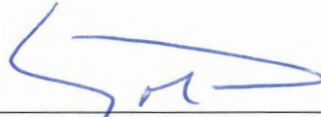
**10. MISCELLANEOUS**

- 10.1 It is the intention of Council that all Offences be interpreted to be strict liability offences.
- 10.2 Nothing in this Law relieves a Person from complying with any other applicable law, including any applicable statute, regulation, law, code, judgement or order.
- 10.3 In the event of any inconsistency or conflict between this Law and any other law, statute, or regulation, this Law shall prevail to the extent of the inconsistency or conflict.
- 10.4 If any provision of this Law is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, in whole or in part, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions of this Law.
- 10.5 This Law may be amended by Council, at a duly convened meeting of the Council, in accordance with the traditions and customs of Ermineskin.

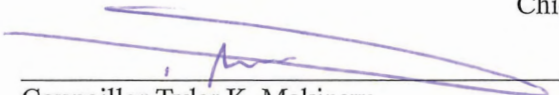
**11. EFFECTIVE DATE AND TERM**

11.1 This Law comes into force on the date of publication in accordance with the customs and traditions of Ermineskin.

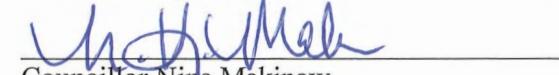
This Law is hereby passed at a duly convened meeting of the Council of the Ermineskin Cree Nation this 22 day of April, 2020.



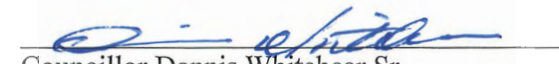
Chief Craig Makinaw



Councillor Tyler K. Makinaw



Councillor Nina Makinaw



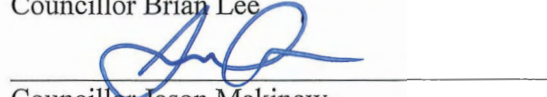
Councillor Dennis Whitebear Sr.



Councillor Ryan Ermineskin



Councillor Brian Lee



Councillor Jason Makinaw



Councillor Clayton Wildcat



Councillor S. Collin Wildcat





## ERMINESKIN CREE NATION CHIEF & COUNCIL MOTION

**FISCAL YEAR:** 2020-2021

**DATE:** April 22, 2020

**TYPE OF MEETING:** Special

**MOTION NUMBER:** 2020-21/22-04-20/005

Be it resolved that we, the Ermineskin Tribal Council, enact the Emergency Measures and Public Access Law effective as of April 22, 2020, as presented.

**MOVED BY:** Nina Makinaw

**SECONDED BY:** Ryan Ermineskin

In favor	Against	Abstained	Carried	Tabled	Defeated	Rescinded
All	0		√			