

# KWIKWASUT'INUXW HAXWA'MIS FIRST NATION

## COMMUNITY SAFETY AND ORDER BY-LAW

WHEREAS Section 81(1) of the *Indian Act*, R.S.C. 1985, c. I-5, as amended (the “*Indian Act*”) authorizes the Band Council to enact by-laws for the removal and punishment of persons trespassing on the Reserve lands or frequenting the Reserve lands for prohibited purposes and for the residence of Band members and other persons on Reserve lands and for the observance of law and order and for the prevention of disorderly conduct and nuisance on Reserve Lands;

AND WHEREAS the Kwikwasut'inuxw Haxwa'mis First Nation (“KHFN”) Council seeks to maintain and protect the safety, health and order of the KHFN community;

AND WHEREAS it is deemed expedient and in the interest of the KHFN to pass this by-law.

NOW THEREFORE, the Council enacts the following by-law:

### 1.0 **Definitions:**

“**Band**” means the KHFN First Nation;

“**Committee**” means the committee to consist of Band Members created by the Council in accordance with the provisions of this by-law for the purpose of reviewing and deciding whether a Member should be prohibited from the Reserve in accordance with this bylaw;

“**Council**” means the duly elected KHFN Council as defined in the *Indian Act*;

“**Member**” means a person who is included or is entitled to be included as a member of the KHFN and who is over the age of 16 years;

“**Officer**” means any police officer, constable or other Member charged with the duty to preserve and maintain the public peace, and any by-law enforcement officer or other Member appointed by the Council for the purpose of maintaining law and order on the Reserve and includes any member of the RCMP;

“**Personal Property**” means all personal property situate on the Reserve and belonging to a Member prohibited pursuant to this by-law;

“**Petition**” means a petition signed by not less than 10 Members who reside on a Reserve requesting that the Committee hold a hearing under section 4 to decide if a Member should be prohibited from the Reserve under this By-law;

“**Reserve**” and “**the Reserve**” means Gwayasdums IR #1.

## 2.0 **Committee**

2.1 The Council shall create a Committee to consider and deal with the prohibition from the Reserve of Members pursuant to section 3. The Committee shall be comprised of at least 3 Band Members.

2.2 Upon receipt of a Petition, the Committee shall have the authority to hold a hearing to determine whether a Member should be prohibited from the Reserve under section 3. The Committee shall further be authorized to set conditions for prohibition, including, without limitation, the date by which the Member must vacate the Reserve, the length of the prohibition and the terms, if any, for visitation or re-entry by the Member who has been prohibited.

### 3.0 **Grounds for Prohibition**

3.1 After a hearing, the Committee may, at its sole discretion, decide to prohibit a Member from the Reserve if the Committee is satisfied that the Member has:

- (i) been convicted of an indictable offence involving harm to another person including drug offences; and/or
- (ii) poses a risk to the safety of other Members.

### 4.0 **Hearing**

4.1 At least 14 days prior to a hearing, the Committee shall:

- (a) give written notice (the "Notice") to any Member being considered by the Committee for prohibition of the time, date and place of the hearing and inform the Member being considered that he or she has a right to appear and be heard at the hearing; and
- (b) post in the Band Office a copy of the Notice.

4.2 At the hearing the Committee shall:

- (a) provide the Member being considered with an opportunity to present evidence and to make oral and written representations, or both, on the issue of whether or not the Member should be prohibited from the Reserve; and
- (b) provide any Member present at the hearing with an opportunity to be heard.

4.3 The Committee may consider any evidence presented at the hearing in any form the Committee deems appropriate.

4.4 The Committee may make rules of procedure governing hearings held under this by-law.

**5.0 Decision**

5.1 The Committee shall render its decision in writing and deliver a copy of the written decision to the affected Member no later than 10 days after the hearing is completed.

5.2 The Committee shall post a copy of the decision in the Band Office within 2 days of delivering a copy of the decision to the affected Member.

5.3 The Committee's written decision shall include the reasons for the Committee's decision.

**6.0 Appeal**

6.1 Any Member who is prohibited from the Reserve as a result of a decision of the Committee may appeal the decision to the Council by delivering written notice of appeal to the Council within 48 hours of the decision having been delivered in accordance with section 5.1 of this by-law.

6.2 Upon receiving written notice of appeal, the Council shall review the decision of the Committee in such manner as the Council in its sole discretion sees fit and shall render a final decision that upholds, reverses or varies the terms of the Committee's decision.

6.3 The Council shall render its final decision in writing and deliver a copy of the written decision to the affected Member no later than 7 days after receiving written notice of appeal in accordance with section 6.1 of this by-law.

6.4 If the Committee's decision is upheld by Council on appeal, the Member must vacate the Reserve by the date stipulated in the Committee's decision or a date specified by Council in its final decision.

**7.0 Implementation of Prohibition Decision**

7.1 If the Committee's decision provides for the prohibition of a Member from the Reserve, the Committee's decision shall set out a date by which the Member must vacate the Reserve. The date by which the Member must vacate the Reserve shall be no less than 10

days from the date the Committee's decision was delivered to the Member pursuant to section 5.1 of this by-law.

- 7.2 If the Committee's decision provides for the prohibition of a Member from the Reserve, the Committee's decision shall set out the length of time for which the prohibition is effective. If the Committee's decision does not set out the length of time for which the prohibition is effective, then the prohibition shall be deemed permanent.
- 7.3 Any Member prohibited by the Committee must remove all Personal Property from the Reserve by the date the Member is required to vacate the Reserve pursuant to section 7.1 of this by-law.
- 7.4 Any Member leaving Personal Property on the Reserve after the time given for the Member to vacate is deemed to have abandoned the Personal Property.
- 7.5 Notwithstanding any other provision of this by-law, a Member who has been prohibited under this by-law shall not be entitled to visit the Reserve without the express written permission of the Committee setting out the period of time during which, and the terms and conditions upon which, the Member may visit the Reserve.
- 7.6 If a Member fails to obey a decision of the Committee or Council, made under this by-law, the Committee or Council may make a further order that the Member is in breach of this by-law. An Officer may enforce any order issued under this section.

## 8. **Urgent Circumstances**

- 8.1 The Council has the authority to determine whether a Member should be prohibited from the Reserve in the following circumstances:

(i) the Council receives a Petition regarding the Member; and

(ii) the Council determines that the Member poses an imminent and significant risk to the safety of other Members.

8.2 In the circumstances set out under 8.1, the Council shall further be authorized to set conditions for prohibition, including, without limitation, the date by which the Member must vacate the Reserve, the length of the prohibition and the terms, if any, for visitation or re-entry by the Member who has been prohibited.

8.2 Where the Council makes a determination under section 8, the length of prohibition shall not exceed 6 months, or until such time as the decision of the Council can be replaced by the decision of the Committee pursuant to section 3, whichever comes first.

8.3 Notice of a prohibition of a Member on Reserve pursuant to the section 8 must be communicated to the Member in writing as soon a practical after the decision has been made.

## 9. **General**

9.1 Any person who violates any of the provisions of this By-law shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding One Thousand Dollars or imprisonment for a term not exceeding thirty days or both fine and imprisonment;

9.2 Every person who commits an offence of a continuing nature against this By-law is liable to the penalty or penalties authorized under section 9.1 of this By-law for each day such an offence is continued.

9.3 This By-law is subject to the *Indian Act* and regulations made thereunder.

9.4 A finding by a court that a provision of this By-law is void or invalid shall not affect the validity of the rest of the By-law.

9.5 This By-law may be amended from time to time or repealed by a by-law made in accordance with the *Indian Act*.

9.7 This By-law shall come into force on December 21, 2020.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the KHFN First Nation this 17<sup>th</sup> day of December, 2020.

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



(Member of the Council)



(Member of the Council)



(Member of the Council)



(Member of the Council)

being the majority of those members of the Council of the KHFN First Nation present at the aforesaid meeting of the Council. The quorum of the Council is 3 members.

Number of members of the Council present at the meeting: 4.