

# TRESPASS LAW

## HORSE LAKE FIRST NATION

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**WHEREAS** the Indigenous and Treaty Rights of the Horse Lake First Nation government were recognized and affirmed in Treaty No. 8 entered into between Her Majesty the Queen and Horse Lake First Nation and confirmed by section 35 of the *Constitution Act, 1982*; and

**WHEREAS** the Trespass Law is an exercise of Indigenous and Treaty Rights and nothing in this Law may be construed as to abrogate or derogate from any Indigenous and Treaty Rights of Horse Lake First Nation; and

**WHEREAS** the *Indian Act*, R.S.C. 1985, c.1-5 further provides in sections 81(c), (p), (p.1), and (p.2) that Council may make laws: respecting rights of residency; for the removal and punishment of persons trespassing on the reserve or frequenting the reserve for prohibited purposes; and, generally, for the peace, order and good governance of Horse Lake First Nation; and

**WHEREAS** the Council has determined that it is desirable and necessary to establish laws regulating access to Horse Lake First Nation lands; and to provide for the removal and punishment of persons trespassing on the reserve or frequent the reserve for prohibited purposes.

**NOW THEREFORE THE COUNCIL OF HORSE LAKE FIRST NATION ENACT AS FOLLOWS:**

**Part 1  
Interpretation**

**1 Short Title**

1.1 This Law may be cited as the Trespass Law.

**2 Definitions**

2.1 In this Law:

- (a) "Access" means to enter upon land;
- (b) "Council" means the Chief and Council elected to public office pursuant to the Election Procedures governing elections of the Horse Lake First Nation as amended or replaced from time to time;
- (c) "First Nation" means the body of persons comprising the Horse Lake First Nation recognized by Her Majesty the Queen in right of Canada as a band as defined in the *Indian Act*, R.S.C. 1985, c. I-5, as amended and any successor to the First Nation;
- (d) "First Nation Lands" means the lands set apart by Her Majesty the Queen in right of Canada as reserves for the use and benefit of the First Nation and includes all lands deemed to be reserve lands pursuant to the *Indian Act*, R.S.C. 1985, c. I-5, as amended;
- (e) "Just Cause" means engaging or threatening to engage in conduct which constitutes a danger or a potential danger to property or persons; or which threatens the health, safety, security, or the peace, order, and good governance of the First Nation or any person lawfully on First Nation Lands. Without limiting the generality of the foregoing, "just cause" shall

be deemed to include engaging in any activity involving or related to the possession, purchase, sale, or use of an illegal drug as defined by the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19;

- (f) "Member" means a person admitted to Membership with the First Nation pursuant to the Membership Code of the Horse Lake First Nation as amended or replaced from time to time;
- (g) "Non-Member Rights Holder" means a person who has been granted a right to Occupy or Access First Nation Lands pursuant to a valid and enforceable instrument granting an interest in or right of access to First Nation Lands;
- (h) "Occupy" means to take possession of land for the purposes of establishing a residence or a business;
- (i) "Officer" means any Police Officer, Police Constable or other person charged with the duty to preserve and maintain the public peace and any other person appointed by the Council for the purposes for maintaining law on the Reserve or as a Bylaw Enforcement Officer.
- (j) "Resident Member" means a Member who has been granted a right to Occupy:
  - (i) a housing unit pursuant to the laws or policies governing housing allocations from time to time, including any applicable laws of the Horse Lake First Nation as amended or replaced from time to time; or
  - (ii) a business premise pursuant to the laws or policies governing business premises on First Nation Lands as amended or replaced from time to time.

## **Part 2**

### **Trespass, Access, and Occupancy**

#### **3 Trespass**

- 3.1 Any person who Occupies, Accesses, attempts to Occupy or Access, or otherwise enters or remains of First Nation Lands other than in accordance with this Law is guilty of the offence of trespass.

#### **4 Occupying First Nation Lands**

- 4.1 Subject to the terms of any laws or the instrument granting a right to Occupy First Nation Lands and section 7 of this Law, the following persons have a right to Occupy and Access First Nation Lands:

- (a) Resident Members;
- (b) minor or dependent children of Resident Members; and
- (c) Non-Member Rights Holders.

## **5 Access to First Nation Lands**

5.1 Subject to section 7, the following persons may Access First Nation Lands:

- (a) Members;
- (b) Non-Member spouses;
- (c) Non-Member adult children of Members;
- (d) Non-Member Rights Holders and their authorized agents;
- (e) invitees of a Member or Non-Member Rights Holder;
- (f) persons granted Access by the Council;
- (g) a person authorized by the Council or by a government or public body established by or under an Act of Parliament or the legislature of the Province of Alberta to perform a public function, to establish, operate, or administer a public service or operate a public installation, or to conduct a technical survey; or
- (h) a member of the public for a short term social or business purpose.

## **6 Removal of Persons from First Nation Lands**

6.1 A person described in sections 5.1 must leave the First Nation Lands immediately upon being directed to do so by the Council or any person authorized by the Council to enforce this Law including members of the local law enforcement detachment having jurisdiction on the First Nation Lands.

6.2 Any other person who Occupies or Accesses First Nation Lands may be ordered to leave or vacate First Nation Lands in accordance with:

- (a) the law or instrument which granted the person the right to Occupy or Access First Nation Lands; or
- (b) in all other cases, by a resolution of the Council in accordance with section 7 of this Law.

- 6.3 No person may Access or Occupy First Nation Lands if the Council has made a resolution barring the person from entering on First Nation Lands in accordance with section 7 of this Law.

**7 Barring Entry to First Nation Lands**

- 7.1 The Council may, by resolution, make an order barring a person from entering on, Accessing, or Occupying First Nation Lands if it has determined that there is Just Cause for the order.
- 7.2 Before making an order under section 7.1, the Council shall provide the affected person, upon not less than 3 days written notice, with an opportunity to appear before the Council to present proof that there is no Just Cause to support an order barring the person from entering on First Nation Lands.
- 7.3 The Council may, in lieu of an order under section 7.1 or by way of a conditional suspension of an order under section 7.1, establish conditions to which the person must abide to maintain the ability to Access or Occupy First Nation Lands.
- 7.4 No decision, order, directive, declaration, ruling or proceeding before the Council under this Law shall be questioned or reviewed in any court by application for judicial review or otherwise and no order shall be made or process entered or proceedings taken in any court whether by way of injunction, declaratory judgment, prohibition, *quo warranto*, or otherwise to question, review, prohibit, or restrain the Council or the Council's decision or proceedings before the Council.
- 7.5 Notwithstanding section 7.4 a decision, order, directive, declaration, ruling, or proceeding of the Council under this Law may be reviewed by way of an application for judicial review in the Federal Court but only on the basis that:
- (a) the Council failed to provide the effected person with the opportunity to appear before the Council pursuant to section 7.2; or
  - (b) the person provided proof that there is no Just Cause to support the order of Council and that the Council was unreasonable in making its decision.

**Part 3  
Remedies**

**8 Forcible Removal**

- 8.1 Upon the request of Council, an Officer shall be authorized to remove a person in respect of whom an order has been made under section 7 from First Nation Lands

and to apprehend without warrant, arrest and detain the person according to this and any other applicable law.

8.2 No person should resist or interfere with an officer with pursuant to Section 8.1

## **9 Injunctive Relief**

9.1 In addition to any other remedy available to the First Nation, the First Nation shall be entitled to apply to either the Court of Queen's Bench of Alberta or the Federal Court of Canada for an order in the nature of an injunction requiring a person to leave First Nation Lands and for any other relief that may be just in the circumstances.

## **10 Penalties**

10.1 A person who is violates any provision of this by-law commits an offense and is liable to fine of up to \$1,000.00 or to a term of imprisonment not to exceed 30 days, or both, in respect of each act of trespass.

## **11 Other Remedies Preserved**

11.1 Nothing in this Law shall be deemed to limit any other remedies available to the First Nation, including remedies in the civil courts.

## **Part 4 General**

## **12 Coming into Force**

12.1 This bylaw will come into force when it is published pursuant to section 86(1) of the *Indian Act*.

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13 Regulations

- 13.1 The Council may, by resolution, enact regulations respecting any matter necessary to carry out the intent of this Law.

**THIS BYLAW IS HEREBY** enacted at a duly convened meeting of Council of the Horse Lake First Nation this 13 day of May, 2020. Voting in favour of the bylaw are the following members of Council:

Quorum 3 (three)

  
\_\_\_\_\_  
Chief Ramona Horseman

  
\_\_\_\_\_  
Councillor Dallas Ferguson

  
\_\_\_\_\_  
Councillor Cameron Horseman

\_\_\_\_\_  
Councillor Nathan Horseman

\_\_\_\_\_  
Councillor Mark Petroski

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

