

LAW OF KIASHKE ZAAGING ANISHINAABEK (GULL BAY FIRST NATION)

THE "TRESPASS ACT"

A LAW FOR THE OBSERVANCE OF LAW AND ORDER AND RESPECTING TRESPASS ON RESERVE

WHEREAS the Reserve has been set aside for the use and benefit of the Gull Bay First Nation;

AND WHEREAS the Council of the Gull Bay First Nation has deemed it expedient and necessary for the peace, safety and good governance of its members to provide for the observance of law and order on Reserve and for the removal and punishment of persons trespassing on the Reserve;

AND WHEREAS the Council of the Gull Bay First Nation is empowered to make by-laws pursuant to section 81(1)(c), (p), (p. 1), (q) and (r) of the Indian Act, R.S.C., 1985, c.1-5;

AND WHEREAS pursuant to section 30 of the Indian Act, R.S.C., 1985, c.1-5, anyone who trespasses on the Reserve is guilty of an offence and is liable to a fine or imprisonment, or both;

AND WHEREAS section 81 of the Indian Act, R.S.C., 1985, c.1-5 makes violation of a by-law punishable by a fine or imprisonment, or both;

AND WHEREAS the Gull Bay First Nation wishes to respond to its security and public order concerns using the traditional knowledge of its people;

NOW THEREFORE it is hereby enacted pursuant to section 81(1) of the Indian Act, R.S.C., 1985, c.1-5:

Short Title

This Law may be cited as the "Trespass Act".

Interpretation

1. In this Law:

"Authorized Person" means a person who is (i) not subject to a Trespass Notice and (ii) who is a member of Gull Bay First Nation or a person who has received written authorization from Chief and Council to reside on Reserve and such written authorization has not been revoked.

"Band" means the Gull Bay First Nation, as represented by its duly elected Chief and Council;

"Chief and Council" means the duly elected Chief and Council of Gull Bay First Nation;

"Indian Act" means the Indian Act, R.S.C., 1985, c. 1-5, a statute of the Federal Crown governing registered Indians, Bands, and Reserves;

"Police Officer" means a police officer employed by Gull Bay First Nation Police Services and/or any police services being engaged by the band from time to time or other person identified by Chief and Council from time to time to enforce this Law.

"Reserve" means all those lands defined as a "Reserve" within the meaning of the Indian Act and set apart for the use and benefit of the Gull Bay First Nation;

"Reside" means being resident in a dwelling or a structure capable of being a dwelling, all for the purpose of domestic day to day activities;

"Trespasser" a person that has committed one or more acts listed as Trespass Conduct under sections 6 or 7 herein.

"Trespass Conduct" has the meaning set out in section 6 and 7 herein;

2. In this Law, the following rules shall apply to the interpretation thereof:
 - (a) words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders or no gender;
 - (b) the words "include", "includes" and "including" and other similar words and expressions shall in all cases be deemed to be followed by the words "without limitation".
 - (c) any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided.

Residence on Reserve

3. The Reserve has been set aside for the use and benefit of the Gull Bay First Nation, and is intended for residence by Band members of the Gull Bay First Nation, including any dependent family members, subject to sections 18.1, 20, 24, 28(2), 58(3), and any other applicable provisions, of the Indian Act, and this or any other law of the Gull Bay First Nation.

Rule Against Trespass

4. No person shall enter upon the Reserve without an express or implied invitation from an Authorized Person.
5. No person shall enter upon the Reserve if at that time, the person is the subject of a Trespass Notice issued by Chief and Council.

Trespass Conduct

6. Any of the following conduct by a person who is not an Authorized Person constitutes Trespass Conduct:

- (a) enter on Reserve without an actual or implied invitation from an Authorized Person;
 - (b) illegal activity on Reserve (including, but not limited to, any conduct contrary to the provisions of the *Criminal Code*, R.S.C., 1985, c. C-46, the *Controlled Drugs and Substances Act* S.C. 1996, c. 19, this Law or any other laws of the First Nation;
 - (c) a history of failure to comply with a previous Trespass Notice even if that notice has expired;
 - (d) activity that is contrary to a Trespass Notice issued to the person.
7. Any of the following conduct by any person (including, for greater certainty, a Band member) constitutes Trespass Conduct:
- (a) illegal activity on Reserve (including, but not limited to, any conduct contrary to the provisions of the *Criminal Code*, R.S.C., 1985, c. C-46, the *Controlled Drugs and Substances Act* S.C. 1996, c. 19, this Law or any other laws of the First Nation;
 - (b) a history of failure to comply with a previous Trespass Notice even if that notice has expired;
 - (c) activity that is contrary to a Trespass Notice issued to the person.

Issuance of Trespass Notices

8. Chief and Council may, from time to time, issue Trespass Notices to any person (including, for greater certainty, a Band member) if, in the reasonable opinion of Chief and Council, the persons conduct:
- (a) Trespass Conduct;
 - (b) Threatens the peace and/or safety of the Reserve and/or persons or property situate on Reserve; or
 - (c) In the case of any person that is not a Band member, for any reason deemed expedient or necessary by Chief and Council.
9. The content of the Trespass Notice may include restrictions upon the person's movement or activity on Reserve or constitute a temporary or permanent ban on entry upon the Reserve.
10. For greater certainty, Chief and Council may determine the duration and content of any Trespass Notice for any reason or for no reason.

Consequence of Failure to Comply With a Trespass Notice

11. If a person, when presented with a Trespass Notice and requested orally to comply with the notice, fails to do so, or thereafter re-enters the Reserve while said Trespass Notice is in effect, is guilty of an offence under this by-law and subject to punishment as set out herein.

Enforcement of Trespass Notices

12. A Police Officer shall have the right, on behalf of the Band, to
 - (a) interview persons in order to identify Trespassers;
 - (b) request identification from a person upon reasonable suspicion the person is a Trespasser;
 - (c) orally request that a person comply with a Trespass Notice;
 - (d) require compliance with a Trespass Notice including said enforcement rights as set out in the *Trespass to Property Act*, R.S.O. 1990, c. T.21;
 - (e) require that any person engaging in Trespass Conduct immediately depart from the Reserve; and
 - (f) use reasonable force to defend himself or another person.

Appeal of a Trespass Notice

13. Any person to whom a Trespass Notice is issued may appeal to Chief and Council for reconsideration of a Trespass Notice at any time and upon receipt of such appeal, Chief and Council may:
 - (a) consider the request;
 - (b) cancel or suspend the Trespass Notice;
 - (c) amend or vary the terms of the Trespass Notice; or
 - (d) confirm the Trespass Notice in its entirety.

Offence

14. A person who commits Trespass Conduct or who fails to comply with a Trespass Notice or that fails to leave the Reserve when requested by a Police Officer under section 12 hereof commits an offence.
15. A person who commits an offence under this Law is liable on summary conviction to a fine not exceeding one thousand (\$1,000.00) dollars or to imprisonment for a term not exceeding thirty (30) days, or to both.
16. In addition to any other rights and remedies available to the Band, the Band may also bring an application to any court of competent jurisdiction for an injunction requiring any Trespasser to refrain from entering upon the Reserve and seek any damages or costs resulting from any breach of this Law.

Severability

17. Should a court determine that a provision of this Law is invalid for any reason, the provision shall be severed from the Law and the validity of the rest of the Law shall not be affected. The Band shall replace the severed provision with another provision, if necessary, in order to maintain the intent of this Law.

Application

18. This Law shall be applicable to all Trespass Notices issued by Chief and Council, whether issued prior to or after the coming into force of this Law.

Coming into Force

19. This Law comes into force immediately upon publication on the Gull Bay First Nation's internet site or other valid form of publication pursuant to section 86 of the *Indian Act*.

[signature page follows]

THIS LAW IS HEREBY made at a duly convened meeting of the Band this 16th day of April, 2019.


Chief



Councillor

Councillor

Councillor

Councillor


Councillor


Councillor


Councillor


Councillor

Councillor


Councillor

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

The quorum of the Council is _____ members.

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