



BY-LAW NO. 2017-01-25
OF THE SANDY BAY OJIBWAY FIRST NATION
COMMUNITY SAFETY BY-LAW

WHEREAS the First Nation has recognized that the sale, distribution and use of Controlled Substances has negatively affected residents and families of the Sandy Bay;

AND WHEREAS the First Nation considers it desirable to undertake measures for the protection of the community and to govern residency on the First Nation's Reserve;

AND WHEREAS the First Nation has declared that the Reserve is a Controlled Substance-free zone;

AND WHEREAS the Council is desirous of declaring in effect a By-law to govern the prevention of disorderly conduct, nuisances, governing the observance of law and order and governing the residence of band members and other persons on reserve with respect to any matter arising out of ancillary to the exercise of powers under section 81 of the Indian Act, and for the imposition of a penalty for a violation thereof;

AND WHEREAS Subsections 81(1)(c),(d), (p), and (p.1) of the Indian Act, authorizes the Council to make by-laws in relation to (c) the observance of law and order; (d) the prevention of disorderly conduct and nuisances; (p) the removal and punishment of persons trespassing on the reserve or frequenting the reserve for prohibited purposes; and (p.1) the residence of band members and other persons on the reserve;

AND WHEREAS it is considered to be expedient and necessary for the benefit, comfort and safety of the inhabitants of the First Nation to provide for the observance of law

and order on the reserve, the prevention of disorderly conduct and nuisances and for the residence of band members and other persons on reserve;

AND WHEREAS subsection 81(1)(r) of the Indian Act provides that Council may impose on summary conviction of a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty days, or both, for a violation of a by-law made under this section;

AND WHEREAS a majority of the electors of the Band who attended a special meeting of the First Nation on (date) _____ called by the council of the First Nation on (date) _____ for the purpose of considering the contents of this bylaw, assented to the contents of this bylaw;

AND WHEREAS the Council of the Band did enact By-law Number _____ on the ___ day of _____, 2016.

NOW THEREFORE, it is hereby enacted pursuant to section 85(1)(c)(d)(p)(p.1) and (r) of the Indian Act:

1. Short Title

This by-law may be cited as the Sandy Bay Ojibway First Nation Community Safety By-law.

2. Interpretation

In this by-law,

(a) "Band Member"- means any treaty Indian registered as a member of the First Nation in accordance with the Registrar of Indian status and membership which is prescribed by Treaty and maintained by the Crown as represented by the Government of Canada and/or as may be established and maintained by the First Nation from time to time;

(b) "Band Council Resolution" – means a resolution in writing of a Council, passed by the majority of the Councillors present at a meeting duly convened at which a quorum is present;

(c) "Controlled Substance" means any substance identified in the Controlled Drugs and Substances Act (Canada), the possession of which would be a contravention of that Act.

(d) "Council"- means the Council of the First Nation;

(e) "Disorderly Conduct"- means any act or behaviour including:

(a) Fighting;

(b) Making or causing unreasonable noise;

- (c) Using abusive language;
 - (d) Using offensive or indecent gestures or displays;
 - (e) Being intoxicated on Public Property;
 - (f) Loitering;
 - (g) Panhandling;
 - (h) Exposing, firing or discharging any gun, pistol or other firearm, or using or threatening to use any other article as a weapon on Public Property; or
 - (i) Interfering in any manner with the orderly conduct of commercial, administrative, educational, recreational, health care, religious or ceremonial activities on the First Nation that disrupts public order on the First Nation, scandalises the community, or causes public inconvenience, annoyance or harm.
- (f) "Effective Date" means December 31, 2017; [provides time to advertise, post signage]
- (g) "First Nation"- means the Sandy Bay Ojibway First Nation, a First Nation who is party to Treaty No. 1 and a Band as defined in the Indian Act;
- (h) "Identified Person"- means a person that has been convicted, without receiving a pardon or record suspension, of an Identified Offence and any person designated as a "Identified Person" pursuant to this by-law;
- (i) "Identified Offence"** means any offence under the Criminal Code (Canada) or the Controlled Drugs and Substances Act (Canada) relating to the sale or distribution of a Controlled Substance, or any offence outside of Canada which, if committed in Canada would be an offence under the Criminal Code (Canada) or the Controlled Drugs and Substances Act (Canada) relating to the sale or distribution of a Controlled Substance.
- (j) "Non-Band Member"** – means any person whose name does not appear on the First Nation membership list or is not registered as a member of the First Nation.
- (k) "Peace Officer"**- means any police or Royal Canadian Mounted Police (RCMP) officer, police or RCMP constable or other person charged with the duty to preserve and maintain the public peace, and a by-law officer or any other person appointed by the Council for the purpose of maintaining law and order on the First Nation, including the Dakota Ojibway Police Services.
- (l) "Public Property"**- means and includes any building, bridge, park or facilities and equipment located therein, and any land, body of water, structure, premises or equipment of whatsoever nature belonging to the First Nation or maintained by the Council or any of its staff or committees on behalf of the Band members of the First Nation.

(m) "Reserve" means Sandy Bay First Nation Indian Reserve No. 5, and any land held for the use and benefit of the First Nation pursuant to section 36.1 of the Indian Act, and any future reserve set aside by Her Majesty for the use and benefit of the First Nation; and

(n) "Reserve Resident" means any person that ordinarily resides on the Reserve or has lawful authority to use, possess, or occupy land on the Reserve.

3. Controlled Substance-Free Reserve

(1) Every person on the Reserve shall, if requested by a Peace Officer, declare whether or not he or she has in his or her possession any Controlled Substance, whether on his or her person or in his or her residence or vehicle or luggage, bags packages or other containers in his or her possession.

(2) Following a declaration or a failure to declare under Subsection (1), a Peace Officer who believes, on reasonable grounds, that there is any person possessing a Controlled Substance may:

(a) Detain that person for a period of time sufficient to conduct a search for any Controlled Substance; and

(b) Detain the vehicle, luggage, bags, packages or other containers for a period of time sufficient to execute a duly issued warrant.

(3) If a Controlled Substance is found pursuant to a search conducted under Subsection (2), a Peace Officer may arrest without warrant any person in possession of a Controlled Substance and charge such person in accordance with the applicable laws of Manitoba or Canada.

(4) The name of every person who fails to declare under Subsection (1) or who is found to be in possession of a Controlled Substance and charged under Subsection (3) shall be reported to Council by a Peace Officer.

4. Disorderly Conduct

(1) Everyone who commits an act of Disorderly Conduct is guilty of an offence.

(2) No person shall remove, deface, destroy, damage, mutilate, or in any manner whatsoever vandalize Public Property on the reserve lands of the First Nation or attempt to vandalize such property.

(3) No person shall wilfully interrupt, or disquiet by profane discourse, by rude or indecent behaviour, by the making of noise or noises, or in any manner whatsoever disturb the order solemnity of:

(a) any meeting of Council;

(b) any cultural event;

(c) any assemblage of Band Members met for the consideration and interest of the matters of public interest, or

(d) any assemblage on the First Nation held for any lawful purpose.

(4) Any Peace Officer may order any person who is engaging in any conduct under Subsection (2) and (3) to stop such conduct immediately.

5. Criminal Record Production Order

(1) If Council reasonably believes the presence of a person on the Reserve may pose a threat to the observance of law and order on the Reserve, Council may, by Band Council Resolution, issue to such person a criminal history information order requiring that person to provide to Council, within 30 days of receiving the order:

(a) a written consent authorizing Council to conduct a criminal record check; or

(b) a signed declaration indicating whether the person has been convicted, without receiving a pardon or record suspension, of an Identified Offence since the Effective Date, and where the person has been so convicted, a signed declaration listing which of these offences the person has received a conviction.

(2) If:

(a) Council believes on the basis of a criminal record check conducted pursuant to the authorization provided by subsection 5(1)(a) or a written declaration received pursuant to subsection 5(1)(b) that a person has been convicted of an Identified Offence since the Effective Date; or

(b) A person fails or refuses to comply with a criminal history information order received pursuant to section 5(1) within 30 days of receiving that order;

(c) Council has knowledge of any person being charged with an Identified Offence; then Council may, by Band Council Resolution, designate such a person as an Identified Person.

6. Sanctions on Identified Persons

(1) Council shall convene a special meeting of Council to consider the issuance of an order sanctioning an Identified Person on Reserve.

(2) Subject to the limitations imposed by law and the consideration in subsections (4) and (5), Council may, by Band Council Resolution, issue an order doing any one or more of the following to sanction an Identified Person:

(a) if the Identified Person is an employee of the First Nation, employment may be terminated;

(b) assistance of any kind provided by the First Nation, including social assistance or economic and education support, may be terminated or denied;

(c) prohibit or restrict the Identified Person from attending specified locations or events on the Reserve;

1(d) prohibit the Identified Person from being within a prescribed distance from a particular person or persons;

(e) limit the duration for which the Identified Person may occupy the Reserve on a given visit;

(f) limit the number of times the Identified Person may frequent the Reserve within a specified period of time;

(g) evict the Identified Person from housing on the Reserve; and

(h) banish the Identified Person from using, occupying, or possessing land on the Reserve, either for a specified function or until express permission is granted in the form of a Band Council Resolution, for a period not exceeding one (1) year.

(3) For greater certainty, an order made pursuant to section 6(1) may be renewed by Council on a yearly basis, subject to sections 6(4) and 6(5).

(4) The Council, at least 5 business days prior to the special meeting of Council pursuant to section 5(1), shall provide the Identified Person with written notice of the date, time and location of the hearing, and shall give a reasonable opportunity for and shall consider the views of the Identified Person and Reserve Residents concerning whether the Identified Person represents a threat to the peace and safety of Reserve Residents or to the observance of law and order on the Reserve

(5) Council shall consider the following when determining whether to impose any prohibition or conditions pursuant to an order under section 5(1):

(a) the oral and written submissions made by the Identified Person at the special meeting of Council pursuant to section 5(1);

(b) whether the behavior for which the conviction was received, if repeated, poses any threat to the peace or safety of Reserve Residents or to Council's ability to ensure the observance of law and order on Reserve;

(c) the circumstances and the particulars of the offence or offences for which the Identified Person has been convicted or charged, including:

(i) whether the offence or offences occurred on the Reserve;

(ii) whether the offence or offences involved a Reserve Resident;

- (iii) whether a conviction of the offence has been entered;
 - (iv) the age of the Identified Person when the offence or offences occurred; and
 - (v) any extenuating circumstances; including the length of time that has elapsed between the commission of the offence or offences, including what the Identified Person has done during that period of time; whether the Identified Person has shown any tendencies to repeat the kind of behavior for which he or she received the conviction or convictions;
- (d) whether the Identified Person has shown a firm intention to rehabilitate himself or herself;
- (e) whether the Identified Person has failed to comply with previous orders issued pursuant to section 6(1);
- (f) any other factors that Council reasonably believes is relevant to the determination of whether the residence of the Identified Person on the Reserve represents a threat to the peace and safety of Reserve Residents or to the observance of law and order on the Reserve.

7. Trespassing

(1) A person commits an offence of trespass if the person does any of the following:

- (a) enters the Reserve without lawful justification;
- (b) frequents the Reserve for a prohibited purpose;
- (c) enters premises without the occupier's permission; or
- (d) engages in an activity on or in a premise after the person has had notice from the occupier of the premises that the activity is prohibited.

(2) For greater certainty, section 7(1), does not apply to a person who is a Reserve Resident.

8. Application Appeal Process

(1) In the event that an Identified Person has been issued an order pursuant to section 6(1) and the Identified Person disagrees with the decision of Council or desires an existing order to be amended or terminated, the Identified Person may apply to the By-Law Application Appeals Tribunal (the "Tribunal") to hold a hearing.

(2) The Tribunal shall hold hearings to assess submitted applications as soon as reasonably practicable.

(3) At least 14 business days prior to a hearing for an application, the Tribunal shall:

(a) provide the applicant with written notice of the date, time and location of the hearing, and inform the applicant of their right to make oral and written submissions; and

(b) post notice at the First Nation Band Office of the date, time and location of the hearing, and informing Band Members of their right to make oral submissions at the hearing.

(4) The Tribunal, within 14 business days of a hearing, shall provide a written decision either:

(a) amending the order under section 6(1) at the discretion of the Tribunal;

(b) granting a termination of the order issued under section 6(1); or

(c) denying an application.

(5) An applicant under section 8 shall not reapply for one year from the date of a denied application, unless:

(a) the Tribunal grants special permission due to a material change in the applicants circumstances; or

(b) Council offers the applicant a new hearing.

(6) In addition to the applicant's application material, the Tribunal may assess criteria including:

(a) the applicant's compatibility with the First Nation culture and community;

(b) the applicant's moral character, considering such factors as a prior conviction for an offence or criminal act under the Criminal Code of Canada (Canada) or the Controlled Drugs and Substances Act (Canada), or an offence outside of Canada which, if committed in Canada would be an offence under the Criminal Code (Canada) or the Controlled Drugs and Substances Act (Canada);

(c) the applicant's engagement in and completion of rehabilitative programming, such as counselling or addictions programs;

(d) the applicant's employment status, including whether the applicant is or will be employed on the Reserve; and

(e) whether the applicant may present a danger to the health or safety of the First Nation and its Reserve Residents.

9. By-Law Application Appeals Tribunal

(1) The Tribunal shall consist of:

(a) One (1) Band Member who has attained the age of 18 years, is not related to the applicant and is a Reserve Resident;

(b) One (1) non-Band Member who is familiar with the First Nation and has knowledge or experience in community development or justice; and

(c) One (1) Band Member who is considered an Elder for the First Nation not related to the applicant.

10. Enforcement

(1) Where a person who has been ordered to stop engaging in Disorderly Conduct, fails or refuses to comply with an order, a Peace Officer may take such reasonable measures as are necessary to stop the Disorderly Conduct.

(2) Where a person who has received an order pursuant to section 6(1) fails or refuses to comply with such an order, a Peace Officer may take such reasonable measures as are necessary to enforce that order.

(3) A person who fails or refuses to comply with an order made under section 6(1), or who resists or interferes with a Peace Officer acting under section 10(2), commits an offence.

(4) Where under section 81(1)(r) of the Indian Act this bylaw is contravened and a conviction entered, a court of competent jurisdiction may make an order prohibiting the continuation or repetition of the offence by the person convicted.

(5) Where under section 81(3) of the Indian Act this bylaw is contravened, such contravention may be restrained by court action to prevent the continuation of disorderly conduct or restriction or prohibition of the Identified Person with the First Nation.

(6) Where an Identified Person who has been ordered to leave the Reserve in accordance with section 6 and fails or refuses to comply with such an order, a Peace Officer may take such reasonable measures as are necessary remove that person from the Reserve.

11. Penalty

(1) A person who commits an offence under this by-law is liable on summary conviction to a fine not exceeding \$1,000.00 or to imprisonment for a term not exceeding thirty days, or to both.

(2) The Council reserve the right to revisit this issue and amend the bylaw at a regularly convened Council meeting of the First Nation.

(3) A person who fails or refuses to comply with an order made under section 5, or who resists or interferes with an officer acting under section 14, is guilty of an offence and liable on summary conviction to a fine not exceeding one (1) thousand dollars or to imprisonment for a term not exceeding thirty (30) days or to both.

12. By-Law Enforcement Officer

Council may, by Band Council Resolution, provide for the appointment and the reasonable remuneration of a by-law enforcement officer.

13. Effective Date

This bylaw comes into force on the Effective Date.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the Band this ___ day of _____, 20 _____.

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

Chief Lance Roulette

Councillor Jason dumas

Councillor Michael Dumas

Councillor Brian Spence

Councillor Hank Richard

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: _____.