

DRAFT
Alexander First Nation Trespass Law

LAW NO. [X]
OF THE ALEXANDER FIRST NATION
BEING A LAW FOR THE REMOVAL AND PUNISHMENT OF PERSONS
TRESPASSING OR FREQUENTING THE NATION FOR PROHIBITED PURPOSES

WHEREAS: the Alexander First Nation has and continues to exercise an inherent Aboriginal and Treaty right to self-government that is recognized and affirmed by nehiyo law, the Canadian common law, reference to *Constitution Act, 1867*, 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;

WHEREAS: Chief and Council of the Alexander First Nation desires to establish a Law to provide for the removal and punishment of persons trespassing on the Alexander First Nation or frequenting the Nation for prohibited purposes;

WHEREAS: Chief and Council deems it to be expedient and in the best interests of the Alexander First Nation, and necessary for the benefit, comfort and safety of the members of the Alexander First Nation, and for the protection of the Nation to make a Law for the purpose of removal and punishment of persons trespassing on the Nation or frequenting the Nation for prohibited purposes;

WHEREAS the Alexander First Nation from time immemorial undertook the issue of prohibiting trespassing to maintain traditional practices and standards with enforcement by the Alexander First Nation;

WHEREAS the Alexander First Nation strives to ensure that matters related to trespass are carried out in a conscientious, respectful and prompt manner, that is consistent with the standards and traditional practices;

WHEREAS pursuant to Section 81 of the *Indian Act*, R.S.C.1985, c.I-5 (the "**Indian Act**"), a Council may make bylaws not inconsistent with the *Indian Act* and regulations made thereunder for any or all of the purposes set out in paragraph 81(1)(p),(q) or (r) thereof;

WHEREAS nothing in this Law shall be deemed to alter, diminish, derogate or abrogate the Treaty Number Six, including the spirit and intent of our Treaty Rights and the inherent rights as understood by the Elders of Treaty Number Six, including under nehiyo law.

IT IS THEREFORE RESOLVED that Chief and Council of the Alexander First Nation hereby enacts the following Law:

SHORT TITLE:

1. This Law may be cited as the “*Alexander First Nation Trespass Law*”

INTERPRETATION:

2. In this law, the following terms shall be defined as:
 - a) “Council” means the Chief and Council of the Alexander First Nation duly elected through the Nation’s traditions and customs, and as defined in the *Indian Act*, RSC 1985 c.I-5.
 - b) “Nation” means the Alexander First Nation’s reserve lands 134, 134(a) and 134(b), Treaty Land Entitlement Lands and any land acquired after this Law comes into force.
 - c) “Officer” means any member of the Royal Canadian Mounted Police, special police constable, or other person charged with the duty to preserve and maintain the public peace on the Alexander First Nation.
 - d) “Premises” means a building, structure, or any lands used in conjunction with a building for the purposes of:
 - i. Providing parking for vehicles;
 - ii. Displaying or storing vehicles, equipment or other chattels;
 - iii. Enhancing the appearance or use of a building or structure; or
 - iv. Carrying out activities which are ancillary to the activities carried out in or on that building or structure.
 - e) “Trespass” means the entry onto, or the presence on the Alexander First Nation, by any person without lawful entry in accordance with applicable Alexander Laws in force at the time this Law comes into force.
3. This Law shall supersede any other trespass bylaw passed by the Alexander First Nation, and shall not be inconsistent with nehiyo law, and any laws passed by the Alexander First Nation, and any inconsistency will be deemed severable pursuant to clause 8 of this Law.

TRESPASS:

4. A person other than a person referred to in section 4, who conducts on the reserve any of the following activities without the prior written authorization of Council or Tribal Administrator, namely:
 - a) Hunting, fishing or trapping;
 - b) Hawking or peddling of wares and merchandise;

- c) Loitering;
- d) Panhandling;
- e) Trafficking, including but not limited to, illegal and/or narcotic substances; or
- f) Squatting,

shall be deemed to be frequenting the Nation for a prohibited purpose.

5. This Law shall not apply to:

- a) A person who, under an enacted law, or duly executed contract is permitted to conduct business or business-related activities on the Nation;
- b) A person attending the Nation for ceremonial events, including but not limited to powwow, lodges of any type, feasts, round dances or any other Nation authorized activities;
- c) A person who has been invited or granted access to the Nation by Chief and Council or Tribal Administrator, including under an issued permit or by written authority; or
- d) Accessing Nation lands designated for business purposes.

6. No person may trespass on the Nation or premises when that person has notice not to trespass.

7. Notice not to trespass shall be given:

- a) Orally by an Officer;
- b) In writing by an Officer; or
- c) By signs visibly displayed:
 - i. At primary entrances providing access to the Nation; and
 - ii. At other prominent locations on the Nation.

8. Anyone who commits a trespass on the Nation shall be considered to have had notice not to trespass:

- a) When signs are displayed in accordance with Section 7(c); or
 - b) Upon refusal of an order from an Officer under section 9 to leave the Nation.
9. When a trespass is committed using a motor vehicle, the driver of the motor vehicle is guilty of an offence under this law and is liable to a penalty under section 17, 18, 19 20 or 21.
10. Any officer may order any person who trespasses on the Nation or who frequents the Nation for a prohibited purpose to leave the Nation immediately.
11. Where a person who has been ordered by an officer to leave the Nation fails to, or refuses to do so, an officer may take such reasonable measures as may be necessary to remove the person from the Nation, including but not limited to:
- a) Apprehend the person without warrant;
 - b) Issue a notice of appearance requiring the person to appear before a court; or
 - c) Use all reasonable measures, including restraint, physical force or powers of arrest to remove the trespasser from the Nation.
12. No person shall fail or refuse to comply with an order made under section 5 to leave the Nation or shall resist or interfere with an officer acting under section 6.
13. No proceedings under this law may begin more than six (6) months after the time of the offence.
14. In the case of trespass of a continuing nature, no proceedings may begin more than six (6) months after the last occurrence of the offence.

SEVERABILITY

15. In the event that a court of competent jurisdiction determines a provision of this Law to be invalid for any reason, the provision shall be severed from this Law and the validity of the rest of the Law shall not be affected.

REPEAL AND AMENDMENTS

16. This law shall be reviewed, and if required, amended by Chief and Council every two (2) years, from the coming into force, unless the need arises for an amendment, which shall be approved at a community meeting.

PENALTY

- 17. Council shall set regulation for the purposes of penalties, including but not limited to the issuance of violation tickets.
- 18. A person who violates any provision of this law commits an offence with notice not to trespass is liable on summary conviction to a fine not exceeding one thousand dollars (\$1,000.00) or to imprisonment for a term not exceeding thirty (30) days or both.
- 19. Where an Officer believes that a person has contravened any provision of this law, the Officer may issue a violation ticket.
- 20. The minimum penalty which may be imposed for:
 - a) A first offence, in respect of a violation for any provision of this law shall be a fine of one hundred and fifty dollars (\$150);
 - b) A second offence in respect of a violation of any provision of this law shall be a fine of three hundred dollars (\$300); and
 - c) A third offence in respect of a violation of any provision of this law shall be a fine of five hundred dollars (\$500).
- 21. This section shall not prevent any officer from issuing a violation ticket requiring a court appearance against the defendant, or from laying an information in lieu of a violation ticket.
- 22. Nothing in this law shall limit the authority of an Officer to take steps to ensure compliance of this law.

COMING INTO FORCE

- 23. This Law shall come into force on the date upon which Council approves this Law at a duly convened meeting.

This Law is hereby approved at a duly convened meeting of the Chief and Council of the Alexander First Nation on this ___day of _____, 2020.

Quorum 4

(Chief) Kurt Burnstick

(Councillor) Anita Arcand

(Councillor) Sheldon Arcand

(Councillor) Christopher Arcand

(Councillor) Cheryl Savoie

(Councillor) Marcel Paul

(Councillor) Joseph Kootenay

- Being the majority of those members of the Council of the Alexander First Nation present at an aforementioned meeting of the Council;
- The quorum of the Council is 4 members;
- Number of members of the Council present at the meeting was []

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