

# DRAFT

**BY-LAW NO. \_.\_**  
**of the Chippewas of Nawash Unceded First Nation**

**A BY-LAW GOVERNING THE RESIDENCE  
AND TRESPASS ON THE NEYAASHIINIGMIING INDIAN RESERVE NO.27  
OF AND BY PERSONS CONVICTED OF DRUG TRAFFICKING**

**ENACTED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020**

**WHEREAS** the Council of the Chippewas of Nawash Unceded First Nation desires to make a by-law governing the residence and trespass on the Reserve of persons convicted of Drug Trafficking;

**AND WHEREAS** First Nation is empowered by its inherent right to govern, including jurisdiction over its reserve lands and membership as recognized and affirmed by s. 91(24) of the *Constitution Act, 1867* and s. 35(1) of the *Constitution Act, 1982*, to enact the present by-law;

**AND WHEREAS** the Council of the Chippewas of Nawash Unceded First Nation is empowered to make such by-law pursuant to paragraphs 81(1) (a), (c), (d), (n), (p), (p.1), (p.2), (q) and (r) of the *Indian Act*;

**AND WHEREAS** the Chief and Council are deeply concerned by incidents of violence, loss of life, injury and harm in the community from the presence of illegal drug activity, and the dangers that such circumstances present to the peace, life and safety of all persons on the reserve;

**AND WHEREAS** the Chief and Council affirm the right and entitlement of members to live on the reserve and to participate in the rights, entitlements, traditions and culture of the First Nation and that these rights and entitlements are to be respected for so long as a member pursues them in a safe, healthy and peacefully way, subject at all times to the inherent right of the First Nation to protect those same rights for all other members.

**AND WHEREAS** it is considered necessary for the peace, life, safety, health and welfare of the citizens of our First Nation that those persons trafficking in illegal drugs be excluded from the Reserve;

**NOW THEREFORE** the Council of the Chippewas of Nawash Unceded First Nation hereby makes the following by-law:

**NOT IN FORCE**

# DRAFT

## Short Title

1. This by-law may be cited as the "Protection from Drug Traffickers By-Law".

## Interpretation

2. In this by-law

"*Council*" means the council of the band, as defined in the *Indian Act*, of the Chippewas of Nawash Unceded First Nation;

"*drug trafficking*" means contravening section 5 of the *Controlled Drugs and Substances Act*, S.C.1996, C.19, as may be amended from time to time, and includes,

- a) any subsequent legislation that replaces this law or this section of this law;
- b) conspiracy to commit drug trafficking; and,
- c) a conviction in a foreign country for an act that would be the crime of drug trafficking had it occurred in Canada.

"*First Nation*" means the Chippewas of Nawash Unceded First Nation;

"*member of the First Nation*" means a person whose name appears on the Chippewas of Nawash Unceded First Nation membership list or who is entitled to have his name appear on the Chippewas of Nawash Unceded First Nation membership list pursuant to the *Indian Act* or the membership rules of the Chippewas of Nawash Unceded First Nation;

"*public lands on the reserve*" means all land on the reserve not subject to a private exclusive right of use and occupancy, and without limiting the forgoing, this includes, but is not limited to, all roads, sidewalks, Band Administration buildings, school buildings, shorelines, parking lots, trails, parks, and paths.

"*reserve*" means the Neyaashiinigmiing Reserve No.27;

"*reside*" means to live in a dwelling, other than as a visitor to that dwelling. For the purposes of this law and subject to proof to the contrary, a person who occupies a dwelling for a period exceeding 60 days on lands reserved for the Chippewas of Nawash Unceded First Nation shall be deemed to reside thereon;

## Ban on Residency for Drug Traffickers

3. No person who has been convicted of drug trafficking may reside on the reserve for the following period of time,
  - a. upon conviction by indictment,
    - i. for 10 years after the date of a first conviction; or,
    - ii. for 25 years after the date of any subsequent conviction,
  - b. upon summary conviction,

**NOT IN FORCE**

# DRAFT

- i. for 5 years after the date of a first conviction; or,
- ii. for 10 years after the date of any subsequent convictions.

## *Transition*

4. Anyone who has been convicted of a drug trafficking offence within the 5 years of the effective date of this By-law loses the right to reside on the reserve for the period set out in s.3, but is allow the following period of time to leave,
  - a. four months after the effective date of this by-law; or,
  - b. if a request made to Council under this by-law for an exemption is not determined by Council within 4 months of the effective date of this bylaw, then until the request is determined.

## **Revocation of Invitation of Drug Traffickers to be on the Reserve**

5. The general invitation and permission of all persons convicted of a drug trafficking to attend on public lands in the reserve is revoked for the following period of time,
  - a. upon conviction by indictment,
    - i. for 10 years after the date of a first conviction;
    - ii. for 25 years after the date of any subsequent conviction.
  - b. Upon summary conviction,
    - i. for 5 years after the date of a first conviction;
    - ii. for 10 years after the date any subsequent convictions.
6. Anyone who attends on the public lands in the reserve after their invitation and permission has been revoked under s.5 shall be considered to be a trespasser.

## *Transition*

7. Anyone who has been convicted of a drug trafficking offence within the 5 years of the effective date of this By-law has their right to attend on reserve land revoked for the period set out in s.5, but that revocation is suspended until,
  - a. four months after the effective date of this by-law; or,
  - b. if a request made to Council for an exemption is not determined by Council within 4 months of the effective date of this bylaw, then until the request is determined.

## **Exemptions**

8. A person who is authorized to reside on the reserve pursuant to any of sections 18.1, 20, 24, subsections 28(2) or 58(3) of the *Indian Act*; or who has an existing right to occupy the matrimonial home pursuant to the *Family Homes on Reserves and Matrimonial Interests or Rights Act*, S.C. 2013, c.20, and whose right to reside or be on the public lands in the Reserve rescinded by this by-law, the following applies during the period of time when their right reside or be on the reserve would have been suspended under this law,

**NOT IN FORCE**

# DRAFT

- a. they may continue to reside in their home on the reserve; and,
- b. they may be on the reserve road or roads that lead directly, and by the shortest route possible, from off the reserve to their home, and only for the purpose of going home or leaving the reserve.

## **Exemptions**

9. A person whose right reside or attend on the reserve has been suspended by this By-law may apply to Council for an exemption. The application for an exemption must be filed in the form as set by Council, from time to time, by Band Council resolution.
10. Within ninety (90) days after the filing of a properly completed application, the Council shall hold a hearing with respect to the application. The Applicant shall be granted the right to attend on the reserve for the hearing, but only at the location of the hearing, for the period starting 30 minutes before the hearing and ending 30 minutes after the hearing, and only on the roads leading directly to and from the location of the hearing.
11. At least fourteen (14) days prior to the hearing, the Council shall
  - a. give written notice to the applicant of the date, time and place of the hearing and inform the applicant that they have a right to appear at the hearing and be heard in support of the application; and
  - b. post in the Band office a copy of the notice.
12. At the hearing, the Council shall
  - a. provide the applicant with an opportunity to present evidence and to make oral and written submissions, or both, in support of their application;
  - b. provide any member of the First Nation present at the hearing with an opportunity to be heard on the application;
  - c. provide the Band Administration an opportunity to make a presentation on the application; and,
  - d. provide the police and/or the Crown attorney's office, or a representative on behalf of the police or the Crown attorney, an opportunity to present evidence and make an oral and/or written submission on the application.
13. The Council may make rules of procedure governing the hearing of applications and shall keep records of its proceedings.

## **Decision**

14. After Council has heard all of the evidence and submissions, the Council shall meet in private to consider the application.
15. In determining whether an application for an exemption to allow the applicant to be a resident of the reserve or attend on the reserve should be granted, the Council shall

**NOT IN FORCE**

# DRAFT

take into consideration each of the following:

- a. the best interests of the First Nation, its citizens, residents and invitees;
- b. the likelihood that the applicant may engage in drug trafficking again;
- c. whether the applicant residing on or being on the reserve would be compatible with the culture, society and community of the Band and welfare of the members of the First Nation residing on the reserve;
- d. the availability on the reserve of adequate housing, land and services; and
- e. whether the applicant is or will be employed on the reserve.

16. Within ten (10) days after the hearing, the Council shall dispose of the application by
  - a. granting the applicant permission to be a resident of the reserve;
  - b. granting the applicant permission to be on the public lands in the reserve;
  - c. setting any terms and conditions the applicant must meet in order to maintain any exemption(s) made under this section; or,
  - d. refusing the application,

and shall give written notice of its decision to the applicant including the reasons for its decision.

17. Within five (5) days after disposing of the application, the Council shall post a notice of its decision in the Band office.
18. A decision made by the Band Council under s.16 is final and binding on the parties in respect of whom the decision is made and except on a question of jurisdiction only, shall not be questioned, reviewed or restrained by any proceeding in the nature of an application for judicial review or otherwise in any court.

## **Reapplication**

19. Where an application made under section 8 is refused pursuant to the provisions of section 16, the Council is not required to consider any further application by that person for a period of one (1) year from the date of the refusal, unless the applicant can show that there has been a material change of circumstances.

## **Harbouring and Aiding**

20. It is an offence to harbour, knowingly or with willful blindness, a person who is not entitled to reside on the reserve, or be on the public lands on the reserve, pursuant to this by-law.
21. Everyone who assists a person who has been ordered to cease to reside on the reserve, to continue to reside on the reserve commits an offence.

## **Procedure and Penalties**

**NOT IN FORCE**

# DRAFT

22. The summary conviction procedures of Part XXVII of the *Criminal Code*, R.S.C., 1985, c. C-46, as amended from time to time, apply to all offences under this law
23. Any person who contravenes any of the provisions of this by-law commits an offence and 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.

**THIS BY-LAW IS HEREBY** enacted at a duly convened meeting of the Council of the Chippewas of Nawash Unceded First Nation this \_\_\_ day of \_\_\_\_\_, 2020, which is the Effective Date of this By-law.

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)

**NOT IN FORCE**