



MISSISSAUGA FIRST NATION
SAFE SEPARATION LAW

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PREAMBLE

Whereas the Mississauga First Nation have the Inherent Right given by the Creator to enact any law necessary in order to protect and preserve our Anishinaabe culture, to protect our lands, our language, customs, traditions and practices;

Whereas Mississauga First Nation deems it advisable and in the best interests of Mississauga First Nation to enact a Law to provide for the protection of the community, children and the vulnerable on Mississauga Lands from violent crime, exposure to illegal drugs and sexual exploitation and abuse;

Whereas Mississauga First Nation has researched and consulted with Elders on traditional methods of peacekeeping when an individual poses a threat to the community or specific community members includes a period of separation along with restorative justice measures;

Whereas we the citizens of Mississauga First Nation exercise our Inherent Indigenous and Treaty Rights to govern ourselves through enacting our own laws through our own Misswezahging Constitution, duly ratified March 15, 2015;

Whereas the Mississauga First Nation has entered into the Framework Agreement on First Nation Land Management with Canada (February 12, 1996, as amended: the "Framework Agreement"), which was ratified on behalf of the Government of Canada by the First Nations Land Management Act (1999);

Whereas the Mississauga First Nation ratified the Framework Agreement and brought its Land Code into effect on August 1, 2009; and,

Whereas, pursuant to the Mississauga Land Code, laws may be enacted to protect Mississauga Land, the use and benefit of Mississauga Land, the occupation of Mississauga Land, residence on Mississauga Land, and the creation of offences, penalties and remedies for violations of Mississauga laws;

**NOW THEREFORE, THIS SAFE SEPARATION LAW IS HEREBY
ENACTED AS LAW OF THE MISSISSAUGA FIRST NATION.**

1. APPLICATION OF THIS LAW

- 1.1. This law applies to all MFN Land, including community land, and all references hereinafter to land refer to the same.
- 1.2. This law applies to all individuals both Mississauga First Nation members and not who reside on MFN Land.

2. RESIDENCY AND ACCESS RIGHTS

- 2.1. For the purposes of this law Residency and Access Rights on MFN Land are defined in Section 37 of the Mississauga First Nation Land Code, 2009.

3. COUNCIL AUTHORITY

- 3.1. Council may, by resolution, provide that a person who breaches any rule or regulation promulgated under this law, or the terms of any permit authorized under this Section, or who is charged with a violation of this law, has their right to enter, attend on, or remaining on any or all MFN Land for such period of time as set out in the resolution.
- 3.2. Council may, by resolution, set out rules and regulations for the use of any community land, including arenas, community halls, recreational facilities, pools, baseball and soccer fields, schools, health clinics and similar uses and purposes.
- 3.3. Council may, by resolution, prohibit entry or activity on community land, provided that notice is given that the entry to the land is prohibited or that one or more activities are prohibited on the land.
- 3.4. Council may, by resolution, regulate the hours or seasons in which community land may be used for specific purposes, impose limits on the activities that can be engaged in and may impose a requirement for a permit to engage in such activities or purposes.
- 3.5. Council may set out in a penalty schedule by resolution such alternative measures in order to restore the harmony and compliance in the community.
- 3.6. Council may recommend and direct by resolution, prior to charges being laid, that a person that allegedly committed any offence against this law may participate in specific alternative measures rather than be charged in order to restore the harmony and compliance in the community.

4. SAFE SEPARATION ORDER

- 4.1. Council may issue a Safe Separation Order to revoke a person's right to be on any or all Community land, if, in the opinion of Council, it is in the best interests of the Mississauga First Nation, its land, assets, any member and invitees, and,
 - 4.1.1. the personal property or personal safety of persons entitled to use or occupy MFN Land, or the personal property or personal safety of any invitees or guests on the MFN Land; or,
 - 4.1.2. they pose a danger to MFN Land, assets or property.
- 4.2. Council shall make every attempt to resolve the problem through the following escalating measures before issuing a Safe Separation Order in an effort to promote the compliance and harmony of the community:
 - 4.2.1. **Issue a Compliance Request:** Members will be given notice of what violations to community safety occurred and what they can do to remedy the situation.
 - 4.2.2. **Offer Remedial Plan:** Members who violate community safety will be offered classes, group sessions, or programming to productively remedy behavioral issues.
 - 4.2.3. **Debaakinagewin Circle Attendance:** Members who continue to violate community safety and wish to restore relationships with the community may participate in a designated circle process.
 - 4.2.4. **Publishing of Names:** In a last attempt to preserve community unity, members who continue to violate community safety, their names and a description of the violations of community safety will be published in the newsletter and website.
- 4.3. If all preventative measures fail, then Council shall,
 - 4.3.1. give the individual at least 60 days' notice of their consideration of the matter, unless there is evidence of a need for urgency;
 - 4.3.2. provide the person with a summary of the reasons for the proposed action;

- 4.3.3. allow the individual to hear the case made against them, and a reasonable opportunity to make submissions against that case; and,
 - 4.3.4. make their decision as soon as practicable, and where a person's right to attend on Mississauga Land are revoked, shall include written reasons for that decision.
- 4.4. The reasons for revocation of an individual's right shall be brought before Council in writing and supported by evidence from but not limited to members of the community, Police and any other agency that can provide reasons for the revocation of a person's right.
- 4.5. The person or persons shall be notified in writing of Safe Separation Order.
- 4.6. Safe Separation Orders can be a maximum of 12 months from the date of issue. At that time Council must reevaluate following Section 3.3 above and then reissue the order if it deems appropriate.
- 4.7. Council may, by subsequent resolution, amend any Safe Separation Order. A Safe Separation Order,
 - 4.7.1. may be for all, or any portion of the MFN Land; and,
 - 4.7.2. may be issued permanently, or for a specified period of time in the Council order.
- 4.8. Council shall make best efforts to effect personal service of resolutions made pursuant to this section, unless service can only be affected by other forms of notice. If personal service is not possible, Council shall make best efforts to inform the individual of the notice. Council shall also arrange for all such resolutions to be posted on MFN Land as it sees fit and shall inform law enforcement agencies of such resolutions in a timely manner.
- 4.9. For the purposes of an offense under Section. 3-9 above, willful or intentional avoidance of services of a notice under this part will not be a defense.
- 4.10. An individual who is the subject of a resolution under this law may appeal to Council for it to be altered or rescinded. Council will prescribe a form for such an appeal to be commenced and may deal with that appeal on the basis of the representations submitted in writing or direct a personal attendance to give the appellant an opportunity to present his or her case.
- 4.11. Council's decision in the matter of any appeal is final and not subject to review.

5. SAFE SEPARATION ORDER NON-COMPLIANCE

- 5.1. Every person who is not acting under a right or authority conferred by the Misswezahging Constitution, the Mississauga Land Code, a Mississauga First Nation law, a resolution of Council, or other effective lawful right, and who,
 - 5.1.1. enters anywhere on MFN Land when a Safe Separation Order has been issued under this Law is committing an offence.
- 5.2. Except as varied by this law, common law defenses to trespass are preserved.
- 5.3. Where the land is community land, the Mississauga First Nation is the occupier and the rights and powers of the occupier are exercised by Chief and Council or by any person designated by Chief and Council to exercise some or all of its rights or powers under this law.

6. OFFENCE

- 6.1. Any offence under this law may, upon summary conviction, be liable to a fine of not more than \$5,000.00, 6 months in jail, or both.

7. PARTIES TO ORDER NON-COMPLIANCE

- 7.1. A person other than an individual who commits trespass under this law is also guilty of an offence under Section 6 if that person is shown to be complicit in the commission of the offence by:
 - 7.1.1. purporting to give permission for entry to the premises where that person is not, or was not at the relevant time, an occupier or otherwise authorized to give such permission under this law;
 - 7.1.2. being the employer of the individual who committed acts of trespass, directed or counseled him or her to do so as part of their employment;
 - 7.1.3. being the principal of the individual who committed acts of trespass, directed or counseled him or her to do so as an agent;
 - 7.1.4. being a person in authority over an individual, counsels or directs that Individual to commit and act of trespass; or

- 7.1.5. knowing that the conduct would be a trespass, assists an individual by providing him or her with the means, tools or equipment to commit the trespass.
- 7.2. A person may be a party to the offence of trespass whether or not the acts subsequent to entry exceeded the scope of such counseling, authorization, direction or assistance and whether or not any other individual was convicted under this law in respect of the same trespass.
- 7.3. Any person commits the offence of obstruction of an Enforcement Officer who, obstructs an Enforcement Officer by providing false information or any other means.
- 7.4. Any person who commits the offence of obstructing an Enforcement Officer and upon conviction is liable to a fine of not more than \$5,000.00 or imprisonment of not more than 6 months or both.
- 7.5. Any person who commits the offence of obstruction of an Enforcement Officer, or who aids and/or abets a person or persons who commits a trespass is subject to a charge and penalties as if they committed the trespass.
- 7.6. Any person who commits the offence of aiding or abetting a person or persons and upon conviction is liable to a fine of not more than \$5,000.00 or imprisonment of not more than 6 months or both.

8. ARREST WITHOUT WARRANT

- 8.1. In this section, "Peace Officer" means a Peace Officer described in the Criminal Code (Canada) and includes an officer appointed by the Council to enforce the laws of the Mississauga First Nation.
- 8.2. A Peace Officer may arrest without warrant any person found on or in premises if the peace officer believes on reasonable and probable. In addition to the above penalties, every person who commits an offence under the By-Law may also be subject to the following sanctions:
- 8.3. grounds that the person is committing an offence under Sections 4 or Sections 5.
- 8.4. If a Peace Officer believes on reasonable and probable grounds that a person has committed an offence under Section 4 or Section 5 and has recently departed from the premises, the Peace Officer may arrest the person without warrant if,
 - 8.4.1. the person refuses to give his or her name and address to the Peace Officer on demand, or

8.4.2. the Peace Officer believes, on reasonable and probable grounds, that the name or address given by the person to the Peace Officer is false.

9. ENTRY ONTO A PREMISES AND ARREST WITHOUT WARRANT

- 9.1. An Enforcement officer may enter any premises at any time to administer and enforce the provisions of this Safe Separation Law.
- 9.2. It is the duty of every one who executes a process or warrant to have it with him or her, where it is feasible to do so, and to produce it when requested to do so.
- 9.3. The administration of court orders and eviction orders shall be carried out during by day as defined by the Criminal Code unless otherwise directed by an order of the court. Service of documents may be served at any reasonable time.
- 9.4. A Police Officer may arrest without warrant any person found on or in premises if the Peace Officer believes on reasonable and probable grounds that the person is committing an offence under Sections 5 or Sections 5.
- 9.5. Any person that does not leave the premises immediately after he or she is directed to do so by the occupier of the premises or a person authorized by the occupier, may be arrested by a Police Officer to facilitate the removal of the person refusing to leave a premise. The person shall be released as soon as practicable after the arrest.
- 9.6. If a Peace Officer believes on reasonable and probable grounds that a person has committed an offence under Section 4 or Section 5 and has recently departed from the premises, the Peace Officer may arrest the person without warrant if,
 - 9.6.1. the person refuses to give his or her name and address to the Peace Officer on demand, or
 - 9.6.2. the Peace Officer believes, on reasonable and probable grounds, that the name or address given by the person to the Peace Officer is false.
 - 9.6.3. Any person that does not leave the premises immediately after he or she is directed to do so by the occupier of the premises or a person authorized by the occupier, may be arrested by an Enforcement Officer to facilitate the removal of the person refusing to leave a premise. The person shall be released as soon as practicable after the arrest.

10. RELEASE AFTER ARREST BY OFFICER

- 10.1. Where a Police Officer arrests a person for a possible breach of this law, the Police Officer shall, as soon as is practicable, release the person from custody after serving him or her with a summons or offence notice, unless the Officer has reasonable and probable grounds to believe that, it is necessary in the public interest for the person to be detained, having regard to all the circumstances apparent to the Officer including the need to establish the identity of the person, secure or preserve evidence of or relating to the offence, or prevent the continuation or repetition of the offence or the commission of another offence.

11. USE OF FORCE

- 11.1. Every Police Officer is, if he or she acts on reasonable and probable grounds, justified in using as much force as is necessary to do what the Officer is required or authorized by law to do.
- 11.2. It is the duty of everyone who arrests a person, whether with or without warrant, to give notice to that person, where it is feasible to do so, of the reason for the arrest.
- 11.3. Where a person is wrongfully arrested, whether with or without a warrant, no action for damages shall be brought,
 - 11.3.1. against the Police Officer making the arrest if he or she believed in good faith and on reasonable and probable grounds that the person arrested was the person named in the warrant or was subject to arrest without warrant under the authority of this Law;
 - 11.3.2. against any person called upon to assist the Police Officer if such person believed that the Police Officer had the right to effect the arrest; or
 - 11.3.3. against any person required to detain the prisoner in custody if such person believed the arrest was lawfully made.

12. DAMAGES AND COSTS AWARDS

- 12.1. Where a person is convicted of an offence under Section 3-9, and a person has suffered damage caused by the person convicted during the commission of the offence, the court shall, on the request of the prosecutor and with the consent of the person who suffered the damage, determine the damages and shall make a judgment for

damages against the person convicted in favor of the person who suffered the damage.

- 12.2. Where a prosecution under Section 3-9 is conducted by a private prosecutor, and the defendant is convicted, unless the court is of the opinion that the prosecution was not necessary for the protection of the occupier or the occupier's interests, the court shall determine the actual costs reasonably incurred in conducting the prosecution and shall order those costs to be paid by the defendant to the prosecutor.
- 12.3. A judgment for damages under Subsection 18.1, or an award of costs under Subsection 18.2, shall be in addition to any fine that is imposed under this law.

13. CIVIL ACTION

- 13.1. A judgment for damages under Subsection 18.1 extinguishes the right of the person in whose favor the judgment is made to bring a civil action for damages against the person convicted arising out of the same facts.
- 13.2. The failure to request or refusal to grant a judgment for damages under Subsection 18.1 does not affect a right to bring a civil action for damages arising out of the same facts.

14. SEVERABILITY

- 14.1. Should any section of this Mississauga First Nation Law be declared by a Court of competent jurisdiction to be *ultra vires* or illegal for any reason, the remaining parts shall nevertheless remain valid and binding, and shall be read as if the offending section or part has been struck out.