



MISSISSAUGA FIRST NATION
COMMUNITY PROTECTION LAW

Enacted ---
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PREAMBLE

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 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 we the citizens of Mississauga First Nation exercise our inherent aboriginal 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 TRESSPASS LAW IS HEREBY ENACTED AS LAW OF THE MISSISSAUGA FIRST NATION.

1. Interpretation

Definitions

1.1. The following definitions apply in this Law:

"community land" means any Mississauga Land in which all members have a common interest and in respect of which there are no member or third party exclusive interests.

"Council" means the Chief and Council of the Mississauga First Nation.

"Enforcement Officer" includes a Police officer defined under the Police Services Act of Ontario including First Nation Constables, the person or persons appointed by Council, from time to time, to administer and enforce the provisions of *Mississauga First Nation* laws enacted by Council and includes any delegate and any assisting personnel as required and requested by an Enforcement Officer, or any peace officer as defined, or any other person appointed by the Council for the purpose of maintaining law and order on the First Nation;

"occupier" includes,

(a) a person who is in physical possession of premises,
or

(b) a person who has responsibility for and control over the conditions of premises or the activities carried on there, or control over persons allowed to enter the premises, even if there is more than one occupier of the same premises.

"Member" means a person whose name appears or is entitled to appear on the Mississauga First Nation Band Membership List.

MFN Land" means Mississauga First Nation Land and has the same meaning as is set out in Section 5 of the Mississauga First Nation Land Code, as amended from time to time.

“premises” means occupied or community land and the improvements on it, including buildings, stores, shops, apartments, or other designated structures

"person" includes a natural person, a corporation of any type, partnership, society or association whether or not incorporated, and any other entity having a separate personality, or style recognized in law.

“occupied land” means any portion of MFN land that is not community land, and for which a member, members, or any third party holds a valid interest or licence in accordance with the Mississauga First Nation Land Code.

"resolution" means a resolution of the Council enacted under the Mississauga First Nation Land Code or a Law.

2. Application of this Law

2.1. This law applies to all MFN Land, including community land, and all references hereinafter to land refer to the same.

3. Trespass an Offence

Offence

3.1. 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,

(a) without the express permission of the occupier, the proof of which rests on the defendant,

(i) enters on premises on MFN Land when entry is prohibited under this Law, or

(ii) engages in an activity on premises on MFN Land when the activity is prohibited under this Law; or

(b) does not leave the premises on MFN Land immediately after he or she is directed to do so by the occupier of the premises or a person authorized by the occupier,

is guilty of an offence on conviction is and can either participate in a designated community restorative justice program or is liable to a fine of not more than \$5,000.00 or 6 months in jail.

New wording

Is guilty of the offence of trespassing and upon conviction is liable to a fine of not more than \$5000.00 or 6 months in jail or both. Council may develop a penalty schedule based on repeat offences and increase the amount of penalty based on frequency and repetition of offences.

Council may prior to laying of charges permit the defendant to participate in an alternative measure or dispute resolution process according to the Mississauga Land Code.

Council may request through the Crown a stay of proceedings permit the defendant to participate in an alternative measure or dispute resolution process according to the Mississauga Land Code.

- 3.2. It is a defence to a charge under subsection 3.1 that the person charged reasonably believed that he or she had a right or interest in the Mississauga Land that entitled him or her to do the act complained of, if such belief has an air of reality and the conduct did no damage to the premises or to the Mississauga land.
- 3.3. Except as varied by this law, common law defenses to trespass are preserved.
- 3.4. 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.

- 3.5. For the purposes of section 3.1(a)(ii), a prohibited activity includes any activity in breach of any law of the Mississauga First Nation, its Land Code, the Criminal Code of Canada or any order of a court of competent jurisdiction. Entry onto Mississauga Land for the purpose of engaging in any such prohibited activity is a separate offence under this law punishable by a fine of not more than \$5,000 and subject to any orders or directions Council may make pursuant to this law irrespective of conviction

4. Residency and Access Rights

4.1 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*. **PUBLIC ACCESS**

4.2 Any person may have access to MFN land for any social or business purposes, if

- (a) the person does not trespass on occupied land and does not interfere with any interest in MFN Land;
- (b) the person complies with all applicable laws; and
- (c) no resolution has been enacted barring that person.

5. Prohibition of Entry

- 5.1. Entry on premises may be prohibited by notice to that effect posted prominently and effective on the premises by the lawful occupier of that premises;
- 5.2. Entry is prohibited without any notice on premises,
- (a) that is a garden, field or other MFN Land that is under cultivation, including a lawn, orchard, vineyard and premises on which trees have been

planted and woodlots on MFN Land that used primarily for agricultural purposes; or

(b) that is enclosed in a manner that indicates the occupier's intention to keep persons off the premises or to keep animals on the premises.

Subject to sections 7, 8, and 9 there is a presumption that public access for lawful purposes to the main door of a building on a premises by the means provided and used for public access purposes is not prohibited. This presumption may be overturned by effective notice.

6. Council Authority

- 6.1. 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.
- 6.2. Council may, by resolution, provide that a person who breaches a rule or regulation, or the terms of any permit authorized under this section, or who is charged with a violation of this law, is banned from entering onto or remaining on any or all MFN Land for such period of time as set out in the resolution.
- 6.3. 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.

Council may, by resolution, regulate the hours or seasons in which community land may be used for specific purposes, impose limits on the activities to be engaged in and may impose a requirement for a permit to engage in such activities or purposes

- 6.4. Council may set out in a penalty schedule by resolution such alternative measures in order to restore the harmony and compliance in the community.
- 6.5. Council may recommend and direct that a person that allegedly commits any offence against this law prior to charges being laid, by resolution direct the person to participate in such alternative measures in order to restore the harmony and compliance in the community.
- 6.6.

7. Offence - Violation of Council Resolution, Rule or Regulation

- 7.1. Every person who fails to comply with a resolution, rule or regulation of Council made under section 6.2 or 6.3, or who fails to comply with the terms of any permit granted under section 6.4, is guilty of the offence, fail to comply with Council Resolution, Rule or Regulation and on conviction is liable to a fine of not more than \$5,000.00 or 6 months in jail or both.

8. Every person who fails to comply may engage in a Community Dispute Resolution process if such a program is available in lieu of a fine. Persons must comply with orders made by the program, and if they do not they forfeit any further engagement in the program and will be assessed the original penalty. Method of Giving Notice

- 8.1. A notice under this Law may be given,
- (1) orally or in writing;
 - (2) by means of signs posted so that a sign is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to the premises to which it applies;
- 8.2. Substantial compliance with clause 8.1 a) or b) is sufficient notice.

9. Form of Sign

- 9.1. A sign naming an activity or showing a graphic representation of an activity is sufficient for the purpose of giving notice that the activity is permitted.

A sign naming an activity with an oblique red line drawn through the name or showing a graphic representation of an activity with an oblique line drawn through the representation is sufficient for the purpose of giving notice that the activity is prohibited.

Examples of wordings for the Notice of the signage section

Form of sign

A sign naming an activity or showing a graphic representation of an activity is sufficient for the purpose of giving notice that the activity is permitted.

Idem

A sign naming an activity with an oblique line drawn through the name or showing a graphic representation of an activity with an oblique line drawn through the representation is sufficient for the purpose of giving notice that the activity is prohibited.

Red markings

Red markings made and posted in accordance with Sections ##### and ### are sufficient for the purpose of giving notice that entry on the premises is prohibited.

Yellow markings

Yellow markings made and posted in accordance with Sections ##### and ### are sufficient for the purpose of giving notice that entry is prohibited except for the purpose of certain activities and shall be deemed to be notice of the activities permitted.

Size

A marking under this section shall be of such a size that a circle ten centimetres in diameter can be contained wholly within it.

Posting

Markings under this section shall be so placed that a marking is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to the premises to which it applies.

Notice applicable to part of premises

A notice or permission under this Act may be given in respect of any part of the premises of an occupier.

9.2.

10. Arrest without warrant

- 10.1. 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.
- 10.2. A peace 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 section 3 or section 7.
- 10.3. If a peace officer believes on reasonable and probable grounds that a person has committed an offence under section 3 or section 7 and has recently departed from the premises, the peace officer may arrest the person without warrant if,
 - (a) the person refuses to give his or her name and address to the peace officer on demand, or

- 9 (b) the peace officer believes, on reasonable and probable grounds, that the name or address given by the person to the peace officer is false.

Entry onto a premises and Arrest without Warrant

- 10.1** An Enforcement officer may enter any premises at any time to administer and enforce the provisions of this (*Name of First Nation*) Law.
- 10.2** 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.
- 10.3** 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.
- 10.4** A peace 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 section 3 or section 7.
- (a) 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
 - (b) to facilitate the removal of the person refusing to leave a premise. The person shall be released as soon as practicable after the arrest.
- 10.5** If a peace officer believes on reasonable and probable grounds that a person has committed an offence under section 3 or section 7 and has recently departed from the premises, the peace officer may arrest the person without warrant if
- (a) the person refuses to give his or her name and address to the peace officer on demand, or
 - (b) the peace officer believes, on reasonable and probable grounds, that the name or address given by the person to the peace officer is false.
 - (c) 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.

Release after arrest by officer

- 10.6 Where a police officer, acting the power of arrest, arrests a person, 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,
- (a) it is necessary in the public interest for the person to be detained, having regard to all the circumstances including the need to,
 - (i) establish the identity of the person,
 - (ii) secure or preserve evidence of or relating to the offence, or
 - (iii) prevent the continuation or repetition of the offence or the commission of another offence; or

Use of force

- 10.7 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.
- 10.8 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.
- 10.9 Where a person is wrongfully arrested, whether with or without a warrant, no action for damages shall be brought,
- (a) 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;
 - (b) 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
 - (c) against any person required to detain the prisoner in custody if

such person believed the arrest was lawfully made.

11. Parties to the Offence of Trespass

- 11.1. A person other than an individual who commits trespass under this law is also guilty of an offence under section 7 if that person is shown to be complicit in the commission of the offence by:
- (a) 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;
 - (b) 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; or
 - (c) being the principal of the individual who committed acts of trespass, directed or counseled him or her to do so as an agent.
 - (d) being a person in authority over an individual, counsels or directs that Individual to commit and act of trespass; or
 - (e) knowing that conduct would be a trespass, assists an individual by providing him or her with the means, tools or equipment to commit the trespass.
- 11.2 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.
- 11.3 Any person commits the offence of obstruction of an enforcement Officer who, obstructs an Enforcement Officer by providing false information or any other means.
- 11.4 Any person who commits the offence of obstructing an Enforcement Officer and upon conviction is liable to a fine of

not more than \$10,000.00 or imprisonment of not more than 6 months or both.

11.5 Any person commits the offence of obstruction of an enforcement Officer who, or aids and/or abets a person or persons and is subject to a charge and penalties as if they committed the trespass,

11.6 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 \$10,000.00 or imprisonment of not more than 6 months or both.

11.7

12. Revocation to Rights to Attend on Mississauga Land

12.1. This provision may apply to any person with respect to any MFN Land or premises on MFN Land, whether or not that person is a member.

12.2. Council may revoke an individual's right to be on any or all Community land, or with the consent of the occupier, on any premises on MFN Land, if, in the opinion of Council,

- a) they have engaged in, or been a participant in, violence on any premises within MFN Land;
- b) they pose a danger to MFN Land, premises on MFN Land or the public and personal safety of individuals entitled to the use and occupation of Mississauga Land;

New wording

they pose a danger to MFN Land, **the personal and public safety of persons entitled to use and occupy MFN Land;**

- c) there is a reasonable apprehension that they may engage in public or private mischief on MFN Land;
- d) it is in the best interests of the Mississauga First Nation, its land, assets or any member; or,

e) they have been convicted of trespass under section 3.1 above;

- 12.3. Where the individual has an existing interest on MFN Land, like personal connections, work, or land interests, that will be affected by a revocation of that person's rights to attend on MFN Land, then Council shall
- a) give the individual at least 7 days notice of their consideration of the matter, unless there is evidence of a need for urgency;
 - b) provide the individual with a summary of the reasons for the proposed action;
 - c) allow the individual to hear the case made against them, and a reasonable opportunity may submissions against that case; and,
 - d) 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.
- 12.4. Where an individual does not have an existing interest as set out in clause 12.3 above, the Council may render its decision on such notice and procedure as the Council believes are appropriate in the circumstances.
- 12.5. A Council revocation of an individual's right to be on MFN Land,
- a) may be for all, or any portion of the MFN Land; and,
 - b) may be issued permanently, or for a specified period of time in the Council order.
- 12.6. Council may revoke of a person's right permanently or for a specified period of time from all or a portion of MFN Land.
- a) Council shall make every attempt to resolve the problem through the dispute resolution process in an effort to promote the compliance and harmony of the community.
 - b) The person or persons shall be notified in writing of the intentions to revoke any or all of an individual's right from the MFN Land.
 - c) 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.

- 12.7. Council may, by subsequent resolution, amend any revocation of a person's invitation to be on MFN Land.
- 12.8. Council shall arrange for personal service of a resolution to that effect upon the individual unless service can only be effected by other forms of notice. If personal service is not possible, Council shall make best efforts to inform the individual of the notice.
- 12.9. Council shall arrange for all such resolutions to be posted on MFN Land as it sees fit and shall inform law enforcement of such resolutions in a timely manner.

New wording

Council shall make best efforts to effect personal service of resolutions made pursuant to this section, shall 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.

- 12.10. For the purposes of an offense under s. 3.1 above, willful or intentional avoidance of services of a notice under this part will not be a defense.
- 12.11. 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.
- 12.12. Council's decision in the matter of any appeal is final and not subject to review.
- 12.13. Every person who fails to comply with a resolution made pursuant to this section, is guilty of an offence and on conviction is liable to a fine of not more \$5,000.00, to imprisonment for a term not exceeding six (6) Months and to such other orders as may be conducive to preventing repetition of the offence.

13. Civil Action for Trespass Preserved

14. Nothing in this Law extinguishes the right of a person, including the Mississauga First Nation, to bring a civil action for damages arising out of a trespass on any MFN Land, and all civil remedies for trespass are preserved. Without limiting the forgoing, the failure to request or refusal to grant a judgment for damages under section 14 does not affect a right to bring a civil action for damages arising out of the same facts. Damages and Costs Awards

- 14.1. Where a person is convicted of an offence under section 3.1, 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 favour of the person who suffered the damage.
- 14.2. Where a prosecution under section 3.1 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.
- 14.3. A judgment for damages under subsection 14.1, or an award of costs under subsection 14.2, shall be in addition to any fine that is imposed under this law.

Civil action

- 14.4. A judgment for damages under subsection ##### extinguishes the right of the person in whose favour the judgment is made to bring a civil action for damages against the person convicted arising out of the same facts.

Idem

- 14.5. The failure to request or refusal to grant a judgment for damages under subsection ##### does not affect a right to bring a civil action for damages arising out of the same facts.

SEVERABILITY

- 14.6. 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.