

**BY-LAW No. 2020-01-20**

**OF THE METEPENAGIAG MI'KMAQ NATION  
BEING A BY-LAW FOR THE REMOVAL AND PUNISHMENT OF PERSONS TRESSPASSING  
OR FREQUENTING THE RESERVE FOR PROHIBITED PURPOSES**

**WHEREAS** the Reserve has been set aside for the use and benefit of the Metepenagiag Mi'kmaq Nation;

**AND WHEREAS** the Council of the Metepenagiag Mi'kmaq Nation desires to establish a By-Law to provide for the removal and punishment of persons trespassing on the reserve or frequenting the reserve for prohibited purposes;

**AND WHEREAS** the Council of the Metepenagiag is empowered to make such By-Law, and any matter ancillary thereto, pursuant to paragraphs 81 (1), (c), (d), (p) and (r) of the *Indian Act*;

**AND WHEREAS** it is deemed to be expedient and necessary, for the benefit, health and safety of the Metepenagiag Mi'kmaq Nation community members, to provide for the removal and punishment of person(s) trespassing on the Reserve or frequenting the Reserve for prohibited purposes;

**NOW THEREFORE** the Council of the Metepenagiag Mi'kmaq Nation hereby makes the following By-Law;

**Short Title:**

1. This By-Law may be cited as "Metepenagiag Trespass By-law" (the "By-Law").

## **Interpretation**

### 2. In this By-law:

**“Appeals Committee”** means a committee comprised of at least one Elder and two non-Council members;

**“Appeals Committee Member”** means a person appointed by the Director of Operations to sit on an Appeals Committee, in accordance with section 37;

**“Band”** means the Metepenagiag Mi’kmaq Nation;

**“Business Day”** means Monday through Friday during the standard office hours as set out in the *Metepenagiag Human Resource Policy*. To clarify, this does not include office closures, holidays or hours of the day when the Band is not open for business;

**“Council”** means the Council of the Metepenagiag Mi’kmaq Nation, as defined in the *Indian Act*;

**“Director of Operations”** means the employee responsible for the management, administration and delivery of all Band programs and services who reports directly to Council;

**“Officer”** means any police officer, police constable or other person charged with the duty to preserve and maintain the public peace, and any person appointed by the Council for the purpose of maintaining law and order on the Reserve;

**“Reserve”** means the reserve lands of the Metepenagiag Mi’kmaq Nation, including Reserve Numbers 06019, 06020, 10156, 10097, 06021, 06022, and such additional lands as may be reserve lands of Metepenagiag Mi’kmaq Nation;

**“Resident”** means any Band member or other persons authorized to reside on Metepenagiag Mi’kmaq Nation Reserve land;

**“Trespass”** means the entry onto, or the presence on, or actions by a person(s) causing interference without lawful justification, of the Reserve land;

### **Prohibited Purposes**

3. A person, other than a person referred to in subsection (2), who conducts on the Reserve any of the following activities:
  - a. Selling unauthorized merchandise;
  - b. Entering the Reserve without lawful justification;
  - c. Dumping garbage or animals;
  - d. Unauthorized hunting;
  - e. Trafficking or distributing illegal substances;
  - f. Compromising the quality of public wells, cisterns, reservoirs and other water supplies;
  - g. Anything that constitutes an offence under any applicable Band by-law, provincial or federal law; and
  - h. Any actions which would cause risk to the health and safety of Metepenagiag Residents or any or all of the Reserves of Metepenagiag.

shall be deemed to be frequenting the Reserve for a prohibited purpose and in Trespass.

4. Section (3) does not apply to any person authorized by the Metepenagiag Mi'kmaq Nation to conduct that activity.

### **Offences**

5. Any person deemed to be frequenting the Reserve for a prohibited purpose or in Trespass commits an offence.
6. Any person who interferes with or obstructs an Officer attempting to enforce this By-Law commits an offence.

## **Enforcement**

7. This By-Law is enforceable by an Officer.
8. If there are reasonable grounds to believe that a person is engaged in an activity on the Reserve that would, if proven, constitute an indictable offence under provincial or federal law, or an offence pursuant to section 5 of this By-Law, Council may, at a duly convened Council meeting, pass a resolution stating that person to be frequenting the reserve for a prohibited purpose and issue a No Trespass Order (“the Order”). (Appendix A).
9. If a No Trespass Order is issued, an Officer shall serve a copy of the No Trespass Order to the person therein named, and order that person to leave the Reserve immediately.
10. Should service of the No Trespass Order not succeed after three attempts, the No Trespass Order shall be publicly posted and will deemed to be served on the personal named in the Order when publicly posted.
11. Where a person who has been ordered to leave the Reserve fails or refuses to do so, an Officer may take such reasonable measures as may be necessary to remove the person from the Reserve and stop the action causing the Trespass.
12. No person shall fail or refuse to comply with a No Trespass Order or shall resist or interfere with an Officer acting under section 9 of this By-Law.
13. An Officer does not require an order from a Court prior to enforcing this By-Law.

## **Public Notification**

14. Council may post a copy of the No Trespass Order in a public place and/or on the Band website, to ensure compliance.

## **Duration of No Trespass Order**

15. A No Trespass Order shall be in effect until revoked by Council in accordance with section 18.

## **Revocation**

16. Twelve (12) months after the date of issuance of the No Trespass Order, the person named in the Order may make a written request to Council requesting that the Order be revoked.
17. Council shall consider, at a duly convened meeting, the decision to revoke the Order. Consideration shall be given to the reasons for the request. Reasons may include but are not limited to: change in employment, housing, family status, character references, etc.
18. The decision regarding the revocation request shall be made in writing by Council.
19. A revocation request may be made every twelve (12) months from the date of the Council's previous decision made under section 18.

### **Penalty**

20. Any person who commits an offence under this By-Law is liable on summary conviction to a fine not exceeding one thousand dollars (\$1,000) or to imprisonment for a term not exceeding thirty (30) days, or to both fine and imprisonment.

### **Appeals**

21. A person issued a No Trespass Order ("the Applicant") may file an appeal if:
  - a. the By-Law was not followed properly; or
  - b. the decision to issue the No Trespass Order was not correct given the circumstances of the person named in the No Trespass Order, which may include, but are not limited: change in employment, housing, family status, character references, etc.
22. If the Applicant wishes to appeal the No Trespass Order, the Applicant must submit a Notice of Appeal (found Appendix B) to the Director of Operations within ten (10) business days of receiving the No Trespass Order, and the Applicant must include in the Notice of Appeal the reason(s) for the appeal.

23. The Director of Operations will notify Council that an appeal is being brought forward.
24. The Director of Operations will compile a package including the relevant background documentation and information (“information package”) leading up to the decision to issue the No Trespass Order.
25. The Applicant will be provided with a copy of the information package within five (5) days of the Director of Operations receiving the Notice of Appeal.
26. The Applicant shall have five (5) business days to review the information package and notify the Director of Operations, in writing, whether or not the Applicant wishes to proceed with the appeal.
27. If the Director of Operations receives confirmation, pursuant to section 26, that the Appeal is going forward, the Director of Operations shall notify Council of same.
28. The Director of Operations shall then appoint an Appeals Committee to hear the appeal. The Appeals Committee shall be comprised of at least one (1) Elder and two (2) non-Council members.
29. The Appeals Committee shall be provided with a copy of the information package, and within five (5) business days of receiving the information package the Appeals Committee must set a date for an appeal hearing.
30. The Appeals Committee shall provide notice to the Applicant of the time and date of the appeal hearing.
31. On the date of the appeal hearing, the Applicant may provide the Appeals Committee with any additional information or documentation relevant to the No Trespass Order, including information or documentation in support of the Applicant’s appeal if the Applicant is appealing pursuant to section 21(b).
32. The Applicant may bring a support person to the appeal hearing so long as the person does not interfere with the appeal hearing or the Appeals Committee.
33. If the Applicant fails to appear at the appeals hearing, the appeal shall be dismissed.

34. The Appeals Committee may request the Applicant, Council members or Band Employees to attend the appeal hearing and answer questions the Appeals Committee Members may have.
35. The Appeals Committee will confer in private and reach consensus as to whether the decision to issue the No Trespass Order should be overturned. The Appeals Committee may make recommendations to Council on how to properly resolve the issue.
36. The Appeals Committee shall provide a written decision to the Applicant within five (5) days of the appeal hearing.

### **Appeals Committee Members**

37. The Director of Operations shall appoint individuals as Appeals Committee Members. The criteria for Appeals Committee Members shall include but is not limited to:
  - c. Training in conflict resolution;
  - d. Band membership; and
  - e. Understanding of Mi'kmaq culture.

### **Severability**

38. Should a court determine that a provision of this By-Law is invalid for any reason, the invalid provision shall be severed from the By-Law and the validity of the rest of the By-Law shall not be affected.

### **Coming into Force**

39. This By-Law comes into force upon publication of the By-Law on the Metepenagiag Mi'kmaq Nation website or the *First Nation Gazette*.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the Band, this 16<sup>th</sup> day of January, 2020.

Voting in favour of the By-Law are the following members of the Council:



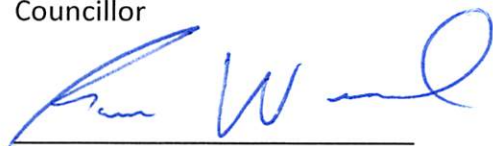
Chief Bill Ward



Councillor



Councillor



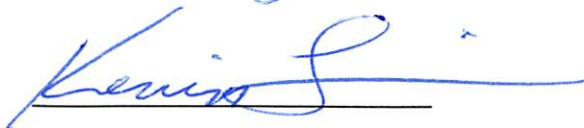
Councillor



Councillor



Councillor



Councillor

I, Chief Bill Ward, Chief of Metepenagiag Mi'kmaq Nation, do hereby certify that an original of the foregoing By-Law was published on the Metepenagiag Mi'kmaq Nation website: this 20<sup>th</sup> day of January, 2020.



**APPENDIX A  
NO TRESPASS ORDER**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Trespasser

This order serves to inform you that you are no longer allowed on any or all of the Reserves of Metepenagiag Mi'kmaq Nation.

This order, issued pursuant section 8 of the Metepenagiag Mi'kmaq Nation Trespass By-law, will remain in effect until you receive **WRITTEN PERMISSION** from the Council of the Metepenagiag Mi'kmaq Nation to be on Reserve. If you wish to appeal this No Trespass Order, you may submit a Notice of Appeal within 10 (ten) days.

\_\_\_\_\_  
Signature



**RETURN OF SERVICE**

I HEREBY CERTIFY that I have given a copy of this Order in-hand to:

\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

Time: \_\_\_\_\_ Location of service: \_\_\_\_\_

Served by: \_\_\_\_\_  
Print name Signature

**APPENDIX B  
NOTICE OF APPEAL**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (please print)

Please provide the reason(s) for appealing the No Trespass Order (include any copies of proof / documents to support your appeal). **Describe the reasons for your appeal (circumstances):**


**Appeal Preference (Please Circle)**

Time of Day:	AM / PM / NO PREFERENCE
Communication Method:	MAIL / EMAIL

After completing this Notice of Appeal, please submit it to the Director of Operations via email at: [crystal.bracken@metepenagiag.com](mailto:crystal.bracken@metepenagiag.com), or by mail addressed as follows:

Metepenagiag Mi’Kmaq Nation  
Attn: Director of Operations  
1926 MicMac Road,  
P.O. Box 293  
Metepenagiag Mi’Kmaq Nation, New Brunswick, E9E 2P2

\_\_\_\_\_  
Signature

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