

[STATE THE FIRST NATION]
BY-LAW NUMBER____.

**BY-LAW OF THE [STATE THE FIRST NATION]
TO REGULATE, CONTROL AND PROHIBIT SMOKING
IN ENCLOSED PUBLIC PLACES**

WHEREAS, pursuant to Section 81(1), paragraphs (a), (q) and (r) of the *Indian Act* RSC 1985 Chapter 1-5, the council of [**state the First Nation**] is empowered to make by-laws in relation to the health of its residents and to prevent the spreading of contagious and infectious diseases, with respect to any matter arising out of or ancillary to the exercise of its powers and to impose penalties of violation of a By-Law; and,

WHEREAS, the council of [state the first nation] recognizes that smoking of tobacco is harmful to persons and contributes to health problems and now wishes to regulate smoking to provide for the health, promotion of safety and general welfare of its residents; and,

WHEREAS, the council of [state the First Nation] desires to enact a Smoking By-Law for the residents on [**state the First Nation**] Reserve No. [**state the Reserve no.**] and to regulate the penalty for violation thereof;

NOW THEREFORE the council of the [**state the First Nation**] at a duly convened meeting hereby enacts the following By-Law as follows:

Short Title

1. This By-Law may be cited as "*The [**state the First Nation**] Smoking By-Law*".

Purpose

2. The purpose of this By-Law is to provide for the health and to promote safety and the general welfare of residents of [**state the First Nation**] by enacting "*The [**state the First Nation**] Smoking By-Law*" and restricting smoking or tobacco use in enclosed public places and imposing the penalty for violation thereof.

Definitions

3. In this By-Law:

"Accommodation units" means any hotel, motel or other premises where guests stay on a

temporary basis;

“Bingo establishment” means the portion of any enclosed place or premises for which a bingo license has been issued;

“Council” means the council of the [**state the First Nation**] as defined in the Indian Act;

“Designated Smoking Area” means an area marked and identifiable by a sign indicating that smoking is permitted in that area.

“Employer” means a person who as an owner, manager, contractor, superintendent, or overseer of any activity, business, work, trade, occupation or profession, has control over or direction of, or is indirectly or directly responsible for the employment of a person, whether paid or not;

“Enclosed public place” means any building or other enclosed place to which the public frequents and is admitted or invited;

“Enclosed work place” means any workplace that is enclosed to which an employee including a volunteer is employed and the public frequents and is admitted or invited;

“Enforcement officer” means any law enforcement officer including Royal Canadian Mounted Police 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;

“Group living facility” means a half-way house, addiction treatment centre, group home, personal care home, a shelter or any other facility the council may deem as a group living facility;

“Health care facility” means a health institution where medical care is administered including a nursing station, hospital, doctors office, or a facility for special care that provides acute or chronic care;

“No-smoking sign” means the depiction of the accepted International “Non-Smoking Symbol” or other no-smoking signs;

“Proprietor” of a place includes any person or persons who owns, occupies, operates, maintains or controls the place or directs the activity carried on within the place;

“Reserve” means the [**state the First Nation**] Reserve No.[**state the Reserve no.**] ,

including any reserve lands designated as [**state the First Nation**] reserve;

“School” means a day care or nursery school, elementary, secondary or post secondary school or any other instructional facility;

“Smoke” or “smoking” means the inhaling and exhaling of tobacco smoke and includes the carrying of a lighted cigar, cigarette, pipe or any other lighted smoking equipment;

“Tobacco” means tobacco in any form in which it is used or consumed, and includes snuff and raw leaf tobacco, but does not include any food, drug or device that contains nicotine to which the Food and Drug Act (Canada) applies.

“Video Lottery Terminal Gaming Rooms” means an enclosed place or premise to which a Video Lottery Terminal license has been issued.

Smoking Prohibited in Enclosed Public Places

4. No person shall smoke in an enclosed public place in [**state the First Nation**] reserve in the following places:
 - (a) any enclosed portion of an office building, group living facility, health care facility, recreation facility, school, retail store or other business or commercial establishment to which the public is ordinarily permitted access;
 - (b) in an elevator, in a hallway, stairway or stairwell within any building on the [**state the First Nation**] reserve;
 - (c) a vehicle used for public transit or a commercial vehicle for hire that is used to transport members of the public.

Designated Smoking Areas

5. (1) the council may designate smoking within an enclosed public place of the following areas:
 - i) bingo establishment;
 - ii) video lottery terminal gaming rooms;
 - iii) accommodation units.
- (2) A proprietor may seek permission of the council to designate smoking areas within an enclosed place and the smoking area must not exceed 60% of an enclosed place. Such designated smoking areas must have signs to indicate the smoking and non-smoking sections.
- (3) An employer may seek permission of the council to designate smoking areas within an enclosed workplace but the smoking area must not exceed 10% of an enclosed workplace.

Such designated smoking areas must be enclosed to effectively separate smoking and non-smoking.

(4) A group living facility may seek permission of the council to designate smoking areas within an enclosed workplace but the smoking area must not exceed 10% of an enclosed workplace. Such designated smoking areas must be enclosed to effectively separate smoking and non-smoking.

Designate Smoking Areas Prohibited

6. The following enclosed public places shall not seek permission of the council to designate smoking areas:
 - (a) Day Care Center;
 - (b) Nursery School;
 - (c) Elementary and Secondary School;
 - (d) Educational Institutions including Post Secondary School;
 - (e) Retail Store;
 - (f) Banking Institution;
 - (g) Child and Family Services Agency;
 - (h) Nursing Station or Hospital;
 - (i) Local Jail.

Sale of Tobacco to a Minor Prohibited

7. No person or retailer shall sell tobacco to a minor who is under the age of 18 years.

Spiritual Ceremonies

8. (1) Nothing in this By-Law shall prohibit any first nation person or a non-first nation person from using tobacco if the use of the tobacco is carried out for a traditional spiritual or cultural practice.

(2) The use of tobacco is not prohibited at facilities in which wakes and funerals take place.

Signs

9. (1) A proprietor, an employer or a group living facility of an enclosed public place to which Section 4 applies shall ensure that such enclosed public place is posted with no-smoking signs in a conspicuous manner at each entrance to the enclosed public place, to indicate that smoking is not permitted there.

(2) A proprietor, an employer or a group living facility with permission of the council to designate a smoking area pursuant to subsections 5(2), 5(3) and 5(4) shall post signs at the entrances to the facility carrying the text "SMOKING PROHIBITED EXCEPT IN DESIGNATED AREAS ONLY" and shall post signs which shall be clearly discernible by persons within the place or area to which the sign relates.

(3) The signs referred to in this section must display the non-smoking symbol and other no-smoking signs in the manner, size and location acceptable of the council and shall include the text at the bottom of each sign "[**state the First Nation**] By-Law No. [**state the no. of the by-law**] MAXIMUM FINE \$1000.00".

Removal of No-Smoking Sign Prohibited

10. No person shall remove, deface or alter any smoking sign posted pursuant to the By-Law.

Enforcement

11. (1) Every person who contravenes any of the provisions of the By-Law is subject to be investigated. An Enforcement officer designate to enforce the By-Law shall investigate the complaint and enforce the applicable provisions of the By-law or may direct the person or the proprietor to cease the action, correct the violation or risk being charged with the offence pursuant to the By-Law.

(2) Every person shall be given equal treatment pursuant to the By-Law.

(3) No person shall obstruct any Enforcement officer or knowingly make false or misleading statement.

Penalty

12. Every person who contravenes any provision of this By-Law is guilty of offense and is liable on summary conviction to a fine not exceeding \$1,000.00 or imprisonment for a term not exceeding (30) thirty days, or both.

Severability

13. A decision of a court that one or more provisions of this By-Law are invalid in whole or in part does not affect the validity, effectiveness, or enforceability of the other provisions or parts of the provisions of this By-Law.

THIS BY-LAW IS HEREBY APPROVED AND ADOPTED AT A DULY CONVENED MEETING OF

THE COUNCIL OF [STATE THE FIRST NATION] ON THIS [state the day] DAY OF JULY, 2007.

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

Chief [**STATE THE CHIEF**]

Councillor [**STATE THE COUNCILLOR**]

Councillor [**STATE THE COUNCILLOR**]

Councillor [**STATE THE COUNCILLOR**]

Councillor [**STATE THE COUNCILLOR**]

Councillor [**STATE THE COUNCILLOR**]

being a majority of those members of council of the [**state the First Nation**] present at the aforesaid meeting of the council.

The quorum of the council is [state the quorum] members.

The number of members of the council present at the meeting: [state the no.].

I, [print the Chief's name] Chief of [**state the First Nation**], do hereby certify that a true copy of the foregoing By-Law was mailed to the Minister of Indian Affairs and Northern Development pursuant to subsection 82(1) of the Indian Act, this [state the date] day of July, 2007.

Witness

Chief [**STATE THE CHIEF**]