

BY-LAW NO. 03
of Kebaowek First Nation

A By-law respecting noise and other nuisances in Kebaowek First Nation

Enacted on the 24th day of May 2018

WHEREAS Kebaowek First Nation has formerly been known as Eagle Village First Nation-Kipawa;

WHEREAS Kebaowek First Nation asserts its right to self-government through its elected Council;

WHEREAS the Council of Kebaowek First Nation deems it necessary to adopt a by-law to ensure peace, order, good government and the general well-being of its residents;

WHEREAS the Council of Kebaowek First Nation considers it to be expedient and necessary for the benefit, comfort and safety of the inhabitants of Kebaowek First Nation to provide for the prevention of nuisances and disorderly conduct on the reserve, with respect to any matter arising out of or ancillary to the exercise of powers under section 81, and for the imposition of a penalty for a violation thereof;

WHEREAS the Council of Kebaowek First Nation is empowered to make such by-law pursuant to paragraphs 81(1)(c),(d),(q) and (r) of the *Indian Act*, R.S.C., 1985, c. I-5 ("*Indian Act*");

WHEREAS the Council of Kebaowek First Nation has consulted with the Témiscamingue Regional County Municipality in an effort to adopt, where possible and beneficial for Kebaowek First Nation, harmonised rules that facilitate enforcement while responding the specific needs of Kebaowek First Nation;

WHEREAS the Council of Kebaowek First Nation did enact By-law No. 1.79 on June 30, 1977 and By-law No. 02 on September 19, 2002, and wishes to repeal said By-laws Nos. 1.79 and 02 and replace them with this by-law;

NOW THEREFORE the Council of Kebaowek First Nation hereby makes the following by-law:

Short Title

1. This by-law may be cited as the "Noise and Nuisance By-law".

Interpretation

2. In this by-law,

“cannon” means a device that shoots any projectile by means of compressed air, other gas or explosives; (“*canon*”)

“band” means Kebaowek First Nation (formerly Eagle Village First Nation – Kipawa), which is a band defined by Section 2 of the *Indian Act*; (“*bande*”)

““Council”” means the Council of Kebaowek First Nation (formerly Council of Eagle Village First Nation – Kipawa), including its Chief, which is a band council as defined in the *Indian Act*; (“*Conseil*”)

“minor” mean a person who is younger than 18 years old; (“*mineur*”)

“nuisance” means any act, activity or condition that materially impairs, otherwise than by direct physical interference, the use and enjoyment of a person's property, or that prejudicially affects a person's health, comfort or convenience or the public health, safety or welfare of the reserve community, but does not include any act, activity or condition to the extent it is unavoidably necessary for carrying on any business or other means of livelihood authorized by the Council; (“*nuisance*”)

“officer” means any police officer, police constable or public security; (“*agent*”)

“person” includes any individual, partnership, corporation, unincorporated organization, government or agency thereof, trustee, executor, administrator or other legal representative; (“*personne*”)

“reserve” means the reserve of Kebaowek First Nation (formerly known as Eagle Village First Nation-Kipawa, which is a reserve as defined by the *Indian Act*; (“*réserve*”)

“vehicle” means any means of transport, or equipment that attaches to a means of transport primarily adapted for the transportation of persons or property, including a motor vehicle, off-road vehicle, trailer, semi-trailer, boat or aircraft. For further certainty, this term includes all recreational vehicles. (“*véhicule*”)

Nuisance

3. (1) Everyone who creates or causes a nuisance is guilty of an offence.

(2) An officer may order any person who is causing or who threatens to cause a nuisance on the reserve to refrain from causing the nuisance or to stop the nuisance within such period as is reasonable in the circumstances.

- (3) In determining whether a period fixed under subsection (2) was reasonable in the circumstances, the officer shall take into account:
- a. the nature and extent of the nuisance;
 - b. the methods available to stop the nuisance;
 - c. the approximate time required to stop the nuisance; and
 - d. the effect of the order on any business or means of livelihood of the person who is the subject of an order if that business or means of livelihood has been authorized by the Council.
4. For greater certainty, the following conduct constitutes a nuisance and is prohibited under this by-law:
- a. making, provoking or encouraging to make, by whatever means, noise which may disturb the peace and general well-being of the neighbourhood within a 25-metre radius;
 - b. using or permitting the use of cannons;
 - c. the use and operation of a lawnmower, a chainsaw, a brush cutter or any power tool between 10:00 pm and 7:00am;
 - d. noise which may disturb the peace, quietness and general well-being of the neighbourhood within a 25-metre radius by construction, demolition, maintenance or repair activities on a building, vehicle or infrastructure, between 10:00 pm and 7:00 am, with the exception of emergency work to ensure the protection and security of persons and property;
 - e. failing to take indoors an animal in one's care who persistently barks, howls or makes other noise that disturbs the peace between 10:00 pm and 7:00am;
 - f. producing or permitting the production of music, entertainment sounds or voices when the sound may be heard outside a radius of 25 metres from the point of transmission or production of the sound;

- g. projecting or permitting the projection of a direct light outside a lot from which it is projected if such light is likely to cause a danger to the public or an inconvenience to individuals;
- h. knocking on a door, ringing a door bell or buzzer, knocking on windows or other parts of a private property, dwelling or building, with no reasonable justification;
- i. any defacement of another person's property, including graffiti, egging and similar misconduct;
- j. indecently exposing oneself in a public place;
- k. possessing an open container of alcohol on a public road, vacant lot or in front of a public building;
- l. using part of the lot of a private residence, business or an office belonging to Kebaowek First Nation for skateboarding or other leisure or entertainment purposes without the consent of the home-owner, buyer, business owner or office administrator, as the case may be;
- m. the abandonment of cars, household appliances or furniture, or parts of cars, household appliances or furniture;
- n. the storage of abandoned cars, household appliances or furniture, or parts of cars, household appliances or furniture;
- o. the dumping or storage of tires, garbage or other refuse;
- p. the burning of any substance other than natural wood;
- q. the use of a fire pit that exceeds 3 feet (0.91 metres);
- r. abandoning a fire or leaving it unattended;
- s. dumping or shovelling snow or ice from a private residence or business onto a road, sidewalk or alleyway;

5. The use of fireworks and firecrackers constitute an offence under this by-law, except on the following days:
 - a. National Aboriginal Day (June 21st);
 - b. Canada Day (July 1st);
 - c. St-Jean Baptiste Day (June 24th);
 - d. New Year's Eve and New Year's Day (December 31st and January 1st);
 - e. Labour Day weekend (including on the first Monday in September);
 - f. Thanksgiving Day (second Monday in October);
 - g. Christmas Day (December 25th);
 - h. Victoria Day;
 - i. All statutory holidays as fixed by proclamation of the Lieutenant-Governor in Council of the Province of Quebec;

Enforcement

6. (1) Where a person who has been ordered to refrain from causing a nuisance or to end a nuisance within a specified period, fails or refuses to comply with the order, an officer may take such reasonable measures as are necessary to prevent or to end the nuisance, including fining the offender.

(2) A person who fails or refuses to comply with an order made under subsection 3(2) or who resists or interferes with an officer acting under subsection 6(1), commits an offence and may be fined.
7. (1) Each individual adult is liable for an offence committed contrary to this by-law with respect to his or her own conduct on reserve and can be held responsible for the conduct of any adult permitted to commit an offence on the individual adult's premise on reserve.

(2) If a child commits an infraction in accordance with the present by-law, any adult who has custody of the child can be held responsible for the infraction.

Penalty

8. (1) A person who commits an offence under this by-law is liable on summary conviction for a fine not exceeding \$1000 or to imprisonment for a term not exceeding thirty days, or to both.

(2) Unless the circumstances requires otherwise, a first offence under this by-law may incur a fine of \$150, a second offence may incur a fine of \$250 and a third offence may incur a fine of \$350.

- (3) Officers may administer fines to any person who contravenes this by-law as well as take all reasonable measures necessary to prevent further offences from occurring.
- (4) If a fine remains unpaid for more than 30 days, Kebaowek First Nation reserves the right to increase the amount of the fine owing to account for the cost of prosecuting the offence.

General

9. The present by-law is adopted in English and the French version is a translation.
10. Should a court determine that a provision of this by-law is invalid for any reason, the provision shall be severed from the by-law and the validity of the rest of the by-law shall not be affected.
11. Kebaowek First Nation may charge a person who requests a paper copy of this by-law the reasonable cost of printing incurred by such a request.
12. Following its adoption by Council, this by-law comes into force upon publication on the website of Kebaowek First Nation pursuant to s. 86(5) of the *Indian Act*.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of Kebaowek First Nation this ____day of ____, 20____ .

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)

being the majority of those members of the Council of Kebaowek First Nation present at the aforesaid meeting of the Council.

The quorum of the Council is 3 members.

Number of members of the Council present at the meeting: _____.