

WESTBANK FIRST NATION
UNSIGHTLY PREMISES LAW NO. 2005-07

WHEREAS Council of Westbank First Nation deems it advisable and in the best interests of Westbank First Nation to enact a Law to regulate unsightly premises within Westbank Lands;

NOW THEREFORE Council of Westbank First Nation repeals Bylaw No. 1979-14 and enacts the following law:

1. TITLE

This Law may be cited for all purposes as "*WFN Unsightly Premises Law No. 2005-07*".

2. DEFINITIONS

2.1 In this Law, unless the context otherwise requires

"Council" means the governing body of Westbank elected pursuant to the *Westbank First Nation Constitution*;

"derelict vehicle" means any vehicle or part thereof, propelled otherwise than by muscle power which:

- (a) is physically wrecked or disabled,
- (b) is not capable of operating under its own power, and
- (c) does not have attached number plates for the current year pursuant to the regulations of the *Motor Vehicle Act*, of the Province of British Columbia;

"discarded material" means all manner of garbage, junk, unused or dismantled trailers, boats, vessels, machinery, mechanical or metal parts, bottles, glass, brush piles, pipes, unused wood or wood products excluding seasoned untreated wood or manufactured products cut in lengths for use as a fuel in a solid fuel burning appliance, dilapidated furniture, inoperative appliances, derelict vehicles and other such similar things;

"filth" means foul or putrid matter;

"junk" means old metal, glass, paper, wood or other material which may be usable again in some fashion;

"nuisance" means any act or omission which obstructs or causes inconvenience or damage to a segment of the public in the exercise of rights common to all members of the public;

"occupant" or **"occupier"** means a person who is legally entitled to occupy or simply occupies a parcel of land, building, dwelling or premises within Westbank Lands;

"offensive matter" means physical objects which are objectionable to the public;

“parcel of land” or **“parcel”** means any lot, block, manufactured home pad or other area in which real property within Westbank Lands is held or into which real property within Westbank Lands is subdivided and the improvements affixed to it;

“peace officer” means a member of the local detachment of the Royal Canadian Mounted Police responsible for policing Westbank Lands, or any delegate;

“person” in addition to its ordinary meaning, includes any association, household, society, corporation, partnership or party, whether acting by themselves or by a servant, agent or employee, and the successors, assigns and personal or other legal representatives of such person to whom the context can apply according to law;

“registered holder” means a person who is registered in the Westbank Lands Register as the holder of an interest in Westbank Lands and, where applicable, includes the occupant;

“rubbish” means useless waste;

“unsightly” means offensive to the sight;

“unwholesome matter” means physical objects which are detrimental to the physical or mental well being of persons;

“waste” means refuse from places of human habitation;

“Westbank” or **“WFN”** means the Westbank First Nation as defined in the *Westbank First Nation Constitution*;

“Westbank Lands” means:

- (a) the following Westbank Indian Reserves:
 - (i) Mission Creek Indian Reserve No. 8
 - (ii) Tsinstikeptum Indian Reserve No. 9
 - (iii) Tsinstikeptum Indian Reserve No. 10
 - (iv) Medicine Hill Indian Reserve No. 11
 - (v) Medicine Creek Indian Reserve No. 12; and
- (b) lands set apart by Her Majesty the Queen in right of Canada in the future as lands reserved for the use and benefit of Westbank, within the meaning of subsection 91(24) of the *Constitution Act, 1867*;

“WFN Law Enforcement Officer” means the person or persons appointed by Council, from time to time, to administer and enforce the provisions of Westbank Laws enacted by Council, and includes any delegate or any peace officer.

2.2 Unless otherwise provided in this Law, words, expressions and rules of construction used in this Law have the same meaning as in the *Westbank First Nation Constitution*.

3. PROHIBITIONS

3.1 Except as provided for in section 5.1 of this Law:

- (a) No person shall cause or permit water, rubbish, or noxious, offensive, or unwholesome matter to collect or accumulate on any parcel of land;
- (b) No person shall deposit or throw bottles, glass or other rubbish in any open place or on any parcel of land within Westbank Lands;
- (c) No person shall cause or permit a visual nuisance on any parcel of land;
- (d) No person shall place graffiti on walls, fences or elsewhere on or adjacent to a public place; and
- (e) No person shall allow any parcel of land to become or remain unsightly by accumulation of filth, discarded materials, rubbish or graffiti.

4. ENFORCEMENT

4.1 The WFN Law Enforcement Officer is authorized, at all reasonable times, to enter on any parcel of land that is subject to any of the terms and conditions of this Law, in order to ascertain whether the provisions of this Law are being obeyed.

4.2 Where the WFN Law Enforcement Officer has received a complaint that a parcel of land or any premises within a parcel of land is unsightly and a subsequent investigation verifies the complaint, the WFN Law Enforcement Officer may issue a written order to the registered holder requiring that the unsightly condition be remedied by removal from such premises of unsightly accumulations of filth, discarded materials, rubbish or graffiti.

4.3 Where after the expiry of fifteen (15) days from delivery of an order given pursuant to section 4.2 of this Law, the unsightly condition which gave rise to the order has not been remedied, Westbank, by its employees or other persons, at reasonable times and in a reasonable manner, may enter on such premises and effect compliance with the order at the expense of the registered holder.

4.4 If the compliance is carried out under section 4.3 of this Law, and the registered holder does not pay the costs on or before December 31st in the year that the compliance was effected, the costs may be added to and form part of the taxes payable in respect of the said parcel of land and deemed to be taxes in arrears.

4.5 Where the WFN Law Enforcement Officer has received a complaint that a parcel of land or any premises within a parcel of land is a visual nuisance or contains offensive matter on it, and a subsequent investigation verifies the complaint, the WFN Law Enforcement Officer may issue a written order to the registered holder and, if different, to the person causing the nuisance or allowing the offensive matter to remain on the parcel of land, requiring that the visual nuisance be abated or the offensive matter removed from such premises.

- 4.6 Where, after the expiry of thirty (30) days from the delivery of an order given pursuant to section 4.5 of this Law, the visual nuisance which gave rise to the order has not been abated or the offensive matter has not been removed from the premises, Westbank, by its employees or other persons, at reasonable times and in a reasonable manner, may enter on such premises and effect compliance with the order at the expense of the registered holder.
- 4.7 If the compliance is carried out under section 4.6 of this Law, and the registered holder does not pay the costs on or before December 31st in the year that the compliance was effected, the costs may be added to and form part of the taxes payable in respect of the parcel of land and deemed to be taxes in arrears.
- 4.8 Where Westbank incurs legal costs in order to have an unsightly condition remedied or a visual nuisance abated or offensive matter removed from a parcel of land, such costs will be considered to be costs related to the remedy, abatement or removal to be paid for by the registered holder and may be collected from the registered holder in accordance with the provisions of this Law.
- 4.9 If the registered holder does not pay the costs related to the remedy, abatement or removal as required by section 4.8 of this Law on or before December 31st in the year that the remedy, abatement or removal was effected by Westbank, the costs may be added to and form part of the taxes payable by the registered holder in respect of the parcel of land and deemed to be taxes in arrears.

5. EXEMPTIONS

- 5.1 This Law does not apply to the outdoor storage of goods and chattels when permitted by any WFN Land Use Plan law enacted from time to time.

6. FEES AND FORMS

- 6.1 Council may, by resolution passed at a duly convened meeting, establish, correct, revise or update the terms of any applicable fee schedules, forms, protocols or other related documentation which complement and support this Law, and will post notice of same in a public area of the WFN administration building and make a copy of same available for viewing free of charge at the administrative offices of Westbank and available for distribution at a nominal charge.

7. NOTICES & CHARGES AGAINST REGISTERED HOLDERS

- 7.1 Where Westbank is required to give notice to or imposes an additional cost or charge against the registered holder and two or more persons are shown as registered holders in respect of a parcel of land, then a notice given to or a cost or charge imposed against one registered holder is not invalidated by the failure to give notice to or impose a charge against any other registered holder.

8. OFFENCES

- 8.1 No person shall obstruct, interfere with or hinder Council, the WFN Law Enforcement Officer or any authorized employee, officer or agent in the carrying out of their duties and responsibilities under this Law.
- 8.2 Any person who violates any of the provisions of this Law or who suffers or permits any act or thing to be done in contravention or in violation of any of the provisions of this Law, or who neglects to do or refrains from doing any act or thing required by any of the provisions of this Law, is guilty of an offence under this Law, and is liable to the penalties imposed by this Law.
- 8.3 Each day a violation of this Law continues will be deemed to be a separate offence for which a fine or imprisonment may be imposed.
- 8.4 Any person who is guilty of an offence under this Law is liable, on summary conviction to a fine of not more than One Thousand Dollars (\$1,000.00) or to a term of imprisonment not exceeding thirty (30) days, or both.

9. IMMUNITY

- 9.1 No action for damages lies or may be instituted against present or past Council; WFN Law Enforcement Officer; or members, employees, servants or agents of either Westbank or Council:
 - (a) for anything said or done or omitted to be said or done by that person in the performance or intended performance of the person's duty or the exercise of the person's authority; or
 - (b) for any alleged neglect or default in the performance or intended performance of the person's duty or the exercise of the person's authority.
- 9.2 Section 9.1 does not provide a defence if:
 - (a) Council, WFN Law Enforcement Officer, members, employees, servants or agents have, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or
 - (b) the cause of action is libel or slander.
- 9.3 Westbank, present or past Council, or members, employees, servants or agents of any of Westbank or Council is not liable for any damages or other loss, including economic loss, sustained by any person, or to the property of any person, as a result of neglect or failure, for any reason, to discover or detect any contravention of this Law or any other Westbank Law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other Westbank Law.

9.4 All actions against Westbank for the unlawful doing of anything that:

- (a) is purported to have been done by Westbank under the powers conferred by this Law or any Westbank Law; and
- (b) might have been lawfully done by Westbank if acting in the manner established by law,

must be commenced within six (6) months after the cause of action first arose, or within a further period designated by Council in a particular case, but not afterwards.

9.5 Westbank is in no case liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained, is delivered to Westbank, within two (2) months from the date on which the damage was sustained. In case of the death of a person injured, the failure to give notice required by this section is not a bar to the maintenance of the action. Failure to give the notice or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the Court of Appeal, believes:

- (a) there was reasonable excuse; and
- (b) Westbank has not been prejudiced in its defence by the failure or insufficiency.

10. APPLICATION OF LAW

10.1 Where any federal Act or regulation or provincial Act or regulation or any other Westbank Law may apply to any matter covered by this Law, compliance with this Law will not relieve the person from also complying with the provisions of the other applicable Act, regulation or law.

10.2 If any section of this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or subsection will be severed from and not affect the remaining provisions of this Law.

10.3 The headings given to the sections and paragraphs in this Law are for convenience of reference only. They do not form part of this Law and will not be used in the interpretation of this Law.


10.4 Unless otherwise noted, any specific statute named in this Law is a reference to a statute of British Columbia and the regulations thereto, as amended, revised, consolidated or replaced from time to time, and any Law referred to herein is a reference to a law of Westbank, as amended, revised, consolidated or replaced from time to time.

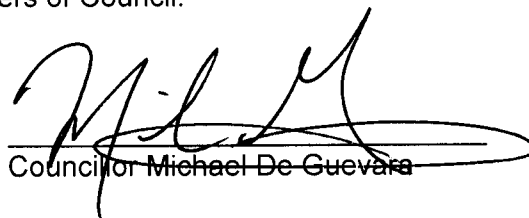
11. REPEAL

11.1 Unightly Premises Regulation Bylaw No. 1979-14 is hereby repealed.

BE IT KNOWN that this Law entitled, "WFN Unsightly Premises Law No. 2005-07" is hereby read for the first, second, and third and final time and is hereby enacted as Law No. 2005-07 by the Council of Westbank First Nation at a duly convened meeting of Council held on the 7th day of February, 2005.

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


Chief Robert Louie


Councillor Michael De Guevara


Councillor Brian Eli


Councillor Loretta Swite


Councillor Michael Werstuik

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

The Quorum of Council is three (3) members.

Number of members of Council present at the meeting: 5.