

WESTBANK FIRST NATION
DISORDERLY CONDUCT AND NUISANCES
LAW NO. 2008-06

WHEREAS Council of Westbank First Nation deems it advisable and in the best interests of Westbank First Nation to enact a law for the prevention of disorderly conduct and nuisances within Westbank Lands;

NOW THEREFORE Council of Westbank First Nation repeals *Westbank First Nation Disorderly Conduct and Nuisances Law 2005-19* and enacts the following law;

1. TITLE

1.1 This Law may be cited for all purposes as the "*WFN Disorderly Conduct and Nuisances Law No. 2008-06*".

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*;

"disorderly conduct" means any act or behavior, including:

- (a) fighting;
- (b) making or causing unreasonable noise;
- (c) using abusive language;
- (d) using offensive or indecent gestures or displays;
- (e) being drunk;
- (f) loitering;
- (g) exposing, firing or discharging any gun, pistol or other firearm, or using or threatening to use any other article as a weapon, except in defence of life or property;
- (h) interfering in any manner with the orderly conduct of commercial, administrative, educational, recreational, health care, religious or ceremonial activities on Westbank Lands;
- (i) having open liquor in a public area;
- (j) possession of a controlled substance or drug paraphernalia in a public area;
- (k) littering;
- (l) refusing to leave a public area when directed to do so by a WFN Law Enforcement Officer;
- (m) urinating and/or defecating in a public area;
- (n) pan handling within 10 metres of a public entrance; or
- (o) any other disorderly behavior;

that disrupts public order on Westbank Lands, scandalizes the community, or causes public inconvenience, annoyance or alarm;

“nuisance” means any act, activity or condition, including:

- (a) the abandonment of cars, household appliances or furniture, or parts of cars, household appliances or furniture;
- (b) the storage of abandoned cars, household appliances or furniture, or parts of cars, household appliances or furniture;
- (c) the dumping or storage of tires, garbage or other refuse;
- (d) the burning of tires, grass, garbage, leaves or other refuse;
- (e) the discharge of any substance into the air or water;
- (f) noise;
- (g) the creation of noxious smells;
- (h) vandalism, including damage to WFN Land or property;
- (i) trespass; or
- (j) any other act;

that materially impairs, otherwise than by direct physical interference, the use and enjoyment of a registered holder’s parcel of land, or that prejudicially affects a person’s health, comfort or convenience or the public health, safety or welfare of Westbank, 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 Council;

“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;

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

“WFN Enforcement Notice” means an enforcement notice issued in accordance with the *WFN Notice Enforcement Law 2008-02* which may be as amended or replaced from time to time;

“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 a peace officer or any 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.

- 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. DISORDERLY CONDUCT

- 3.1 Everyone who commits an act of disorderly conduct is guilty of an offence.
- 3.2 The WFN Law Enforcement Officer may order any person who is engaging in any disorderly conduct to stop such conduct immediately; and
- 3.3 For each designated contravention, a WFN Law Enforcement Officer may complete and issue a WFN Enforcement Notice to a person against whom a contravention is alleged.

4. NUISANCE

- 4.1 Everyone who creates or causes a nuisance is guilty of an offence.
- 4.2 The WFN Law Enforcement Officer may order any person who is causing or who threatens to cause a nuisance on Westbank Lands to refrain from causing the nuisance or to abate the nuisance within such period as is reasonable in the circumstances.
- 4.3 In determining whether a period fixed by the WFN Law Enforcement Officer under section 4.2 was reasonable in the circumstances, a court shall take into account:
 - (a) the nature and extent of the nuisance;
 - (b) the methods available to abate the nuisance;
 - (c) the approximate time required to abate the nuisance; and
 - (d) the effect of the order on any business or means of livelihood of the person who is the subject of the order.
- 4.4 For each designated contravention, a WFN Law Enforcement Officer may complete and issue a WFN Enforcement Notice to a person against whom a contravention is alleged.

5. ENFORCEMENT

- 5.1 Where a person who has been ordered to stop engaging in disorderly conduct, or to refrain from causing a nuisance or to abate a nuisance within a specified period, fails or refuses to comply with the order, the WFN Law Enforcement Officer may take such reasonable measures as are necessary to stop the disorderly conduct, or to prevent or to abate the nuisance.

- 5.2 A person who fails or refuses to comply with an order made under sections 3.2 or 4.2, or who resists or interferes with the WFN Law Enforcement Officer acting under section 3.2 or section 5.1, commits an offence;
- 5.3 Nothing in this Law precludes Westbank from pursuing any other enforcement action or remedy provided for in any other Westbank Law.

6. FEES AND FORMS

- 6.1 Council may, by resolution, and in accordance with this Law, 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, or any other Westbank 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, or any other Westbank 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 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 *WFN Disorderly Conduct and Nuisances Law No. 2005-19* is hereby repealed.

BE IT KNOWN that this law entitled, "*WFN Disorderly Conduct and Nuisance Law No. 2008-06*" is hereby:

Read a first time by Council of Westbank First Nation at a duly convened meeting held on the 9th day of June, 2008;

Presented to the Membership at a Special Membership Meeting held on the 13th day of August, 2008;

Read a second time by Council of Westbank First Nation at a duly convened meeting held on the 2nd day of September, 2008;

Read a third time and enacted by Council of Westbank First Nation at a duly convened meeting held on the 15th day of September, 2008;

Signed by the following Members of Council:


Chief Robert Louie


Councillor Michael De Guevara

Councillor Brian Eli


Councillor Loretta Swite


Councillor Larry Derrickson