WAHTA MOHAWKS FIRST NATION TRESPASS BY-LAW NO. 1.18

WHEREAS the Reserve is the home of Wahta Mohawk First Nation and has been set aside for the First Nation's use and benefit;

AND WHEREAS the Council of Wahta Mohawk First Nation has deemed it expedient and necessary for the benefit, comfort and safety of its members to provide for the removal and sanction of persons trespassing on the Reserve;

AND WHEREAS subsections 81(1)(d), (q), (r), and (p.1) of the *Indian Act* empowers the Council of a First Nation to make by-laws governing the residence of citizens of a First Nation and other persons on reserve;

AND WHEREAS subsections 81(1)(p), (q) and (r) of the *Indian Act* also empowers the Council of a First Nation to make by-laws governing the removal and sanction of persons trespassing on reserve;

AND WHEREAS pursuant to section 30 of the *Indian Act*, anyone who trespasses on the Reserve is guilty of an offence and is liable to a fine or imprisonment, or both;

AND WHEREAS section 81 of the *Indian Act* makes violation of a by-law punishable by a fine or imprisonment, or both;

NOW THEREFORE, **BE IT HEREBY RESOLVED** by the Wahta Mohawks First Nation Council and enacted pursuant to section 81(1) of the *Indian Act* the following Trespass By-Law:

PART 1 - INTRODUCTORY MATTERS

Short Title

1. This By-Law may be cited as the *Trespass By-Law*.

Interpretation

2. In this By-Law:

    a. "*Indian Act*" means the *Indian Act*, R.S.C. 1985, c. I-5, or as amended;

    b. "Applicant" means an Occupier who has made an Application under Part 3 of this By-Law;

c. “Band” means Wahta Mohawk First Nation, as represented by its duly elected Chief and Council;

d. “Certificate of Possession” means a certificate issued pursuant to section 20 of the *Indian Act*;

e. “Council” means the Chief and Council of the Wahta Mohawk First Nation as defined in the *Indian Act*;

f. “Occupier” includes:

    i. the Council in its capacity of managing Wahta Mohawk First Nation Territory or Premises therein for the Wahta Mohawk First Nation;

    ii. a person who is in lawful possession of Premises pursuant to a Certificate of Possession, lease, permit or other allotment by Council;

    iii. a person who is in lawful possession of Premises and/or lands pursuant to the *Family Homes on Reserves and Matrimonial Interests or Rights Act* or a valid court order under that Act; or

    iv. a person who has the responsibility for and control over the condition of Premises, or the activities carried on there, or control over persons allowed to enter the Premises;

g. “OPP” means the Ontario Provincial Police;

h. “Premises” means a residential, commercial, industrial or administrative building, improvement, structure, trailer or any other property or land that is situated on Reserve and acknowledged to be for the Occupier’s use;

i. “Reserve” means the Reserve of the Wahta Mohawk First Nation

j. “Respondent” means a person against whom an Application has been made under Part 3 of this By-Law;

k. “Trespassing” means any act that constitutes trespass under the common law, including the following:

    i. entering or remaining on Premises without lawful authority or without permission of the Occupier;

    ii. entering or remaining on Wahta Mohawk First Nation Reserve (Territory) without lawful authority or without permission of the Occupier; or

iii. engaging in an activity on Wahta Mohawk First Nation Reserve (Territory) or on Premises after the Occupier has provided notice that the activity is prohibited.

Designation of Areas

3. Council may, at a duly convened Council meeting, pass a Band Council Resolution designating locations on Wahta Mohawk First Nation Reserve:

    a. That are open or restricted to the public; and

    b. On which the carrying on of specified activities is permitted or prohibited.

4. Band Council Resolutions made pursuant to section 3 shall be publicly posted.

PART 2 - TRESPASS

Prohibited Purposes

5. Subject to section 5, a person who is found on Wahta Mohawk First Nation Reserve:

    a. Hunting, fishing or trapping;

    b. Hawking or peddling wares or merchandise;

    c. Loitering;

    d. Camping, except in areas of Wahta Mohawks First Nation designated for such a purpose by Council pursuant to section 3;

    e. Operating an all-terrain vehicle, non-motorized vehicle or other vehicle on roads and trails that are not open to the public, except in areas of Wahta Mohawks First Nation designated for such a purpose by Council pursuant to section 3;

    f. Dumping refuse;

    g. Soliciting financial assistance;

    h. Interfering in any manner with the orderly conduct of commercial, administrative, educational, recreational, or health care activities on Reserve; or

i. Conducting any other activity that is prohibited by law or a Wahta Mohawks First Nation By-Law or Band Council Resolution;

is deemed to be frequenting Wahta Mohawk First Nation Reserve (Territory) for a prohibited purpose and is guilty of the offence of Trespassing under this By-Law.

6. Section 5 does not apply to:

   a. A person who is a registered Wahta Mohawks First Nation Band member, or a lawful Occupier of Wahta Mohawks First Nation Reserve, and is carrying out the activity with lawful authority.

   b. A person who is authorized by Council or who otherwise has lawful authority to carry out the activity.

Trespass of Premises

7. Every one who does not act under a right or authority conferred by law and who, without the express permission of the Occupier or Council, whichever is applicable,

   a. Enters a Premises when such entry is prohibited by notice;

   b. Engages in an activity on a Premises when the activity is prohibited by notice; or

   c. Does not leave a Premises immediately after he or she is directed to do so by the Occupier of a Premises or a person authorized by the Occupier to provide such direction;

   is guilty of the offence of Trespassing under this By-Law.

8. Entry to a Premises may be prohibited by notice to that effect or by enclosure or fencing in a manner that indicates the Occupier's intention to keep persons out of the Premises.

PART 3 - ENFORCEMENT

Immediate Removal of Trespasser on Certificate of Possession Land

9. An Occupier who orders any one to leave Premises pursuant to sections 7(c) or 8, above, and that person does not leave, is entitled to contact OPP officers or other peace officers and request their immediate removal from the Premises.

Notice of Trespass and Order to Vacate

10. Upon application by an Occupier, Council may, by majority vote at a duly convened Council meeting, issue a Notice of Trespass and Order to Vacate against any Respondent who has committed the offence of Trespassing under Part 2 of this By-Law.

11. Council may consider applications for a Notice of Trespass and Order to Vacate made on Council's own initiative.

12. In applying for a Notice of Trespass under this By-Law, an Applicant shall:

    a. Make any application under this part in writing, and shall set out the name(s) of the Respondent(s) and the grounds for the Notice of Trespass; and

    b. Serve a copy of the application on the Respondent by:

        i. Leaving a copy of the application with the Respondent personally;

        ii. Delivering a copy of the application to the last known address of the Respondent; or

        iii. Making the application available at the Council Office, or as otherwise designated by Council, to the Respondent if the address of the Respondent is unknown.

13. A Respondent shall:

    a. Respond to the application in writing within 48 hours; and

    b. Provide a copy of any response to Council and to the Applicant.

14. Council shall make a determination of an application made under this part upon the expiry of the response period described in section 13(a) above, or as soon as possible thereafter.

15. Council shall serve any issued Notice of Trespass and Order to Vacate on the Respondent by:

        i. Leaving a copy of the application with the Respondent personally;

        ii. Delivering a copy of the application to the last known address of the Respondent; or

iii. Making the Notice of Trespass and Order to Vacate available at the Council Office, or as otherwise designated by Council, to the Respondent if the address of the Respondent is unknown.

Appeal

16. A Respondent may appeal a Notice of Trespass and Order to Vacate within 30 days.

17. Appeals made under this Part shall be heard by Chief and Council at a special Council meeting convened for that purpose.

18. The Applicant and the Respondent may be represented by counsel at any appeal hearing.

19. A Respondent shall:

    a. Make any appeal under this part in writing, and shall set out the grounds of the appeal; and

    b. Serve a copy of the appeal on the Applicant and Council personally.

20. Council's decisions on an appeal under this part shall be made in writing and provided to all parties.

Removal

21. OPP officers and other peace officers are hereby authorized to immediately remove any individual from a Premises upon request by an Occupier who demonstrates they are:

    a. a person who is in lawful possession of Premises pursuant to a Certificate of Possession, lease, permit or other allotment by Council; or

    b. a person who is in lawful possession of Premises and/or lands pursuant to the *Family Homes on Reserves and Matrimonial Interests or Rights Act* or a valid court order under that Act; or

22. A copy of any Notice of Trespass and Order to Vacate shall be provided to the OPP or any other police agency with jurisdiction within the Reserve.

23. OPP officers and other peace officers are hereby authorized to enforce a Notice of Trespass and Order to Vacate issued pursuant to this By-Law, and to use such reasonable measures as may be necessary to enforce a Notice of Trespass and Order to Vacate.

Failure to Abide by Order

24. A person who fails or refuses to comply with a Notice of Trespass and Order to Vacate issued under this Part commits an offence under this By-Law.

PART 4 - PENALTIES

25. A person who commits an offence under this By-Law is liable on summary conviction to a fine not exceeding $1,000.00 or to imprisonment for a term not exceeding thirty (30) days, or to both.

26. In addition to all other penalties provided herein, any person causing damage or loss to any Wahta Mohawk First Nation Band property will be responsible for the cost of repairing or replacing such damage or loss.

PART 5 – GENERAL PROVISIONS

Forms

27. Council may, by Band Council Resolution, establish, correct, revise or update any applicable schedules, forms, protocols or other related documentation that complement and support this By-Law, and will post notice of any changes in a public area of the Wahta Mohawk First Nation Administration Building.

Amendments

28. Council may make amendments to this law that do not change the substance of this law by Band Council Resolution made at a duly convened meeting of council. Such revisions include, but are not limited to:

    a. Corrections to clerical, grammatical, or typographical errors;

    b. Minor improvements to the language of this By-Law that bring out more clearly the intent of Wahta Mohawk First Nation without changing the substance of any provision;

    c. Changes as may be required to reconcile seemingly inconsistent provisions;

    d. Amendments to reference any new or amended Wahta Mohawk First Nation laws that are relevant to this By-Law; and

    e. Amendments ordered by any court of competent jurisdiction.

29. Council may make substantive amendments to this law as long as the following steps have been followed:

    a. Council approves the proposed amendment in principle at a duly convened meeting of Council;

    b. Council makes the wording of the proposed amendment available for members to review;

    c. Council consults with members about the proposed amendments by holding a minimum of two community meetings over a period of at least three months;

    d. Council finalizes the wording of the proposed amendment in response to the consultation with members and the proposed amendment receives at least one reading in a duly convened meeting of council; and

    e. Council adopts the amendments by Band Council Resolution made at a duly convened meeting of Council.

30. An amendment to this law comes into force upon passage of the Band Council Resolution adopting the amendment in accordance with section 27 in the case of a minor amendment and section 28 in the case of a substantive amendment.

Severability

31. If any section or subsection of this By-Law is for any reason deemed invalid by a court of competent jurisdiction, the invalid section or subsection will be severed from and not affect the validity of the remaining sections of this By-Law.

Coming Into Force

32. This By-Law comes into force on November 21, 2018 as per Mohawk Council Resolutions; 2018/2019-34, 2018-2019-35, 2018/2019-36, 2018/2019-37.

THIS BY-LAW IS HEREBY made and approved at a duly convened meeting of the Council of the Wahta Mohawks First Nation this 21 day of November, 2018.

Trespass By-Law 1.18 Application

See reverse side for full instructions

Date:	
Name of Applicant:	
Is the Applicant a Wahta Mohawk member? Circle One	Yes No
Address of Applicant:	
Address of alleged trespass: *(if different than address of Applicant)*	
Name of Certificate of Possession holder for alleged trespass area:	
Name of Respondent:	
Is the Respondent a Wahta Mohawk member? Circle One	Yes No

Grounds for Trespass (include any documentation if necessary):
*Please see the **WAHTA MOHAWKS FIRST NATION TRESPASS BY-LAW NO. 1.18***
for potential grounds of trespass. If you need more space is needed please attach an additional sheet.

An Applicant shall:

Serve a copy of the application on the Respondent by:

- Leaving a copy of the application with the Respondent personally; or
- Delivering a copy of the application to the last known address of the Respondent.
- Make the application available at the Council Office, or as otherwise designated by Council, to the Respondent if the address of the Respondent is unknown.
- File the Application with proof the application was served on the Respondent to Chief and Council forthwith.

A Respondent shall:

- Respond to the application in writing within 48 hours; and
- Provide a copy of any response to Council and to the Applicant.
- Provided proof that the Response was served on the Applicant to Chief and Council

Chief and Council shall:

Make a determination of the application made upon the expiry of the response period, or as soon as possible thereafter.

If Chief and Council grants the Application, Chief and Council shall serve an issued Notice of Trespass and Order to Vacate to the Respondent by:

- Leaving a copy of the application with the Respondent personally;
- Delivering a copy of the application to the last known address of the Respondent; or
- Making the Notice of Trespass and Order to Vacate available at the Council Office, or as otherwise designated by Council, to the Respondent if the address of the Respondent is unknown.

The Respondent may appeal, in writing, a Notice of Trespass and Order to Vacate within 30 days of the Order by serving an Appeal on to Chief and Council and the Applicant.

If Chief and Council deny the Application, then Chief and Council shall advise both parties, in writing.