

July 16, 2024

**Internal Draft
Kanesatake Law-Making Process**

Resolution #
Date of Resolution:

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Preamble

WHEREAS the Mohawks of Kanesatake are a community of the Mohawk Nation;

AND WHEREAS the Mohawks of Kanesatake have inherent rights and jurisdiction over their Territory;

AND WHEREAS the Mohawks of Kanesatake assert that it is one of their guiding principles to consider the consequences of actions for the next seven generations and beyond, and the Mohawks of Kanesatake intend to protect and preserve Kanesatake Mohawk Lands for the benefit of the next seven generations and beyond;

AND WHEREAS the Mohawks of Kanesatake have Aboriginal rights and title and treaty rights, protected by the Royal Proclamation of 1763, in and to the lands which make up the Seigneury of the Lake of Two Mountains;

AND WHEREAS, the rights of the Mohawks of Kanesatake are recognized and affirmed by section 35 of the *Constitution Act, 1982*;

AND WHEREAS, the rights of the Mohawks of Kanesatake are included in the *United Nations Declaration on the Rights of Indigenous Peoples* (hereinafter “*UNDRIP*”), and as ratified and implemented in the *United Nations Declaration on the Rights of Indigenous Peoples Act* (hereinafter “*UNDRIPA*”);

AND WHEREAS the Mohawks of Kanesatake, as represented by the Mohawk Council of Kanesatake (hereinafter “*MCK*”), may exercise authority under the *Kanesatake Interim Land Base Governance Act*, SC 2001, c 8, passed on May 14, 2001 (hereinafter “*Governance Act*”);

AND WHEREAS, Section 7 of the *Governance Act* specifically states that the Mohawks of Kanesatake have jurisdiction to make laws in relation to the use and development of the lands in the Kanesatake Mohawk Interim Land base and in relation to:

- a) The health and quality of life of residents.
- b) The protection and management of wildlife and fish.
- c) The observance of law and order to the prevention of disorderly conduct and nuisances.
- d) The prevention of trespass, including entry onto, or occupation of, the lands without lawful authority.
- e) Residency.
- f) The construction, maintenance, management, and use of local works, including water supplies.
- g) The construction or alteration of buildings, including inspection in connection with the construction or alteration.

- h) Zoning.
- i) Waste management and public sanitation.
- j) Traffic regulation.

AND WHEREAS the MCK may also exercise its authority to make laws concerning the protection, management, and administration of Kanesatake Mohawks Lands under the Mohawks of Kanesatake *Interim Land Governance Code* passed on October 14, 2000 (hereinafter “*Governance Code*”), including under section 1;

AND WHEREAS the MCK operates in accordance with the *Mohawks of Kanesatake Custom Electoral Code* (hereinafter “*Electoral Code*”), ratified June 20, 2015;

AND WHEREAS, the MCK may exercise its authority under the *Indian Act*.

NOW THEREFORE BE IT RESOLVED that the Mohawks of Kanesatake enact this **Kanesatake Law-Making Process** (hereinafter “**KLMP**”) for the purposes of law making under the authority of its inherent rights, the *Constitution Act, 1982*, *UNDRIP*, *UNDRIPA*, the *Governance Act*, and the *Indian Act*.

Purpose

The purpose of this Regulation is to ensure open, transparent, and accountable law making and enactment procedure for the Mohawks of Kanesatake. The MCK strives to engage the Kanesatake community, and this Regulation establishes standardized legislative enactment procedures for the development, enactment, amendment, and repeal of Kanesatake Laws.

Section 1 Short Title

1.1 This may be referred to as the **Kanesatake Law-Making Process** (“**KLMP**”).

Section 2 Definitions

“**Community Meeting**” means a meeting convened by the MCK to communicate information to consult with, and/or provide updates to all Members.

“**Council**” means the elected Chiefs of the Mohawks of Kanesatake.

“**Council Meeting**” means a meeting convened by the MCK attended by at least four (4) elected Chiefs.

“**Emergency**” means a present or imminent situation or condition that requires prompt action to prevent harm or damage to the Land, and/or loss of life, harm or damage to the safety, health, or welfare of Members of Kanesatake.

“**Land(s)**” means the Mohawk Territory of Kanesatake, including the Interim Land Base as set aside by Canada for the use and benefit of the Mohawks of Kanesatake as lands reserved for the Indians within the meaning of Section 91(24) of the *Constitution Act, 1867*, as set out in the *Governance Act*

“**Member**” means a person (**Kanesatakehró:non**) whose name appears on the Kanesatake Band List.

“**Mohawk Council of Kanesatake**” (MCK) means the elected Chiefs of the Mohawks of Kanesatake.

“**Person**” includes every individual, company, statutory or otherwise, partnership, association, society, co-operative or other legal entity or non-legal association.

“**Quorum**” means four (4) elected Chiefs of the MCK.

“**Resolution**” means a Band Council Resolution (BCR) formally adopted by a Quorum of the MCK pursuant to its governing authority.

Section 3 Phase I: Accepting a Draft Kanesatake Law or Amendment in Principle

- 3.1 The draft Kanesatake law or amendment will be presented at a Council Meeting for consideration.
- 3.2 Within a minimum of twenty-one (21) days after reviewing the draft Kanesatake law or amendment in a Council Meeting, a second Council Meeting will be held and by majority vote, the draft Kanesatake law or amendment will be accepted or rejected in principle by Resolution.
- 3.3 The draft Kanesatake law or amendment that is accepted in principle shall be labelled with the chronological number of the Resolution, and the date of acceptance.
- 3.4 The draft Kanesatake law or amendment will be posted in public spaces and made available on relevant web tools.
- 3.5 The draft Kanesatake law or amendment may also be provided as a curtesy to Canada.

Section 4 Phase II: Community Approval Process

- 4.1 The MCK will exercise discretion to determine an appropriate community approval process for each law.
- 4.2 As per Section 27 of the *Governance Code*, laws in relation to the following areas of jurisdiction must be subject to a community approval process:
 - a) Land use planning,
 - b) Residency,

- c) Matters affecting membership rights,
- d) Wildlife conservation,
- e) Law and order,
- f) Conservation,
- g) Healthy and Safety, or
- h) Any other matter which has a substantive impact.

4.3 Where a draft Kanesatake law or amendment has been accepted in principle, within seven (7) days of the acceptance in principle, the MCK shall establish by majority vote, a community approval process and the ratification threshold for the draft law or amendment.

4.4 Community Approval Processes may be conducted through at least one of the following processes:

a. Community Meetings

- i) A series of no less than three (3) Community Meetings, in person or virtually, in the form of public sessions to be held to review, provide information, and receive comments concerning the law or amendment.
- ii) Seven (7) days notice must be given to the Members prior to each meeting.

b. Workshops

- i) A minimum of two (2) workshops will be held for all interested Members to review, provide information, and receive comments concerning the law or amendment.
- ii) Seven (7) days notice must be given to the Members prior to each workshop.

c. Secret Ballot Vote

- i) The draft law or amendment will be presented to the Members by way of a virtual, in-person, recorded presentation, or through any other platform deemed appropriate by the MCK.
- ii) On a date, no more than seven (7) days, following the presentation, a secret ballot vote will be held in which all eligible voters of Kanesatake shall be entitled to vote on whether the law or amendment shall be adopted by the MCK.
- iii) Voters will be eligible to vote at a designated location and through any other platform deemed appropriate by the MCK.

- iv) A minimum of 20% of eligible voters must vote, representing a broad consensus.
 - v) 50% plus 1 of those voting must vote in favour of the enactment of the law or amendment.
- 4.5 Where a draft Kanesatake law or amendment has been accepted in principle and a community approval process has been set, notice must be provided.
- 4.6 A copy of the law or amendment being considered for enactment will be available to the Members within fourteen (14) days.
- 4.7 During the community approval process, all comments and questions received from Members shall be heard and considered along with community needs and other relevant matters for further revision and incorporation into a post-consultation draft.

Section 5 Phase III: Review of Post-Consultation Draft Kanesatake Law or Amendment

- 5.1 **Legal Review** - The post-consultation draft of the Kanesatake law or amendment shall be reviewed by a legal advisor to:
- a) promote clarity and consistency and determine liability and other matters; and
 - b) identify additional proposed revisions, if required.
- 5.2 **Council Review** – At a meeting of the MCK following the Legal Review, the MCK will again review the law, for the purpose of determining if the Kanesatake law or amendment will be passed to be enacted.
- a) During the Council Review meeting, the MCK shall by Resolution, decide to:
 - i) Pass the Kanesatake law or amendment, with or without amendments, and proceed to Phase IV Enactment of a Kanesatake law or amendment; or
 - ii) require further Community Consultation in accordance with subsection 4.4; or
 - iii) reject the Kanesatake law or amendment.
 - b) Where the MCK has made a Resolution under subsection 5.2, the Resolution shall be labelled with the chronological number and the date of the resolution.
 - c) Where the MCK has made a Resolution under subsection 5.2 to enact a Kanesatake law or amendment, the Kanesatake law or amendment shall be attached to the Resolution.
 - d) Where the MCK has made a Resolution under subsection 5.2 to reject the Kanesatake law or amendment, the Resolution shall contain an explanation for the reason to reject.

Section 6 Phase IV: Enactment of a Kanesatake Law

- 6.1 Where a Kanesatake law or amendment has been Accepted in Principle, been through a Community Approval Process, and passed by Resolution at the Council Review, a Notice of Enactment will be issued to the community and posted in public spaces and made available on relevant web tools.
- 6.2 The Notice of Enactment shall:
 - a) Include the date of coming into force of the Kanesatake law or amendment;
 - b) Include a copy of the signed and dated Kanesatake law or amendment.
- 6.3 The Kanesatake law or amendment shall be entered into the registry of laws. The registry will include three (3) notarized copies, the Resolution, and that it was published in the First Nations Gazette.

Section 7 Repeals to a Kanesatake Law

- 7.1 In order to repeal an existing Kanesatake law, the Kanesatake Law-Making Process must be followed.

Section 8 Special Emergency Measures

- 8.1 The MCK may exercise the power and authority to enact Emergency laws and orders where there is a significant risk to the Lands and/or the health and safety of the Members and/or to the Lands.
- 8.2 Where there is an Emergency or the Emergency is imminent, Emergency laws and orders may be exceptionally passed by Resolution.
- 8.3 A law or order under subsection 8.2 must detail the nature of the Emergency, the scope and effect of the order, and the initial duration the order will be in effect. The order may be renewed as required.
- 8.4 Emergency laws and orders shall remain in force at least for the duration necessary to mitigate the Emergency situation and ensure the protection of Lands and/or the health and safety of the Members.
- 8.5 The MCK must take immediate steps to provide notice of the Emergency laws to the Members and make the law publicly available immediately upon taking effect.
- 8.6 The MCK shall regularly review and assess the necessity of Emergency laws, ensuring their alignment with the ongoing emergency circumstances and the principles of transparency and accountability.
- 8.7 Emergency laws may be repealed by Resolution.

Section 9 General Provisions

9.1 Notice

- a) Unless specified otherwise, notice of a Community Meeting shall be provided to the community by any of the following methods:
 - i. written notice delivered, mailed, or emailed to community Members;
 - ii. posting the notice in a public area of Kanesatake public buildings;
 - iii. posting the notice on the Mohawks of Kanesatake website and/or an online group or page moderated or administered by the MCK or community Members;
- b) Unless specified otherwise, notice shall be provided at least seven (7) days before the meeting date, and shall include:
 - i. the type of meeting;
 - ii. the date, time, and place of the meeting;
 - iii. a plain language summary of the Kanesatake law or amendment;
 - iv. the draft Kanesatake law or amendment.

9.2 Interpretation

- a) Words in singular include the plural, and words in the plural include the singular.
- b) Unless otherwise clear from the context, whenever “he” is used, it will include “she” and the use of “she” includes “he”.
- c) If a word or expression is defined, other parts of speech and grammatical forms of the same word or expressions have corresponding meanings.
- d) The expression “shall” is to be understood as mandatory and the expression “may” is to be understood as discretionary.
- e) Unless the context indicates otherwise, “including” means “including, but not limited to”, and “includes” means “includes, but not limited to”.
- f) A reference to a Kanesatake Law, Charter or Regulation includes any amendment, replacement, or successor of that Kanesatake Law, Charter or Regulation;
- g) A “person”, in addition to a natural person, includes a corporation, partnership, agency, government or any agent, employee, successor or legal representative of such person to whom the context can apply according to law;
- h) A reference to a Kanesatake court, board, commission, body, or tribunal in this Law includes any successor body established by Kanesatake Law or Resolution carrying out all or some of the functions.

9.3 Calculation of Time

- a) When calculating the number of days for the purposes of establishing a deadline, the following guidelines shall be used: unless otherwise provided, Saturdays, Sundays, federal holidays, provincial holidays, MCK-declared holidays, or the day of an event are not included in the calculation of number of days for completing an act or meeting a deadline;
- b) if the Administration office is closed on a day when a time limit expires, the act may be done on the next day that the office is open; and
- c) if there is no deadline identified, and unless otherwise provided in a Kanesatake Law or Regulation, the deadline for completion of acts is seven (7) days.

Section 10 Other Matters

- 10.1 *[If this is enacted as a law, include this paragraph]* This Law may be repealed or amended from time to time through a community approval process as outlined in the *Kanesatake Law-making Process*.
- 10.2 Unless otherwise provided for under this Law, the words, expressions, and rules of construction used in this Law have the same meaning as in the *Governance Act*.
- 10.3 The language of the Kanesatakehró:non may be used to clarify the meaning of any provision in this Law, if the meaning of that provision is not clear in English or French.
- 10.4 *If this is created as a Law, include this paragraph:* The MCK shall periodically review this Law to ensure it fulfills its Purpose.
- 10.5 Nothing in this Law shall derogate or aggregate from our inherent rights or Aboriginal and Treaty rights as recognized and affirmed by s. 35 of the *Constitution Act, 1982*.
- 10.6 In the event that all or any part of any section, or sections of this Law are found by a court of competent jurisdiction to be invalid, such sections shall be severable, and the remaining portions or sections shall remain in full force and effect.

Section 11 Enactment and Coming into Force

11.1 This law comes into force the day on which it is published to any public website, including but not limited to the *First Nations Gazette*.

11.2 This Law is enacted and signed into Law on behalf of the MCK by a Quorum of the MCK, this _____ day of the month of _____ in the year of 20 _____.

MCK Signatures:

Quorum is: _____

Grand Chief _____

Chief _____

Chief _____

Chief _____

Chief _____

Chief _____

Chief _____