

CONFIDENTIAL
INTERNAL DRAFT

June 3, 2024

**Mohawks of Kanesatake State of Emergency and
Emergency Measures Law**

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*), including section 7;

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 *Land Governance Code* passed on June 21, 2000 (hereinafter *Governance Code*), including 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*;

AND WHEREAS, it is considered to be expedient and necessary, for the Health and Safety of the Members and the protection of the Lands to declare a state of emergency measures and /or implement emergency measures.

NOW THEREFORE BE IT RESOLVED that the MCK enacts this **State of Emergency Law** under the authority of its inherent rights, *Constitution Act, 1982*, *UNDRIP*, *UNDRIPA*, the *Governance Act*, the *Governance Code*, and the *Indian Act*.

Purpose

The purpose of this Law is to protect the Health and Safety of the Members and the Lands by adopting Emergency measures.

By enacting this State of Emergency Law, the MCK affirms its special responsibility to care for the Members and Lands.

Section 1 Short Title

2.1 This Law may be referred to as the Mohawks of Kanesatake **State of Emergency and Emergency Measures Law**.

Section 2 Definitions

"Authorized Person" means a person authorized by the MCK to exercise a power or perform a limited duty under this Law;

"Disaster" means an urgent or critical situation that has resulted or may result in harm to the safety, health, or welfare of people, or in widespread damage to property and Kanesatake Land.

"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.

"Governance Act" means the *Kanesatake Interim Land Base Governance Act*, SC 2001, c 8.

"Governance Code" means the Land Governance Code enacted on June 21, 2000.

"Health and Safety" means the state of physical, mental, and social well-being of the Members.

"Kanesatake Land" 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.

"Non-Member" means a Person who is not a Member of the Mohawks of Kanesatake.

"Officer" means any First Nations Safety Officer, Peace Officer, police constable, law enforcement agent, or other person charged with the duty to preserve and maintain the public peace, Sûreté du Québec, and an Enforcement Officer or any other person appointed by the Mohawks of Kanesatake for the purpose of maintaining and enforcing Laws on Lands pursuant to agreements or Resolution of the MCK.

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

"Quorum" means four or more elected Members 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 Application

3.1 This Law applies to the Kanesatake Land and to all conduct and activities on Kanesatake Land.

Section 4 Declaring a State of Emergency

4.1 In the event of an emergency, Disaster, or impending Emergency or Disaster on Kanesatake Lands, the MCK may, by Resolution, declare a State of Emergency.

4.2 A declaration of a state of emergency shall be limited to the duration of the Emergency or Disaster and include the following:

- a. a description of the Emergency or Disaster;
- b. the effective date;
- c. the duration of state of emergency;
- d. the area(s) of the Kanesatake Lands affected;
- e. the person or team to receive questions, comments or concerns; and
- f. subject to section 5, any necessary emergency measure(s).

4.3 The declaration of a state of emergency must be made public to all persons on Kanesatake Lands as quickly as possible, using effective communication methods, including but not limited to:

- a. Email or other electronic methods;
- b. Website or social media;
- c. Notices posted in the community and the Band Office.

Section 5 Emergency Measures

5.1 Subject to section 4, during a state of emergency, the MCK may implement emergency measures limited to measures necessary to mitigate or address the Emergency or Disaster or impending Emergency of Disaster.

5.2 To implement Emergency Measures, the MCK may issue necessary Emergency Orders, including but not limited to:

- a. Regulating or prohibiting travel to, from, or within specified areas for health or safety reasons;
- b. Evacuating persons and removing property from specified areas, ensuring proper care and protection of persons, property, and Kanesatake Lands;
- c. Directing an Authorized Person to provide essential services;
- d. Regulating the distribution of goods, services, and resources;
- e. Authorizing payments required to address the Emergency or Disaster;
- f. Establishing shelters and hospitals;
- g. Assessing and repairing or replacing damaged property belonging to the MCK and/or Kanesatake Lands;
- h. Assessing environmental damage and taking steps to mitigate or eliminate it.

Section 6 Ending a State of Emergency

6.1 Upon the resolution of the Emergency or Disaster or impending Emergency or Disaster, the state of Emergency and any Emergency measures shall be lifted by Resolution.

Section 7 Offence

7.1 Each offence under this Law is a strict liability offence.

7.2 All offences created under this Law are punishable on summary conviction, and proceedings in respect of each such offence may be taken under:

- a. Part 27 of the *Criminal Code of Canada*; or
- b. the *Contraventions Act*; or
- c. any MCK law that allows for proceedings in respect of offence under MCK Law.
- d. The Court of Québec, as defined in the *Courts of Justice Act*, has jurisdiction to hear and try offences under this Law.

- e. For greater certainty, this Law is an enactment, for the purposes Part 27 of the *Criminal Code of Canada*.
- f. Each calendar day an offence continues will be deemed to be a separate offence for the purpose of the proceedings in respect of that offence.

7.3 Any Person who commits an offence under this Law is liable on summary conviction to:

- a. a fine not greater than five thousand dollars (\$5,000);
- b. imprisonment for up to two (2) years less a day;
- c. restitution;
- d. community service;
- e. and any other means or combination thereof for achieving compliance.

7.4 Nothing in this Law precludes offences being heard by a justice of the peace appointed in accordance with section 16(2) of KILGA.

7.5 Nothing in this Law precludes the MCK from pursuing any other enforcement action or remedy available to MCK at law or under any other enactment.

Section 8 Interpretation

- 8.1 Words in singular include the plural, and words in the plural include the singular.
- 8.2 If a word or expression is defined, other parts of speech and grammatical forms of the same word or expressions have corresponding meanings.
- 8.3 The expression “shall” is to be understood as mandatory and the expression “may” is to be understood as discretionary.
- 8.4 Unless the context indicates otherwise, “including” means “including, but not limited to”, and “includes” means “includes, but not limited to”.

Section 9 Other Matters

- 9.1 This Law may be repealed or amended from time to time through a community approval process as outlined in the Mohawks of Kanesatake Law-Making Process.
- 9.2 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 Code*.
- 9.3 The MCK shall periodically review this Law to ensure it fulfills its Purpose.
- 9.4 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.

9.5 Nothing in this Law shall derogate or aggregate from inherent rights or Aboriginal and Treaty rights as recognized and affirmed by section 35 of the *Constitution Act, 1982*.

Section 10 Enactment and Coming into Force

10.1 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*

10.2 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 ____.

SIGNATURES ON FOLLOWING PAGE

DRAFT

MCK Signatures:

Quorum is: _____

Grand Chief _____

Chief _____

Chief _____

Chief _____

Chief _____

Chief _____

Chief _____

DRAFT