

CONFIDENTIAL
INTERNAL DRAFT
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Mohawks of Kanesatake Trespass 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 Land 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, as represented by the Mohawk Council of Kanesatake (hereinafter MCK), 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 Declarations 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 MCK may also 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 Land under the Mohawks of Kanesatake *Land Governance Code* passed on June 21, 2000 (hereinafter “*Governance Code*”);

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, the Mohawks of Kanesatake have a right to control access and use of Mohawks of Kanesatake Territory;

AND WHEREAS, the Mohawks of Kanesatake wish to prohibit any conduct or activities that will cause damage to the people, environment and/or property on the Mohawks of Kanesatake Territory;

AND WHEREAS, the Mohawks of Kanesatake wish to protect the health, safety, and wellness of the Members;

AND WHEREAS it is deemed necessary to establish a law that regulates the removal of individuals trespassing on Kanesatake Land, as well as the sanctions and penalties to be imposed on those who enter or remain on Kanesatake Land for prohibited purposes;

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

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Purpose

The purpose of this Trespass Law is to control access to and use of Kanesatake Mohawk Territory.

By enacting this Trespass Law, the MCK reaffirms its special responsibility to care for and prohibit any conduct or activities that will cause damage on the Kanesatake Mohawk Territory and to protect the health, safety, and wellness of the Members.

Section 1 Short Title

1.1 This Law may be referred to as the Mohawks of Kanesatake Trespass 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;

"**Kanesatake Land**" means the Mohawk Territory of Kanesatake, including, but not limited to, 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 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.

"**Mohawks of Kanesatake Law**" means a law enacted pursuant to the Mohawks of Kanesatake Law-Making Process or the Mohawks of Kanesatake *Governance Act* or *Land Governance Code*.

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

"**Notice of Trespass**" means a notice provided to a Person under section 5 herein.

"**Occupier**" means:

- a) a Person who is in lawful possession of a Premises pursuant to Band Council Resolution, an Oka Letter, lease, permit or other form of allotment by MCK; or
- b) a person who has the responsibility for and control over the condition of a Premises, the activities carried on there, or control over Persons allowed to enter the Premises.

"**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 MCK for the purpose of maintaining and enforcing Laws on Land 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.

"Premise" includes any structure used by a Person or business and/or operations for shelter, accommodation, operations, or storage and includes, but is not limited to houses, trailers, portable structures, mobile homes, sheds, tents, fenced lots, and barns on the Kanesatake Lands.

"Quorum" means four or more elected Members of the MCK.

"Removal" means where the MCK has issued a Band Council Resolution, ordering the removal of a Person from the Kanesatake Land.

"Resolution" means a Band Council Resolution (BCR) formally adopted by a quorum of the MCK pursuant to its governing authority.

Section 3 Prohibited Purposes and Trespass

- 3.1 Subject to section 4, a Person who does any of the following commits an offence:
- a) enters Kanesatake Land or the Premises after the Person has had notice from an Occupier of the Premises or an Authorized Person that the entry is prohibited;
 - b) engages in activity on Kanesatake Land or in Premises after the Person has had notice from an Occupier of the Premises or an Authorized Person that the activity is prohibited.
- 3.2 Subject to section 4, a Person who has been directed, either orally or in writing, by an Occupier of Premises or an Authorized Person to
- a) leave the Premises or Kanesatake Land, or
 - b) stop engaging in an activity on Kanesatake Land or in the Premises commits an offence if the Person
 - c) does not leave the Premises or Kanesatake Land or stop the activity, as applicable, as soon as practicable after receiving the direction, or
 - d) re-enters the Premises or Kanesatake Land or resumes the activity on or in the Premises or Kanesatake Land, as applicable.

Section 4 Defences to Trespass Charge

- 4.1 A Person may not be convicted of an offence under section 3 in relation to Premises, if the Person's action or inaction, as applicable to the offence, was with
- a) the consent of the Occupier and the MCK, or
 - b) other lawful authority.

Section 5 Methods of posting or giving notice

- 5.1 For the purposes of the definition of "Kanesatake Land" in section 2, signs must be posted so that, in daylight and under normal weather conditions, from the approach to

each ordinary point of access to the Kanesatake Land,

- a) a sign is clearly visible,
- b) if the sign contains writing, the writing is clearly legible, and
- c) if the sign uses graphic representation, the graphic representation is clearly visible.

5.2 For the purposes of section 3, notice may be given

- a) orally or in writing, or
- b) by means of a sign posted at or near an ordinary point of access to the Premises so that, in daylight and under normal weather conditions, from the approach to the ordinary point of access, the sign satisfies the requirements of Section 5.1 of this section.

5.3 A sign, posted in accordance with section 3, that

- a) names an activity and has an oblique line drawn through the name, or
- b) shows a graphic representation of an activity and has an oblique line drawn through the graphic representation is sufficient for the purpose of giving notice that the activity is prohibited.

5.4 In a prosecution for an offence under section 3, proof that a sign that complies with this section, as applicable, was posted at the ordinary point of access used by the defendant to enter the Premises is sufficient for the purpose of establishing, as applicable, that

- a) the Premises are Kanesatake Land, or
- b) notice was given for the purpose of section 2.

5.5 Notice given under this section may relate to all or a part of premises and different notices may be given or posted in relation to different parts of premises.

Section 6 Trespasser must give name and address

6.1 On the demand of an Occupier of Premises, or of an Authorized Person, who has reasonable grounds to believe that a Person is on or in Kanesatake Land, or was on or in the Premises, in contravention of section 3, the Person must provide the Person's correct name and address to the Occupier or Authorized Person.

6.2 A person who contravenes subsection 6.1 commits an offence.

6.3 A person who contravenes subsection 6.1 and remains on or in the premises commits an offence.

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.
- 7.3 The Court of Québec, as defined in the *Courts of Justice Act*, has jurisdiction to hear and try offences under this Law.
- 7.4 For greater certainty, this Law is an enactment, for the purposes Part 27 of the *Criminal Code of Canada*.
- 7.5 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.
- 7.6 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.
- 7.7 Nothing in this Law precludes offences being heard by a justice of the peace appointed in accordance with section 16(2) of the *Governance Act*.
- 7.8 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 Kanasatake 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 Kanasatakehrónon 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 ____.

MCK Signatures:

Quorum is: _____

Grand Chief _____

Chief _____

Chief _____

Chief _____

Chief _____

Chief _____

Chief _____

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