

WESTBANK FIRST NATION
ANIMAL CONTROL LAW NO. 2005-05

WHEREAS Council of Westbank First Nation deems it advisable and in the best interests of Westbank First Nation to both regulate the keeping of and prohibit the running at large of animals and poultry within Westbank Lands;

NOW THEREFORE Council of Westbank First Nation repeals Animal Control Bylaw No. 1981-01 and enacts the following Law:

1. TITLE

1.1 This Law may be cited as "*WFN Animal Control Law No. 2005-05*".

2. DEFINITIONS

2.1 In this Law unless the context otherwise requires:

"animal" means any livestock, small livestock or farmed fur bearing animals;

"Animal Control Officer" means the person appointed by Council or contracted by Council to enforce and carry out the provisions of this Law and includes the WFN Law Enforcement Officer and any special provincial constable of the SPCA;

"Brand Inspector" means any Inspector appointed under the *Livestock Brand Act*, RSBC 1996, c.271 as amended;

"cattle" means any bull, cow, ox, heifer, steer or calf;

"Council" means the governing body of Westbank elected pursuant to the *Westbank First Nation Constitution*;

"farmed fur bearing animals" means all animals that are wild by nature, kept in captivity and whose pelts are commonly used for commercial purposes, but does not include a species of animal excluded by any Westbank Law or provincial regulations;

"farmed game" means any animal held for agricultural purposes under the authority of a licence under the provincial *Game Farm Act* and includes fallow deer; bison and reindeer;

"game birds" include guinea fowl, pheasant, partridge, quail, silkies, squab and tinamou;

"horse" means any horse, mare, gelding, colt, filly, ass or mule;

"impounded" means seized, delivered, received, or taken into the Pound, or into the custody of the Poundkeeper as provided in this Law;

"keep/keeper/keeping" means raising and/or maintaining, owning, possessing or harboring;

“**livestock**” includes cattle, horse, mule, ass, sheep, goat, swine, musk ox, llama, alpaca, farmed game and ratites;

“**owner**” when used in relation to the ownership of an animal, includes a person owning, possessing, harbouring or having custody, care and control of an animal or permitting an animal to remain about the person’s house, premises or parcel of land and, where the owner is a minor, the person responsible for the custody of the minor;

“**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;

“**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;

“**pet**” means a domesticated animal kept for pleasure as opposed to being kept for a utilitarian purpose;

“**poultry**” means domesticated birds kept for eggs, meat, feathers, hide, cosmetic or medicinal purposes and includes chickens, ducks, geese, turkeys and game birds;

“**pound**” means any building, enclosure or place designated as an animal pound, either by Council or by the person with whom Council has an agreement to act as Poundkeeper, for the keeping of animals impounded under this Law;

“**Poundkeeper**” means the person appointed from time to time by Council to be Poundkeeper, or the authorized agent of any corporation, society, governmental body or other organization with whom Council has an agreement to act as Poundkeeper, including their assistants for the keeping of animals impounded under this Law;

“**ratite**” mean birds that have small or rudimentary wings and no keel to the breastbone and include ostriches, rheas and emus;

“**run or running at large**” when used with reference to any animal means being elsewhere than on the premises of a person owning or having the custody, care or control of such animal and not being under the direct charge and effective control of a responsible and competent person;

“**small livestock**” means poultry, rabbit or other small animals similar in size and weight but does not include farmed fur bearing animals;

“**SPCA**” means the Society for the Prevention of Cruelty to Animals;

“**structure**” means any building, shed, stable, or other type of housing used for the shelter or enclosure of animals;

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

“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 the 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 or any peace officer.

- 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. KEEPING OF ANIMALS

- 3.1 Except as outlined in this section, the keeping of animals other than as household pets is prohibited within Westbank Lands. The keeping of animals, when permitted, must comply with the following restrictions:

- (a) on parcels of less than 400 m² in area, keeping of livestock, small livestock or farmed fur bearing animals will not be permitted;
- (b) on parcels greater than 400 m² and less than 1,500 m² in area, keeping of animals must be limited to 5 small livestock. Roosters must not be kept on parcels of this size;
- (c) on parcels greater than 1,500 m² and less than 2,500 m² in area keeping of animals must be limited to 10 small livestock. Roosters must be kept inside sound resistant buildings between 7:00 p.m. and 7:00 a.m.;
- (d) on parcels greater than 2,500 m² and less than 5,000 m² in area, keeping of animals must be limited to 25 small livestock. Roosters must be kept inside sound resistant buildings between 7:00 p.m. and 7:00 a.m.;
- (e) on parcels greater than 5,000 m² and less than 1 hectare in area, keeping of animals must be limited to 1 livestock and 25 small livestock per 5,000 square meters;
- (f) on parcels 1 hectare or greater and less than 2 hectares in area, keeping of animals must be limited to 5 livestock and 100 small livestock per hectare (10,000 square meters) of lot area;

- (g) on parcels 2 hectares or greater and less than 4 hectares in area keeping of animals must be limited to 10 livestock and 100 small livestock per hectare (10,000 square meters) of lot area; and
 - (h) on parcels 4 hectares or greater in area keeping of livestock and small livestock will be unlimited.
- 3.2 Accessory buildings or structures used to shelter or house animals, with the exception of household pets, must, unless exempted by the Animal Control Officer, be situated:
- (a) a minimum of 15.24 metres (50 feet) from any building used for residential purposes located on the same parcel;
 - (b) a minimum of 15.24 metres (50 feet) from any front, side, or rear lot line of the parcel it occupies; and
 - (c) a minimum of 30.48 metres (100 feet) from all wells and streams.
- 3.3 No keeper of animals shall allow their animals to run at large.
- 3.4 Livestock, small livestock and farmed fur bearing animals when outside of buildings must be kept enclosed within secure fences, corrals or pens sufficient to retain them. This does not include livestock that are under permits that allows grazing on Westbank Lands.
- 3.5 Subject to the requirements of the *WFN Dog and Cat Control Law*, pets may be kept in a reasonable number on all parcels within Westbank Lands, provided that they are kept primarily within the household to which they are associated and their keeping does not create a nuisance to persons on adjacent parcels.
- 3.6 Aviaries for tropical birds must not be located on parcels with an area of less than 1 hectare and must include facilities for keeping the birds in sound resistant buildings between 7:00 p.m. and 7:00 a.m.
- 3.7 Farmed fur bearing animals must not be kept on a parcel with an area less than 2 hectares.
- 3.8 No person shall keep bee hives on a parcel of land which has an area of less than .61 hectares (one and one-half (1½) acres).
- 4. ESTABLISHMENT OF POUND**
- 4.1 Council may, from time to time, enter into an agreement with any person for the provision of an Animal Pound on private property.
- 4.2 Council will, from time to time, as may be required, appoint or contract with a Poundkeeper, who will operate a Pound for the impounding of animals pursuant to the provisions of this Law.

5. IMPOUNDING OF ANIMALS

- 5.1 Any owner or person who suffers, permits or allows animals to run at large, stray, depasture or trespass on any street, lane, highway, boulevard, park or public place within Westbank Lands is guilty of an infraction of this Law.
- 5.2 Any owner or person who suffers, permits or allows animals to trespass on private property within Westbank Lands or to graze on unfenced land within Westbank Lands without being securely tethered, or any owner or person who releases any animal from an enclosure or tether, leaves any gate open or removes, cuts or breaks any fences so as to release any animals contained therein, is guilty of an infraction of this Law.
- 5.3 The Poundkeeper, or any other person, is authorized to seize and impound any animal found running at large or trespassing in or upon any parcel of land, premises, or public place, in any enclosures or gardens, or any enclosed land within Westbank Lands contrary to the provisions of this Law.
- 5.4 The Poundkeeper must notify the Brand Inspector (by telephone or in writing) of the impoundment of any branded animal, and to furnish the Brand Inspector with any particulars requested by him in connection with the impounded animal.
- 5.5 Council must establish a schedule of fees in relation to this Law, in respect of seizure, boarding, haulage and destruction of animals. A copy of the current schedule of fees must be available for viewing free of charge at the administrative offices of Westbank and available for distribution at a nominal charge.
- 5.6 The Poundkeeper must detain seized animals until their owner has paid the applicable fees for impoundment, boarding, and any hauling resulting from impoundment.
- 5.7 The applicable fees will be assessed per impoundment occurrence by the Poundkeeper.
- 5.8 The Poundkeeper must not release any impounded animal without receiving the applicable fees, and must furnish a receipt to the payee of such payment.
- 5.9 The Poundkeeper must request the attendance of a veterinarian, to any impounded animal who, if in the opinion of the Poundkeeper, is suffering from any injury, disease or sickness, or from any other cause. The Poundkeeper is entitled to demand and receive from the owner, if known, the amount equivalent to the veterinary charges for professional services and attendance call administered to the animal, or such expenditure is to be realized from Westbank for animals whose owner cannot be located. The Poundkeeper may permit the suffering animal to be humanely destroyed.

6. NOTICE OF IMPOUNDING

- 6.1 If the owner of any impounded animal is known to the Poundkeeper, the Poundkeeper will immediately notify the owner by mail or telephone, in accordance with the form of Impounding Notice established by Council, from time to time.
- 6.2 In case the owner is not known, or the owner so notified does not, within three (3) days of impoundment or notification, as the case may be, appear at the Pound and reclaim the

impounded animal by payment of the applicable fees, the Poundkeeper must publish a Notice of Sale in the form established by Council, from time to time.

- 6.3 The Notice of Sale must be posted at the Pound and in a public area of the Westbank administration building, and if considered advisable by the Poundkeeper, by publication in one issue of a newspaper of local circulation.
- 6.4 The Notice of Sale must be posted for at least six (6) clear days before the day of sale named thereon. More than one (1) animal may be included in each Notice and the wording of the Notice amended accordingly to merit the circumstances.

7. SALE OF IMPOUNDED ANIMALS

- 7.1 Every owner of an impounded animal must immediately upon being notified or becoming aware of the impoundment, reclaim the animal in accordance with the provisions of this Law.
- 7.2 If the Pound is broken and the animal gets out or in any way escapes from the Pound and returns to the possession or custody of the owner or any person claiming the animal, the owner or other person is still liable for the payment of any impoundment, boarding or haulage fees due and payable under this Law.
- 7.3 Where any impounded animal has not been claimed in accordance with the provisions of this Law, the Poundkeeper will take whatever action is necessary to sell such animal by public auction on the day named in the Notice of Sale.
- 7.4 If more than one (1) animal is impounded and:
 - (a) the owner thereof is known, the Poundkeeper must not sell or cause to be sold any more of such animals after there has been realized from the sale sufficient to satisfy the outstanding fees due against the animals under this Law, and the owner of the animals is entitled to those remaining unsold animals; or
 - (b) the owner of the animals is unknown, the Poundkeeper must sell all the animals impounded.
- 7.5 Where at any public auction held pursuant to this Law, no bid is received for the impounded animal to be sold or where a bid received is less than the outstanding fees due under this Law, the Poundkeeper may, at his discretion, sell it at private sale, and if in the opinion of the Poundkeeper, it is impossible to dispose of such animal for valuable consideration, the Poundkeeper may cause such animal to be humanely destroyed or otherwise disposed of.
- 7.6 If the proceeds from the sale or other disposal of any impounded animals are not sufficient to satisfy the outstanding fees payable, then the owner or other person entitled to the possession of the animal must pay the balance and may be sued therefore at the insistence of the Poundkeeper.

8. DESTRUCTION OF ANIMALS

- 8.1 Subject to section 8.2, if an owner contacts the Poundkeeper and requests that their animal be taken away and destroyed, the Poundkeeper may direct the Animal Control Officer to call for and take away the animal and may humanely destroy or otherwise dispose of the animal.
- 8.2 An owner who makes a request under section 8.1 must first complete the form of Consent for Euthanasia established by Council, from time to time.
- 8.3 An animal which is to be humanely destroyed will be destroyed under direct supervision of a person authorized to practice Veterinary Medicine under the *Veterinarians Act* for the Province of British Columbia, and in possession of a valid and subsisting Westbank or City of Kelowna business licence, as the case may be.

9. RIGHT OF ENTRY

- 9.1 The Animal Control Officer is authorized to enter, at all reasonable times, upon any parcel of land or premises within Westbank Lands that is subject to any of the terms and conditions of this Law, in order to determine the health and well-being of any animal within the premises and to ascertain whether the provisions of this Law are being obeyed.
- 9.2 Where the Animal Control Officer or the Poundkeeper is satisfied that an animal is not receiving proper care, treatment or shelter or is being kept on any premises contrary to the provisions of this Law, they are each authorized to enter upon any parcel of land or premises within Westbank Lands in order to control, impound or destroy any dangerous, wounded or sick animal.

10. FEES AND FORMS

- 10.1 Council may, by resolution passed at a duly convened meeting, 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.

11. OFFENCES

- 11.1 No person shall obstruct, interfere with or hinder Council, the Animal Control Officer or any authorized employee, officer or agent in the carrying out of their duties and responsibilities under this Law.
- 11.2 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.

- 11.3 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.
- 11.4 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.

12. IMMUNITY

- 12.1 No action for damages lies or may be instituted against present or past Council, Animal Control Officer, Poundkeeper, 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 actual or required performance of the person's duty or the exercise of their authority; or
 - (b) for any alleged neglect or default in the actual or required performance of the person's duty or the exercise of their authority.
- 12.2 Section 12.1 does not provide a defence if:
- (a) Council, Animal Control Officer, Poundkeeper, 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.
- 12.3 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.
- 12.4 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.
- 12.5 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.

13. APPLICATION OF LAW

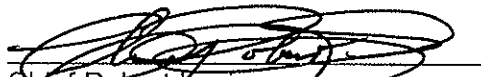
- 13.1 Where any federal Act or regulation or provincial Act or regulation or any other Westbank Law may apply to any matter covered by this Law, compliance with this Law will not relieve the person from also complying with the provisions of the other applicable Act, regulation or law.
- 13.2 If any 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.
- 13.3 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.
- 13.4 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.

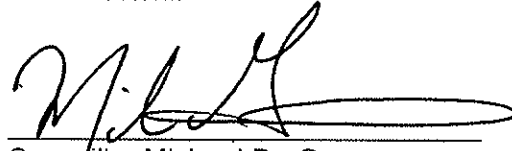
14. REPEAL

- 14.1 Animal Control Bylaw, 1981-01 is hereby repealed.

BE IT KNOWN that this Law entitled, "WFN Animal Control Law No. 2005-05" is hereby read for the first, second, and third and final time and is hereby enacted as Law No. 2005-05 by the Council of Westbank First Nation at a duly convened meeting of Council held on the 7th day of February, 2005.

Voting in favour of the Law are the following members of Council:


Chief Robert Louie


Councillor Michael De Guevara


Councillor Brian Eli


Councillor Loretta Swite


Councillor Michael Werstuik

being a majority of those members of Council of Westbank First Nation present at the aforesaid meeting of Council.

The Quorum of Council is three (3) members.

Number of members of Council present at the meeting: 5.