

**WESTBANK FIRST NATION
FIREWORKS LAW NO. 2005-12**

WHEREAS Council of Westbank First Nation deems it advisable and in the best interests of Westbank First Nation to enact a law to regulate the use of fireworks within Westbank Lands;

NOW THEREFORE Council of Westbank First Nation repeals Incendiary Devices Bylaw No. 1995-05 and enacts the following law:

1. TITLE

1.1 This Law may be cited as the "*WFN Fireworks Law No. 2005-12*".

2. DEFINITIONS

2.1 In this Law, unless the context otherwise requires:

"Act" means the "*Explosives Act*, RSC 1985, c. E-17", and the regulations enacted thereunder, as amended or replaced from time to time;

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

"Consumer Fireworks" means a pyrotechnic device producing quantities or effects of light, sound and/or smoke by the combustion of explosive or flammable composition and includes fireworks showers, fountains, golden rain, lawn lights, pin wheels, Roman candles, and volcanoes, classed under the Act as low hazard, Class 7.2.1 fireworks, but does not include Christmas Crackers, sparklers or caps for toy guns;

"Display Fireworks" means the manufactured pyrotechnic device producing effects of light and/or sound classed under the Act as high hazard, Class 7.2.2 fireworks, but does not include firecrackers;

"Fire Chief" means the person duly appointed as head of the fire department of any fire protection district, municipal corporation or first nation responsible for fire prevention and protection within Westbank Lands;

"Fire Department" includes the fire department of any fire protection district, municipal corporation, or first nation responsible for attending fires on Westbank Lands;

"firecracker" means a pyrotechnic device that explodes instantaneously when ignited and does not produce any visible effect after the explosion, but does not include items classed under the Act as low hazard Class 7.2.1 fireworks, nor Christmas Crackers, sparklers or caps for toy guns;

"Fireworks" means any Display Fireworks, Consumer Fireworks or Pyrotechnic Special Effects but does not include Christmas Crackers, sparklers or caps for toy guns;

"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;

"permit" means a permit issued pursuant to and in accordance with section 4.1 of this Law in the form established by Council, from time to time;

"Pyrotechnic Special Effects" means a manufactured pyrotechnic device used to produce a special effect for indoor or outdoor performance use, and that any device used, is an authorized pyrotechnic effect under the Explosives Regulatory Division of Natural Resources Canada, Class 7.2.5, Class 1.1 and Class 3;

"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. PROHIBITIONS

3.1 No person shall sell or offer for sale any firecrackers or Fireworks within Westbank Lands.

3.2 No person shall discharge, fire or set off any firecrackers or Fireworks within Westbank Lands, unless the person has obtained a valid Permit authorized under this Law.

3.3 No person shall manufacture, store, transport, display or sell Display Fireworks within Westbank Lands.

3.4 No person shall use, set off or allow to be used or set off any Fireworks in such a place or in such a manner as might create danger or constitute a nuisance to any person or property, or to do or cause or allow any unsafe act or omission at the time and place for the setting off of any Fireworks.

4. PERMIT FOR FIREWORKS

- 4.1 The Fire Chief is hereby authorized to issue a Permit to any person for the purpose of the observance or celebration of any special event or festival by the use of Fireworks, subject to the terms and conditions outlined in this Law.
- 4.2 Every application for a Permit must be made by the person setting off the Fireworks, must be in writing, addressed to the Fire Chief, and be in the form established by Council, from time to time.
- 4.3 Every applicant for a Fireworks Permit pursuant to this section must hold a current and valid Fireworks Supervisors and/or Pyrotechnics Certification card as issued by Natural Resources Canada.
- 4.4 The applicant must enter into a Save Harmless Agreement in the form established by Council, from time to time.
- 4.5 An applicant must submit a written agreement from the owner of the parcel on which the Fireworks are to be used and a written agreement from any Sponsoring Organization of the Fireworks, in the form established by Council, from time to time. In the case of Fireworks that are to be used on Nation-occupied property, a Permit under the WFN Special Events Law may be required.
- 4.6 Every Permit authorized pursuant to this Law must be in the form established by Council, from time to time.
- 4.7 The applicant must, without limiting its obligations or liabilities under the Fireworks Permit, procure and maintain, at its own expense and cost, such insurance policy or policies with coverage in amounts as determined by Council, from time to time. The insurance policy must be maintained continuously from the date of commencement of the Fireworks Permit until the date of expiry of the Fireworks Permit or such further period as may be specified in the form of Insurance Requirements established by Council, from time to time.
- 4.8 Prior to the issuance of the Permit, the applicant must provide evidence to the Fire Chief of the insurance required under section 4.7 of this Law by way of a Certificate of Insurance, in the form established by Council, from time to time.
- 4.9 Fireworks must end at or prior to 11:00 p.m. and may not commence prior to 8:00 a.m. on any day and must be started and completed within the time period specified on the Permit, except as otherwise authorized by the Fire Chief.
- 4.10 Fireworks may be inspected by the Fire Department to ensure all safety aspects have been adhered to as set out in the Act and in accordance with the form of Checklist for Fireworks, established by Council, from time to time.
- 4.11 The Fire Chief and the WFN Law Enforcement Officer and any other person(s) authorized by Council are hereby authorized to enter upon any parcel of land at all reasonable times prior to, during and reasonably subsequent to the time period

specified on the Permit, subject to the terms of this Law, in order to ascertain whether the provisions of this Law are being or have been complied with.

- 4.12 The Fire Chief is hereby authorized to revoke a Permit issued under this Law at any time.
- 4.13 The Fireworks must be set off by the person to whom the Permit is issued and must be conducted in a manner that is consistent with all safety procedures required under the Act.
- 4.14 A Permit issued under this Law is non-transferable.
- 4.15 All Fireworks and all debris from the Fireworks must be removed and safely disposed of by the holder of the Permit as soon as practical after the Fireworks is completed and in any event on or before the expiry of the Permit.

5. FEES AND FORMS

- 5.1 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.

6. NOTICES & CHARGES AGAINST REGISTERED HOLDERS

- 6.1 Where Westbank is required to give notice to or imposes an additional cost or charge against the registered holder and two or more persons are shown as registered holders in respect of a parcel of land, then a notice given to or a cost or charge imposed against one registered holder is not invalidated by the failure to give notice to or impose a charge against any other registered holder.

7. OFFENCES

- 7.1 No person shall obstruct, interfere with or hinder Council, the WFN Law Enforcement Officer or any authorized employee, officer or agent in the carrying out of their duties and responsibilities under this Law.
- 7.2 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.
- 7.3 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.

7.4 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.

8. IMMUNITY

8.1 No action for damages lies or may be instituted against present or past Council; WFN Law Enforcement Officer, Fire Chief, Officer or Member, 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 performance or intended performance of the person's duty or the exercise of the person's authority; or
- (b) for any alleged neglect or default in the performance or intended performance of the person's duty or the exercise of the person's authority.

8.2 Section 8.1 does not provide a defence if:

- (a) Council, WFN Law Enforcement Officer, Fire Chief, Officer or Member, or 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.

8.3 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.

8.4 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.

8.5 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.

9. APPLICATION OF LAW


- 9.1 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.
- 9.2 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.
- 9.3 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.
- 9.4 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.

10. REPEAL

- 10.1 Incendiary Devices Bylaw No. 1995-05 and all amendments thereto are hereby repealed.

BE IT KNOWN that this Law entitled, "WFN Fireworks Law No. 2005-12" is hereby read for the first, second, and third and final time and is hereby enacted as Law No. 2005-12 by the Council of Westbank First Nation at a duly convened meeting of Council held on the 7th day of February, 2005.

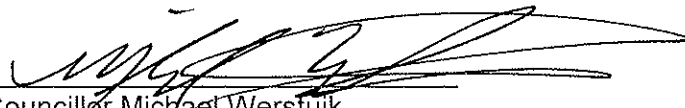
Voting in favour of the Law are the following members of Council:


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.

