

TRESPASSING LAW

WHEREAS Henvey Inlet First Nation manages its lands and resources for the use and benefit of its members by adhering to the *Framework Agreement on First Nation Land Management* and by having the *First Nations Land Management Act* apply to Henvey Inlet First Nation reserve lands;

AND WHEREAS pursuant to the *Framework Agreement on First Nation Land Management*, Henvey Inlet First Nation has enacted the Henvey Inlet First Nation Land Code (herein the “Land Code”) as a fundamental law of Henvey Inlet First Nation;

AND WHEREAS section 7.01 of the Land Code allows Henvey Inlet First Nation the authority to enact rules and procedures applicable to trespass on Henvey Inlet First Nation Land.

THEREFORE the Council of Henvey Inlet First Nation enacts the Henvey Inlet First Nation Trespass Law No. 01-2013 as follows.

1.0 TITLE

1.0 This law may be cited as the Henvey Inlet First Nation Trespass Law No. 01-2013.

2.0 GLOSSARY

For the purposes of this Law, the following definitions apply:

“community land” means any First Nation land in which all members have a common interest and in respect of which there are no other member interests or third party interests;

“Council” means the Chief and Council of Henvey Inlet First Nation;

“First Nation land” means any reserve land that is subject to the Henvey Inlet First Nation Land Code;

“Member” means a person whose name appears or is entitled to appear on the *First Nation* Band Membership List;

“Natural Resources” means any renewable and non-renewable resources in and of Henvey Inlet First Nation Lands;

“occupier” includes,

- (a) a person who is in physical possession of premises, or

- (b) a person who has responsibility for and control over the conditions of premises or the activities carried on there, or control over persons allowed to enter the premises, even if there is more than one occupier of the same premises;

"person" includes a corporation of any type, partnership, society or association whether or not incorporated, and any other entity having a separate personality, or style for carrying out business, recognized in law;

“premises” means lands and structures, or either of them and includes water;

“resolution” means a resolution of the Council.

3.0 Trespassing

3.1 Every person who:

- a) enters onto community land without authorization from Council;
- b) enters onto First Nation land in contravention of a Band Council Resolution;
- c) enters onto premises without the occupier’s express permission; or
- d) occupies First Nation land without the express permission of Council to do so,

is guilty of an offence and is liable to a fine of not more than \$10,000.

3.2 Every person who enters on community land, without authorization from Council, for the purposes of:

- a) hunting, fishing, trapping, or gathering;
- b) hawking or peddling wares or merchandise, goods and services;
- c) loitering or soliciting;
- d) removing any natural resources;
- e) using any roads, bridges or paths which are on community lands;

is guilty of an offence and is liable to a fine of not more than \$10,000.

3.3 Every person who is not acting under a right or authority conferred by the First Nation Land Code, a First Nation law or a resolution of Council and who,

(a) without the express permission of the occupier, the proof of which rests on the defendant,

- (i) enters on premises when entry is prohibited under this Law, or
- (ii) engages in an activity on premises when the activity is prohibited under this Law; or

(b) does not leave the premises immediately after he or she is directed to

do so by the occupier of the premises or a person authorized by the occupier,

is guilty of an offence and is liable to a fine of not more than \$10,000.00.

- 3.4 It is a defence to a charge under subsection 3.1, 3.2, or 3.3 in respect of premises that is First Nation land that the person charged reasonably believed that he or she had title to or an interest in the First Nation land that entitled him or her to do the act complained of.
- 3.5 Where the premises are or include community land, the First Nation is the occupier and the rights and powers of the occupier are exercised by Chief and Council or by a person designated by Chief and Council to exercise some or all of its rights or powers under this land law.
- 3.6 An activity prohibited under this law includes any activity in breach of a land or environmental law of the First Nation, its Land Code, the *Criminal Code (Canada)* or any order of a court of competent jurisdiction. Entry into premises that are First Nation land for the purpose of engaging in any such activity is a separate offence under this land law.

4.0 Prohibition of Entry

- 4.1 Entry on premises may be prohibited by notice to that effect and entry is prohibited without any notice on premises,
- (a) that is a garden, field or other First Nation land that is under cultivation, including a lawn, orchard, vineyard and premises on which trees have been planted and woodlots on First Nation land that is used primarily for agricultural purposes; or
 - (b) that is enclosed in a manner that indicates the occupier's intention to keep persons off the premises or to keep animals on the premises.
- 4.2 Subject to sections 5, 7 and 8, there is a presumption that access for lawful purposes to a building by a means provided and ordinarily used for access purposes is not prohibited.

5.0 Council Authority

- 5.1 Council may make a resolution setting out the rules and regulations for the use of any premises on community land, including arenas, community halls, recreational facilities, pools, baseball and soccer fields, health clinics and similar premises.
- 5.2 Council may make a resolution providing that a person who breaches a resolution, rule, regulation or the terms of any permit authorized under this

section, or who is charged with a violation of this land law, is banned from entering onto or remaining on any or all First Nation lands for such period of time as set out in the resolution.

5.3 Council may prohibit, by resolution, entry or activity on premises located on community lands, provided that notice is given that the entry to the premises is prohibited or one or more activities are prohibited on the premises.

5.4 Council may regulate, by resolution, the hours or seasons in which premises located on community land may be used for specific purposes, impose limits on the activities to be engaged in and may impose a requirement for a permit to engage in such activities or purposes.

6.0 Offence - Violation of Council Resolution, Rule or Regulation

6.1 Every person who fails to comply with a resolution, rule or regulation of Council made under section 5.2 or 5.3, or who fails to comply with the terms of any permit granted under section 5.4, is guilty of an offence and is liable to a fine of not more than \$10,000.00.

7.0 Method of Giving Notice

7.1 A notice under this Law may be given,

(1) orally or in writing:

(2) by means of signs posted so that a sign is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to the premises to which it applies.

7.2 Substantial compliance with clause 7.1 (2) is sufficient notice.

8.0 Form of Sign

8.1 A sign naming an activity or showing a graphic representation of an activity is sufficient for the purpose of giving notice that the activity is permitted.

8.2 A sign naming an activity with an oblique line drawn through the name or showing a graphic representation of an activity with an oblique line drawn through the representation is sufficient for the purpose of giving notice that the activity is prohibited.

9.0 Arrest without warrant

9.1 In this section, "**peace officer**" means a peace officer described in the *Criminal Code* (Canada) and includes an officer appointed by the Council to enforce the laws of the First Nation.

- 9.2 A peace officer may arrest without warrant any person found on or in premises if the peace officer believes on reasonable and probable grounds that the person is committing an offence under section 3 or section 6.
- 9.3 If a peace officer believes on reasonable and probable grounds that a person has committed an offence under section 3 or section 6 and has recently departed from the premises, the peace officer may arrest the person without warrant if
- (a) the person refuses to give his or her name and address to the peace officer on demand, or
 - (b) the peace officer believes, on reasonable and probable grounds, that the name or address given by the person to the peace officer is false.

11.0 Civil Action for Trespass Preserved

- 11.1 Nothing in this Law extinguishes the right of a person, including the First Nation, to bring a civil action for damages arising out of a trespass on any premises and all civil remedies for trespass are preserved.

BE IT KNOWN that this Law cited as the Henvey Inlet First Nation Trespass Law No. 01-2013 is hereby;

Enacted this ____ day of _____, 2013.

Chief

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor