

Disclaimer: This document has been created by staff at the First Nation Land Management Resource Centre (FNLMRC); it is general information only and not to be construed as legal advice for any specific factual situation. It is strongly recommended that you consult with your lawyer regarding the drafting of any Covid 19 law, and particularly regarding the scope of powers of appointed officials under your law.

XYZ FIRST NATION

Interim COVID-19 Virus

Community Protection Law

Dated for Reference: XX 2020

Table of Contents

Part I. Principles 2

PART II. TITLE..... 2

PART III. DEFINITIONS 0

PART IV. PURPOSE & APPLICATION 0

 Purpose 0

 Application 0

PART V. INTERIM RESTRICTIONS WITHIN BUSINESSES & OTHER PREMISES 0

 Appointment of XYZ Officials 0

 Restrictions on hours of operation and number of occupants..... 1

PART VI. INTERIM RESTRICTIONS ON PUBLIC GATHERINGS 1

 Restrictions on access to XYZ Lands..... 1

 Restrictions and Closure of public facilities 2

 Social distancing requirements..... 2

 Restrictions on public gatherings without permission 2

 Restrictions apply to homes and residences 2

 Orders 2

 Assistance of Police & Peace Officers 2

PART VII - ENTRY ONTO A PREMISES AND ARREST WITHOUT WARRANT 2

 Release after arrest by officer..... 3

 Use of force..... 4

 Parties to an Offence 4

 Curfew, Exclusion..... 4

 Offence..... 5

PART VIII. PARKING RESTRICTIONS 6

 Parking 6

 No Parking signs..... 6

 Removal of Vehicles..... 6

 Offence..... 6

PART IX. GENERAL 6

 Interim nature of this Law 6

 Law applies to XYZ employees and XYZ Council..... 7

 No liability 7

 Limitation Period..... 7

 Required Notice 7

 Compliance with other Laws..... 7

 Severability..... 8

 Coming into Force 8

Part I. Principles

WHEREAS An emergency exists as a result of the potential presence of novel coronavirus COVID-19 (“COVID-19”) on XYZ Lands and elsewhere in Ontario which poses risks to XYZ Lands, the environment and the health of Members;

WHEREAS COVID-19 is a disease that is readily communicable from person to person and carries risks of fever, pneumonia, and in the most serious cases, a risk of death;

WHEREAS the spread of COVID-19 has been declared a pandemic by the World Health Organization; and

WHEREAS XYZ health experts have advised Council of the need to adopt social distancing, restrictions on public gatherings, and restrictions on the use of XYZ Lands to reduce the risk of spreading the virus on XYZ Lands and amongst Members and their families.

WHEREAS section X of the XYZ Land Code, verified on MM, DD, YYYY (the Land Code) sets out the authority of Council to enact laws that Council believes are required urgently to protect XYZ Lands or Members;

WHEREAS Council reasonably believes that an emergency law is required urgently to protect XYZ Lands and Members from the risk of the spread of COVID-19;

WHEREAS in accordance with section X of the XYZ Land Code this law will expire within 120 days of enactment;

WHEREAS Council will monitor the COVID-19 virus risks on XYZ Lands and may in accordance with XX and XX of the XYZ Land Code decide at a future XX date whether to re-enact, amend, or repeal all or part of this Law;

- **NOW THEREFORE BE IT RESOLVED THAT** the XYZ First Nation Interim COVID-19 Community Protection Law (2020) is hereby enacted as a law of Brunswick House.

PART II. TITLE

- 2.1 This Law may be cited as the XYZ First Nation Interim COVID-19 Virus Community Protection Law.

PART III. DEFINITIONS

3.1 The following definitions apply to this Law:

“**Council**” means the Chief and Council of the XYZ First Nation or any successor elected government of the XYZ First Nation;

“**Councillor**” means a duly elected band councillor of XYZ First Nation;

“**Council Resolution**” means a formal, written motion passed by a quorum of Council at a duly convened meeting of Council;

“**Land Code**” means the XYZ First Nation Land Code, dated MM, DD, YYYY

“**Law**” means this XYZ *Interim COVID-19 Virus Community Protection Law (2020)*

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

“**Order**” means an order made under this Law;

“**Peace Officer**” has the meaning ascribed in section 2 of the Criminal Code of Canada, R.S.C. 1985 c. C-46, as amended.

“**Person**” means an individual or corporation;

“**XYZ Land**” has the meaning as set out in section 1.2 of the Land Code;

“**XYZ First Nation Law**” means a law or regulation enacted under the Land Code, but does not include a Council Resolution;

“**XYZ Official**” means a Person appointed by BCR in writing as a XYZ Official pursuant to this Law.

PART IV. PURPOSE & APPLICATION

Purpose

- 4.1 The purpose of this Law is to provide for the protection of XYZ Lands, the environment, the health and safety of Members, and their families by imposing measures to reduce the risk of the spread of the COVID-19 virus on XYZ Lands.
- 4.2 This Law has been adopted by Council as an interim law on an urgent basis, in accordance with the authority to adopt urgent laws as set out in sections XX and XX of the Land Code, for the purpose of imposing temporary measures required to reduce the risk of harm on XYZ FN Lands.

Application

- 4.3 The provisions of this Law apply to all XYZ FN Lands.

PART V. INTERIM RESTRICTIONS WITHIN BUSINESSES & OTHER PREMISES

Appointment of XYZ Officials

- 5.1 Council may appoint, by Council Resolution, an employee, Councillor or agent of Brunswick House, or any other person, to be a XYZ Official for the purposes of this Law.
- 5.2 A person appointed as a XYZ Official shall carry a copy of his or her appointment and on request, produce such appointment that provides evidence of his or her authority.
- 5.3 A XYZ Official, once appointed by Council, has the following powers: to enforce any of the provisions under this Law;
 - (a) To restrict access by methods approved by Council, stop and demand identification to verify the person's identity and make such inquiries into the recent travel, recent contacts and possible exposure to persons testing positive for the COVID-19 virus.
 - (b) to issue orders under this Law which XYZ Officials are specifically empowered to make; and
 - (c) To process individuals by way of information and summons, issue written warnings and other penalties or remedies under this Law.
- 5.3 As an alternate remedy an XYZ official or the Police may choose alternative methods or remedies in keeping with diversion remedies as Council authorizes such as community service, recommendations from elder's or any other recommendation in keeping with traditional customs and traditions.

- 5.4 Any person that agrees to an alternative remedy must complete those recommendations within the prescribed times.
- 5.5 Every person who fails to comply with those recommendations of alternative remedies commits the offence of fail to comply and is guilty of an offence and on conviction is liable to a fine of not more than ten thousand dollars (\$10,000) or imprisonment of not more than two (2) months or both. Council may develop a penalty schedule based on repeat offences and increase the amount of penalty based on frequency and repetition of offences.
- 5.6 Council may, at its sole discretion and without imparting any obligation to do so whatsoever, may provide for remuneration of a XYZ Official by Council Resolution.

Restrictions on hours of operation and number of occupants

5.7 For the purposes of protecting public health, Council may issue orders restricting the hours of operation, and number of persons entering businesses or other premises on XYZ Lands.

5.8 Any person who violates an order commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars (\$10,000.00), imprisonment for up to two (2) years, or both imprisonment and a fine. Any person who commits a subsequent offence within a sixty-day (60) period from the original date of the offence may be subject to increased fines as prescribed in this law.

- (a) As an alternate remedy an XYZ official or the Police may choose alternative methods or remedies in keeping with diversion remedies as Council recommends such as community service, recommendations from elder's or any other recommendation in keeping with traditional customs and traditions.

PART VI. INTERIM RESTRICTIONS ON PUBLIC GATHERINGS

Restrictions on access to XYZ Lands

- 6.1 No person, other than:
- (a) a Member and their immediate family;
 - (b) a person who is not a Member but who is authorized to reside on XYZ Lands;
 - (c) a Peace Officer or coroner;
 - (d) a XYZ Official; or
 - (e) other persons specifically permitted to do so in advance by Council.

is authorized to enter onto or remain on XYZ Lands while this Law is in force.

Restrictions and Closure of public facilities

- 6.2 Council may, at its sole discretion, order closure, or restrictions on access to, community facilities on XYZ Lands including, schools and school playgrounds, hockey arenas, and other open recreational spaces.

Social distancing requirements

- 6.3 In order to protect health and safety, all persons present on XYZ Lands must practice social distancing at all times by maintaining a minimum distance of six (6) feet or more from persons other than those with whom they share or occupy a dwelling.
- 6.4 In order to protect health and safety, Chief and Council, in consultation with appropriate public health officials, may issue additional orders for social distancing and similar conduct on XYZ Lands.

Restrictions on public gatherings without permission

- 6.5 No person shall participate in public gatherings, assemblies, or parties involving five (5) or more persons on XYZ Lands, without the specific written permission of Council.

Restrictions apply to homes and residences

- 6.6 The restrictions under this Law on public gatherings, assemblies, or parties apply to residences and spaces on XYZ Lands whether occupied by Members or non-Members.
- 6.7 The restrictions under this Law on public gatherings, assemblies, or parties in private dwellings on XYZ Lands do not apply to the ordinary use of those dwellings by persons who live in those private dwellings.
- 6.8 Notwithstanding section 6.7, no person may have any more than ten (10) people present at any one time in his or her private dwelling.

Orders

- 6.9 An XYZ Official may order that persons participating in public gatherings, assemblies, or parties contrary to this Law cease participating in those public gatherings, assemblies, or parties.

Assistance of Police & Peace Officers

- 6.10 XYZ Officials authorized to issue orders under this Law may request the assistance of Peace Officers or health or law enforcement professionals to carry out orders under this Law.

PART VII - ENTRY ONTO A PREMISES AND ARREST WITHOUT WARRANT

- 7.1 An appointed XYZ Official or Peace Officer may enter any premises at any time to administer and enforce the provisions of this XYZ First Nation Interim COVID-19 Virus Community Protection Law.

- 7.2 It is the duty of everyone who executes a process or warrant to have a copy with him or her, where it is feasible to do so, and to produce it when requested to do so. An XYZ Official or Peace Officer shall serve or leave a copy of the process, notification or warrant at the location or on the person to who the document is directed.
- 7.3 The administration of orders shall be carried out during by day as defined by the Criminal Code unless otherwise directed by an order of the court. Service of documents may be served at any reasonable time.
- 7.4 A peace officer may arrest without warrant any person found on or in a premises if the peace officer believes on reasonable and probable grounds that the person is committing an offence under XYZ First Nation Interim COVID-19 Virus Community Protection Law,
- (a) to facilitate the removal of the person refusing to leave a place or premise. The person shall be released as soon as practicable after the arrest;
- 7.5 If a peace officer believes on reasonable and probable grounds that a person has committed an offence under XYZ First Nation Interim COVID-19 Virus Community Protection Law and has recently departed from a place or 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. Any person that does not obey the order of an XYZ official or Peace officer, may be arrested by a Peace Officer to facilitate the removal of the person refusing to leave a place or premise. The person shall be released as soon as practicable after the arrest.

Release after arrest by officer

- 7.6 Where a police officer, acting on the power of arrest, arrests a person, the police officer shall, as soon as is practicable, release the person from custody after serving him or her with a summons or order authorized by this law unless the officer has reasonable and probable grounds to believe that,
- (a) it is necessary in the public interest for the person to be detained, having regard to all the circumstances including the need to,
 - (b) establish the identity of the person,
 - (c) secure or preserve evidence of or relating to the offence, or
 - (d) prevent the continuation or repetition of the offence;

Use of force

- 7.7 Every police officer is, if he or she acts on reasonable and probable grounds, justified in using as much force as is necessary to do what the officer is required or authorized by law to do.
- 7.8 It is the duty of everyone who arrests a person, whether with or without warrant, to give notice to that person, where it is feasible to do so, of the reason for the arrest.
- 7.9 Where a person is wrongfully arrested, whether with or without a warrant, no action for damages shall be brought,
- (a) against the police officer making the arrest if he or she believed in good faith and on reasonable and probable grounds that the person arrested was the person named in the warrant or was subject to arrest without warrant under the authority of this Law;
 - (b) against any person called upon to assist the police officer if such person believed that the police officer had the right to effect the arrest; or
 - (c) against any person required to detain the prisoner in custody if such person believed the arrest was lawfully made.

Parties to an Offence

- 7.10 A person other than a person who commits an offence under this law, is also guilty of an offence under section if that person is shown to be complicit in the commission of the offence by:
- (a) purporting to give permission for entry to the premises where that person is not, or was not at the relevant time, an occupier or otherwise authorized to give such permission under this law;
 - (b) being the principal of the person who committed acts against this law, directed or counseled him or her to do so as an agent:
- 1.1 A person may be a party to the offence against this law whether or not the acts subsequent to entry exceeded the scope of such counseling, authorization, direction or assistance and whether or not any other person was convicted under this law in respect of the same offence.

Curfew, Exclusion

- 1.2 This provision may apply to any person with respect to any XYZ or premises on XYZ Land, whether or not that person is a member.
- 1.3 Council may by resolution apply a remedy pursuant to this section for any of the reasons or circumstances described in section XX with respect to frequenting XYZ Land or any premises on XYZ Land, for any reason other than authorized by Council or outlined in this law that Council determines to pose a danger to XYZ Land, premises

on XYZ Land or the public and personal safety of persons entitled to the use and occupation of XYZ Land.

1.4 Council through a XYZ Official may impose a curfew on any person with respect to all or any XYZ Land or premises on XYZ Land, which may prescribe hours, dates or times when that person is permitted or prohibited from attending at or on those premises, or restricting that person to specified premises during specific hours, dates or times, and shall arrange for personal service of a resolution to that effect upon the person unless service can only be effected by other forms of notice pursuant to this law.

a. In the event of a curfew restricting access for the members and public, notification can be through signage and communication deemed appropriate by the XYZ Official.

1.5 Council through a XYZ Official may exclude a person at all times from all or any XYZ Land or premises on XYZ Land and shall arrange for personal service of a resolution to that effect upon the person unless service can only be effected by other forms of notice pursuant to this law.

(a) Every effort to serve the person personally and when a person cannot be served through personal service, any other recognized service by leaving it with and inmate of the premises over 16 years of age or registered mail will be considered due notice.

7.16 This provision may apply to any person with respect to any XYZ Land or premises on XYZ Land, whether or not that person is a member.

7.17 XYZ Official may impose a curfew or self-isolating order on any person with respect to all or any XYZ Land or premises on XYZ Land, which may prescribe hours, dates or times when that person is permitted or prohibited from attending at or on those premises, or restricting that person to specified premises during specific hours, dates or times, and shall arrange for personal service of a resolution to that effect upon the person unless service can only be effected by other forms of notice pursuant to this law.

Offence

7.18 Any person who does not comply with an order or commits an offence under this Law upon conviction is guilty of an offence and liable on conviction to a fine not exceeding ten thousand (\$10,000.00) dollars, imprisonment for up to two(2) years, or both imprisonment and a fine. Council may develop a penalty schedule based on repeat offences and increase the amount of penalty based on frequency and repetition of offences.

7.19 Any person who does not comply with an demand for identification is guilty of an offence and upon conviction is guilty of an offence and liable on conviction to a fine not exceeding ten thousand (\$10,000.00) dollars, imprisonment for up to two(2) years, or both imprisonment and a fine. Council may develop a penalty schedule based on repeat offences and increase the amount of penalty based on frequency and repetition of offences.

7.20

PART VIII. PARKING RESTRICTIONS

Parking

8.1 No person may park a motor vehicle on any XYZ Lands, other than lands on which signs have been erected permitting parking, and lands ordinarily used by Members for parking adjacent to, or near, their residences.

No Parking signs

8.2 Council may authorize XYZ Officials to post signs restricting or banning parking motor vehicles on any XYZ Lands, including any lands on which parking has been permitted in the past if deemed necessary by Council to prevent the risk of the spread of COVID-19, or to ensure that emergency and health officials have access to any XYZ Lands.

Removal of Vehicles

8.3 Council may authorize XYZ Officials to tow or remove vehicles that are parked in violation of this Law and XYZ is not liable for damages to a motor vehicle, or damages incurred by any person affected by the need to tow or remove the motor vehicle.

Offence

8.4 Any person who fails to remove a motor vehicle when ordered to do so, who obstructs a XYZ Official in the course of their duties related to parking violations, or who parks a motor vehicle in contravention of this Law is guilty of an offence and liable on conviction to a fine not exceeding ten thousand dollars, imprisonment for up to two (2) years, or both imprisonment and a fine.

PART IX. GENERAL

Interim nature of this Law

9.1 This Law is an interim law to respond to an urgent situation on XYZ Lands and will no longer be in force 120 days after enactment, except to the extent required to complete any enforcement actions arising from events taking place while this Law was in force.

Law applies to XYZ employees and XYZ Council

- 9.2 Employees, representatives and agents of XYZ may be suspended for a period of time specified by Council or have their employment or contract with XYZ terminated if they fail to comply with an order issued under this Law.
- 9.3 A Councilor may be temporarily suspended from Council, by a majority decision of Council, for a period of time specified by Council if they fail to comply with an order issued under this Law.

No liability

- 9.4 None of XYZ, present or past Council, or members, employees, representatives or agents of any of XYZ or Council are 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 XYZ Law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other XYZ Law.

Limitation Period

- 9.5 Any actions against XYZ (including Council and its employees) for the unlawful doing of anything that:
- (a) is purported to have been done under the powers conferred by this Law or any XYZ Law; and
 - (b) might have been lawfully done if acting in the manner established by law,
 - (c) must be commenced within six (6) months after the cause of action first arose.

Required Notice

- 9.6 XYZ 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 XYZ within two (2) months from the date on which the damage was sustained. In the 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 a reasonable excuse; and
 - (b) XYZ FN has not been prejudiced in its defence by the failure or insufficiency.

Compliance with other Laws

- 9.7 Where any other law or legal requirement 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 such other applicable law or legal requirement.

Severability

9.8 In the event that all or any part of any section of this Law is found by a court of competent jurisdiction to be invalid, that part or section shall be severable, and the remaining portions and sections of this Law shall remain in full force and effect.

Coming into Force

9.9 This Law will come into force on the date that it is duly passed by Council.

BE IT KNOWN that this Law is entitled the **XYZ** First Nation Interim COVID-19 Community Protection Law (2020) and is hereby enacted by a quorum of Council of **XYZ** FN held on **March 27, 2020**

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____