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K'ómoks First Nation

K'ómoks First Nation Unauthorized Residential Dwelling Law October 13, 2021

WHEREAS pursuant to section 12.1 of the Land Code, Council has the authority to make laws relating to the protection, management, use and possession of K'ómoks First Nation reserve lands.

AND WHEREAS the use of trailers, motor homes, and other recreational vehicles as dwelling units for extended periods of time gives rise to an increased risk of fire, sanitation and environmental concerns amongst others;

AND WHEREAS due to these concerns, Council deems it advisable and in the best interests of KFN to enact a law to prohibit all persons from living in trailers, motor homes, and other recreational vehicles for extended periods of time on of K'ómoks First Nation reserve lands;

AND WHEREAS pursuant to section 14.3, a draft of the Unauthorized Residential Dwelling Law was tabled at a Council meeting on October 13th, 2021, more than 28 days ago, and posted at the Band Administration office on October 13th, 2021 more than 21 days ago;

NOW THEREFORE this K'ómoks First Nation Unauthorized Residential Dwelling Law is hereby enacted at a duly convened meeting in Courtenay on 13th October 2021, as a Law of K'ómoks First Nation.

1. TITLE AND PURPOSE

- 1.1 This Law may be cited as the *KFN Unauthorized Residential Dwelling Law, 2021*.
- 1.2 The purpose of this Law is to prohibit persons from living in Trailers, Motor Homes, and other Vehicles for extended periods of time on KFN Lands.
- 1.3 The provisions of this Law apply to all KFN Lands.
- 1.4 In the event of an inconsistency between this Law and the Land Code, the Land Code prevails.

2. DEFINITIONS

- 2.1 In this Law, unless the context otherwise requires:

"Allotment" has the meaning assigned in the Land Code;

"Certificate of Possession" has the meaning assigned in the Land Code;

"Community Lands" has the meaning assigned in the Land Code;

"Council" means KFN's "council of the band", as that term is defined in the *Indian Act*, or any successor legislation;

"Dwelling Unit" means a shelter used as the living quarters for one or more persons;

"Enforcement Notice" means any enforcement notice issued in accordance with the *KFN Notice Enforcement Law* which may be amended or replaced from time to time;

"Immune Person" has the meaning given to it at subsection 9.1 of this Law;

"Indian Act" means the *Indian Act*, as amended or replaced from time to time;

"KFN" means the K'omoks First Nation, recognized as a "band" under the *Indian Act*, as represented by Council, or any successor to such band pursuant to a federal statute or otherwise;

"KFN Law Enforcement Officer" means the person or persons appointed by Council, from time to time, pursuant to the *KFN Notice Enforcement Law*, to administer and enforce the provisions of KFN laws enacted by Council and includes any delegate and any assisting personnel as required and requested by a KFN Law Enforcement Officer, or any Peace Officer, as defined herein, or any other person appointed by Council for the purpose of maintaining law and order on KFN Lands;

"KFN Lands" means any portion of a KFN reserve subject to the Land Code;

"Land Code" means the K'omoks First Nation Land Code adopted by KFN in accordance with the *First Nations Land Management Act*, as may be supplemented or amended from time to time;

"Lease" has the meaning assigned in the Land Code;

"Member" has the meaning assigned in the Land Code;

"Motor Home" means a vehicle, generally fitted with camping conveniences, but not intended for full time habitation;

“Owner” means:

- a. on Private Land, the person or persons who have been issued a Certificate of Possession, Allotment or Lease pursuant to or in accordance with the Land Code and have exclusive use and possession of the particular parcel of land in question; and
- b. on Community Lands, Council or their designate;

“Peace Officer” means a member of the local detachment of the Royal Canadian Mounted Police responsible for policing KFN Lands, or any delegate;

“Private Land” means KFN Lands that is:

- a. not Community Lands; and
- b. is land in which a Member or non-member has an interest pursuant to or recognized by the Land Code and includes business premises;

“Resolution” means a question decided by a majority vote of members of Council present at a duly convened meeting;

“Short Term” means for a period of less than 30 days;

“Soft Shelters” means a shelter made of cloth, canvas or other fabric and includes but is not limited to tents;

“Trailer” means a vehicle capable of being towed, generally equipped with a bed, a kitchen and other camping conveniences and includes tiny homes on wheels and Fifth Wheels; and

“Vehicle” means a thing used for transporting people or goods such as a car, truck, van, bus or motorcycle and includes a Motor Home, Trailer and any other type of vehicle equipped with camping conveniences.

3. PROHIBITED ACTIVITY

- 3.1 Subject to section 4, any person who uses or occupies a Vehicle or Soft Shelter as a Dwelling Unit on KFN Lands commits an offence.
- 3.2 Any Owner of Private Land who allows another person to use or occupy a Vehicle or Soft Shelter as a Dwelling Unit on their property in contravention of subsection 3.1 commits an offence.
- 3.3 Any Owner of Private Land who in exchange for money allows or licenses a person or persons to occupy a Dwelling Unit on a Short Term basis, using applications such as AirBNB, VRBO or otherwise commits an offence.

4. EXEMPTION FOR SHORT TERM CAMPING

4.1 Subsection 3.1 does not apply to persons:

- a. who use or occupy a Vehicle or Soft Shelter as a Dwelling Unit on KFN Lands for a period of two weeks or less in any calendar year with the consent of the Owner; or

- b. who have obtained prior approval in writing from KFN Council or their designate to use a Vehicle or Soft Shelter as a Dwelling Unit for a specified period provided the person only uses the Vehicle or Soft Shelter as a Dwelling Unit for that specified period.

5. INSPECTION TO DETERMINE WHETHER LAW IS BEING FOLLOWED

- 5.1 A KFN Law Enforcement Officer is authorized to enter, at all reasonable times, on any Private Land to inspect and determine whether all regulations, prohibitions and requirements of this Law are being met.

6. REMOVAL OF VEHICLES

- 6.1 Council may, by Resolution, cause , any Vehicle to be removed and impounded and taken to and stored in a suitable place when the Vehicle:
 - a. is abandoned on KFN Lands; or
 - b. is parked and used on KFN Lands in contravention of this Law; or
 - c. is parked on KFN Lands without the consent of the Owner.
- 6.2 When Council or a KFN Law Enforcement Officer believes on reasonable grounds that a Vehicle referred to in subsection 6.1 is derelict, that person may cause the Vehicle to be moved to a nuisance ground, salvage yard or municipal dump for disposal or to be otherwise dealt with.
- 6.3 For the purposes of subsection 6.1, Council may by resolution designate certain locations as suitable places for the storage of Vehicles.
- 6.4 If Council causes any Vehicle to be impounded and removed pursuant to subsection 6.1, the owner of the Vehicle shall be liable for all reasonable costs incurred relating to the impounding, removing and storage of a Vehicle.
- 6.5 If Council causes any Vehicle to be impounded and removed pursuant to subsection 6.1, and the owner of the Vehicle fails to claim the Vehicle within 60 days from the date of impounding, Council may sell or otherwise dispose of the Vehicle provided it has given 30 days notice of its intention to dispose of the Vehicle to:
 - a. any person who has registered a financing statement in the Personal Property Registry using the vehicle identical number; and
 - b. posted such notice in the KFN Administration office.

Council may set off all reasonable costs incurred relating to the impounding, removing and storage of a Vehicle against the proceeds of sale or disposition.

7. OFFENCES AND PENALTIES

- 7.1 For each offence designated under this Law, a KFN Law Enforcement Officer may complete and issue an Enforcement Notice to the person against whom an offence is alleged.
- 7.2 No person shall obstruct, interfere with or hinder Council, the KFN Law Enforcement Officer or any authorized employee, officer or agent in the carrying out of their duties and responsibilities under this Law, or any other KFN law.

- 7.3 Each day a violation of this Law continues will be deemed to be a separate offence for which a separate fine or other remedy may be imposed.
- 7.4 Any person who commits an offence under this Law is liable on summary conviction to a fine of not more than five thousand dollars (\$5,000), imprisonment for a term not exceeding six (6) months, restitution, community service and any other means or combination thereof for restoring justice or achieving compliance.
- 7.5 Nothing in this Law precludes KFN from pursuing any other enforcement action or remedy provided for in any other KFN law.

8. APPLICATION AND INTERPRETATION OF LAW

- 8.1 Where any federal act or regulation or provincial act or regulation or any other KFN Law may apply to any matter covered by this Law, compliance with this Law must not relieve the person from also complying with the provisions of the other applicable act, regulation or law.
- 8.2 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 must be severed from and not affect the remaining provisions of this Law.
- 8.3 The headings given to the sections and paragraphs in this Law are for convenience of reference only, and do not form part of this Law and must not be used in the interpretation of this Law.
- 8.4 Unless otherwise noted, any specific statute named in this Law is a reference to an enactment of British Columbia or Canada 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 KFN, as amended, revised, consolidated or replaced from time to time.

9. IMMUNITY

- 9.1 No action for damages lies or may be instituted against any present or past Council or employees, servants or agents of any of KFN or Council (the "Immune Person"):
- 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
 - 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.
- 9.2 Subsection 9.1 does not provide a defence if:
- the Immune Person has, 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
 - the cause of action is libel or slander.
- 9.3 An Immune Person 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 KFN law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other KFN law.

9.4 All actions against an Immune Person for the unlawful doing of anything that:

- a. is purported to have been done by the Immune Person under the powers conferred by this Law or any KFN law; and
- b. might have been lawfully done by the Immune Person if acting in the manner established by this 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.

9.5 An Immune Person 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 the Immune Person and Council, within two (2) months from the date on which the damage was sustained. 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, any appeal court, believes:

- a. there was a reasonable excuse; and
- b. the Immune Person has not been prejudiced in its defence by the failure or insufficiency.

10. COMING INTO FORCE

10.1 This Law shall come into force and effect on the date it is passed by resolution of Council, as evidenced below.

BE IT KNOWN that this Law entitled the *KFN Unauthorized Residential Dwelling Law, 2021* is hereby enacted by resolution by a quorum of *Council* at a duly convened meeting of Council of the K'ómoks First Nation held on October 13th, 2021.



Chief Nicole Rempel



Councillor Richard Hardy



Councillor Charlene Everson



Councillor Katherine Frank

A quorum consists of three (3) Council Members
