



# K'ómoks First Nation

## **K'ómoks First Nation Trespass, Residence and Access Law, 2024**

**Enacted February 8, 2024**

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**K'ÓMOKS FIRST NATION**  
**TRESPASS, RESIDENCE AND ACCESS LAW**

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**KFN-2024-01**

**WHEREAS** the K'ómoks First Nation has an inherent right to self-government, including the right to establish and enforce laws governing K'ómoks First Nation lands and peoples, as recognized and affirmed by section 35 of the *Constitution Act, 1982* and articles 3, 4 and 5 of the United Nations Declaration on the rights of Indigenous Peoples;

**WHEREAS** Canada and a group of First Nations concluded the *Framework Agreement on First Nations Land Management* on February 12, 1996, and Canada later ratified the agreement via the enactment of the *Framework Agreement on First Nation Land Management Act, SC 2022, c 19*;

**WHEREAS** the K'ómoks First Nation became a signatory to the *Framework Agreement on First Nations Land Management* and later brought the *K'ómoks First Nation Land Code* into effect on November 30, 2016;

**WHEREAS** the K'ómoks First Nation has the authority under subsection 18.1 of the *Framework Agreement on First Nation Land Management* and under subsection 12.1 of the *K'ómoks First Nation Land Code* to make laws respecting the development, conservation, protection, management, use and possession of K'ómoks First Nation land and interests and any matter necessary or ancillary to a law respecting K'ómoks First Nation land;

**WHEREAS** the K'ómoks First Nation has a profound relationship with its land;

**AND WHEREAS** the K'ómoks First Nation deems it advisable and in the best interests of the K'ómoks First Nation to enact a law to protect the community and remove trespassers from K'ómoks First Nation land.

**NOW THEREFORE**, the K'ómoks First Nation Chief and Council enacts the following law:

**PART I – INTERPRETATION, PURPOSE AND APPLICATION**

**1. SHORT TITLE**

1.1 This Law may be cited, for all purposes, as the *Trespass, Residence and Access Law*.

**2. DEFINITIONS**

2.1 The following definitions apply to this Law:

**“Administrator”** means a person appointed by Chief and Council under subsection 19.1 for the administration of matters set out under this Law, and which includes any delegate acting on behalf of the Administrator;

**“Authorized Person”** means an Occupier of a Premises, or a person authorized by an Occupier of a Premises to exercise a power or perform a duty of the Occupier under this Law;

**“Chief and Council”** means KFN’s “council of the band”, as that term is defined in the *Indian Act*;

**“Community Lands”** means any KFN Lands in which all Members have a common interest and to which no Members have been granted a certificate of possession and is not subject to a permanent interest in the Land Code, and which includes any building on KFN Lands;

**“Enforcement Notice”** means any enforcement notice served in accordance with the *Summary Offence Law*;

**“Framework Agreement on First Nation Land Management”** means the *Framework Agreement on First Nation Land Management* concluded between Canada and First Nations on February 12, 1996, as amended or replaced from time to time;

**“Host”** means the following persons who are authorized to invite another person to:

- (a) reside on KFN Lands:
  - (i) a Member, who has been allocated a residential lot by Chief and Council, in accordance with paragraph 31.3(a) of the Land Code; and
  - (ii) the spouse or Child of a Member referred to in subparagraph (i), in accordance with paragraph 31.3(a) of the Land Code;
- (b) access KFN Lands:
  - (i) a Member in accordance with paragraph 31.4(a) of the Land Code;
  - (ii) a lessee in accordance with paragraph 31.4(b) of the Land Code; and
  - (iii) a renter in accordance with paragraph 31.4(c) of the Land Code;

**“Immune Person”** means KFN, present or past Chief and Council, KFN Law Enforcement Officers or employees, servants or agents of either KFN or Chief and Council;

**“Indian Act”** means the *Indian Act*, RSC 1985, c I-5, as amended or replaced from time to time;

**“Invitee”** means a person authorized to:

- (a) reside on KFN Land because they have been invited to do so by a Host in accordance with paragraph 31.3(a) of the Land Code; and
- (b) access KFN Land because they have been invited to do so by a Host in accordance with subsection 31.4 of the Land Code;

**“Invitee Prohibition”** means an order issued by Resolution of Chief and Council under subsection 7.1 prohibiting an Invitee from residing on or accessing all or part of KFN Lands;

**"KFN"** means the K'ómoks First Nation, recognized as a Band under the *Indian Act*, or any successor to the K'ómoks First Nation under a federal statute or otherwise;

**"KFN Land"** means the KFN reserve lands that are subject to the Land Code, or any portion thereof;

**"KFN Law Enforcement Officer"** means the Person or Persons appointed by Chief and Council under the *Summary Offence Law* to enforce the provisions of KFN laws, and includes any delegate or peace officer;

**"Land Code"** means the *K'ómoks First Nation Land Code*, as may be supplemented or amended from time to time, and which was adopted by KFN in accordance with the *Framework Agreement on First Nations Land Management*;

**"Law"** means this *Trespass, Residence and Access Law*, as amended or replaced from time to time, and any associated regulations;

**"Member"** means a person whose name appears on the KFN band membership list;

**"Notice of Trespass"** means a notice provided in accordance with subsection 11.1, indicating that a Person's entry onto or occupation of a Premises is prohibited or that a Person's actions on or in a Premises are prohibited;

**"Occupier"** means:

- (a) a Person lawfully entitled to possession of a Premises;
- (b) a Person who has:
  - (i) responsibility for and control over the conditions of a Premises or the activities carried out in or on a Premises; or
  - (ii) control over Persons allowed to enter or occupy the Premises; or
- (c) Chief and Council in relation to Community Lands, but not including leased or rented Premises on Community Lands to which another Person is lawfully entitled to possession;

**"Person"** means a natural person, Members, non-Members, a corporation of any type, partnership, society or association whether or not incorporated;

**"Premises"** means:

- (a) KFN Land; and
- (b) anything on KFN Land, including:
  - (i) buildings and other permanent structures;
  - (ii) a vehicle, except while in operation;
  - (iii) a trailer or a portable structure designed or used as a residence, for shelter or to house a business; and
  - (iv) water;

**“Remove”** means to physically remove, relocate or detain;

**“Resolution”** means a resolution by a quorum of Chief and Council passed at a duly convened meeting;

**“Review Application”** means an application for a review of an Invitee Prohibition, in the form prescribed by the Administrator, submitted in accordance with subsection 8.1; and

**“Summary Offence Law”** means the *Summary Offence Law*, KFN-2023-01, as amended or replaced from time to time.

### **3. PURPOSE**

3.1 The purpose of this Law is to provide for the protection, management, use and possession of KFN Land by:

- (a) regulating the residence and access of Invitees on KFN Lands; and
- (b) prohibiting trespassers on KFN Land.

### **4. APPLICATION**

4.1 In the event of an inconsistency between this Law and the Land Code, the Land Code prevails.

4.2 Where a KFN law, or a federal or provincial act or regulation, applies to any matter covered by this Law, compliance with this Law will not relieve any Person from also complying with provisions of the applicable law, act or regulation.

### **5. INTERPRETATION**

5.1 Unless otherwise provided for under this Law, the words, expressions and rules of construction used in this Law have the same meaning as in the Land Code.

5.2 The following rules of interpretation apply in this Law:

- (a) if this Law prescribes the use of a set form for an application under this Law, deviations from the set form which do not affect the substance or are not calculated to mislead, do not invalidate the form used;
- (b) gender specific terms include all genders and include corporations;
- (c) words in the singular include the plural, and words in the plural include the singular;
- (d) if a word or expression is defined in this Law, other parts of speech and grammatical forms of the same word or expression have corresponding meanings; and
- (e) the word including means including but not limited to.

- 5.3 The headings given to the sections, subsections, paragraphs and subparagraphs in this Law are for convenience of reference only, and do not form part of this Law and will not be used in the interpretation of this Law.
- 5.4 If any section, subsection, paragraph or subparagraph of this Law is, for any reason, held invalid by a decision of a court of competent jurisdiction, the invalid section, subsection, paragraph or subparagraph must be severed from this Law in such a way as to minimize the effect of the severance on the remainder of the Law.

## **PART II – RESIDENCE AND ACCESS RIGHTS**

### **6. RESIDENCE AND ACCESS RIGHTS**

- 6.1 The residence and access rights set out in section 31 of the Land Code remain in force and have effect, unless explicitly altered by this Law.
- 6.2 A Host has a right to authorize an Invitee to reside on or access KFN Lands in accordance with subsections 31.3 and 31.4 of the Land Code, unless that right is revoked under subsection 7.1.

### **7. INVITEE PROHIBITION**

- 7.1 Notwithstanding the right of a Host to authorize an Invitee to reside on or access KFN Lands in accordance with subsections 31.3 and 31.4 of the Land Code, if Chief and Council has reasonable grounds to believe that an Invitee poses a serious threat or may cause serious harm to the KFN community, KFN Land or KFN values, then Chief and Council may, by Resolution, revoke that right by issuing an Invitee Prohibition that prohibits the Invitee from residing on KFN Lands, from accessing KFN Lands, or both.
- 7.2 An Invitee Prohibition must include the following information:
  - (a) the name of the Invitee who is the subject of the order;
  - (b) the extent to which the Invitee is prohibited from residing on or accessing KFN Lands;
  - (c) the date upon which the Invitee Prohibition becomes effective; and
  - (d) the date upon which the Invitee Prohibition expires, which may not be more than one year from the effective date under paragraph 7.2(c).
- 7.3 If Chief and Council issues an Invitee Prohibition, the Administrator must, within five (5) days of the date the order was issued:
  - (a) use their best efforts to provide a copy of the order to the Invitee who is the subject of the order;
  - (b) provide a copy of the order to any Host that authorized the Invitee to reside on or access KFN Lands; and
  - (c) publish a copy of the order by posting it on the KFN members website and in the KFN administration offices.

- 7.4 Chief and Council may, in their discretion, rescind an Invitee Prohibition at any time.
- 7.5 If Chief and Council rescinds an Invitee Prohibition under subsection 7.4, Chief and Council must:
  - (a) within five days of the rescission, provide notice of the rescission to:
    - (i) the Invitee who is the subject of the order; and
    - (ii) the Host who authorized the Invitee to reside on or access KFN Lands; and
  - (b) publish notice of rescission by posting it on the KFN members website and in the KFN administration offices.

**8. REVIEW OF AN INVITEE PROHIBITION**

- 8.1 An Invitee who is the subject of an Invitee Prohibition, or a Host affected by an Invitee Prohibition, may apply for a review of the order within thirty (30) days of its issuance, by submitting a Review Application to the Administrator.
- 8.2 If a person submits a Review Application, the Administrator must provide the subject of the order and an affected Host with the opportunity to make written submissions with respect to the Invitee Prohibition within thirty (30) days of the submission of the application.
- 8.3 Within fourteen (14) days of the close of the period for the receipt of written submissions under subsection 8.2, Chief and Council must review the Invitee Prohibition, the application and any written submissions, and must make one of the following determinations:
  - (a) if Chief and Council finds that the subject of the order does not pose a serious threat, or is not causing serious harm, to the KFN community, KFN Lands or KFN values, set aside the order and provide written reasons for the same; or
  - (b) if Chief and Council finds the subject does pose a serious threat, or is causing serious harm, to the KFN community, KFN Lands or KFN values, confirm the order and provide written reasons for the same.
- 8.4 Within five (5) days of a determination under subsection 8.3, the Administrator must:
  - (a) provide a copy of the determination to the subject of the Invitee Prohibition and any affected Host; and
  - (b) publish a copy of the determination by posting it on the KFN members website and in the KFN administration office.
- 8.5 Chief and Council may take any other steps they deem necessary when making a determination under subsection 8.3.
- 8.6 The submission of a Review Application does not stay or suspend an Invitee Prohibition unless Chief and Council orders otherwise.



## **PART III –TRESPASS**

### **9. TRESPASS PROHIBITED**

- 9.1 A Person who does any of the following, without lawful authority or the express permission of an Authorized Person in respect of a Premises, commits an offence:
- (a) enters onto or occupies a Premises if entry onto or occupation of the Premises is prohibited under subsection 10.1;
  - (b) enters onto, occupies or does not immediately leave a Premises after an Authorized Person in respect of the Premises gives the Person a Notice of Trespass in accordance with subsection 11.1 that the Person's entry onto or occupation of the Premises is prohibited; or
  - (c) engages in or does not immediately stop an activity on or in a Premises, after an Authorized Person in respect of the Premises gives the Person a Notice of Trespass in accordance with subsection 11.1 setting out that the activity they are or were engaging in is prohibited on or in the Premises.
- 9.2 An Invitee who is the subject of an Invitee Prohibition commits an offence if they reside on or access KFN Land contrary to an Invitee Prohibition.

### **10. TRESPASS ON PREMISES WHERE NOTICE IS NOT REQUIRED**

- 10.1 Entry onto or occupation of a Premises is prohibited, and no Notice of Trespass is required, if the Premises is enclosed in a manner that indicates the Occupier's intention to keep Persons off the Premises, or to keep animals on the Premises, including by a lawful fence or a natural boundary.

### **11. TRESPASS ON PREMISES WHERE NOTICE IS REQUIRED**

- 11.1 For the purposes of paragraphs 9.1(b) or (c), an Authorized Person in respect of a Premises may give a Notice of Trespass in one or more of the following ways:
- (a) orally or in writing;
  - (b) by means of a sign or signs which are posted so that, in daylight, under normal weather conditions and from each ordinary point of access to the Premises, the signs:
    - (i) are clearly visible;
    - (ii) contain writing that is clearly legible, if any writing is used, to indicate a prohibition; and
    - (iii) contain graphic representations that are clearly visible, if any graphic representation is used, to indicate a prohibition; or
  - (c) by Resolution posted in a public area and made available free of charge at the KFN administrative offices.

- 11.2 In the prosecution of an offence under subsection 9.1, proof that a sign compliant with paragraph 11.1(b) was posted at the ordinary point of access used by the Person accused of the said offence to enter the Premises is sufficient for the purpose of establishing that a Notice of Trespass was given for the purpose of paragraphs 9.1(b) or (c).
- 11.3 A Notice of Trespass given under this section 11 may relate to all or a part of the Premises and different notices may be given or posted in relation to different parts of the Premises.

**12. OFFENCE TO REMOVE, ALTER OR DEFACE SIGNS**

- 12.1 A Person must not remove, alter or deface a written signs posted on a Premises or a Resolution posted in a public area for the purpose of subsection 11.1, unless the Person is an Authorized Person in respect of the Premises.
- 12.2 A Person who contravenes subsection 12.1 commits an offence.

**13. TRESPASSER MUST GIVE NAME AND ADDRESS**

- 13.1 Chief and Council and an Authorized Person in respect of a Premises may demand a Person's name and address if they have reasonable grounds to suspect that the Person is on the Premises or was on the Premises in contravention of section 9.
- 13.2 If Chief and Council or an Authorized Person in respect of a Premises demands a Person's name and address under subsection 13.1, the Person must provide their correct name and address to the Authorized Person in respect of the Premises.
- 13.3 A Person who contravenes subsection 13.2 commits an offence.

**14. PARTIES TO THE OFFENCE OF TRESPASS**

- 14.1 A Person commits an offence if they:
  - (a) purport to give another Person permission to enter onto or into Premises and the other Person proceeds to enter the Premises and commits an offence under section 9;
  - (b) are the employer of another Person and thereby direct or counsel that other Person to commit an offence under section 9 as part of their employment, and that other Person proceeds to commit the said offence;
  - (c) are the principal of another Person and thereby direct or counsel that other Person to commit an offence under section 9 as their agent, and that other Person proceeds to commit the said offence;
  - (d) are a Person in authority over another Person and thereby direct or counsel that other Person to commit an offence under section 9, and that other Person proceeds to commits the said offence; or

- (e) knowingly assist another Person in committing an offence under section 9 by providing that other Person with the means, tools or equipment to do so.

**15. CIVIL ACTION FOR TRESPASS PRESERVED**

- 15.1 Nothing in this Law extinguishes the right of a Person, including KFN, to bring a civil action for damages arising out of a trespass on any Premises on KFN Land, and all civil remedies for trespass are preserved.

**PART IV – COMPLIANCE AND OFFENCES**

**16. DETERMINATION OF COMPLIANCE**

- 16.1 A KFN Law Enforcement Officer is authorized to enter, at all reasonable times, any Premises on any KFN Land to inspect and determine whether a person residing on or accessing KFN Land is in compliance with an Invitee Prohibition.

**17. REMOVAL FROM PREMISES**

- 17.1 Where a KFN Law Enforcement Officer has reasonable and probable grounds to believe that a person is committing an offence under section 9, the KFN Law Enforcement Officer may take such reasonable and lawful measures to Remove the person from the Premises if the person refuses to leave the Premises voluntarily.

**18. OFFENCES**

- 18.1 Each offence under this Law is a strict liability offence.
- 18.2 All offences created under this Law are punishable on summary conviction, and proceedings in respect of each such offence may be taken under the *Summary Offence Law*.
- 18.3 Each calendar day an offence continues will be deemed to be a separate offence for the purpose of the *Summary Offence Law*.
- 18.4 Any Person who commits an offence under this Law is liable on summary conviction to a fine not greater than fifteen thousand dollars (\$15,000), imprisonment for a term not exceeding two (2) years less a day, restitution, community service and any other means or combination thereof for achieving compliance.
- 18.5 Nothing in this Law precludes KFN from pursuing any other enforcement action or remedy available to KFN at law or under any other enactment.

## **PART V – ADMINISTRATION**

### **19. APPOINTMENT AND POWERS OF ADMINISTRATOR**

- 19.1 Chief and Council must, by Resolution, appoint an Administrator for the purpose of administering matters set out under this Law.
- 19.2 The Administrator’s powers include all things necessary to fulfill the duties and responsibilities of the Administrator under this Law.

### **20. CONFIDENTIALITY OF PROCEEDINGS**

- 20.1 No Administrator or member of Chief and Council shall divulge any information related to their duties under this Law as applicable, except as required to conduct a review under section 8, provide notice under sections 7 and 8 and otherwise carry out their duties under this Law.
- 20.2 Notwithstanding subsection 20.1, an Invitee Prohibition is not a confidential document.

## **PART VI – GENERAL**

### **21. PROVISION OF DOCUMENTS**

- 21.1 Unless otherwise indicated, any document that is required to be provided to a Person under this Law must be provided in any of the following ways:
  - (a) if provided to an individual, by:
    - (i) sending a copy of the document by ordinary mail, registered mail or courier to the actual or last known address of the individual;
    - (ii) leaving a copy of the document with the individual;
    - (iii) leaving a copy of the document addressed to the individual at the individual’s place of residence with a person who appears to be over sixteen (16) years of age and who resides with the individual;
    - (iv) leaving a copy of the document in a mailbox or mail slot for the address at which the individual resides;
    - (v) attaching a copy of the document to a door or other conspicuous place at the address at which the individual resides; or
    - (vi) sending a copy of the document by email to the email address provided by the individual;
  - (b) if provided to a corporation, business or society, by:
    - (i) sending a copy of the document by ordinary mail, registered mail, or courier to the registered office of the corporation, business or society;
    - (ii) leaving a copy of the document with an officer, senior manager, director, or other executive officer of the corporation, business or society; or
    - (iii) sending a copy of the document by email to the email address provided by the corporation, business or society; and

- (c) if provided to a partnership, by:
  - (i) sending a copy of the document by ordinary mail, registered mail, or courier to the business office or registered office of the partnership;
  - (ii) leaving a copy of the document with a partner or other executive officer of the partnership; or
  - (iii) sending a copy of the document by email to the email address provided by the partnership.

## **22. REGULATIONS, FEES AND FORMS**

- 22.1 Chief and Council may, by Resolution, establish regulations regarding any matter necessary to carry out the purposes and provisions of this Law.
- 22.2 If Chief and Council establishes regulations under subsection 22.1, the Administrator must thereafter:
  - (a) post notice of the regulations in a public area of the KFN administrative office; and
  - (b) make a copy of the regulations and any amendments thereto available for viewing free of charge at the administrative office of the KFN, and available for distribution at a nominal charge upon request.
- 22.3 Chief and Council may establish, correct, revise, or update the terms of any applicable fee schedules, notices, forms, protocols, or other documentation related to this Law, and must:
  - (a) post notice of the same in a public area of the KFN administration building; and
  - (b) upon request, make a copy of the same available for viewing free of charge at the administration offices of the KFN.

## **23. IMMUNITY**

- 23.1 No action for damages lies or may be instituted against an Immune Person for:
  - (a) anything said or done or omitted to be said or done by that Immune Person in the performance or intended performance of the Immune Person's duty or the exercise of their authority under the powers conferred by this Law; or
  - (b) any alleged neglect or default in the performance or intended performance of the Immune Person's duty or the exercise of their authority under the powers conferred by this Law.
- 23.2 Subsection 23.1 does not provide a defense if:
  - (a) an 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 willful misconduct; or

(b) the cause of action is libel or slander.

23.3 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.

23.4 All actions against KFN for the unlawful doing of anything that:

(a) is purported to have been done by an Immune Person under the powers conferred by this Law or any KFN law; and

(b) might have been lawfully done by an Immune Person 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 Chief and Council in a particular case, but not afterwards.

23.5 A party commencing an action against an Immune Person must deliver notice in writing, setting out the time, place and manner in which the damage was sustained, to KFN and the Immune Person within sixty (60) days from the date on which the damage was sustained.

23.6 If the party commencing an action against an Immune Person fails to deliver notice to KFN and the Immune Person as required under subsection 23.5, the action must be struck and the Immune Person will not be liable for damages.

## **24. AMENDMENTS AND ENACTMENT**

24.1 Chief and Council may, by Resolution, make minor amendments that do not change the substance of this Law, including but not limited to:

(a) changes necessary to clarify the drafting of provisions;

(b) correcting grammatical or typographical errors; and

(c) changes required to address inconsistencies with the *Framework Agreement on First Nation Land Management*.

24.2 For greater certainty, all other amendments to this Law must be in accordance with the Land Code.

24.3 This Law comes into force on the day of its enactment, February 8, 2024.

**BE IT KNOWN** that this Law entitled the *Trespass, Residence and Access Law*, KFN-2024-01 was/is hereby:

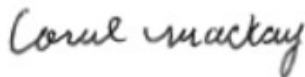
Enacted by the Chief and Council of K'ómoks First Nation on an emergency basis pursuant to subsection 14.4 of the *K'ómoks First Nation Land Code* at a duly convened meeting held on the 8<sup>th</sup> day of February, 2024; and

Signed by the following Members of Chief and Council who were present at the duly convened meeting wherein this *Trespass, Residence and Access Law*, KFN-2024-01, was enacted:



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Chief Councilor: Ken Price



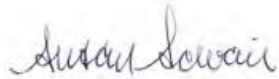
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Councilor: Coral Mackay



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Councilor: Candace Newman



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Councilor: Susan Savoie