



Roseau River Anishinabe First Nation Government

P.O. Box 30

Ginew, Manitoba

R0A 2R0

PH: (204) 427-2312

FAX: (204) 427-2584

Toll Free: 1-888-283-8765

**BY-LAW NO. 002
of the Roseau River Anishinabe First Nation Band**

A By-Law to Prohibit Illegal Drugs

WHEREAS the Roseau River Anishinabe First Nation has and continues to exercise an inherent right to self-government;

AND WHEREAS the use, possession and selling of illegal drugs on the Roseau River Anishinabe First Nation is causing misery and turmoil amongst the people of Roseau River Anishinabe First Nation and is a major cause of social concerns and problems in the community;

AND WHEREAS the Roseau River Anishinabe First Nation considers it necessary to undertake measures for the protection and safety of the community and residents of Roseau River Anishinabe First Nation (the "Objective");

AND WHEREAS the Council of the Roseau River Anishinabe First Nation deems it necessary to enact a prohibition against the use, sale and possession of illegal drugs on the Roseau River Anishinabe First Nation (subject to exceptions provided herein);

AND WHEREAS paragraph 81(1), (a), (c), (d), (p), (q) and (r) of the *Indian Act*, R.S.C. 1985, c. I-5, empower the Council of a Band to make By-Laws to provide for the health of residents, the observance of law and order, the prevention of disorderly conduct and nuisances, the removal and punishment of persons trespassing on the reserve or frequenting the reserve for prohibited purposes, with respect to any matter arising out of or ancillary to the exercise of powers under section 81, and for the imposition on summary conviction of a fine or imprisonment for violation thereof;

NOW THEREFORE the Council of the Roseau River Anishinabe First Nation hereby makes the following By-Law:

1.00 TITLE

- 1.01 This by-law may be cited as the Roseau River Anishinabe First Nation Illegal Drug By-Law.
- 1.02 Any previous By-Law of the Roseau River Anishinabe First Nation relating to illegal drugs shall hereby be revoked.

2.00 INTERPRETATION

- 2.01 In this By-Law,
- a) "*Roseau River Anishinabe First Nation*" means the Roseau River Anishinabe First Nation Band;
 - b) "*Council*" means the Chief and Council of the Roseau River Anishinabe First Nation.
 - c) "*Illegal Drugs*" means those drugs and substances prohibited or controlled under the *Controlled Drugs and Substances Act*, S.C. 1996, C. 19. Prohibited drugs and substances shall also include any substances declared as such by Council through the invocation of emergency powers in times of crisis, which may include substances such as alcohol or other legal drugs and substances, for such periods as indicated;
 - d) "*Lands*" means all of those lands defined as a "Reserve" within the meaning of the *Indian Act*, R.S.C. 1985, c-15, and set apart for the use and benefit of the Roseau River Anishinabe First Nation Band

3.00 PROHIBITIONS

- 3.01 No person shall sell, barter, supply or manufacture an illegal drug on the Lands.
- 3.02 No person shall use or be in possession of an illegal drug on the Lands.
- 3.03 No person shall harbour an individual who has been removed or banished pursuant to this By-Law.

4.00 EXCEPTIONS

- 4.01 No person contravenes Section 3.00 of this By-law where illegal drugs are possessed, used or intended to be used solely for medical purposes upon prescription by a medical doctor in accordance with the *Controlled Drugs and Substances Act*, S.C. 1996, C. 19.

5.00 ENFORCEMENT

- 5.01 Every person who fails or refuses to comply with a provision of this By-law commits an offence.

6.0 PENALTY

- 6.01** Every person who commits an offence under this By-Law is liable on summary conviction:
- a) in the case of an offence under paragraph 3.01 of this By-law, to a fine of not more than \$1,000.00 or to imprisonment of a term not exceeding six months, or to both;
 - b) in the case of an offence arising out of paragraph 3.02 of this By-law, to a fine of not more than \$100.00 or to imprisonment of a term not exceeding three months, or to both.
 - c) in the case of an offence arising out of paragraph 3.03 of this By-law, to a fine of not more than \$100.00 or to imprisonment of a term not exceeding three months, or to both.
- 6.02 In addition to the above penalties, every person who commits an offence under the By-Law may also be subject to the following sanctions:
- a) termination of employment with the Roseau River Anishinabe First Nation;
 - b) termination or denial of assistance of any kind, including but not limited to social assistance, economic and educational support;
 - c) denial of housing on the Lands;
 - d) removal of their name from the housing list;
 - e) eviction from housing on the Lands;
 - f) publication of their name as an offender;
 - g) refusal by the Roseau River Anishinabe First Nation and its affiliated or related companies and their agencies to do business with such persons; and
 - h) removal or banishment from the Lands.

7.00 BAND COUNCIL RESOLUTIONS

7.01 The Council may make Band Council Resolutions respecting any matter that the Council considers necessary or advisable to meet or further the Objectives of this By-Law.

8.00 DRUG TESTING

8.01 In furtherance of the Objective of this By-Law, Roseau River Anishinabe First Nation may engage in drug testing practices for its employees in certain circumstances, pursuant to the Human Resources Policies of the Roseau River Anishinabe First Nation

9.00 CHECKPOINTS

9.01 In furtherance of the Objective of this By-Law, Roseau River Anishinabe First Nation may establish checkpoints on the Lands for the purpose of searching any individuals or vehicles entering the Lands or crossing through such checkpoints for Illegal Drugs.

9.02 If any individual refused to allow a search provided for in section 9.01, Roseau River Anishinabe First Nation may deny them entry into the Lands and demand that they remove themselves from the Lands. Failure to comply with such a denial or demand shall be an offence under this By-Law.

10.00 PROCEDURE

10.01 All sanctions provided for under section 6.02 shall be imposed pursuant to any rules, guidelines, contracts, or other procedures that govern the corresponding service or relationship.

10.02 In applying section 10.01 to corresponding procedural provisions, attention should be paid to the severity of the offence, including whether it falls under section 3.01 or 3.02. As an example and for greater certainty, sanctions under section 6.02(a) for an offence under section 3.02 shall be carried out in accordance with the procedures outlined in the **Roseau River Anishinabe First Nation Illegal Drug Policy for Employees**. In contrast, an offence under section 3.01 shall be interpreted as cause for immediate termination from employment with the Roseau River Anishinabe First Nation.

10.03 Any person who has been removed or banished from the Lands pursuant to section 6.02(h) has an automatic right to appeal that decision.

- a) That person must notify the Appeal Committee of their intention to appeal the banishment decision within twenty (20) days of the decision having been communicated to the banished individual.
- b) Within fifteen (15) days of notice of the appeal being provided to Appeal Committee, a hearing must be held at which the banished individual shall have the opportunity to plead their case. In doing so, the banished individual shall have the opportunity to present evidence relevant to the decision that is being appealed.

In making their decision on appeal, the Appeal Committee shall take into account the following factors:

- i. The nature and severity of the offence, including whether it was an offence under section 3.01, 3.02 or 3.03 of this By-Law;
 - ii. Any attempts made by the individual at rehabilitation, at making reparations, or otherwise attempting to repair any harm already done or preventing future harm;
 - iii. The connection of the individual to the community and its members, including whether the individual has any dependents for whom their removal from the community could be detrimental;
 - iv. The extent to which banishment in the specific case contributes to the objective of this type of sanction, specifically whether banishment of the individual would be in the best interests of the safety and protection of the community;
 - v. Any other consideration that the Appeal Committee deems relevant.
- d) The Appeal Committee shall communicate their decision on the appeal within ten (10) days of the hearing date.
 - e) Decisions made by the Appeal Committee are final and are not subject to appeal by any court or tribunal.
 - f) All hearings conducted by the Appeal Committee shall be open to the public.
 - g) In addition to the above and for greater certainty, the name of any person who has been banished pursuant to this By-Law may be published by Chief and Council

10.04 The Appeal Committee shall be made up of five (5) members as follows:

- a) The Chief and Council shall appoint one (1) member to the Appeal Committee from each of the following groups:
 - i. One elder;
 - ii. One youth;

- iii. One community member;
 - iv. One member of council;
 - v. One lawyer or individual with an education in law.
- b) Whenever an Appeal Committee member has a conflict of interest or is unsure of whether they have a conflict of interest in a matter coming before the Appeal Committee, the affected person shall fully disclose the nature of the interest.
- i. In a matter which relates to a member of the Appeal Committee or to any member of their immediate family (parent, child, sibling, step-parent, step-child, step-sibling or spouse), the affected member must withdraw from participation in any related discussions or decisions and shall physically remove themselves from the hearing.
 - ii. If an Appeal Committee member is unsure as to whether they have a conflict, or a decision relates to a member of their extended family (grandparent, grandchild, aunt, uncle, niece, nephew, great-grandparent, great-grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, sister-in-law or brother-in-law), the Appeal Committee member must disclose the potential conflict, and the remaining members of the Appeal Committee shall decide as to whether that individual must withdraw from participation in any related discussions or decisions. If a majority of the remaining members of the Appeal Committee believes in their absolute discretion that there is a conflict of interest, the potentially conflicted member must withdraw from participation in any related discussions or decisions and shall physically remove themselves from the hearing.
- 10.05 Banishment pursuant to section 6.02(h) shall take effect upon the expiry of thirty (30) days after notice of the decision has been communicated to the affected individual. However, if the individual has appealed the decision, banishment shall take effect upon the expiry of ten (10) days after notice of the decision on appeal has been communicated to the individual.
- 10.06 Individuals who have been banished pursuant to section 6.02(h) may apply to the Appeal Committee to have the banishment lifted after five (5) years. Applications shall outline the reasons why the Appeal Committee ought to overturn this decision, including why the individual is no longer a threat to re-offend and further jeopardize the safety and security of the community.
- 10.07 The Appeal Committee may use their discretion in providing conditions on individuals who have been banished pursuant to section 6.02(h) including allowing the banished individual to temporarily re-enter the lands in specified circumstances such as a funeral, or any other circumstance they see fit.

11.00 MISCELLANEOUS

- 11.01 Should a court determine that a provision of this By-Law is invalid for any reason, the provision shall be severed from the By-Law and the validity of the rest of this By-Law shall not be affected.
- 11.02 This By-Law shall come into force upon it being first published pursuant to subsection 86(1) of the *Indian Act*.
- 11.03 The provisions of this By-Law apply to all Lands of the Roseau River Anishinabe First Nation.
- 11.04 Nothing in this By-Law shall derogate or abrogate from existing Indigenous Aboriginal or inherent Treaty Rights.

This By-Law is hereby made at a duly convened meeting of the Council of the Roseau River Anishinabe First Nation this 14th day of December, 2020

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



Chief Craig Alexander



Councillor June Thomas

Councillor Terrance Nelson



Councillor Max Seenie



Councillor Alfred Hayden