

WHITECAP DAKOTA FIRST NATION

By-law No. 2007-01



CERTIFIED TRUE COPY
as per Section 86 of Indian Act
Paul Lyset *May 7/07*
Superintendent DIAND Date

A By-law to Regulate Smoking in Enclosed Public Places



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By-Law No. 2007-01

A By-Law to Regulate Smoking in Enclosed Public Places

PREAMBLE

WHEREAS it has been determined that second-hand tobacco smoke is a health hazard or discomfort for many non-smoking residents of the Whitecap Indian Reserve No. 94;

AND WHEREAS it is desirable in the interest of promoting the health, safety and welfare of all the residents of the Whitecap Indian Reserve No. 94 to regulate and prohibit smoking in enclosed public places on the Whitecap Indian Reserve as hereinafter set out;

AND WHEREAS the Council of the Whitecap Dakota First Nation is authorized by Section 81.(1)(a), (q) and (r) of the *Indian Act*, R.S.C. 1985, c. 1-5 in order to carry out such purposes, and desires to make a by-law not inconsistent with such Act or with any regulation made by the Governor in Council or the Minister of Indian Affairs and Northern Development to provide for the health of the residents of the Whitecap Indian Reserve No. 94, with respect to any matter arising out of or ancillary to the exercise of powers under section 81, and for the imposition of a penalty for a violation thereof;

NOW THEREFORE the Council of the Whitecap Dakota First Nation hereby enacts the following by-law:

1.0 SHORT TITLE

This by-law may be cited as the Whitecap Smoking By-law No. 2007-01.

2.0 INTERPRETATION

In this by-law, the following words shall have the following meanings:

"Act" means the *Indian Act*, R.S.C. 1985, c. 1-5 as amended;

"Band" or "First Nation" means the Whitecap Dakota First Nation, being a Band within the meaning of subsection 2.(1) of the *Indian Act*, R.S.C. 1985, c. 1-5;

"By-law Enforcement Officer" means a person(s) appointed under section 8 of this by-law;

"Council" means the duly elected Chief and Councillors of the Whitecap Dakota First Nation;

"enclosed public place" means;

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- (i) all or any part of a building that is open to the public or to which the public is customarily admitted or invited; and
- (ii) the interior of a vehicle used for public transit or a commercial vehicle for hire that is used to transport members of the public.

For the purposes of this by-law, an enclosed public place does not include patios or decks attached to a place or premises.

"Member" means a member of the Whitecap Dakota First Nation;

"Minister" means the Minister of Indian Affairs and Northern Development;

"person" means any individual, whether or not he or she is a Member;

"place or premises" means businesses, schools, healthcare facilities and any facility operated by the Band for the administration of services provided to the Members located on the Reserve;

"Professional Engineer" means a person licensed to practice in the Province of Saskatchewan as a Professional Engineer.

"proprietor" means:

- (i) with respect to a place or premises, means a person who controls, governs or direct the activities carried on within the place or premises, and includes a person who is actually in charge of the place or premises at any particular time; and
- (ii) with respect to a vehicle, means the registered owner of the vehicle or the operator in charge of the vehicle at any particular time;

"Reserve" means the Whitecap Indian Reserve No. 94 and any additions made thereto;

"resolution" means a motion passed and approved by a majority of the Council of the Band present at a duly convened meeting;

"school" means an educational institution, including primary, secondary and post secondary, including vocational and trade institutions;

"smoking" or "smoke" means the use, carrying or holding of a lighted cigar, cigarette, pipe or any other items used for burning tobacco or any other substance the vapour from which is inhaled and exhaled by humans but, for greater clarity, does not include any such activity carried on exclusively for traditional aboriginal cultural or spiritual purposes;

"smoking room" means a room that conforms to the requirements of section 6 of this by-law;

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- 2.1 The Preamble forms part of this by-law.
- 2.2 The following schedules, appendices and forms are attached to, and form part of, this by-law:

Schedule "A" - Specifications for No Smoking Signs

3.0 APPLICATION OF BY-LAW

- 3.1 This by-law applies to every enclosed public place on the Reserve.

4.0 SMOKING PROHIBITED

- 4.1 Subject to section 4.3, no person shall smoke or hold lighted tobacco in an enclosed public place on the Reserve except in a smoking room.

- 4.2 Notwithstanding any other provisions of this by-law, no person shall smoke or hold lighted tobacco in the following places or premises on the Reserve:

- (a) a building occupied by a school;
- (b) a facility operated by, or an enclosed place or premises occupied by, a health authority or an affiliate, including a special-care home and a community clinic;
- (c) a daycare facility;
- (d) a building or portion of a building occupied by the Band or any of its corporations, boards, commissions or other agencies;
- (e) a building occupied by a business; and
- (f) a vehicle used for public transit or a commercial vehicle for hire that is used to transport members of the public.

- 4.3 Sections 4.1 and 4.2 do not apply while being used with the consent of the proprietor, for traditional aboriginal, spiritual or cultural practices or ceremonies, if the use of tobacco or tobacco-related products is an integral part of the traditional aboriginal spiritual or cultural practices or ceremonies being carried out in the enclosed public place.

5.0 SIGNS

- 5.1 Every proprietor, with respect to a place or premises to which section 4 applies, shall ensure that signs prohibiting smoking or holding lighted tobacco are posted in the place or premises.

- 5.2 A sign that is required to be posted pursuant to this section must be posted:

- (a) at each entrance to the place or premises;

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- (b) in each public washroom located in the place or on the premises; and
 - (c) in conspicuous locations throughout the place or premises.
- 5.3 Every proprietor, with respect to a vehicle to which section 4 applies, shall ensure that signs prohibiting smoking or holding lighted tobacco are posted in the interior of the vehicle in a place that is easily visible to passengers.
- 5.4 A sign that is required to be posted pursuant to this section must meet the minimum specifications as set out in Schedule "A".
- 6.0 SMOKING PERMITTED**
- 6.1 Smoking is permitted in smoking rooms.
- 6.2 Where smoking is permitted in a smoking room, the smoking room shall be:
- (a) no larger than 20% of the floor area of the portion of the building, structure, place or area that is generally open to and actively used by the public but not including hallways, foyers, stairways, elevators, escalators, laundry rooms, washrooms and amenity areas;
 - (b) enclosed by a floor, a ceiling, 4 walls, and a door;
 - (c) clearly identified as a smoking room;
 - (d) equipped with ashtrays;
 - (e) equipped with non-combustible covered receptacles for the disposal of waste;
 - (f) designed to prevent the transfer of smoke from the smoking room to the non-smoking areas;
 - (g) equipped with a separate non-recirculating exhaust ventilation system with tempered replacement air provided to balance exhaust from the smoking room, replacement air may be provided by a forced supply and/or passive transfer vent from non-smoking areas; and
 - (h) designed so that the greater of a ventilation rate of 35 cubic feet per minute per person or 70 cubic feet per square foot of openings is achieved.
- 6.3 If a smoking room is utilized, a certificate signed by a Professional Engineer certifying that the ventilation system of the smoking room conforming to the requirement of subsections 6.2, must be provided to the First Nation by the proprietor of the place or premises:

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6.4 Where a smoking room is utilized by the proprietor of a place or premises, a sign must be posted at each entrance to the smoking room with the words, "SMOKING ROOM, SMOKING PERMITTED", in a size that is easily visible.

7.0 PROPRIETORS TO PROHIBIT CONTRAVENTIONS

7.1 For the purposes of complying with sections 4, 5 and 6 of this by-law, every proprietor of place or premises shall ensure that:

- (a) subject to subsection 6.2, ashtrays, lighters, matches and similar products associated with the use of tobacco are not available for use in the place or premises, except as permitted within this by-law; and
- (b) the signs required by sections 5 and 6 are posted in accordance with those sections.

7.2 The prohibition respecting ashtrays and lighters does not apply to a vehicle that is an enclosed public place if the vehicle is equipped by the manufacturer with ashtrays and lighters.

7.3 If a person is contravening section 4 of this by-law in an enclosed public place, the proprietor shall:

- (a) request the person to immediately stop smoking or holding lighted tobacco and to immediately extinguish the lighted tobacco;
- (b) inform the person that he or she was committing an offence; and
- (c) refuse to provide that person with a good or service that the proprietor customarily provides in the enclosed public place until that person ceases contravening section 4 of this by-law.

8.0 ADMINISTRATION AND ENFORCEMENT

8.1 Appointment of By-law Enforcement Officers

- (a) The Council may:
 - (i) by resolution, appoint a person(s) to act as a By-law Enforcement Officer(s) for the purposes of enforcing this by-law and pay such persons reasonable remuneration for their services;
 - (ii) in appointing a person pursuant to subsection (a), impose any restrictions on the powers of the person(s) that the Council considers appropriate; and
 - (iii) dismiss the By-law Enforcement Officer(s) and any other appointed person(s) from their positions for failure to carry out their duties as

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described in the by-law, or, for having been convicted of an employment-related offence under the *Criminal Code*.

8.2 Powers of By-law Enforcement Officers

- (a) For the purposes of administering and enforcing this by-law, a By-law Enforcement Officer shall:
- (i) subject to subsection 8.2(b), at any reasonable time, enter and inspect any place or premises where smoking or holding lighted tobacco is prohibited pursuant to this by-law;
 - (ii) ensure that any required signage is posted in accordance with this by-law;
 - (iii) report to Council from time to time, in any event not less than annually, on his or her activities under this by-law;
 - (iv) make any inspection, investigation, report or inquiry that the By-Law Enforcement Officer considers necessary; and
 - (v) attend to the enforcement provisions of this by-law.
- (b) Subject to any applicable legislation, a By-law Enforcement Officer shall not enter a private dwelling without the consent of the occupier or a warrant obtained pursuant to *The Summary Offences Procedure Act, 1990*.

9.0 OBSTRUCTION, FALSE STATEMENT, ETC. PROHIBITED

- 9.1 No person shall obstruct a By-law Enforcement Officer who is acting pursuant to the authority of this by-law.
- 9.2 No person shall knowingly make a false or misleading statement to a By-law Enforcement Officer or produce a false document to a By-law Enforcement Officer.

10.0 SIGN REMOVAL, ALTERATION, ETC., PROHIBITED

- 10.1 No person shall remove, cover up, mutilate, deface or alter any sign required pursuant to this by-law to be displayed or posted.

11.0 OFFENCE AND PENALTIES

- 11.1 Every person who contravenes any provisions of this by-law is guilty of an offence and upon summary conviction is liable to a fine not exceeding \$1,000 or imprisonment for a term not exceeding thirty (30) days, or both.
- 11.2 The summary conviction procedures of Part XXVII of the *Criminal Code*, as amended from time to time, apply to offences under this by-law.

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as per Section 86 of Indian Act
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12.0 DIRECTORS, OFFICERS OR AGENTS OF CORPORATIONS

12.1 Every director, officer or agent of a corporation who directed, authorized, assented to, acquiesced in or participated in an act or omission of the corporation that would constitute an offence by the corporation is guilty of that offence, and is liable on summary conviction to the penalties provided for the offence whether or not the corporation has been prosecuted or convicted.

13.0 VICARIOUS LIABILITY

13.1 In a prosecution for an offence pursuant to this by-law, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted or convicted for the offence, unless the accused establishes that the offence was committed without his or her knowledge and that the accused exercised all due diligence to prevent its commission.

14.0 GENERAL

14.1 The Council may, from time to time as it deems necessary in its absolute discretion:

- (a) amend this by-law;
- (b) enact further smoking by-laws required for the health and well-being of Members and other people on the Reserve; and
- (c) take any other measures that may be necessary to provide for the health and well-being of Members and other people on the Reserve.

14.2 In the event that a Court of competent jurisdiction or other body with jurisdiction determines that any provision herein is unlawful or beyond the Council's jurisdiction, said provision shall be severable from this by-law and the remainder of the terms of this by-law shall remain in full force and effect.

14.3 This by-law, or such part as is allowed by the Minister, shall come into force and effect in accordance with Section 82.(2) of the *Indian Act*.

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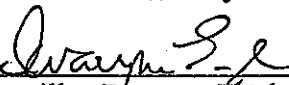
Ken Lyse *May 7/02*
Superintendent OIAND Date

THIS BYLAW IS HEREBY MADE at a duly convened meeting of the Council of the Whitecap Dakota First Nation held on this 3rd day of April, 2007.

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



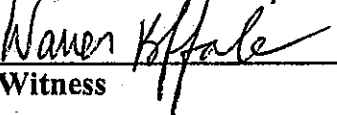
Chief Darcy Bear

Councillor Frank Royal


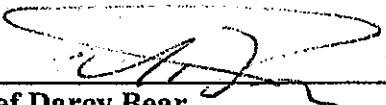
Councillor Dwayne Eagle

A quorum of this Council consists of two (2) Council members.

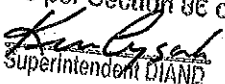
I, Darcy Bear, Chief of the Whitecap Dakota First Nation, do hereby certify that a true copy of the Whitecap Smoking By-law No. 2007-01 was mailed to the Minister of Indian Affairs and Northern Development pursuant to subsection 82.(1) of the Indian Act, this 3rd day of April, 2007.



Witness



Chief Darcy Bear

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Schedule "A"

Minimum requirements for signs required under Section 5 of the Whitecap Smoking By-law No. 2007-01.

1. Must be at least 15.25 centimetres wide and 15.25 centimetres tall;
2. Must contain the international no smoking symbol in a form that is at least 12 centimetres in diameter; and
3. Must include the text "WDFN By-law No. 2007-01".

NOTE: The size of signs required to be posted in the interior of a vehicle can be smaller than 15.25 centimetres but must be of a size that is easily visible to the passengers in the vehicle.



WDFN By-law No. 2007-01

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CERTIFICATE

I, Kevin Lysak, do hereby certify as Superintendent of Lands and Trust Services, pursuant to Section 86 of the Indian Act, R.S., C.1-6, that the attached copy marked "CERTIFIED TRUE COPY" is the true copy of the original by-law No. 2007-01, duly made on the 2nd day of April 2007 by the Council of the Whitecap Dakota First Nation, being a by-law in respect to Regulate Smoking in Enclosed Public Places.

Kevin Lysak

Kevin Lysak
Superintendent
Lands and Trust Services
North Central District

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Kevin Lysak *May 7/07*
Superintendent DIAND Date