



Wei Wai Kum First Nation Land Code Laws

Community Protection Law, 2019

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WHEREAS:

- A. Wei Wai Kum First Nation has an inherent right to self-government which emanates from our people, culture and land and which is recognized and affirmed by section 35 of the Constitution Act, 1982;
- B. Wei Wai Kum has taken over control and management of Wei Wai Kum Reserve lands and resources pursuant to the *Framework Agreement on First Nation Land Management* and has enacted the *Wei Wai Kum Land Code* effective the 31st day of January, 2013;
- C. Wei Wai Kum has traditional laws and teachings regarding protecting our community and Members and historically used banishment as one of a number of traditional remedies for dealing with individuals who posed a threat to the Members or the community;
- D. Section 20 of the *First Nations Land Management Act* and section 6.1 of our Land Code confirm Wei Wai Kum’s authority to enact laws with respect to the development, conservation, protection, management, and use and possession of our Reserves, and the power to enact laws with respect to any matter arising out of or ancillary to the exercise of that power, and to provide for enforcement measures;

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- E. Section 36.6 of our Land Code provides that any person who resides on, enters or remains on Wei Wai Kum First Nation Reserves other than in accordance with a residence or access right under our Land Code or a related Law is guilty of an offence, and may be ordered evicted or removed by Resolution enforceable by any Peace Officer or enforcement official designated by Council by Resolution; and
- F. Wei Wai Kum wishes to ensure that our Members can live on our Reserves in relative safety and is committed to implementing measures to safeguard against potentially threatening and dangerous behaviours on Wei Wai Kum Reserve Lands;

NOW THEREFORE this Wei Wai Kum *Community Protection Law* is hereby enacted at a duly convened Council meeting as a Law of the Wei Wai Kum First Nation.

PART 1. NAME

1.1 This Law may be cited as the Wei Wai Kum *Community Protection Law*.

PART 2. PURPOSE

2.1 The purpose of this Law is to address potentially disruptive, destructive, dangerous or threatening behaviour or conduct on Wei Wai Kum Reserve Lands.

PART 3. WHERE THIS LAW APPLIES

3.1 The provisions of this Law apply to the whole area of Wei Wai Kum Reserve Lands as defined in the Land Code.

PART 4. DEFINITIONS

4.1 For the purposes of this Law, terms have the same definitions as in the Land Code;

4.2 For the purposes of this Law, the following definitions apply:

“Criminal Code” means the *Criminal Code of Canada* as amended or replaced from time to time;

“Designated Individual” means a person who has been determined to be a Designated Individual by Council under section 7.1 or 7.2;

“Enforcement Officer” means a person appointed under subsection 6.1;

“Land Code” means the Wei Wai Kum First Nation Land Code;

“Sexual Offence” means an offence under sections 151 to 173 of the Criminal Code or an equivalent offence contained in a federal or state statute of the United States of America or any other country;

“Wei Wai Kum Official” means a person appointed under sections 6.1 and 6.2;

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“Wei Wai Kum Restraining Order” means an order made under section 7.4(c);

“Violent Offence” means an offence under sections 229 to 240, 244 to 248, 264 to 273 and 279 to 286 of the *Criminal Code of Canada* or an equivalent offence contained in a federal or state statute of the United States of America or any other country; and

“*Wei Wai Kum Enforcement and Ticketing Law*” means any community-specific legislation the Wei Wai Kum First Nation may adopt pursuant to sections the *Framework Agreement on First Nation Land Management Act* and section 6 of the *Wei Wai Kum Land Code* that addresses Ticketing and Enforcement.

PART 5. GENERAL PROVISIONS

5.1 The headings of parts and sections in this Law have been inserted as a matter of convenience and for reference only and in no way define or limit any of its provisions.

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

PART 6. APPOINTMENT OF WEI WAI KUM OFFICIALS

6.1 Council shall, by Resolution, appoint one or more Wei Wai Kum Officials to carry out the duties of the Wei Wai Kum Official as set out in this Law.

- 6.2 A Wei Wai Kum Official may be
- (a) an Enforcement Officer,
 - (b) a Peace Officer,
 - (c) a Wei Wai Kum elected representative,
 - (d) a contractor, or
 - (e) any other individual or organization designated under subsection 6.1.

6.3 Council must ensure that any Wei Wai Kum Official is sufficiently qualified to carry out activities and enforcement under this Law, either generally, or specifically as set out in their appointment.

PART 7. DETERMINATION OF A DESIGNATED INDIVIDUAL

Conviction

- 7.1 If Council, acting reasonably and in good faith, believes that a Person
- (a) has been convicted of a Sexual Offence or a Violent Offence; and
 - (b) poses a serious threat to the physical or psychological health, safety or wellbeing of a person residing on Wei Wai Kum Reserve Lands or using Wei Wai Kum facilities,

Council may make a determination that the person is a Designated Individual for a period of no longer than five (5) years.

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Designation Without Conviction

- 7.2 In addition to Council’s authority under section 7.1, if Council has credible information that a Person
- (a) has been charged with a Sexual Offence or Violent Offence;
 - (b) has threatened to commit a Sexual Offence or Violent Offence; or
 - (c) has caused serious harm or poses a serious threat to the physical or psychological health, safety or wellbeing of one or more Persons on Wei Wai Kum Reserve Lands,
- Council may, by Resolution with a unanimous motion, designate the Person as a Designated Individual for a period of no longer than six (6) months at a time.

Best Interest of Wei Wai Kum

- 7.3 Council must not pass a Resolution under sections 7.1 or 7.2 unless it determines, in good faith, that doing so is in the best interests of Wei Wai Kum, taking into account the interests of the Person, and whether or not the Person has acknowledged their issues and is working on rehabilitation or restoration.

Terms and Conditions

- 7.4 Subject to the limitations imposed by law, Council may authorize such terms and conditions as Council deems just and appropriate to restrict or prohibit the presence of a Designated Individual on Wei Wai Kum Reserve Lands or an area of Wei Wai Kum Reserve Lands, which may include the following:
- (a) posting the name of a Designated Individual at a Wei Wai Kum facility or otherwise informing Members and residents of Wei Wai Kum Reserve Lands of the presence of a Designated Individual on Wei Wai Kum Reserve Lands;
 - (b) taking into account the balance between community protection and the reasonable privacy of individuals, sending information to other Laich-kwil-tach Nations to consider posting in their communities;
 - (c) required participation in a traditional healing, restoration, rehabilitation or correctional process based on the direction of Council;
 - (d) issuing a Wei Wai Kum Restraining Order to:
 - (i) prohibit or prevent a person from using or accessing Wei Wai Kum computers, servers, e-mail addresses, copiers, notice boards, equipment or facilities;
 - (ii) prohibit or restrict a Designated Individual from attending specified locations or events on Wei Wai Kum Reserve Lands or being present within specified areas or facilities on Wei Wai Kum Reserve Lands during specified dates or times,
 - (iii) prohibit a Designated Individual from being within a prescribed distance from
 - (A) specified locations or events, or
 - (B) a particular Person,
 - (iv) a Designated Individual determined under section 7.1,
 - (A) evict the Designated Individual from rental housing or housing leased on Wei Wai Kum Reserve Lands, for a specified period of time, or

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- (B) banish the Designated Individual from using, occupying, or possessing Wei Wai Kum Reserve Lands for a specified time period not exceeding one (1) year; or
- (v) a Designated Individual determined under section 7.2,
 - (A) evict the Designated Individual from rental housing or housing leased on Wei Wai Kum Reserve Lands, for a specified period of time, or
 - (B) banish the Designated Individual from using, occupying, or possessing Wei Wai Kum Reserve Lands for a specified time period not exceeding six (6) months.

Expiry of Wei Wai Kum Restraining Order

7.5 Subject to the time limit of six months imposed on the designation of a Designated Individual under section 7.2 who has not been convicted of a serious offense, and the time limits of six months and one year imposed on certain types of banishment under section 7.4(d)(iv), a Wei Wai Kum Restraining Order must expire within five (5) years from the date the Wei Wai Kum Restraining Order becomes effective.

Time of Effect

7.6 A Wei Wai Kum Restraining Order that includes a term evicting a Designated Individual residing on Wei Wai Kum Reserve Lands under a lease under section 7.4(d)(iv)(A) and 9.4(d)(v)(A), the term takes effect forty-eight (48) hours after service of the Wei Wai Kum Restraining Order in accordance with section 9.1.

7.7 A Wei Wai Kum Restraining Order that includes a term banishing a Designated Individual under section 7.4(d)(iv)(B) and 9.4(d)(v)(B)

- (a) takes effect immediately after service of the Band Council Resolution in accordance with section 9.1; and
- (b) may be renewed by Council on a yearly basis but only after Council has carried out a detailed review and re-assessment.

7.8 Despite sections 7.6 and 7.7, a Person who has been evicted or banished under section 7.4 may return to Wei Wai Kum Reserve Land to collect personal possessions provided that the Person:

- (a) provides at least three (3) days written notice to the Chief and receives written confirmation from the Chief, in consultation with Council setting out a date and time,
- (b) agrees to be escorted by the RCMP, or an Enforcement Officer, or a Wei Wai Kum Official,
- (c) does not engage in or threaten to engage in a Sexual Offence or Violent Offence,
- (d) goes directly to their former residence, leaves directly from their former residence, takes only those possessions that are demonstrably owned by the Person, and stays for no longer than four (4) hours.

7.9 The access granted by the Chief under section 7.8 may be revoked by the Chief if the Person fails to comply with the conditions set out in that section.

Resolution

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7.10 All decisions, determinations or orders made under this Part must be made pursuant to a Resolution made with a unanimous motion.

PART 8. CONTENT AND DELIVERY OF WEI WAI KUM RESTRAINING ORDER

Contents of Wei Wai Kum Restraining Order

- 8.1 A Wei Wai Kum Restraining Order must contain:
- (a) the name of the Designated Individual and sufficient identifying information;
 - (b) the offence for which the Designated Individual was convicted, if applicable;
 - (c) the date upon which the Designated Individual was convicted for the offence, if applicable;
 - (d) the date upon which the Wei Wai Kum Restraining Order was authorized by Resolution;
 - (e) the date upon which the Wei Wai Kum Restraining Order was issued;
 - (f) the date upon which the Wei Wai Kum Restraining Order becomes effective;
 - (g) the date upon which the Wei Wai Kum Restraining Order expires;
 - (h) any terms or conditions imposed or required by the Resolution;
 - (i) if applicable, a list of building or areas or a map of Wei Wai Kum Reserve Lands clearly showing the specific locations for which a Designated Individual’s access is prohibited or restricted; and
 - (j) information stating that the individual may request a review or appeal of the Wei Wai Kum Restraining Order.

PART 9. NOTICE

Notice to Designated Individual

- 9.1 A Wei Wai Kum Official shall, within fourteen (14) days of the date upon which the applicable Band Council Resolution was made, personally serve a Person for whom or against whom Council
- (a) has determined to be a Designated Individual under section 7.1 or 7.2; or
 - (b) has issued a Wei Wai Kum Restraining Order or other Order with a copy of the Band Council Resolution or Order, as applicable, and a summary of Council’s reasons.
- 9.2 If it is not possible to serve a Designated Individual personally as required by subsection 9.1, after at least two (2) documented attempts to service the Designated Individual, alternative service of the notice may be provided by:
- (a) by leaving a copy of the order with a person who appears to be at least 18 years of age at the actual or last known address of the addressee;
 - (b) posting a copy of the order prominently on a door of a building at the actual or last known address of the addressee; and
 - (c) by mailing a copy of the order to the actual or last known address of the addressee;
- provided that the actions in paragraphs (a) to (c) are supported by an affidavit to confirm they have been carried out.

9.3 A copy of an Order, notice or written reasons delivered under subsection 9.2 is

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presumed to have been received by the addressee on the fifth (5th) day following the last action taken under that subsection.

General Notice of Wei Wai Kum Restraining Order

9.4 If Council authorizes a Wei Wai Kum Restraining Order, subject to any written directions from Council, the Wei Wai Kum Official shall, within fourteen (14) days from the date of the Band Council Resolution authorizing the Wei Wai Kum Restraining Order:

- (a) deliver a copy of the Wei Wai Kum Restraining Order to:
 - (i) each employer of the Designated Individual that is located on Wei Wai Kum Reserve Lands;
 - (ii) each employer of the Designated Individual that is not located on Wei Wai Kum Reserve Lands if, in the opinion of the Wei Wai Kum Official, the Designated Individual’s employment with that employer could require the Designated Individual to enter onto the prohibited areas described in the Wei Wai Kum Restraining Order;
 - (iii) the local RCMP detachment;
 - (iv) any Wei Wai Kum staff or departments which Council directs in writing; and
 - (v) each Wei Wai Kum facility or office identified as a prohibited area in the Wei Wai Kum Restraining Order, with instructions that it be posted in a place visible to all employees and volunteers of the facility or office; and
- (b) post a summary of the Wei Wai Kum Restraining Order in the appropriate location, if Council determines that it is necessary, taking into account the rights and interests of the community and the rights and interests of the individual.

PART 10. ALTERNATIVES FOR PARTICIPATION

Meeting Materials

10.1 If a Designated Individual who is the subject of a Wei Wai Kum Restraining Order and who is also a Member is prevented from attending a Wei Wai Kum general assembly for Members or other similar meeting on Wei Wai Kum Reserve Lands, Council shall

- (a) provide the Designated Individual with a copy of the agenda and any proposed resolutions in advance of the meeting; and
- (b) invite written comments from the Designated Individual on the documents provided under subsection (a).

Accessing Programs and Services

10.2 If a Designated Individual who is the subject of a Wei Wai Kum Restraining Order and who is also a Member is prevented from accessing information, programs or services that are available to other Members, excluding Wei Wai Kum Community Benefit payments, Council shall ensure that other alternatives are in place for the Designated Individual to access the information, programs or services, as appropriate.

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Attending an Election or Ratification Vote

10.3 For the purpose of participating in a Wei Wai Kum election for Wei Wai Kum Council, or a Wei Wai Kum Ratification Vote, The Designated Individual must notify the Electoral Officer of the new address so that the voting package can be mailed to the Designated Individual at the appropriate time.

PART 11. IF DESIGNATED INDIVIDUAL HAS AN INTEREST IN WEI WAI KUM RESERVE LANDS

11.1 Unless a Designated Individual has been banished under subsection 7.4 or is the subject of a Wei Wai Kum Restraining Order that prohibits the individual from accessing lands or structures in which they have an interests, if a Designated Individual who is the subject of a Wei Wai Kum Restraining Order has a right or Interest in Wei Wai Kum Reserve Lands outside of the area prohibited under the order, the Wei Wai Kum Restraining Order must:

- (a) provide for the Designated Individual to have access to those lands associated with the right or Interest; and
- (b) include a map of Wei Wai Kum Reserve Lands clearly showing the means by which the Designated Individual is permitted to access those lands and the Designated Individual may access those lands in accordance with the Wei Wai Kum Restraining Order.

PART 12. DESIGNATED INDIVIDUAL MAY NOT ACQUIRE RIGHT OR INTEREST IN WEI WAI KUM RESERVE LANDS

Non-Member

12.1 A Designated Individual who is subject to a Wei Wai Kum Restraining Order and is not a Member may not acquire a right or Interest in Wei Wai Kum Reserve Lands that is within an area prohibited under the Wei Wai Kum Restraining Order.

Member

12.2 A Designated Individual who is subject to a Wei Wai Kum Restraining Order and is also a Member may acquire a right or Interest in Wei Wai Kum Reserve Lands that is within an area prohibited under the Wei Wai Kum Restraining Order, but only by way of an estate administered under the *Indian Act* or by testamentary disposition in a valid will and remains subject to the terms and conditions set out in the Wei Wai Kum Restraining Order.

Notice Required

12.3 If a Designated Individual who is subject to a Wei Wai Kum Restraining Order acquires a right or Interest under section 12.2, the Designated Individual must notify the Wei Wai Kum Official of the existence of the right or Interest within thirty (30) days from the date of the registration in the Wei Wai Kum Reserve Lands Register of that right or Interest.

Modify Wei Wai Kum Restraining Order

12.4 Upon receipt of the notification in subsection 12.3, the Wei Wai Kum Official shall:

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- (a) modify the Wei Wai Kum Restraining Order to provide for access to the lands that are the subject to the right or Interest in accordance with section 12.1; and
- (b) deliver a copy of the modified Wei Wai Kum Restraining Order in accordance with subsections 9.1 and 9.4.

PART 13. MODIFICATION OR CANCELLATION OF DESIGNATION OR WEI WAI KUM RESTRAINING ORDER

13.1 Council may modify or cancel

- (a) a Designated Individual determination under section 7.1 or 7.2; or
 - (b) a Wei Wai Kum Restraining Order
- at any time if it is satisfied that the circumstances described in section 7.1 or 7.2, as applicable, no longer exist and that the safety of the community or any Person on Wei Wai Kum Reserve Lands would not be compromised by modifying, cancelling or removing the Designated Individual determination or the Wei Wai Kum Restraining Order.

Application to Council

13.2 A Designated Individual may apply in writing to Council to modify or cancel:

- (a) the Designated Individual determination under sections 7.1 or 7.2; or
- (b) a Wei Wai Kum Restraining Order, if applicable.

13.3 Any application from a Designated Individual must:

- (a) contain a specific request setting out what the Designated Individual wishes Council to review and any specific proposals to modify or cancel the designation or Wei Wai Kum Restraining Order;
- (b) contain details and information to support the application; and
- (c) be submitted to the Wei Wai Kum Chief and Council no more frequently than within sixty (60) days for those designated for 6 months and 6 months or once new information or evidence arises for those designated for 5 years of the last request to Council to modify or cancel the designation or Wei Wai Kum Restraining Order.

13.4 Within thirty (30) days of receiving an application under section 13.2, Council shall:

- (a) consider the application; and
- (b) either:
 - (i) approve the application, or
 - (ii) reject the application.

13.5 The portion of the Council meeting held under section 13.3(a) must be held *in camera*.

Band Council Resolution

13.6 All decisions, determinations or orders made under this Part must be made pursuant to a Band Council Resolution made with a unanimous motion and must be served or delivered in accordance with PART 9.

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PART 14. REVIEW OF COUNCIL DECISIONS

Final and binding

14.1 A decision of Council under sections 7.1 or 7.2, 7.4(c), or 13.1 is final and binding.

Court Review

14.2 Notwithstanding section 14.1, a Designated Individual may apply to the court, solely at their own expense, for a review of a Council decision under sections 7.1 or 7.2, 7.4(c), or 13.1.

Standard of Review

14.3 The standard of review of an application under section 14.2 is reasonableness.

Time limit

14.4 An application under section 14.2 must be brought within thirty (30) days after service of Council’s decision in accordance with section 9.1.

No Stay

14.5 An application under section 14.2 does not operate as a stay of a removal order.

PART 15. NO LIABILITY FOR DECISIONS MADE IN GOOD FAITH

15.1 Wei Wai Kum, including Council, a Wei Wai Kum Official, or any Person acting on authority of, or under the direction of Council, is not liable for any damage arising from

- (a) making a determination that a person is a Designated Individual;
- (b) making a Wei Wai Kum Restraining Order;
- (c) enforcing any aspect of this law

providing that the determination under subsection (a) and that the Wei Wai Kum Restraining Order under subsection (b) was made in good faith.

PART 16. DUTY TO REPORT

16.1 A person who has reasonable grounds to believe that a Designated Individual has breached any requirement, term or condition of a Wei Wai Kum Restraining Order shall immediately report these grounds to the Wei Wai Kum Official as per section 6.2 or an Enforcement Officer.

PART 17. ENFORCEMENT OF WEI WAI KUM RESTRAINING ORDER

17.1 If a Designated Individual fails or refuses to comply with any requirement, term or condition of a Wei Wai Kum Restraining Order made in accordance with this Law and delivered in accordance with section 9.1, without limiting an Enforcement Officer’s powers at law, including pursuant to a Wei Wai Kum Law that addresses enforcement powers of Enforcement Officers, an Enforcement Officer may take such reasonable measures as are necessary to enforce that order, and without limiting the generality of the foregoing, may:

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- (a) issue a warning, order, ticket, violation notice, information or summons in a form and, if applicable, subject to the fines or penalties authorized by Band Council Resolution, this Law, or any other applicable law such as a community-specific legislation the Wei Wai Kum First Nation may have adopted pursuant to sections the *Framework Agreement on First Nation Land Management Act* and section 6 of the *Wei Wai Kum Land Code*, to a Designated Individual who is in breach of any requirement, term or condition of a Wei Wai Kum Restraining Order; or
- (b) remove the Designated Individual from the area prohibited in the Wei Wai Kum Restraining Order, or may detain the Designated Individual pending the arrival of the RCMP.

17.2 If a person fails to pay a fine or penalty under this Law, the Lands Administrator is authorized, thirty (30) days after having sent a warning letter to the person, to:

- (a) send any unpaid fine or penalty to a collection agency if the fine or penalty is owed by a person who is not a Wei Wai Kum Band Member; or
- (b) for fines or penalties owed by Wei Wai Kum Members, to send a request to the Wei Wai Kum Council that moneys be withheld from annual membership distributions or other community grants or benefits or take similar actions as set out in the *Wei Wai Kum Enforcement and Ticketing Law*.

All Remedies Retained

17.3 Nothing in this Law precludes Wei Wai Kum from pursuing any other enforcement action or remedy to address a Designated Individual’s failure or refusal to comply with a Wei Wai Kum Restraining Order provided for in any other relevant law.

May File Order in Court but Not Necessary

17.4 All Wei Wai Kum Orders validly issued under this Law have the force of law and is fully enforceable whether or not they are registered in a court.

17.5 Despite subsection 17.4, Wei Wai Kum Council may, in its sole discretion, file a certified copy of a Wei Wai Kum Order made under this Law with a court of competent jurisdiction.

17.6 A Wei Wai Kum Restraining Order filed under subsection 17.4 has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court.

PART 18. OFFENCES AND PENALTIES

Penalties

18.1 A Person who contravenes this Law, or any requirement, term or condition of an order made and delivered in accordance with this Law, or an order made by a Court pursuant to this Law, is guilty of an offence and

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- (a) is liable for a ticketing fine if authorized by Band Council Resolution, this Law, the Wei Wai Kum *Enforcement and Ticketing Law*, or any other applicable law; or
 - (b) is liable on summary conviction to a fine of not more than \$10,000 as outlined in the Wei Wai Kum *Enforcement and Ticketing Law* for each offence or to a term of imprisonment not exceeding thirty (30) days, or both;
- and
- (c) in addition to any ticket fines, summary conviction fines, imprisonment or other penalties under paragraph (a) or (b), a Person who also causes damage to property or infrastructure within Wei Wai Kum Reserve Lands, is liable to repair the damage or reimburse Wei Wai Kum or affected entities or individuals for the damage and any such reimbursement costs are a debt owing which can be collected under this law, the Wei Wai Kum *Enforcement and Ticketing Law*, or the laws relating to collections.

Fine

18.2 A fine payable under section 18.1 shall be remitted to Wei Wai Kum by the Court, after reasonable Court costs have been deducted.

Offences

18.3 It is an offence to

- (a) fail or refuse to comply with any warning, order, ticket, violation, notice, information or summons made or issued under this Law, including, for certainty, the requirements, terms or conditions of a Wei Wai Kum Restraining Order;
- (b) fail or refuse to comply with the requirement under section 12.3 to report a right or interest in Wei Wai Kum Reserve Land by testamentary disposition;
- (c) knowingly and willingly allow a Designated Individual to remain on one's property in contravention of a Wei Wai Kum Restraining Order made in accordance with this Law and published in accordance with section 9.4; or
- (d) obstruct, interfere with, or deny access to an Enforcement Officer.

Continuing Offence

18.4 Where any contravention of this Law is committed or continued on more than one day, it constitutes a separate offence for each day on which the contravention is committed or continued.

PART 19. REGULATIONS, FEES AND FORMS

19.1 Council may, by Band Council Resolution made with a unanimous motion

- (a) pass any regulations necessary to implement this law; and
- (b) establish, correct, revise or update the terms of any applicable fee, schedule, form, protocol or other related documentation which complement and support this Law.

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PART 20. COMING INTO FORCE

Date Law Comes into Force

20.1 This Law shall come into force and effect on the date it is passed by Band Council Resolution.

BE IT KNOWN that this Law entitled the *Wei Wai Kum Community Protection Law* is hereby enacted by a quorum of Council at a duly convened Council of the Wei Wai Kum First Nation held on _____, 2019.

Chief

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Council consists of 8
Members

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