

# Tsartlip First Nation Disorderly Conduct & Nuisance By-law

Dated: July 22, 2024

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## **Preamble**

**WHEREAS** Tsartlip has an inherent right of self-government that emanates from our people, culture, and land and is recognized and affirmed by s. 35(1) of the *Constitution Act, 1982*;

**AND WHEREAS** Tsartlip's inherent right of self-government includes jurisdiction over its reserve lands;

**AND WHEREAS** it is considered necessary for the health and welfare of Tsartlip to regulate the conduct of Tsartlip Members, residents, and other persons on its reserve lands;

**AND WHEREAS** Tsartlip deems it advisable and in the best interests to enact a by-law for the prevention of nuisances and disorderly conduct within its reserve lands;

**AND WHEREAS** Tsartlip is empowered to make such a by-law pursuant to paragraphs 81(1)(a), (c), (d), (e), (h), (q), and (r) of the *Indian Act*;

**AND WHEREAS** nothing in this by-law may be interpreted as abrogating or derogating from the Indigenous and treaty rights of Tsartlip in its territories;

**NOW THEREFORE** Council of Tsartlip hereby makes the following by-law:

### **1 SHORT TITLE**

1.1 This by-law may be cited as the "*Tsartlip First Nation Disorderly Conduct and Nuisance By-law*."

### **2 INTERPRETATION**

2.1 In this by-law:

**"Council"** means the duly elected Chief and Council of Tsartlip;

**"Councillors"** means all members of Council, including the Chief, and **"Councillor"** means any single member of Council, including the Chief;

**"Disorderly Conduct"** means any act or behaviour that disrupts the public order on a Reserve, including, but not limited to:

- a) fighting;
- b) making or causing unreasonable noise;
- c) using abusive language;
- d) using offensive or indecent gestures or displays;

- e) consuming Intoxicants in a public place;
- f) being under the influence of an Intoxicant in a disorderly manner;
- g) loitering;
- h) exposing, firing, or discharging any gun, pistol, or other firearm, or using or threatening to use any other article as a weapon;
- i) interfering in any manner with the orderly conduct of commercial, administrative, educational, recreational, health care, religious, or ceremonial activities on the Reserve; and
- j) any behaviour that may, from time to time, be specified by Council.

**"False Alarm"** means the activation of an alarm system resulting in the delivery of fire, police, or emergency response services where the providers of the service do not find any evidence of unlawful acts, fire, fire damage, smoke in relation to the building, structure, residence, or a facility; or where there has been no other fire or emergency;

**"Intoxicant"** means any substance that if ingested has the potential to impair or alter judgment, behaviour, the capacity to recognize reality, or ability to meet the ordinary demands of life, but does not include caffeine or any authorized medication used in accordance with directions given by a health care professional;

**"Member"** means a person whose name appears on the Tsartlip membership list, or who is entitled to have their name appear on the Tsartlip membership list, or, if Tsartlip develops membership rules, any person who holds or is entitled to hold membership under those rules;

**"Nuisance"** means any act, activity, or condition that takes place on a Reserve which substantially and unreasonably interferes with a Person's use and enjoyment of land, adversely affects a Person's health, comfort, or convenience, or adversely affects the public health, safety, or welfare of the Tsartlip community. Without limiting the generality of the foregoing, **"Nuisance"** includes the following:

- a) abandoning cars, household appliances, furniture, or any parts thereof;
- b) storing abandoned cars, household appliances, furniture, or any parts thereof;
- c) dumping or storing of tires, garbage, or other refuse;
- d) burning tires, grass, garbage, or other refuse;
- e) discharging a potentially noxious substance into the air or water;

- f) driving or parking heavy trucks in residential areas, other than for short periods of time for the purposes of delivering goods and materials to a residence;
- g) making or causing any noise or sound which disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort, or convenience of the public, the neighbourhood, or Persons in the vicinity;
- h) creating noxious or unpleasant smells;
- i) vandalism, including removing, defacing, destroying, mutilating, or in any manner whatsoever damaging or attempting to damage land, structures, or property;
- j) interfering in any manner with the orderly conduct of commercial, administrative, educational, recreational, health care, religious, or ceremonial activities on the Reserve, that disrupts public order on the Reserve, scandalizes the community, or causes public inconvenience, annoyance, or alarm; or
- k) setting off three (3) or more False Alarms within a twelve (12) month period;

**“Occupier”** means a Person who resides in or has the right of access to any Premises;

**“Officer”** means:

- a) any person designated in writing by Council to enforce this by-law;
- b) RCMP officers; and
- c) any other person charged by Canada or British Columbia with the duty to preserve and maintain the public peace in accordance with their laws;

**“Owner”** means, in respect of Private Property, the owner of that Private Property, and includes, for greater certainty, a certificate of possession holder, a residential leaseholder, and a commercial lease holder, as the context requires;

**“Person”** in addition to its ordinary meaning, includes any association, society, corporation, or partnership.

**“Premises”** means land, including land covered by water, and any building or structure on the land, whether permanent or portable, together with its appurtenances, and for greater certainty, includes Premises on Private Property.

**“Private Property”** means land on Reserve held or occupied by a Person for residential or commercial purposes, whether via leasehold, life estate, residential tenancy, certificate of possession or other form of lawful tenure;

**“Reserves”** means:

- a) South Saanich Indian Reserve No. 1;
- b) Mayne Island Indian Reserve No 6;
- c) Senanus Island Indian Reserve No. 10; and
- d) any lands which have been set apart as “reserves” within the meaning of the Indian Act for the use and benefit of Tsartlip, other than Goldstream Indian Reserve No. 13

and **“Reserve”** means any of the Reserves, as the context requires.

**“Tsartlip”** means the Tsartlip First Nation.

### **3 APPLICATION**

3.1 This by-law applies to the Reserves.

### **4 PROHIBITIONS**

4.1 No person shall:

- (a) commit an act of Disorderly Conduct or Nuisance; or
- (b) in the case of an Owner or Occupier, permit an act of Disorderly Conduct or Nuisance to occur.

4.2 No person shall obstruct, interfere with, or hinder an Officer in the carrying out of their duties and responsibilities under this by-law.

### **5 ABATEMENT ORDER**

5.1 An Officer may order any Person who is engaging in or threatens to engage in any Disorderly Conduct or Nuisance to stop such conduct immediately.

5.2 An Officer may order any Person who is causing or threatens to cause an act of Disorderly Conduct or Nuisance to refrain from so doing, or to abate the Disorderly Conduct or Nuisance within such period as is reasonable in the circumstances.

5.3 If an Officer orders a Person to abate an act of Disorderly Conduct or Nuisance, the Officer may order the Person to remove any object(s) from the Reserve or Reserves that contributes to or is a result of that Disorderly Conduct or Nuisance, as the case may be.

- 5.4 In determining whether a period fixed by an Officer under section 5.2 is reasonable in the circumstances, a court shall consider:
- (a) the nature and extent of the Disorderly Conduct or Nuisance;
  - (b) the methods available to abate the Disorderly Conduct or Nuisance;
  - (c) the approximate time required to abate the Disorderly Conduct or Nuisance; and
  - (d) the effect of the order on any business or means of livelihood of the Person who is the subject of the Officer's order.
- 5.5 Where a Person fails or refuses to comply with an order under section 5.1 or 5.2, an Officer may take such reasonable measures as are necessary to stop the Disorderly Conduct or Nuisance, as the case may be.
- 5.6 For the purposes of section 5.5, an Officer may enter onto any property on the Reserves (including Private Property) and remove any object(s) from the Reserve that contributes to or is the result of Disorderly Conduct or a Nuisance.
- 5.7 Tsartlip may dispose of any property removed from the Reserves under section 5.6 in any manner it sees fit, including selling the property removed to defray any costs that Tsartlip reasonably incurs in removing and disposing of the property.

## **6 INSPECTION AND INVESTIGATION**

- 6.1 An Officer is authorized to enter onto any property on the Reserve, including Private Property, upon reasonable notice and during business hours, or, if emergency or other exigent circumstances exist, without notice and at any time, to inspect and determine whether or not any acts of Disorderly Conduct or Nuisance have occurred or are occurring.
- 6.2 An Officer that makes an order under this by-law shall cause the order to be served on the Person subject to the order within seven (7) days.
- 6.3 An Officer shall serve an order made under this by-law:
- (a) by delivering it or causing it to be delivered to the Person subject to the order;
  - (b) where the order is directed at an Owner or Occupier, by mailing the order to that Person at their last known address; or
  - (c) if the Person subject to the order cannot be found, is not known, or refuses to accept service of the order, or, in the opinion of the Officer, acting reasonably, service of the order is otherwise impractical, by posting a copy of the order in a conspicuous place on the Premises where the alleged Disorderly Conduct or Nuisance occurred.

## **7 OFFENCES AND PENALTIES**

- 7.1 A Person commits an offence if they:
- (a) contravene or violate any provisions of this by-law;
  - (b) allow any act or thing to be done in contravention of this by-law; or
  - (c) fail or neglect to do anything required to be done by this by-law.
- 7.2 Each day a violation of this by-law continues will be deemed to be a separate offence for which a fine or imprisonment may be imposed.
- 7.3 Upon being convicted of an offence under this by-law in a court of competent jurisdiction, a Person shall be liable:
- (a) on summary conviction, to a fine not exceeding One Thousand Dollars (\$1,000.00) or imprisonment for a term not exceeding thirty (30) days, or both; and
  - (b) for any costs Tsartlip incurs for services provided that are a consequence of the offence.
- 7.4 Without limiting section 5.7, if Tsartlip incurs any costs to stop, prevent, abate or remediate any Disorderly Conduct or Nuisance, the Person convicted of such Disorderly Conduct or Nuisance is liable to Tsartlip for those costs.
- 7.5 Tsartlip may recover any fines imposed under section 7.3 or costs incurred under section 7.4 through the set-off of any Tsartlip distributions of any kind which a person liable for an offence under this by-law is entitled, including:
- (a) cash;
  - (b) other property; and
  - (c) in the case of an employee, through garnishment of their employee wages.
- 7.6 In addition to any penalties under this Part of the by-law, Tsartlip may apply to a court of competent jurisdiction for an order prohibiting the continuation or repetition of the offence.

## **8 ENFORCEMENT**

- 8.1 Any Officer is authorized to enforce this by-law.



## **9 IMMUNITY**

- 9.1 No action for damages lies or may be instituted against past or present Councillors, Tsartlip employees, servants, or agents, any Officer, or Members for:
- (a) anything said, done, or omitted to be said or done by such a person in the performance or intended performance of such person's duties or the exercise of that person's authority under this by-law; or
  - (b) any alleged neglect or default in the performance or intended performance of such person's duty or the exercise of such person's authority under this by-law.
- 9.2 Past and present Councillors and Tsartlip employees, Members, servants, and agents are 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 by-law or any other Tsartlip by-law, or from the neglect or failure, for any reason or in any manner, to enforce this by-law or any other Tsartlip by-law.
- 9.3 This by-law does not create any duty of care whatsoever on the part of Tsartlip or its Councillors, officers, employees or agents in respect of enforcement or failure to enforce this by-law. Neither the failure to administer or enforce, nor the incomplete or inadequate administration or enforcement of this by-law or inspections made by Tsartlip staff, agents or contractors gives rise to a cause of action in favour of any Person.
- 9.4 Nothing in this Part of the by-law provides a defence where past or present Councillors, Tsartlip employees, Members, servants or agents, or any Officer are guilty of dishonesty, gross negligence, malicious or wilful misconduct, or where the cause of action is in defamation.

## **10 JUDICIAL REVIEW**

- 10.1 On any application for judicial review in respect of a decision or resolution made pursuant to this by-law, the Court shall take notice of Tsartlip's specialized knowledge about Tsartlip's customary law, history, culture, values and best interests.

## **11 SEVERABILITY**

- 11.1 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 the by-law shall not be affected.

## **12 AMENDMENTS**

- 12.1 This by-law may only be amended by a quorum of Council at a duly convened Council meeting.

**13 ENACTMENT**

**THIS BY-LAW IS HEREBY** enacted at a duly convened meeting of the Council of Tsartlip this 22<sup>nd</sup> day of July, 2024.

The quorum of Council is five (5) Councillors.



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Chief Don Tom



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Councillor–Gordon Elliott Ellsworth



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Councillor –Lawrence Bartleman



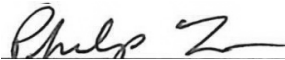
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Councillor – Verna



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Councillor – Joe Seward



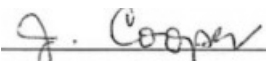
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Councillor – Phillip Tom



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Councillor – Simon Smith, Jr.



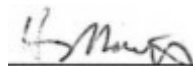
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Councillor – Jeanine Cooper



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Councillor – Curtis Olsen



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Councillor – Howard Morris