



TSAWOUT FIRST NATION

**STÁUTW FIRST NATION
NUISANCE PREMISES
LAW NO. 2020-05**

A Law to regulate and prohibit Nuisances Premises

WHEREAS Chief and Council of STÁUTW First Nation deem it advisable and in the best interests of STÁUTW First Nation to enact a Law to regulate unsightly premises and nuisances within STÁUTW Lands in accordance with the *STÁUTW First Nation Land Code* (June 25, 2013);

AND WHEREAS pursuant the *STÁUTW First Nation Land Code* the STÁUTW Chief and Council wishes to enact a bylaw to regulate, prohibit or require the following:

- prevent and prohibit derelict vehicles on reserve;
- prevent, abate (lessen, reduce or remove), and prohibit nuisances, and provide for the recovery of the cost of abatement of nuisances from the person causing the nuisance or other persons described in the law;
- prohibit persons from causing or permitting standing water, rubbish, noxious, or offensive matter to collect or accumulate around their premises, or from depositing or throwing bottles, broken glass, or other rubbish in any open space;
- prohibit persons from placing graffiti in public places;
- prohibit the owners or occupiers of real property from allowing their property to become or remain unsightly;
- require the owners or occupiers of real property, or their agents, to remove from it any accumulations of filth, discarded material, or rubbish; and,
- require the owners of real property, or their agents, to eliminate or reduce the fouling or contaminating of the atmosphere through the emission of smoke, dust, gas, sparks ash, soot, cinders, fumes, or other unpleasant or harmful odor, secretion, or discharge (effluvia).

NOW THEREFORE Chief and Council of STÁUTW First Nation enacts the following law:

1. TITLE

This Law may be cited for all purposes as “*STÁUTW Nuisance Premises No. 2020-05*”.

2. DEFINITIONS

2.1 In this Law, unless the context otherwise requires

"derelict vehicle" means any motorized vehicle or part thereof which:

- (a) is physically wrecked or disabled,
- (b) is not capable of operating under its own power, or
- (c) does not have attached number plates for the current year pursuant to the regulations of the *Motor Vehicle Act*;

"discarded material" means all manner of garbage, junk, unused or dismantled trailers, boats, vessels, machinery, mechanical or metal parts, bottles, glass, brush piles, pipes, unused wood or wood products excluding seasoned untreated wood or manufactured products cut in lengths for use as a fuel in a solid fuel burning appliance, dilapidated furniture, inoperative appliances, derelict vehicles and other such similar things;

"filth" means foul or putrid matter;

"garbage" means waste or spoiled food and other refuse, as from a kitchen or household.

"graffiti" includes any unauthorized inscription, writing, slogan, design, drawing, or painting, howsoever made, on any sidewalk, wall, building, fence, sign, or any other structure or surface.

"junk" means old metal, glass; paper, wood or other material which may be usable again in some fashion;

"nuisance" means a condition or situation on a parcel of land that interferes with another parcel owner or occupier's use or enjoyment of real property including but not limited to the following:

- (a) excessive or obtrusive light emanating from a parcel that shines, glares, or reflects into a neighbouring parcel;
- (b) emission of smoke, dust, gas, sparks, ash, soot, cinders, fumes or other effluvia;
- (c) graffiti; or
- (d) odour emanating from a parcel that can be detected from within another parcel.

"occupant" or "occupier" means a person who is legally entitled to occupy or simply occupies a parcel of land, building, dwelling or premises within S7AUTW Lands;

"offensive matter" means physical objects which are objectionable to the public;

"parcel of land" or "parcel" means any lot, block, manufactured home pad or other area in which real property within S7AUTW Lands is held or into which real property within S7AUTW Lands is subdivided and the improvements affixed to it;

"real property" means land other than a highway, together with all improvements which have been so affixed to the land as to make them in law a part of the land and includes land without improvements.

"registered holder" means a person who is registered in the S7AUTW Lands Register as the holder of an interest in S7AUTW Lands and, where applicable, includes the registered holder or occupant;

"rubbish" means useless waste;

"unsightly" means offensive to the sight;

"waste" means refuse from places of human habitation;

"STÁUTW" or "TFN" means the STÁUTW First Nation as defined in the STÁUTW *First Nation Land Code*;

"STÁUTW First Nation Land" means:

- (a) the following STÁUTW Indian Reserves:
 - (i) East Saanich Indian Reserve No. 2
 - (ii) Fulford Harbour Indian Reserve No. 5

- (b) This law will only apply to these lands where the respective partner First Nation has agreed/followed the appropriate procedure; the following lands jointly held or in common with other First Nations:
 - (i) Saturna Island Indian Reserve No. 7 (06835)
 - (ii) Pender Island Indian Reserve No. 8 (06836)
 - (iii) Bare Island Indian Reserve No. 9 (06837)
 - (iv) Goldstream Indian Reserve No. 13 (06838);

pending agreement by all partnering First Nations;

and,

- (c) Lands set apart by Her Majesty the Queen in right of Canada in the future as lands reserved for the use and benefit of STÁUTW, within the meaning of subsection 91(24) of the *Constitution Act, 1867*;

"TFN Land Use Plan" means...

"TFN Bylaw Enforcement Officer" means any person appointed by Council, from time to time, to administer and enforce the provisions of STÁUTW Laws enacted by Chief and Council;

"vehicle" "a device in, upon, or by which a person or thing is or may be transported or drawn upon a highway, except a device designed to be moved by human power or used exclusively upon stationary rails or tracks."

- 2.2 Unless otherwise provided in this Law, words, expressions, and rules of construction used in this Law have the same meaning as in the STÁUTW *First Nation Land Code*.

3. PROHIBITIONS

- 3.1 A registered owner or occupier of real property must not cause, permit, suffer or allow the property to become or remain unsightly, and in particular must not:
 - (a) keep a derelict, deteriorating, inoperative or unused vehicle, boat, or household appliance, or any parts thereof, on the property, whether or not covered by a tarpaulin or similar device;
 - (b) allow the accumulation of filth, rubbish, or discarded materials;
 - (c) cause graffiti to appear or allow graffiti to remain on any wall, fence, building or other structure

4. ENFORCEMENT

- 4.1 The TFN Bylaw Enforcement Officer is authorized, at all reasonable times, to enter on any parcel of land that is subject to any of the terms and conditions of this Law, in order to ascertain whether the provisions of this Law are being obeyed. When concern of safety or continued violations
- 4.2 Where the TFN Bylaw Enforcement Officer has received a complaint that a parcel of land or any premises within a parcel of land is unsightly and a subsequent investigation verifies the complaint, the TFN Law Enforcement Officer may issue a written order to the registered holder requiring that the unsightly condition be remedied by removal from such premises of unsightly accumulations of filth, discarded materials, rubbish or graffiti.
- 4.3 After authorization granted from Council, where after the expiry of fifteen (15) days from delivery of an order given pursuant to section 4.2 of this Law, the unsightly condition which gave rise to the order has not been remedied, STÁUTW, by its employees or other persons, at reasonable times and in a reasonable manner, may enter on such premises and effect compliance with the order at the expense of the registered holder.
- 4.4 If the compliance is carried out under section 4.3 of this Law, and the registered holder does not pay the costs on or before six months time (180 days) from the date the compliance was effected, the costs may be added to and form part of the taxes payable in respect of the said parcel of land and deemed to be taxes in arrears.
- 4.5 Where the TFN Bylaw Enforcement Officer has received a complaint that a parcel of land or any premises within a parcel of land is a visual nuisance or contains offensive matter on it, and a subsequent investigation verifies the complaint, the TFN Bylaw Enforcement Officer may issue a written order to the registered holder and, if different, to the person causing the nuisance or allowing the offensive matter to remain on the parcel of land, requiring that the visual nuisance be abated or the offensive matter removed from such premises.
- 4.6 Where, after the expiry of thirty (30) days from the delivery of an order given pursuant to section 4.5 of this Law, the visual nuisance which gave rise to the order has not been remedied or the offensive matter has not been removed from the premises, STÁUTW, by its employees or other persons, at reasonable times and in a reasonable manner, may enter on such premises and effect compliance with the order at the expense of the registered holder.
- 4.7 If the compliance is carried out under section 4.6 of this Law, and the registered holder does not pay the costs on or before six months time (180 days) from the date the compliance was effected, the costs may be added to and form part of the taxes payable in respect of the parcel of land and deemed to be taxes in arrears.
- 4.8 Where STÁUTW incurs legal costs in order to have an unsightly condition remedied or a visual nuisance abated or offensive matter *removed* from a parcel of land, such costs will be considered to be costs related to the remedy, abatement or removal to be paid for by the registered holder and may be collected from the registered

holder in accordance with the provisions of this Law.

5. PENALTY

- 5.1 If the registered holder does not pay the costs related to the remedy, abatement or removal as required by section 4.8 of this Law on or before December 31st in the year that the remedy, abatement or removal was effected by SĀĀUTW, the costs may be added to and form part of the taxes payable by the registered holder in respect of the parcel of land and deemed to be taxes in arrears.

6. EXEMPTIONS

- 6.1 The outdoor storage of goods and chattels when permitted by any TFN Law shall not be considered a contravention of Part 3 of this Law.

7. FEES AND FORMS

- 7.1 Council may, by resolution passed at a duly convened meeting, establish, correct, revise or update the terms of any applicable fee schedules, forms, protocols or other related documentation which complement and support this Law, and will post notice of same in a public area of the TFN administration building and make a copy of same available for viewing free of charge at the administrative offices of SĀĀUTW and available for distribution at a nominal charge.

8. NOTICES & CHARGES AGAINST REGISTERED HOLDERS

- 8.1 Where SĀĀUTW is required to give notice to or imposes an additional cost or charge against the registered holder and two or more persons are shown as registered holders in respect of a parcel of land, then a notice given to or a cost or charge imposed against one registered holder is not invalidated by the failure to give notice to or impose a charge against any other registered holder.

9. OFFENCES

- 9.1 No person shall obstruct, interfere with or hinder Council, a TFN Law Enforcement Officer or any authorized employee, officer, or agent of SĀĀUTW or Council in the carrying out of their duties and responsibilities under this Law.
- 9.2 Any person who violates any of the provisions of this Law or who suffers or permits any act or thing to be done in contravention or in violation of any of the provisions of this Law, or who neglects to do or refrains from doing any act or thing required by any of the provisions of this Law, is guilty of an offence under this Law, and is liable to the penalties imposed by this Law.
- 9.3 Each day a violation of this Law continues will be deemed to be a separate offence.
- 9.4 Any person who is guilty of an offence under this Law is liable, on summary conviction to a fine of not more than One Thousand Dollars (\$1,000.00) or to a term of

10. IMMUNITY

- 10.1 No action for damages lies or may be instituted against the present or a past

Council; a member of the present or a past Council; a TFN Law Enforcement Officer; or members, employees, servants, or agents of either STÁUTW or Council:

- (a) for anything said or done or omitted to be said or done by that person in the performance or intended performance of the person's duty or the exercise of the person's authority; or
- (b) for any alleged neglect or default in the performance or intended performance of the person's duty or the exercise of the person's authority.

10.2 Section 9.1 does not provide a defense if:

- (a) the present or a past Council; a member of the present or a past Council; a TFN Law Enforcement Officer; or members, employees, servants, or agents of either STÁUTW or Council have, 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.

10.3 STÁUTW; the present or a past Council; a member of the present or a past Council; a TFN Law Enforcement Officer; or members, employees, servants, or agents of either STÁUTW or Council 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 Law or any other STÁUTW Law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other STÁUTW Law.

10.4 All actions against STÁUTW for the unlawful doing of anything that:

- (a) is purported to have been done by STÁUTW under the powers conferred by this Law or any STÁUTW Law; and
- (b) might have been lawfully done by STÁUTW 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 Council in a particular case, but not afterwards.

10.5 STÁUTW is in no case liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained, is delivered to STÁUTW, within two (2) months from the date on which the damage was sustained. In case of the death of a person injured, the failure to give notice required by this section is not a bar to the maintenance of the action. Failure to give the notice or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the Court of Appeal, believes:

- (a) there was reasonable excuse; and
- (b) STÁUTW has not been prejudiced in its defense by the failure or insufficiency.

11. APPLICATION OF LAW

11.1 Where any federal act or regulation or provincial act or regulation or any other STÁUTW Law may apply to any matter covered by this Law, compliance with this Law will not relieve the person from also complying with the provisions of the other applicable act, regulation or law.

- 11.2 If any section of this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or subsection will be severed from and not affect the remaining provisions of this Law.
- 11.3 The headings given to the sections and paragraphs in this Law are for convenience of reference only. They do not form part of this Law and will not be used in the interpretation of this Law.
- 11.4 Unless otherwise noted, any specific statute named in this Law is a reference to a statute of British Columbia and the regulations thereto, as amended, revised, consolidated or replaced from time to time, and any Law referred to herein is a reference to a law of STÁUTW, as amended, revised, consolidated or replaced from time to time.

BE IT KNOWN that this Law entitled, "STÁUTW Nuisance Premises Law No. 2020-05" is hereby enacted as Law No. 2020-05 by the Council of STÁUTW First Nation at a duly convened meeting of:

Council held on the 30th day of November, 2020 at STÁUTW First Nation, British Columbia.

A quorum consists of **five (5)** Council members.

Chief Nicholas Claxton

Councillor John Etzel

Councillor Samantha Etzel

Councillor Abraham Pelkey

Councillor Mary Ann Sam

Councillor Stanley Sam

Councillor Bruce Underwood

Councillor Mavis Underwood

Councillor John Wilson