



TSAWOUT FIRST NATION

**STÁUTW FIRST NATION
DISORDERLY CONDUCT
LAW NO. 2020-06**

A Law to regulate and prohibit Disorderly Conduct

WHEREAS:

STÁUTW First Nation Council deems it advisable and in the best interests of STÁUTW First Nation to enact a law for the prevention of disorderly conduct, prohibits and imposes requirements respecting public health and safety matters on STÁUTW First Nation Lands;

STÁUTW First Nation in accordance with the WSÁNEĆ tradition has recognized the importance of the collective rights of the community and the priority of those collective rights over the rights of the individual;

NOW THEREFORE the Council of STÁUTW First Nation enacts following Law:

1.0 TITLE

1.1 This Law may be cited as the STÁUTW First Nation Disorderly Conduct Law 2020-06.

2.0 DEFINITIONS

2.1 In this Law, unless the context otherwise requires:

"Disorderly conduct" means unruly behavior constituting a minor offense that disrupts public order on STÁUTW Lands, scandalizes the community, causes inconvenience, annoyance, or alarm, or threatens the safety of a community member including:

- i. fighting;
- ii. loitering;
- iii. making or causing unreasonable noise;
- iv. using abusive language;
- v. using offensive or indecent gestures or displays;
- vi. exposing, firing or discharging any gun, pistol or other firearm, or using or threatening to use any other article as a weapon, except in defense of life or property;
- vii. interfering in any manner with the orderly conduct of commercial, administrative, educational, recreational, health care, religious or ceremonial activities on STÁUTW First Nation lands, including STÁUTW Band Office;
- viii. possession of a controlled substance or drug paraphernalia in a public area;
- ix. littering;
- x. refusing to leave a public area when directed to do so by a TFN Bylaw Enforcement Officer;
- xi. urinating or defecating in a public area; or,
- xii. entering any cultural sites without proper permissions, capture or any historical knowledge via recording, interviews, and/or photos, or desecrating any cultural important places or things;

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

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

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

"SṪÁUTW First Nation Land" means:

- (a) the following SṪÁUTW 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 SṪÁUTW, within the meaning of subsection 91(24) of the *Constitution Act, 1867*;

"TFN Enforcement Notice" means an enforcement notice issued in accordance with the SṪÁUTW First Nation Disorderly Conduct and Nuisances Control Law 2020-05 which may be as amended or replaced from time to time.

"TFN Law Enforcement Officer" means the person or persons appointed by Council, from time to time, to administer and enforce the provisions of SṪÁUTW First Nation Laws enacted by Council, and includes any delegate or any peace officer.

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 SṪÁUTW First Nation Land Code.

3. DISORDERLY CONDUCT

3.1 The TFN Law Enforcement Officer may order any person who is engaging in any disorderly conduct on SṪÁUTW First Nation lands to stop such conduct immediately or within such period as is reasonable in the circumstances; and

3.2 For each designated contravention, a TFN Law Enforcement Officer may complete and issue a TFN Enforcement Notice to a person against whom a contravention is alleged.

3.3 In determining whether an incident was reasonable in the circumstances, TFN Law

Enforcement Officer shall take into account:

- a) the nature and extent of the nuisance;
- b) the methods available to abate the nuisance;
- c) the approximate time required to abate the nuisance; and
- d) the effect of the order on any business or means of livelihood of the person who is the subject of the order.

5. GENERAL REQUIREMENTS

- 5.1 No person shall make or cause, or permit to be made or caused, any noise in or on a highway or elsewhere within STÁUTW First Nation Lands which disturbs the peace, rest, quiet, enjoyment, comfort or convenience of any person or persons in the neighborhood or vicinity.
- 5.2 No person being the registered holder of a parcel of land knowingly shall allow or permit such parcel to be used so that noise or sound which emanates therefrom disturbs the peace, rest, quiet, enjoyment, comfort, or convenience of any person or persons in the neighborhood or vicinity.
- 5.3 No person shall own, keep or harbor any animal or bird which by its barks, cries or sounds unduly disturbs the peace, rest, quiet, enjoyment, comfort or convenience of any person or persons in the neighborhood or vicinity.
- 5.4 No person within STÁUTW First Nation Lands shall on any day before 7:00 a.m. or after 10:00 p.m. construct, erect, re-construct, alter, repair or demolish any building, structure or thing or excavate or fill in land in any manner whatsoever which makes, causes noise or sounds in or on a highway or elsewhere within STÁUTW First Nation Lands which disturb or tend to disturb, the peace, rest, quiet, enjoyment, comfort or convenience of any person or persons in the neighborhood or vicinity.
- 5.5 Notwithstanding other provisions of this Law, a person may apply to the TFN Bylaw Enforcement Officer, authorized by Council, for and receive from STÁUTW First Nation, a permit authorizing the making of unreasonable noise or sounds, in which a permit the requirements of this Law may be waived by Council acting in the best interest of STÁUTW. [Please refer to Permitting Bylaw TFN XXX].
- 5.6 Notwithstanding any provisions of this Law, a person may perform works of an emergency nature for the preservation or protection of life, health or property but the onus will be on the person performing the work to show cause that the work was of an emergency nature.
- 5.7 Notwithstanding the other provisions of this Law, where farming practices require the operation of machinery equipment for the production of crops, working farms are exempt from the provisions of this Law.
- 5.8 No person shall create a nuisance or disturbance upon any portion of a highway or other public or private place, including any place to which the public reasonably access has, by participating in a fight or other similar physical confrontation between consenting or non-consenting persons.

6. ENFORCEMENT

- 6.1 Where a person who has been ordered to stop engaging in disorderly conduct, within a specified period, fails or refuses to comply with the order, the TFN Bylaw Enforcement Officer may take such reasonable measures as are necessary to stop the disorderly conduct.
- 6.2 A person who fails or refuses to comply with an order made under sections 3.2 or 4.2, or who resists or interferes with the TFN Law Enforcement Officer acting under section 3.2 or section 5.1, commits an offence;
- 6.3 Nothing in this Law precludes STÁUTW from pursuing any other enforcement action or remedy provided for in any other STÁUTW Law.

7. FEES AND FORMS

- 7.1 Council may, by resolution, and in accordance with this Law, 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 STÁUTW and available for distribution at a nominal charge.

8. NOTICES & CHARGES AGAINST REGISTERED HOLDERS

- 8.1 Where STÁUTW 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, the TFN Bylaw Enforcement Officer or any authorized employee, officer or agent in the carrying out of their duties and responsibilities under this Law, or any other STÁUTW 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, or any other STÁUTW Law.
- 9.3 Each day a violation of this Law continues will be deemed to be a separate offence for which a fine or imprisonment may be imposed.
- 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 imprisonment not exceeding thirty (30) days, or both.

10. IMMUNITY

- 10.1 No action for damages lies or may be instituted against present or past Council or members, employees, servants or agents of either STÁUTW or Council: 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 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: Council, TFN Bylaw Enforcement Officer, members, employees, servants or agents 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 the cause of action is libel or slander.
- 10.3 STÁUTW, present or past Council, or members, employees, servants or agents of any of STÁUTW or Council is 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: is purported to have been done by STÁUTW under the powers conferred by this Law or any STÁUTW Law, and 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: there was reasonable excuse, and 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.

12. COMING INTO EFFECT

- 12.1 This Law shall come into force and effect on the date it is enacted by Resolution after complying with the requirements of section 7 of Part 2 of the STÁUTW *First Nation Land Code*.

THIS LAW IS HEREBY ENACTED by Council at a duly convened meeting 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