

# **Musqueam Indian Band**

## **Nuisance By-law**

This By-law is made pursuant to Section 81(d), (q) and (r) of the Indian Act.

WHEREAS by passing the Nuisance By-law in 2008, the Band Council ("Council") of the Musqueam Indian Band ("the Band") exercised its powers under the said Indian Act for the prevention of nuisances on the Reserves of the Band (the "Reserves") and Council now deems it expedient and in the best interests of the Band to amend those By-laws;

NOW THEREFORE the Band Council of the Band enacts as a By-law the following:

### **1. Name: The Musqueam Nuisance By-law**

#### **Definitions**

#### **2. In this Act:**

**"Band Manager"** means the Chief Operating Officer of the Band

**"Band Land"** means: For the purposes of this By-law, any reserve of the Band except for:

- a. Land in respect of which the Band has granted exclusive right of possession to another person
- b. Land in respect of which the Band has granted exclusive right of possession to a corporation, Government, Society or other legal entity
- c. Land for which a certificate of possession has been granted by the Band

**"Band"** means the Musqueam Indian Band

**"Band owned building"** means: any building, and any parcel of real property on which said building is situated, that is owned, leased or rented by the Band and includes dwelling houses

**"Council"** means the elected Council of the Band

**"Reserve"** means any of the Reserves of the Band, wherever situated

**"Enforcement officer"** means any person appointed by the Council for the purpose of enforcing the By-law and includes any member of the Musqueam Security Patrol

**"Peace Officer"** means any sworn member of the Vancouver Police and any person appointed as such by the Council.

**"Graffiti"** means one or more letters, symbols or marks, however made, on any structure or thing but does not include marks made accidentally or any of the following:

Presented for final approval-signatures to Chief & Council on Jan. 12, 2015 (after 1<sup>st</sup>/2<sup>nd</sup> & 3<sup>rd</sup> reading)

- a) A sign, public notice or traffic control mark authorized by the Band Manager.
- b) A public notice authorized by the Band Manager or by legislation
- c) In the case of private property, a letter, symbol or mark authorized by the owner or tenant of the property on which the letter, symbol or mark appears.

**“Premises”** means the area contained within the apparent boundaries of any legal parcel of land and any building situated within such boundaries, provided however that where a building contains more than one unit, each unit, the common areas of the building, and the land within the apparent boundaries of the lot, shall each be deemed to be separate premises

**“Property”** means within any Reserve of the Band, a building or structure or part of a building or structure and includes the lands and premises appurtenant thereto and all mobile homes, mobile buildings mobile structures, out-buildings, fences and erections thereon whether heretofore or hereafter erected, anything affixed to the land and includes vacant property

**“Real property”** includes land and any buildings on the land and anything affixed to the land

**“Power equipment”** means: any equipment or machinery used in lawn and garden care or in building and property maintenance, and includes but is not limited to leaf blowers, edge trimmers, line trimmers, rototillers, lawn mowers, pressure washers, carpet cleaning equipment, and hand operated power tools;

**“Continuous sound”** means: any sound occurring for a duration of more than three minutes, or occurring continually, sporadically or erratically but totalling more than three minutes in any 15 minute period.

**“Non-continuous sound”** means: any sound other than continuous sound.

**“Day time”** means: unless otherwise provided in this by-law, from 7 o’clock in the morning (0700 hours) to 10 o’clock in the evening (2200 hours) on any weekday or Saturday, and from 10 o’clock in the morning (1000 hours) to 10 o’clock in the evening (2200 hours) on any Sunday or holiday;

**“Holiday includes”:**

**Sunday, Christmas Day, Good Friday and Easter Monday,**

**Canada Day, Victoria Day, British Columbia Day, Remembrance Day, New Year’s Day, December 26<sup>th</sup>, Family Day**

**National Aboriginal Day and Musqueam Day**

**Any day fixed by the Band Council as a day of general prayer or mourning, public rejoicing, Thanksgiving , or as a public holiday.**

**“Nighttime”** means: any time not included within the definition of daytime;

- 3) No person shall place graffiti, or cause graffiti to be placed, on any wall, fence or other structure or thing in any street or other public place.
- 4) No person shall place graffiti, or cause graffiti to be placed, on any wall, fence, building or other structure located on real property and adjacent to a street or other public place.
- 5) No owner or occupant of real property shall permit graffiti to be placed, on any wall, fence, building or other structure located on real property and adjacent to a street or other public place.
- 6) Where real property is not maintained in accordance with section 3 and the property is not occupied by its owner, the Band may enter the property and remove the graffiti provided that it first gives at least thirty (30) days notice to the owner by posting the notice on the property.
- 7) Where the Band enters property to effect maintenance pursuant to section 4, the costs thereof may be held against the property as a debt to the Band.
- 8) No person shall make or cause, or permit to be made or caused, any noise or sound in a street, park or similar public place which disturbs or tends to disturb unreasonably the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public and such noises or sounds are hereby prohibited, and,
- 9) no person being the owner or occupant of any premises shall make, cause, allow, or permit:
  - a. The noise resulting from a gathering of two or more persons at any time, where one or more human voice is raised beyond the level of ordinary conversation, or
  - b. The sound of a radio, television, player or other sound playback device, public address system, or any other music or voice amplification equipment, musical instrument, whether recorded or live, whether amplified or not.
  - c. The continuous sound of a barking dog or the cry of an animal or bird,  
Which can be easily heard by an individual or member of the public who is not on the same premises, notwithstanding that such noise or sound might not constitute a breach of any other provision of this by-law.
- 10) Sections 8 or section 9(a),(b) of this by-law shall not apply to noise or sound created:
  - a. As a consequence of the construction, demolition, repair, cleaning, or other maintenance of any building, street, sewer, water main, electrical duct, or other public utility;  
Or;
  - b. By the sound of church bells, chimes, or carillons, whether amplified or not; or
  - c. By the sounds of drumming, singing, prayers, chanting or bathing generated as a consequence of the practise of traditional Musqueam ceremony or cultural activities.
  - d. As a consequence of the lawful testing of an emergency generator provided that it is not operated more than once a week during the day time, and for a maximum of 30 minutes.

- 11) Notwithstanding any provision of this by-law, a person may make or cause a noise or sound which exceeds any sound level set out in this by-law when performing works of an emergency nature for the preservation or protection of property, life or health.**
- 12) Notwithstanding any provision of this by-law, except as provided in Sections 11,13 or 14, no person shall carry on any construction, or operate any kind of tool, power equipment, machine, or engine, to the disturbance of the quiet, peace, rest, or enjoyment of the public, except between the hours of 7 o'clock in the morning (0700 hours) to 8 o'clock in the evening (2000 hours) on any weekday or Saturday, and between 10 o'clock in the morning (1000 hours) to 8 o'clock in the evening (2000 hours) on any Sunday or holiday.**
- 13) Notwithstanding section 12, on any day of the week the moving of material or equipment onto or off of a construction site may commence at 6:30 o'clock in the morning (0630 hours).**
- 14) In any case where it is impossible or impractical to comply with sections 12 or 13 an application, in the form prescribed in clause (a) may be made to the Band Manager for an exception, and the Band Manager may give his consent in writing to carry on any such works outside the prescribed limits upon such terms as he determines.**
  - a. The application noted in section 14 shall be in writing and submitted to the Band Manager at least five (5) working days prior to the date of the proposed activity, and shall contain:
    - i. The name, address, and telephone number of the applicant;**
    - ii. The address of the site of the works;**
    - iii. The reason the exception is sought;**
    - iv. A description of the source(s) of noise of noise in respect of which the exception is sought;**
    - v. The exact period of time for which the exception is desired;**
    - vi. The reason why the exception should be given; and**
    - vii. A statement of the measures planned or presently being taken to minimize the sound or noise.****
- 14.1) The Band Manager may order any terms or conditions deemed appropriate by him in granting written consent pursuant to section 14.**
- 15) No person shall maintain, possess, or use a security system, burglar alarm, or other device equipped with an audible Alarm which sounds on the premise or real property and is intended to direct attention to trespass or an unlawful act unless such system is
  - a. Provided with an operating automatic shut-off device which stops the audible alarm sound within 10 minutes and permits the audible alarm system to sound only a maximum of 3 (three) times in a 24 hour period.**
  - b. Approved by the Chief Constable of the Vancouver Police Department or a person authorized to act on his behalf.****
- 16) With respect to Band owned Land a person must not, without the prior written consent of the Band Manager:
  - a. Cut, break. Injure, damage or destroy any tree, shrub, plant, turf, artificial turf, or flower on any Reserve of the Band;****

- b. Remove any rock, soil, tree, shrub, plant, turf, artificial turf, or flower from any Reserve of the Band;
- c. Deposit any garbage, refuse, litter, fluid or other waste material on any Reserve of the Band, except in containers provided by the Band for that purpose.
- d. Deposit, store, sort or distribute any construction materials, recyclables, auto parts, metal, wood, plastics or hazardous waste as defined by The BC Environmental Management Act (1988) Hazardous Waste Regulations.
- e. Deposit, or store waste as defined in the Indian Reserves Waste Disposal Regulations
- f. Deposit or store any substance or material that emits an obnoxious odor
- g. Deposit or store any offal, bait or other animal product.
- h. Store any vehicle, vessel, trailer or motor home.
- i. Store any fishing equipment, construction tools, any equipment, or any property held for personal, commercial or business purposes.
- j. Except for cultural practise, start any fire.

**17) With respect to real property for which a Certificate of possession has been given, or in respect of which the Band has granted exclusive right of possession to another person, a corporation, Government, Society or other legal entity, no person, without the prior written consent of the Band Manager may:**

- a. Deposit, store, sort or distribute any construction materials, recyclables, auto parts, metal, wood, plastics or hazardous waste as defined by The BC Environmental Management Act (1988) Hazardous Waste Regulations on any portion of the said land.
- b. store any derelict vehicle, vessel, trailer or motor home on any portion of the said land.
- c. Deposit, store or sort any garbage, refuse, litter, fluid or other waste material on any portion of the said land except in containers designed for that purpose and which are emptied at least bi-weekly.
- d. Deposit, store or sort any waste as defined in the Indian Reserves Waste Disposal Regulations
- e. Deposit or store any substance or material that emits an obnoxious odor
- f. Deposit or store any offal, bait or other animal product without adequate storage facilities to prevent the decomposition of the animal product and the incursion of wild or domestic animals.

**17.1 The Band Manager may order any terms or conditions deemed appropriate by him in granting written consent pursuant to section 15.**

**18) With respect to Band owned facilities no person shall remain within any Band facility after being asked to leave by any Band employee.**

**19) Having been asked to leave any Band facility by any Band employee no person may re-enter the said facility without the written permission of the Facilities Manager.**

**20) A person commits an offence under sections 8, 9 or 12, where he fails to abate a nuisance on the Reserve after he or she has been notified by The Band Manager, Member of Council, Enforcement Officer or Peace Officer forthwith, or, within 48 hours as may be reasonable in the circumstances.**

**21) Other than sections 8, 9 or 12, a person who violates any provision of this by-law commits an offence in the first instance.**

**Offences under By-law**

**22) A person who:**

- (a) violates any provision of this By-law, or does any act or thing which violates any provision of this By-law; or**
- (b) neglects to do or refrains from doing anything required to be done by any provision of this By-law; or**
- (c) suffers or allows any other person to fail to comply with an order, direction, or notice given under any provision of this By-law;**

**is guilty of an offence against this By-law, and liable to the penalties imposed under this Section 28.**

**23) Every person who commits an offence against this By-law is punishable on summary conviction to a fine of not more than \$1000.00 or imprisonment for a term not exceeding thirty (30) days or both for each offence.**

**Fine for continuing offence**

**24) Every person who commits an offence of a continuing nature against this By-law is liable to a fine not exceeding \$500.00 for each day such offence continues.**

**25) This By-law is subject to the Indian Act and regulations made thereunder.**

**26) A finding by a court that a provision of this By-law is void or invalid shall not affect the validity of the rest of the By-law.**

**27) This By-law may be amended from time to time or repealed by a by-law made in accordance with the Indian Act.**

**28) This By-law shall apply to all Reserves.**

**29) This By-law shall come into force forty (40) days after the date of mailing to the Minister of Aboriginal Affairs and Northern Development as required pursuant to the section 82 of the Indian Act.**


30) Upon the coming into force of this By-law, the Nuisance By-law passed on September 15<sup>th</sup>, 2008 shall be repealed.

31) This By-law is without prejudice to the provisions of any other by-law that may apply.

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

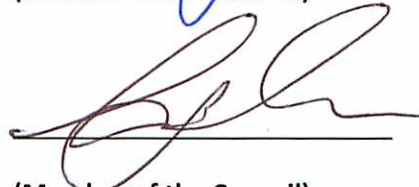
  
(Member of the Council)

  
(Member of the Council)

  
(Member of the Council)

  
(Member of the Council)


  
(Member of the Council)


  
(Member of the Council)

\_\_\_\_\_  
(Member of the Council)

\_\_\_\_\_  
(Member of the Council)

\_\_\_\_\_  
(Member of the Council)

  
(Member of the Council)

  
(Member of the Council)

  
(Member of the Council)

being the majority of those members of the Council of the Musqueam Indian Band present at the aforesaid meeting of the Council.

The quorum of the Council is \_\_\_\_\_ members