

Tsartlip First Nation Trespass 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 Tsartlip, since time immemorial, has had traditional laws and teachings regarding protection of members, residents, and community, including a traditional practice of banishment where an individual has, through certain acts, lost the trust of the community;

AND WHEREAS the *United Nations Declaration on the Rights of Indigenous Peoples* provides that in exercising their right to self-determination, Indigenous peoples have the right to autonomy or self-government in matters relating to their internal and local affairs (Article 4), that they have the right to promote, develop and maintain their own juridical systems (Article 34), and that Indigenous peoples have the right to determine the responsibilities of individuals to their communities (Article 35);

AND WHEREAS the Chief and Council of Tsartlip have an obligation to protect Tsartlip members and residents, particularly Elders, children, and other vulnerable community members, from acts or threats of acts that may cause harm or diminish the health and safety of Tsartlip members, residents, and the community;

AND WHEREAS it is considered necessary for the health and welfare of Tsartlip to make a bylaw to provide for the removal and punishment of Persons trespassing on the reserve or frequenting the reserve for Prohibited Purposes;

AND WHEREAS Tsartlip is empowered to make such a by-law pursuant to paragraphs 81(1)(a), (c), (d), (p), (p.1), (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 the Chief and Council of Tsartlip hereby makes the following by-law:

1 NAME

1.1 This by-law may be cited as the *Tsartlip First Nation Trespass 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" has the meaning given to it in the *Tsartlip Disorderly Conduct and Nuisance By-Law*;

"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 citizenship under those rules;

"Nuisance" has the meaning given to it in the *Tsartlip Disorderly Conduct and Nuisance By-Law*;

"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 tenure;

"Prohibited Purpose" means any of the following activities conducted on the Reserve by any Person:

- a) engaging in conduct which causes or may cause harm or potential harm to Persons or property on the Reserve;
- b) engaging in Disorderly Conduct or Nuisance;
- c) engaging in an activity that constitutes an offence under the *Controlled Drugs and Substances Act*, SC 1996, c. 19, as amended;
- d) engaging in an activity that constitutes an offence under the *Criminal Code*, RSC 1985, c. C-46, as amended;
- e) sale, barter, supply or manufacture of Intoxicants;
- f) hawking or peddling of wares or merchandise without authorization from Council; and
- g) hunting, fishing, or trapping, except by Members who have the exclusive right to hunt, fish and trap on the Reserves;

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.

“Resident” means a person residing on a Reserve and includes persons who are temporarily absent from that Reserve because of schooling, work, travel, or similar purposes. For greater certainty, a person who has been removed from a Reserve on an interim basis in accordance with the *Tsartlip First Nation Residency and Community Protection and By-law* is deemed to be a Resident;

“Tsartlip” means the Tsartlip First Nation;

“Trespass” means any act that constitutes trespass under the common law and includes:

- a) entering or remaining on the Reserve without lawful jurisdiction or authority;
- b) entering or remaining on the Reserve for a Prohibited Purpose;
- c) entering or remaining in or on a Premises without lawful authority or the permission of the Occupier,

but does not include a Person who enters onto the reserve for the purposes of attending at or carrying on lawful business;

- 2.2 Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and the feminine.

3 APPLICATION

- 3.1 This by-law applies to the Reserves.
- 3.2 This by-law applies to all Persons on the Reserves, including Members.
- 3.3 If there is any inconsistency between previously enacted Tsartlip by-laws under section 81 of the *Indian Act*, this by-law prevails to the extent of the inconsistency.

4 TRESPASS

- 4.1 No Person may Trespass on the Reserve or any part of it.
- 4.2 A Person found on or in Premises on the Reserve is presumed to be in Trespass.

5 ORDERS

- 5.1 An Officer may order a Person to do or not do anything that the Officer reasonably believes is necessary to bring the Person into compliance with this by-law, including by ordering any Person not to enter or to immediately leave the Reserve.
- 5.2 Where a Person who has been ordered to leave the Reserve fails or refuses to do so, an Officer may take such reasonable measures as may be necessary to remove the Person from the Reserve.

6 INSPECTION

- 6.1 An Officer may stop a Person or vehicle, enter a vehicle or Premises and inspect a vehicle or Premises to monitor or confirm compliance with a provision of this bylaw including, without limitation, to determine whether a Person is in Trespass.
- 6.2 Before entering a vehicle or Premises to conduct an investigation in accordance with section 6.1, an Officer must take reasonable steps to notify the Owner or Occupier of the Premises or owner of the vehicle and to obtain their consent to enter, except that an Officer can conduct an inspection without providing notice if:
- (a) providing notice would not be reasonably practical in the circumstances, or
 - (b) providing notice would frustrate the purposes of the inspection.

7 PROHIBITION ORDER

- 7.1 This Part 7 does not apply to Members or Residents.
- 7.2 Where a Person has been ordered not to enter or to leave the Reserve under section 5.1, or, where Council reasonably believes that a Person is in Trespass and that the Person presents a danger to or is likely to endanger the life or safety of one or more Persons present on one or more Reserves or poses a risk of damage to property on one or more Reserves, Council may, by resolution:
- (a) order that the Person be prohibited from entering one or more Reserves for a defined period or on a permanent basis; and
 - (b) make such further or other resolutions in respect of the prohibition referred to in subsection 7.2(a) as Council deems appropriate and necessary for ensuring the health and safety of the Tsartlip community.
- 7.3 In considering whether to issue any orders under section 7.2, Council may provide the Person with an opportunity to be heard at or prior to the Council meeting in which the resolution(s) is being considered.
- 7.4 Any resolutions pursuant to section 7.2:
- (a) must be in writing and include written reasons;
 - (b) are final and binding, and not subject to an appeal; and
 - (c) come into force upon serving the affected Person by personal service, or if personal service is impractical, by either:
 - (i) posting a copy of the resolution on the front door of the affected Person's known dwelling, which shall be deemed to be served after 24 hours of being posted, or
 - (ii) mailing the resolution to the affected Person's known dwelling by registered mail, which shall be deemed to be served one week later on the same day of the week as the day of mailing.
- 7.5 For greater certainty, nothing in this part affects the applicability of the *Tsartlip Residency and Community Protection By-law*.

8 OFFENCES AND PENALTIES

- 8.1 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;
 - (c) fail or neglect to do anything required to be done by this by-law;
 - (d) interfere with or obstruct an Officer who is exercising their enforcement powers under this by-law;
 - (e) knowingly assist a Person who is in Trespass to reside on or be present on the Reserve; or
 - (f) fail to comply with an Officer's order enforcing this bylaw.
- 8.2 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.
- 8.3 Upon being convicted of an offence under this by-law, 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.
- 8.4 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.
- 8.5 The offences created by this by-law are in addition to, and do not replace, any applicable provincial or federal offences.

9 NO LIABILITY

- 9.1 None of Tsartlip Council, Members, officers, employees, representatives or agents of any of Tsartlip or Council are liable, directly or vicariously, 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 from the neglect or failure, for any reason or in any manner, to enforce this by-law.

10 COMPLIANCE WITH OTHER LAWS

- 10.1 Compliance with this by-law shall not relieve a Person from having to comply with the requirements of any other applicable law or legal requirement.

11 SEVERABILITY

- 11.1 If a court of competent jurisdiction determines that a provision of this by-law is invalid for any reason, the provision shall be severed from the by-law and the remaining provisions of this by-law shall remain in full force or effect.

12 AMENDMENTS

- 12.1 Council may adopt any amendment to this by-law by resolution at a duly convened meeting. Council will cause the amended by-law to promptly be posted on the Tsartlip website and in prominent locations on the Reserve and will share the amended by-law with any Officers who are helping to enforce it.

13 ENACTMENT

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

The quorum of Council is five (5) Councillors.



Chief Don Tom



Councillor–Gordon Elliott
Ellsworth



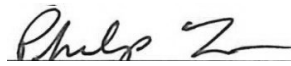
Councillor –Lawrence Bartleman



Councillor – Verna



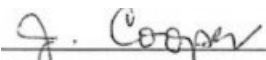
Councillor – Joe Seward



Councillor – Phillip Tom



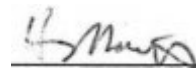
Councillor – Simon
Smith, Jr.



Councillor – Jeanine Cooper



Councillor – Curtis Olsen



Councillor – Howard
Morris