

Tataskweyak Cree Nation

Community Protection Bylaw,

2019-01

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WHEREAS at community membership meetings, the Members of the Tataskweyak Cree Nation asked Council to deal with negative social issues that are occurring on Reserve, such as, but not limited to: public intoxication, increased DUI's, assaults, violence amongst Members, increased drug use and dealing drugs and bootlegging.

WHEREAS at community membership meetings held in 2017, Members approved designating the Reserve to be free of alcohol and drugs, and Council enacted the Intoxicant Bylaw, 2017-1.

WHEREAS in light of the negative social issues that continue to plague the community, Members requested and support a bylaw which would allow Council to regulate who can and can't be on Reserve and to remove and prohibit people, including Members, from residing or entering onto Tataskweyak Cree Nation Reserves, if they pose a threat to the community, children or other vulnerable community members.

WHEREAS Chief and Council of the Tataskweyak Cree Nation have an obligation to ensure the safety of its Members and residents, particularly children and other vulnerable community members and to ensure that the remote location of its Reserves are managed in a way that maximizes the protection of its Members and residents, particularly children and other vulnerable community members.

WHEREAS Chief and Council of the Tataskweyak Cree Nation, in accordance with tradition, recognize the importance of the collective rights of the community and the priority of those collective rights over certain rights of the individual;

WHEREAS Chief and Council of the Tataskweyak Cree Nation wishes to ensure that its Members and other residents can live on Tataskweyak Cree Nation Reserves in relative safety.

WHEREAS Chief and Council of the Tataskweyak Cree Nation are in the best position to evaluate the safety and health of their Members on their Reserves and can fulfill their obligation to ensure the observance of law and order, given their experience and expertise.

WHEREAS the practice of banishment has been part of Tataskweyak Cree Nation traditional aboriginal customary law as a remedy for dealing with individuals who posed a threat to Members or the community.

WHEREAS Sections 81(a), (c), (d), (p),(p.1), (q) and (r) of the *Indian Act* empower the Chief and Council to pass bylaws to provide for the health and safety of residents on the reserve, the observance of law and order, the prevention of disorderly conduct and nuisances, the removal and punishment of persons trespassing on reserve or frequenting the reserve for prohibited purposes, the residence of Members and other persons on the Reserve, in addition to matters arising out of or in addition to the exercise of powers under this section and the

imposition of a penalty for the violation of any such bylaw.

WHEREAS this Bylaw balances the rights of the individual guaranteed under the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Code* with the safety of the Members of the Tataskweyak Cree Nation, the community, its children and the vulnerable;

Now Therefore Chief and Council of the Tataskweyak Cree Nation hereby approve the following amended Bylaw:

PART 1. NAME

1.1 This Bylaw may be cited as the *Community Protection Bylaw, 2019-01*.

PART 2. DEFINITIONS

2.1 For the purposes of this Bylaw, the following definitions apply:

"Appeals Tribunal" means the Appeals Tribunal appointed by Council pursuant to PART 10 of this Bylaw to consider an appeal of a Removal Order.

"BCR" means the documented written decision made by a majority of the Council at a duly convened meeting of Council.

"Court" means any federal or provincial court of competent jurisdiction.

"Council" means the Chief and Council of the Tataskweyak Cree Nation.

"Criminal Code" means the *Criminal Code of Canada*, R.S.C. 1985, c. C-46, as amended or replaced from time to time.

"Enforcement Officer" means any RCMP, police officer, police constable, peace officer, First Nation Safety Officer, Bylaw enforcement officer or any other person charged with the duty to preserve and maintain the peace and appointed by Chief and Council for the purposes of maintaining law and order.

"First Nation Safety Officer" means a person appointed by Tataskweyak Cree Nation who is authorized to enforce this Bylaw.

"Immediate Family" means mother, father, spouse, brother/sister, children and any other relative residing in the same residence.

"Indictable Offence" includes a hybrid offense that proceeded by way of summary conviction.

"Intoxicant Bylaw" means the Tataskweyak Cree Nation Intoxicant Bylaw, 2017-01;

"Intoxicant" includes any substance, liquid or the vapors which can be used to produce a

state of intoxication, and includes, without limiting the foregoing:

- a) alcohol, alcoholic, spirituous (vodka, rum, whiskey, etc), vinous (wine), beer, fermented malt or other intoxicating liquor or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise intoxicating and all drinks, drinkable liquids, preparations or mixtures capable of human consumption that are intoxicating;
- b) any homemade mixtures capable of producing a state of intoxication;
- c) marijuana, hashish, or other cannabis preparations or derivatives;
- d) a controlled substance as defined in the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, as amended or replaced from time to time, including but not limited to: Cocaine/Crack Cocaine, Magic Mushroom and Heroin; and
- e) prescription drugs regulated by the Federal Government of Canada under the *Canadian Food and Drugs Act*. Prescription drugs are only legal when prescribed by a doctor. It is illegal to possess prescription drugs without a valid prescription or to get multiple prescriptions filled by different pharmacies (ex: lying about your identity, using a fake prescription, or getting multiple prescriptions by various doctors). Any other drug-related activities (for example: selling or giving out Oxycodone) are considered criminal offences.

“Member” means a person whose name appears on the TCN membership list;

“TCN” means the Tataskweyak Cree Nation;

“Person of Interest” means a person identified by Council as a Person of Interest under PART 5 of this Bylaw;

“Removal Order” means a decision made by Council under this Bylaw to prohibit a person from residing or being on Reserve;

“Reserve” means lands reserved for Tataskweyak Cree Nation within the meaning of the *Indian Act*, R.S.B.C.1985, c.1-5 (see Schedule #1);

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.

PART 3. PUBLICATION OF BYLAW

3.1 Upon the coming into force or any amendments of this Bylaw, Council shall:

- (a) cause the Bylaw to be published in the First Nation Gazette; or
- (b) post the Bylaw in a public area in the TCN Administration Building including a notice containing:
 - (i) the date that this Bylaw came into force; and
 - (ii) a summary of this Bylaw.

PART 4. APPLICATION OF BYLAW

Bylaw applicable to TCN Reserves

4.1 This Bylaw applies only to TCN Reserves.

Bylaw applicable to Members and non-Members

4.2 This Bylaw applies to all persons, including Members.

PART 5. IDENTIFYING A PERSON OF INTEREST

- 5.1 If Council believes the presence of a person on the Reserve may pose a threat to the observance of law and order on the Reserve, Council may, by BCR, declare the person to be a Person of Interest and issue to the him or her a request to meet with Council within 14 days of receiving the request.
- 5.2 The request made under section 5.1 shall include the reasons that Council has identified the person to be a Person of Interest.
- 5.3 If the Person of Interest fails to contact Council to arrange to meet with Council within 7 days of receiving the request, Council may take any steps necessary under this Bylaw to ensure the safety of the residents on the Reserve without further notice to the person of interest.

PART 6. MEETING WITH A PERSON OF INTEREST

- 6.1 At least 3 business days prior to the meeting with the Person of Interest and Council pursuant to section 5.1, Council shall provide the Person of Interest with written notice of the date, time and location of the meeting.
- 6.2 At the meeting, Council shall give a reasonable opportunity for the Person of Interest to speak.
- 6.3 Council shall consider the following when determining whether to impose any sanctions, prohibition or conditions under PART 7:

- (a) the oral and written submissions made by the Person of Interest at the meeting under section 5.1;
- (b) whether their behavior poses any threat to the peace or safety of people residing on Reserve or to Council's ability to ensure the observation of law and order on Reserve;
- (c) whether the behavior is occurring on the Reserve;
- (d) whether a charge or conviction has been entered;
- (e) whether the Person of Interest has failed to comply with previous orders issued under to PART 7 of this Bylaw;
- (f) the Person of Interest's compatibility with the First Nation culture and community;
- (g) the Person of Interest's moral character, considering such factors as a prior conviction for an offence or criminal act under the Criminal Code of Canada (Canada) or the Controlled Drugs and Substances Act (Canada), or an offence outside of Canada which, if committed in Canada would be an offence under the Criminal Code (Canada) or the Controlled Drugs and Substances Act (Canada);
- (h) the Person of Interest's interest, engagement in and completion of rehabilitative programming, such as counselling or addictions programs;
- (i) the Person of Interest's employment status, including whether the applicant is or will be employed on the Reserve; and
- (j) whether the Person of Interest may present a danger to the health or safety of the Band and the people who reside on Reserve.

6.4 Council may enact rules of procedures for meetings under this Bylaw.

PART 7. SANCTIONS IMPOSED ON A PERSON OF INTEREST

7.1 After meeting with the Person of Interest, Council may take any action that they determine is in the best interest of the Band, and the people who reside on Reserve, including:

- (a) instructing Enforcement Officer(s) to conduct further investigations;
- (b) enlisting the services of a trained dog to confirm the presence of Intoxicants;

- (c) asking the Person of Interest or their families for more information;
 - (d) sending a warning letter to the Person of Interest or if the Person of Interest is under eighteen (18) years of age, to the subject's parents or guardians and any applicable child welfare agency;
 - (e) attempting to resolve the issues by declaration, agreement or informal action;
 - (f) issuing a Removal Order under PART 8;
 - (g) deciding not to act further;
 - (h) taking any other action that Council considers appropriate.
- 7.2 The decision to do any of the things referred to in subsection 7.1 or to stop doing any of them at any time is within the discretion of Council.
- 7.3 All decisions to order a sanction, prohibition or condition under this Part will be made by BCR and will include reasons.

PART 8. REMOVAL ORDER

- 8.1 Council must not issue a Removal Order under this Part unless it is reasonably satisfied that the presence of the person poses a real threat to the health, safety or wellbeing of people residing on TCN Reserves.
- 8.2 A Removal Order under section 7.1(f) shall not be considered under this Bylaw if the Person of Interest is under the age of twelve (12) years.
- 8.3 Council may issue a Removal Order if it is satisfied that the presence of the Person of Interest on Reserve is threatening the safety and well-being of the Band, and that the Person of Interest has not shown Council any indication of changing or stopping certain behavior identified by Council as dangerous.
- 8.4 All decisions to issue a Removal Order will be made by Council BCR.

If the person subject to the Removal Order is a Member

- 8.5 A Removal Order issued under this Bylaw for a Member will be for a defined period of time, not to exceed one year.

If the person subject to the Removal Order is a Non-Member

- 8.6 A Removal Order issued under this Bylaw for a non-Member may be permanent or for a defined period of time.

Renewal of an Order

8.7 For greater certainty, an order made pursuant to sections 8.5 or 8.6 may be renewed by Council on a yearly basis, subject to sections 6.1 and 6.3.

8.8 A Removal Order must contain:

- (a) the name of the person subject to the Removal Order;
- (b) a description of the steps Council took in reaching the decision to remove the person;
- (c) a description of the activities in respect of which the Removal Order is made;
- (d) the time and date upon which the Removal Order is effective;
- (e) a provision requiring the person to vacate the Reserve on or before a date specified in the Removal Order;
- (f) if a person is party to a tenancy agreement or lease, a provision terminating the tenancy agreement or lease of any tenant of the property on the date specified under subsection (d);
- (g) a provision instructing all persons from causing, contributing to, permitting, or acquiescing in the activities, beginning on the day after the person is served with the order and continuing until the order ceases to be in effect;
- (h) any conditions attached to the return of the person to the Reserve at the expiration of the Removal Order;
- (i) a provision fixing the date on which the order ceases to be in effect, if applicable.

8.9 A decision of Council under this Part shall be sent to the RCMP, the person subject to the Removal Order, and if the person is less than eighteen (18) years of age, his or her parents or guardians, and the appropriate child welfare agency, and shall be posted publicly in the TCN Administration Building.

8.10 All decisions made by Council under this Part can be appealed, as set out in this Bylaw.

PART 9. APPEALING SANCTIONS

9.1 A person subject to a sanction, prohibition or condition ordered under PART 7 who disagrees with the decision outlined in the BCR or desires an existing BCR to be amended or terminated may apply to the Appeal Tribunal to hold a hearing.

Time for applying

- 9.2 All applications for appeals under this Bylaw must be within 30 days of the date that the BCR was made under section 7.3.
- 9.3 Council may extend the time for making the appeal application if it is satisfied that the extension is in the interests of justice.
- 9.4 If an appeal is received within the 30-day time limit, an Appeal Tribunal will be appointed by Council to hold the hearing as soon as is reasonably practicable.
- 9.5 At least seven (7) days prior to the hearing, the Appeal Tribunal shall:
- (a) give written notice by way of personal service to the appellant informing him or her of the date, time and place of the hearing and that he or she has a right to present submissions to the Appeal Tribunal in writing, by telephone or in person; and
 - (b) give written notice by way of personal service to Council of the date, time and place of the hearing, informing them that they have a right to appear at to present submissions in writing or in person; and
 - (c) post a copy of the notice of the hearing in a public area in the TCN Administration Building.
- 9.6 If the appellant is incarcerated, notice pursuant to section 9.5(a) will be sufficient if it is sent to his or her attention at the correctional facility.
- 9.7 If the appellant is less than eighteen (18) years of age, notice pursuant to section 9.5(a) shall also be given to his or her parents or guardians and any applicable child welfare agency.
- 9.8 At the hearing, the Appeal Tribunal:
- (a) shall review the BCR issued under section 7.3 and any recording of the meeting between Council and the Person of Interest, any written record associated with that meeting including, for example, minutes, transcripts and written submissions made, if available;
 - (b) may provide all party's an opportunity to respond to the BCR and to make oral and written submissions, or both, on the petition; and
 - (c) can ask any questions to Council and the Appellant.
- 9.9 Within 14 business days of the hearing, the Appeal Tribunal shall provide a written

decision either:

- (a) declaring a BCR issued under PART 7 invalid; or
- (b) setting aside a BCR issued under PART 7 and referring the decision back to Council for determination in accordance with such directions as it considers appropriate; or
- (c) confirming the BCR ordered by Council and dismissing the appeal application.

9.10 The Appeal Tribunal shall include in their written decision under section 9.9, the reasons for their decision, which may include, but are not limited to:

- (a) that Council erred in making their decision based on an incorrect interpretation of the Bylaw, or of the facts;
- (b) that Council based its decision or sanction on an erroneous fact;
- (c) that Council failed to observe a principle of natural justice, procedural fairness, or other procedure that it was required by law to observe;
- (d) that Council acted in any other way contrary to law or custom.

9.11 The Appeal Tribunal, in making their decision, can interpret this Bylaw.

9.12 A decision of the Appeal Tribunal under this Part shall be final and not subject to appeal or judicial review and an applicant shall not reapply for one year from the date of the denied application, unless:

- (a) The Appeal Tribunal grants special permission due to a material change in the applicant's circumstances; or
- (b) Council offers the applicant a new hearing.

PART 10. APPEALS TRIBUNAL

10.1 The Appeals Tribunal shall consist of (five) 5 Members appointed by Council:

- (a) Four (4) Band Member who have attained the age of 18 years, and are not the Immediate Family of the appellant and who reside on Reserve; and
- (b) One (1) non-Band Member who is familiar with TCN and has knowledge or experience in community development or justice.

PART 11. EFFECTIVE TIME OF REMOVAL ORDER

When the Removal Order comes into effect

- 11.1 Notwithstanding section 22.2, where a Removal Order has been issued under this Bylaw, the person subject to the Removal Order must leave the Reserve by the time and date upon which the Removal Order is effective, pursuant to section 8.8(d), which shall not be less than 48 hours.

Time order in effect

- 11.2 Once a Removal Order comes into effect, it is in force until it expires according to its terms or is cancelled pursuant to section 9.9 or PART 14.

Personal belongings

- 11.3 The person subject to the Removal Order must remove their personal belongings from the property by the time and date upon which the Removal Order is effective.
- 11.4 If an individual believes they have personal belongings that remain on the property where they were residing after the Removal Order takes effect, the individual may contact the TCN Executive Director and:
- (a) provide a detailed list of personal belongings and arrange to have the personal belongings delivered to an agreed-upon location off Reserve; or
 - (b) at the sole discretion of the TCN Executive Director, arrange for re-entry onto Reserve in the presence of an Enforcement Officer for a specified period of time to gather and remove the personal belongings.

PART 12. VISITS

- 12.1 A person subject to the Removal Order may apply to Chief and Council for permission to visit the Reserve for the purposes of funerals, ceremonies, and other special occasions.
- 12.2 A person making an application under section 12.1 shall include in his or her application the dates upon which the person proposes to visit the Reserve, the purpose of the visit, where on the Reserve the person will be present, and any additional information or submissions the person wishes Council to consider.
- 12.3 Council shall use its best efforts to consider and determine applications under this Part as soon as possible, and in advance of the proposed visitation dates.
- 12.4 Council may consider and determine applications pursuant to sub-section 12.1 on the

basis of the written application and is not required to hold a hearing into the matter.

12.5 A decision by Council under this Part shall be by BCR and is final and not subject to appeal.

PART 13. PERSONS NOT AFFECTED

13.1 No Removal Order shall impact upon the ability of the spouse or children of the person subject to the Removal Order to continue to reside on Reserve or visit the Reserve.

PART 14. CANCELLATION OF REMOVAL ORDER

When a Removal Order must be cancelled

14.1 After the 30-day appeal period has passed, Council must cancel a Removal Order if it is satisfied that the circumstances described in PART 5 no longer exist and that the safety of the community or any Member would not be compromised by cancelling the Removal Order.

Application for cancellation of Removal Order

14.2 A person subject to the Removal Order may apply to Council for cancellation of the Removal Order if they can provide reasonable evidence that the circumstances for which the Removal Order was issued has changed.

Council must consider application within a reasonable time frame

14.3 As soon as reasonably practicable after receiving an application under section 14.2, Council must:

- (a) consider the application at a duly convened Council meeting; and
- (b) by BCR, either:
 - (i) approve the application for cancellation; or
 - (ii) reject the application for cancellation, with reasons.

14.4 A person subject to the Removal Order whose application for cancellation has been rejected by Council is prohibited from making a further application for cancellation of the Removal Order for six (6) months after the reasons for rejection have been provided.

Meeting must be in camera

14.5 A Council meeting held under section 14.3(a) must be held *in camera*.

Cancellations must be made by BCR

14.6 A cancellation of a Removal Order under section 14.1 or 14.3 must be made by BCR.

PART 15. NO LIABILITY FOR DECISIONS MADE IN GOOD FAITH

15.1 TCN, including Council, the Justice Committee, and Arbitrator or any person acting on authority of, or under the direction of Council, is not liable for any damages arising from any action taken pursuant to this Bylaw, including issuing a Removal Order, provided that the action or order was made in good faith.

PART 16. ENFORCEMENT

16.1 This Bylaw is enforceable by any Enforcement Officer.

16.2 Where a person who has received an order pursuant to PART 7 fails or refuses to comply with such an order, an Enforcement Officer may take such reasonable measures as are necessary to enforce that order.

16.3 A person who fails or refuses to comply with an order made under PART 7 or who resists or interferes with an Enforcement Officer acting under section 16.2, commits an offence.

16.4 Where under section 81(1)(r) of the *Indian Act* this Bylaw is contravened and a conviction entered, a court of competent jurisdiction may make an order prohibiting the continuation or repetition of the offence by the person convicted.

16.5 Where under section 81(3) of the *Indian Act* this Bylaw is contravened, such contravention may be restrained by court action to prevent the continuation of disorderly conduct or restriction or prohibition of the Person of Interest with the First Nation.

16.6 Where a Person of Interest has been ordered to leave the Reserve in accordance with PART 8 and fails or refuses to comply with such an order, an Enforcement Officer may take such reasonable measures as are necessary remove that person from the Reserve

16.7 An Enforcement Officer may order any person who is, or in the absence of evidence to the contrary, appears to be, frequenting or residing on the Reserve contrary to this Bylaw, and who is not entitled to be or reside on the Reserve, to leave the Reserve.

PART 17. PENALTY

17.1 Any person who fails or refuses to comply with this Bylaw, or who assists a person who is contravening this Bylaw, commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars (\$1,000.00) or to

imprisonment for a term not exceeding thirty (30) days, or both.

17.2 A person who commits an offence under this Bylaw is liable on summary conviction to a fine not exceeding \$1,000.00 or to imprisonment for a term not exceeding thirty days, or to both.

17.3 Council reserves the right to revisit this issue and amend the Bylaw at a regularly convened Council meeting of the First Nation.

PART 18. JUDICIAL REVIEW

18.1 On any application for judicial review in respect of a BCR made under this Bylaw, the Court shall take notice of the specialized knowledge and expertise of the members of the Justice Committee and Council with respect to the history, culture and values of the TCN, as well as the best interests of TCN.

PART 19. NOTICE

19.1 Any notice which is required to be provided to TCN under this Bylaw will be in writing and will be considered to have been given if delivered by hand or mailed by prepaid registered post in Canada, to the address or facsimile transmission number set out below:

By mail: Tataskweyak Cree Nation,
 PO BOX 250
 SPLIT LAKE, MB, R0B 1P0

By facsimile: (204) 342-2270

PART 20. SEVERALABILITY

20.1 Should a Court determine that a provision of this Bylaw is invalid for any reason, the provision shall be severed from the Bylaw and the validity of the rest of the Bylaw shall not be affected.

PART 21. CONFLICT OF TERMS

21.1 If there is any inconsistency between this Bylaw and any other agreement, law, bylaw or policy, the terms of this Bylaw will prevail.

PART 22. CALCULATION OF TIME

22.1 Where there is a reference to a number of days or a number of days in between two events within this Bylaw, in calculating the number of days, the days on which the events happen are excluded and Saturdays and Sundays are included.

- 22.2 Where the time limited for the doing of an act under this Bylaw expires or falls on a Saturday or Sunday or a federal or provincial holiday, the act may be done on the next day that is not a Saturday, Sunday or holiday.
- 22.3 If the time for doing an act under this Bylaw is with respect to an act required in a business office, and falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open during regular business hours.

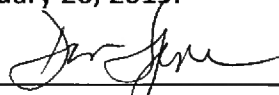
PART 23. AMENDMENTS

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

PART 24. DATE BYLAW COMES INTO FORCE

- 24.1 This Bylaw shall come into force when a copy of it is first published on TCN's Internet site, in the First Nations Gazette or in a newspaper that has general circulation on the Reserve, whichever the Council considers appropriate in the circumstances pursuant to section 86 of the *Indian Act* and the Council hereby confirms that any of these forms of publication are appropriate in the circumstance.

BE IT KNOWN that this Bylaw entitled the *Tataskweyak Cree Nation Community Protection Bylaw, 2019-01* is hereby amended by a quorum of Council at a duly convened Council of the Tataskweyak Cree Nation held on February 20, 2019:




 Chief Doreen Spence

 Councillor Sarah Cole

 Councillor Robert Spence



 Councillor Michael Kirkness



 Councillor Nathan Neckoway



 Councillor Leroy Spence



 Councillor Mary Flett

Quorum of Council is four (4).

Schedule "A"

Reserves/Settlements/Villages

No.	Name	Location	Hectares
06461	SPLIT LAKE 171	104 KN NE/NE OF/DE THOMPSON	15928.40
06462	SPLIT LAKE 171A	TWP 83, RGES 8,9&10, TWP 84 RGES 8&9, EPM	2990.70
06463	SPLIT LAKE 171B	TWP 82, RGE 9, EPM	135.60