

Cowichan Tribes COVID-19 Community Protection Bylaw

A bylaw to reduce the risk from the COVID-19 pandemic in Qw'utsun Hwulmuhw

TABLE OF CONTENTS

PART 1	4
1. NAME	4
PART 2	5
2. PUBLICATION OF BYLAW	5
PART 3	5
3. INTERPRETATION	5
PART 4	6
4. APPLICATION OF BYLAW	6
Bylaw applicable to Reserve	6
Bylaw applicable to Members and non-Members	6
PART 5	7
5. PROTECTIVE MEASURES	7
Restrictions on access to the Reserve	7
Restrictions and Closure of Public Facilities	8
Restrictions on Businesses	8
Compliance with Orders of the PHO	8
Quarantine/Self-Isolation	8
Council May Order Increased Protective Measures	8
PART 6	9
6. ENFORCEMENT AND PENALTIES	9
Inspection	9
Orders	9
Offences	10
Penalties	10
PART 7	11
7. GENERAL	11
No Liability	11
Compliance with Other Laws	11
Severability	11
PART 8	11
8. COMING INTO FORCE AND DURATION	11

PART 9.....11

9. AMENDMENTS11

WHEREAS:

- A.** Cowichan Tribes has an inherent right to self-government which emanates from our people, culture and land and which is recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- B.** A communicable disease known as COVID-19 has been declared by the World Health Organization to be a global pandemic and has arrived in British Columbia. COVID-19 is caused by a highly infectious virus known as SARS CoV-2. A person who is infected with SARS CoV-2 can infect other people with whom the infected person is in contact;
- C.** Cowichan Tribes faces certain challenges, including poor housing conditions, high levels of underlying health conditions, low incomes in many households and limited access to medical services that make it particularly vulnerable to an outbreak of COVID-19;
- D.** SARS CoV-2 and COVID-19 pose a serious and immediate threat to the health, safety and lives of the people of Cowichan Tribes, and especially to Elders, people with underlying health conditions and other vulnerable community members, and require the prompt coordination of action or special regulation of persons or property to protect the health, safety, well-being and lives of people;
- E.** Canada’s Chief Public Health Officer (CPHOC) and the British Columbia Provincial Health Officer (BCPHO) have made orders and recommendations designed to prevent and reduce the spread of SARS CoV-2, including requiring social (physical) distancing and limiting the size of gatherings;
- F.** Council has an obligation to protect Cowichan Tribes members and residents, particularly Elders, children and other vulnerable community members, and to enforce the orders and recommendations of the CPHOC and the BCPHO and reasonably believes that urgent action is required to protect Cowichan Tribes from the spread of SARS CoV-2 and a COVID-19 outbreak;
- G.** Sections 81(1)(a), (c), (d), (p), (p.1), (q) and (r) of the *Indian Act* empower Council to pass bylaws to provide for the health 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, and for matters arising out of or ancillary to the exercise of powers under this section and the imposition of a penalty for the violation of any such bylaw;
- H.** In accordance with the need for physical distancing, Council is holding its meeting to review and approve this bylaw by teleconference.

Now Therefore the Council of Cowichan Tribes at a duly convened meeting enacts the following Bylaw:

Part 1

1. NAME

- 1.1 This Bylaw may be cited as the Cowichan Tribes COVID-19 Community Protection Bylaw.

Part 2

2. PUBLICATION OF BYLAW

2.1 Upon enacting this Bylaw, Council shall:

- (a) publish the Bylaw in the First Nation Gazette;
- (b) post the Bylaw on a Cowichan Tribes internet page, to remain until such date as it is repealed;
- (c) post the Bylaw in a public area in the Cowichan Tribes Administration Building including a notice containing:
 - (i) the date that this Bylaw is in force; and
 - (ii) a summary of this Bylaw.

Part 3

3. INTERPRETATION

3.1 In this Bylaw:

"Authorized Occupant" means a person who

- (a) is listed in the rental agreement as an occupant of a Cowichan Tribes rental home or
- (b) has their official address at a privately-owned home on Reserve.

"BCPHO" means the Provincial Health Officer of British Columbia

"Bylaw" means this Cowichan Tribes COVID-19 Community Protection Bylaw

"CPHOC" means the Chief Public Health Officer of Canada

"Council" means the duly elected Chief and Council of Cowichan Tribes

"Cowichan Tribes" means the Cowichan Tribes, a band within the meaning of section 2 of the *Indian Act*.

"Indian Act" means the federal *Indian Act*, R.S.C. 1985, c. I-5, as amended.

"Justice Coordinator" means the person appointed by Council to manage and implement the Restorative Justice Program.

"Member" means a person whose name appears on the Cowichan Tribes membership list, or who is entitled to have their name appear on the Cowichan Tribes membership list

"Officer" means

- (a) any person designated in writing by Council to enforce this Bylaw;

- (a) R.C.M.P. officers; and
- (b) any other person charged by Canada or British Columbia with the duty to preserve and maintain the public peace in accordance with their laws

“Prohibited Purposes” means any of the following activities conducted on the Reserve by any person, including a Member:

- (a) hawking or peddling of wares or merchandise without a valid license or permit;
- (c) loitering;
- (d) soliciting financial assistance;
- (e) participating in gatherings of people prohibited under this Bylaw; or
- (f) dealing, trafficking or delivering alcohol or drugs to any person, except if they are being delivered as part of an essential health service (e.g. managed alcohol program, prescription delivery).

“Protective Measures” means all those protective measures intended to reduce or prevent the spread of COVID-19 as set out in Part 5 of this Bylaw;

“Reserve” means all those tracts of land set apart by Canada for the use and benefit of Cowichan Tribes and includes Tumuhw;

“Restorative Justice Program” means the Quw’utsun Mustimuhw Restorative Justice Program established under an agreement between Cowichan Tribes and the Department of Justice to implement and coordinate restorative justice measures for Members.

“Restricted Area” means any part of the Reserve designated by Council under section 5.2 of this Bylaw to be an area where access is restricted to those persons who meet the criteria in section 5.3 or who have received permission from Council under section 5.4.

“Unauthorized Person” means a person who meets none of the criteria in section 5.2 of this Bylaw or who has been designated by Council as an Unauthorized Person in accordance with section 5.5 of this Bylaw and is therefore not permitted to be on a Restricted Area.

- 3.2 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 4

4. APPLICATION OF BYLAW

Bylaw applicable to Reserve

- 4.1 This Bylaw applies to the Reserve.

Bylaw applicable to Members and non-Members

- 4.2 This Bylaw applies to all persons, including Members.

Part 5

5. PROTECTIVE MEASURES

Restrictions on access to the Reserve

- 5.1 No person is permitted on the Reserve, or any part of it, if that person is frequenting the Reserve for a Prohibited Purpose.
- 5.2 Council may designate any part of the Reserve to be a Restricted Area.
- 5.3 A person may only enter or be present on a Restricted Area if they are:
- (a) a Member;
 - (b) an Authorized Occupant;
 - (c) the spouse or family member of a Member who routinely resides with a Member on the Restricted Area;
 - (d) conducting urgent appliance or home repairs;
 - (e) delivering goods to a home or a Member-owned business on the Restricted Area, except not alcohol or drugs unless they are being delivered as part of an essential health service (e.g. managed alcohol program, prescription delivery);
 - (f) caring for an Authorized Occupant;
 - (g) providing emergency services (e.g. firefighting, child and family services, medical, RCMP and Search and Rescue services);
 - (h) doing work to maintain or repair utilities or public infrastructure (e.g. hydro, phone, internet, snowplowing, garbage removal); or
 - (i) providing essential services or other work for Cowichan Tribes at Cowichan Tribes's request.
- 5.4 Council may approve a request made in writing for a person to enter or be present on a Restricted Area for a reason not specified in section 5.3
- 5.5 A person who meets none of the criteria in section 5.3 and who has not received permission of Council pursuant to a written request made under section 5.4 is not allowed to enter or be present on a Restricted Area and is an Unauthorized Person.
- 5.6 Despite sections 5.3 and 5.4 Council may designate a person to be an Unauthorized Person where the person meets one of the criteria in section 5.3 or has received permission of Council pursuant to a written request made under section 5.4 and Council has determined the person to be a threat to the health and safety of Cowichan Tribes and Members because the person, has contravened an order of an Officer made under this Bylaw and Council has a reasonable belief that the person will continue the contravention.

Restrictions and Closure of Public Facilities

- 5.7 Council may order closure or restrictions on access to community facilities on the Reserve, including schools, playgrounds, recreational buildings and cultural buildings.

Restrictions on Businesses

- 5.8 Council may make orders restricting the hours of operation and number of persons entering businesses or other premises on Reserve.

Compliance with Orders of the PHO

- 5.9 All persons present on Cowichan Tribes Reserves must strictly comply with any order or recommendation of the CPHOC or BCPHO made in relation to the COVID-19 outbreak from time to time, including orders, recommendations and guidance related to the following:
- (a) Travel restrictions;
 - (b) Self-isolation and/or quarantine;
 - (c) Prohibitions on mass gatherings of people;
 - (d) Staying home;
 - (e) Restricting visitors;
 - (f) Social (physical) distancing; and
 - (g) Wearing face masks or other personal protective equipment when in public.

Quarantine/Self-Isolation

- 5.10 A person who resides in the same household as a person who is required to quarantine or self-isolate pursuant to orders of the CPHOC or BCPHO shall also self-isolate for fourteen (14) days in accordance with the instructions for self-isolating given by the CPHOC or the BCPHO, whichever is the more stringent at any given time.

Council May Order Increased Protective Measures

- 5.11 Council may issue orders by resolution requiring Protective Measures on the Reserve that are more stringent than an order, recommendation or guidance of the CPHOC or BCPHO if Council determines such requirements are reasonable and necessary to protect the health and safety of Cowichan Tribes, Members or the public.

Part 6

6. ENFORCEMENT AND PENALTIES

Inspection

- 6.1 An Officer may stop a person or vehicle, enter a vehicle or place and inspect a vehicle or place to monitor or confirm compliance with a provision of this Bylaw including, without limitation, to determine whether:
- (a) a person is allowed to enter or be on the Reserve or a Restricted Area, including by requesting appropriate written or verbal confirmation that the person meets one of the criteria in section 5.3 or that they have permission of Council under section 5.4;
 - (b) a person is frequenting the Reserve for a Prohibited Purpose;
 - (c) a person has been designated an Unauthorized Person by Council under section 5.6
 - (d) a gathering of people or occupancy in a home or building on Reserve exceeds the number specified in any order of the CPHOC or BCPHO prohibiting mass gatherings; or
 - (e) a person should be quarantined or self-isolating in accordance with an order of the CPHOC or BCPHO or pursuant to section 5.10.
- 6.2 Before entering a vehicle or place to conduct an inspection in accordance with section 6.1, an Officer must take reasonable steps to notify the owner or occupier of the vehicle or place 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 possible or practical in the circumstances, or
 - (b) in the case of a Protective Measure, providing notice would frustrate the purposes of the inspection.

Orders

- 6.3 An Officer may order a person to do or not do anything that the Officer reasonably believes is necessary to
- (a) determine whether Protective Measures are being followed as required under this Bylaw,
 - (b) prevent or stop the risk of exposure to COVID-19, or to mitigate the harm or prevent further harm from exposure to COVID-19, or
 - (c) bring the person into compliance with this Bylaw.
- 6.4 Without limiting the generality of section 6.3, Officers may:
- (a) order any person who is frequenting the Reserve for a Prohibited Purpose to immediately leave the Reserve;
 - (b) order any Unauthorized Person not to enter or to immediately leave a Restricted Area;

- (c) where a gathering of people on Reserve exceeds the number specified in any order of the CPHOC or BCPHO prohibiting mass gatherings, order the attendees of the gathering to disperse;
 - (d) order any person who should be under quarantine or self-isolating in accordance with an order of the CPHOC or BCPHO or pursuant to section 5.10 to comply with the terms such order or that section, including by wearing a mask and staying home;
 - (e) order any person who is in contravention of an order made by Council pursuant to section 5.11 to take such steps as are required to bring that person into compliance with the order.
- 6.5 Where a person who has been ordered to leave the Reserve or a Restricted Area fails or refuses to do so, an Officer may take such reasonable measures as may be necessary to remove the person from the Reserve or Restricted Area.

Offences

- 6.6 No person may interfere with or obstruct an Officer who is exercising their enforcement powers under this Bylaw or fail to comply with an Officer's order enforcing this Bylaw.
- 6.7 A person who contravenes any of the Protective Measures under this Bylaw, including any order of Council made pursuant to this Bylaw, or who breaches section 6.6 commits an offence.
- 6.8 Where an act in contravention of this Bylaw continues for more than one day, each day on which the offence is committed will be deemed a separate offence and may be punished as such.
- 6.9 The offences created by this Bylaw are in addition to, and do not replace, any applicable provincial or federal offences.

Penalties

- 6.10 A Member who commits an offence under this Bylaw shall be referred to the Restorative Justice Program.
- 6.11 The Justice Coordinator shall review the circumstances of the offence in accordance with Restorative Justice Program procedures and provide a report to the General Manager that includes recommendations and planning for appropriate restorative justice measures for the Member in relation to the offence.
- 6.12 The General Manager shall make recommendations to Council regarding the Member and appropriate penalties for the offence and Council may determine whether to:
- (a) undertake restorative justice measures consistent with the Restorative Justice Program procedures and Cowichan Tribes's traditional governance and cultural protocols; or
 - (b) pursue a summary conviction and impose penalties in accordance with section 6.13.
- 6.13 A person who commits an offence under this Bylaw is liable on summary conviction to a fine of up to one thousand dollars (\$1,000.00), imprisonment for up to thirty (30) days or to both pursuant to section 81(1)(r) of the *Indian Act*.

Part 7

7. GENERAL

No Liability

- 7.1 None of Cowichan Tribes Council, Members, employees, representatives or agents of any of Cowichan Tribes or Council are 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 Bylaw or from the neglect or failure, for any reason or in any manner, to enforce this Bylaw.

Compliance with Other Laws

- 7.2 Compliance with this Bylaw shall not relieve a person from having to comply with the requirements of any other applicable law or legal requirement.

Severability

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

Part 8

8. COMING INTO FORCE AND DURATION

- 8.1 This Bylaw comes into force the day it is adopted by Council. As soon as the Bylaw is approved, it will be posted on the Cowichan Tribes website and in prominent locations on the Reserve and it will be shared with the Officers who will help to enforce it.
- 8.2 This Bylaw will remain in force until the earlier of these events:
- (a) Council repeals it; or
 - (b) the CPHOC and BCPHO declare that Protective Measures are no longer necessary or recommended to deal with COVID-19.

Part 9

9. AMENDMENTS

- 9.1 This Bylaw may be amended by a quorum of Council at a duly convened meeting of Council. Council will promptly post the amended Bylaw on the Cowichan Tribes website and in prominent locations on the Reserve, and it will share the amended Bylaw with the Officers who are helping to enforce it.

BE IT KNOWN that this Bylaw entitled the *Cowichan Tribes COVID-19 Community Protection Bylaw* is hereby enacted by a quorum of Council at a duly convened meeting of Council of Cowichan Tribes held by videoconference on May 27, 2020.

Quorum 5



(Chief William Seymour)



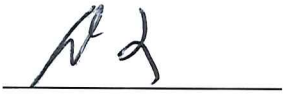
(Councillor)



(Councillor)



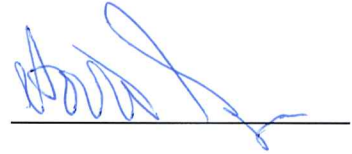
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