

GITGA'AT FIRST NATION

RESIDENCY BYLAW NO. 02-2017

A BYLAW TO REPEAL AND REPLACE HARTLEY BAY INDIAN BAND RESIDENCY BYLAW NO. 01-1988 ENACTED ON THE 10TH DAY OF NOVEMBER, 1988

WHEREAS Council of the Gitga'at First Nation (formerly the Hartley Bay Indian Band) enacted the *Hartley Bay Indian Band Residency Bylaw* No. 01-1988 on the 10th day of November, 1988, and wishes to repeal said Bylaw No. 01-1988 and replace it with this bylaw governing the residence of Members and other persons residing on the Gitga'at First Nation's reserve lands;

AND WHEREAS Council is empowered to make such bylaw pursuant to subsections 81(1)(p.1), (q) and (r) of the *Indian Act*;

AND WHEREAS it is considered necessary for the health and welfare of the Nation to regulate the residence of Members and other persons residing on its reserve lands;

AND WHEREAS Council has an obligation to ensure that the remote location of its community is managed in a way that maximizes the protection of residents, particularly children and other vulnerable community members;

NOW THEREFORE Council of the Gitga'at First Nation hereby enacts the following bylaw:

Short Title

- 1 This bylaw may be cited as the "*Gitga'at First Nation Residency Bylaw*".

Interpretation

- 2 In this bylaw:

"**applicant**" means a person who has submitted an application for permission to be a resident on a reserve in accordance with section 4;

"**child**" includes a child born in or out of wedlock, a legally adopted child, and a child adopted in accordance with Indian custom;

"**Clerk**" means the Membership Clerk, within the meaning of the Nation's membership rules;

"**Council**" means the duly elected Council, as defined in the *Indian Act*, of the Gitga'at First Nation;

"**Criminal Code**" means the *Criminal Code*, R.S.C. 1985, c. C-46 and any amendments thereto;

"**dependent child**" means a child of a Member, or a child whom a Member stands in *loco parentis*:

- a) under the age of eighteen (18) years; or
- b) over the age of eighteen (18) years and under the charge of the Member by reason of being unable (due to illness, disability or other reasonable cause) to withdraw themselves from such charge or provide themselves with the necessaries of life;

"**dwelling**" means any house, apartment, mobile home, or a room located therein, or any similar lodging suitable for human habitation;

“**Indian Act**” means the *Indian Act*, R.S.C. 1985, c. I-5;

“**Member**” means a person whose name appears on the Nation’s membership list, or who is entitled to have his or her name appear on the Nation’s membership list, pursuant to the *Indian Act* R.S.C. 1985, c. I-5 or the membership rules of the Nation;

“**Nation**” means the Gitga’at First Nation (formerly the Hartley Bay Indian Band);

“**pardon**” means a record suspension granted under the *Criminal Records Act*, R.S.C. 1985, c. C-47;

“**reserve**” means any tract of land, the legal title to which is vested in Her Majesty for the use and benefit of the Nation;

“**reside**” means to live in a dwelling, otherwise than as a visitor;

“**resident**” means a person who is entitled to reside on a reserve, in accordance with section 3; and

“**spouse**” means a person who is married to, or who co-habits in a relationship of permanence and commitment akin to a conjugal relationship with, a Member, and includes a common law spouse.

Entitlement to Reside on Reserve

- 3 (1) Subject to section 8 of this bylaw, a Member is entitled to reside on a reserve only if that Member:
- (a) resides on a reserve at the time this bylaw comes into force; or
 - (b) obtains lawful housing on a reserve for that Member and any spouse or dependent child of that Member in an existing lawful dwelling or in a dwelling that is constructed with the consent of Council and approved by Council as being suitable for occupancy.
- (2) A person other than a Member is entitled to reside on a reserve only if the person:
- (a) is a spouse or dependent child of a Member who is entitled to reside on a reserve under subsection 3(1) of this bylaw and who actually resides with that person at or after the time the entitlement arises, in which case such person is entitled to reside on reserve only until such time as that Member ceases to reside on a reserve or ceases to be entitled to reside on a reserve;
 - (b) is widowed from his or her spouse who was a Member entitled to reside on a reserve at the time of his or her death, and such widow or widower’s conduct in the Nation’s community demonstrates a lifestyle compatible with the culture, customs and community standards of the Nation, with such entitlement being subject to revocation pursuant to section 8;
 - (c) is authorized to reside on reserve pursuant to:
 - (i) section 18.1, subsection 28(2), or subsection 58(3) of the *Indian Act*, subject to the terms of any associated permit or lease; or
 - (ii) the *Family Homes on Reserves and Matrimonial Interests or Rights Act*, S.C. 2013, c. 20;
 - (d) otherwise has the permission of Council to reside on reserve pursuant to section 5 of this bylaw.

- (3) For greater certainty:
- (a) nothing in this bylaw entitles any person, including a Member, to construct, place, or locate a dwelling or any other form of housing, be it permanent or temporary, on a reserve without the written authorization of Council;
 - (b) nothing in this bylaw creates an obligation on the part of the Nation or Council to provide housing in any form to any person, including a Member, or dependent child; and
 - (c) Council retains the right to order that any person residing on a reserve, including a Member, spouse or dependent child, to vacate a dwelling on reserve that Council deems unsafe or unsuitable for occupancy.

Application for Residency

- 4
- (1) Any person who is not entitled to reside on reserve pursuant to sections 3 or 8 of this bylaw may apply to Council for permission to reside on a reserve or to extend any defined period for which permission was previously granted to the person by Council to reside on a reserve.
 - (2) A residency application must be filed with the Clerk and include:
 - (a) the applicant's reasons for applying to be a resident of the reserve;
 - (b) a commitment by the applicant to abide by and uphold the bylaws, rules, regulations and customs of the Nation and to maintain the peace and tranquility of the Nation's community to the best of his or her ability, if granted permission to reside on a reserve;
 - (c) if the applicant proposes to reside on reserve for a limited time, the approximate duration of the proposed residence;
 - (d) the specific location and dwelling at which the applicant proposes to reside;
 - (e) any names of any residents that will be sharing the applicant's dwelling, including but not limited to the applicant's spouse and dependent children, if any;
 - (f) any additional information the applicant wishes to provide relating to the considerations listed in subsection 5(3); and
 - (g) if requested by Council, an RCMP Certified Criminal Record Check completed no earlier than 30 days prior to the date of the person's residency application.

Determining Residency Application

- 5
- (1) Council will hear a properly completed residency application submitted under section 4 of this bylaw at a regularly scheduled Council meeting within 60 days after the receipt of such residency application by the Clerk.
 - (2) At a Council meeting deciding a residency application, Council will provide the applicant with reasonable opportunity to present evidence and to make oral or written submissions, or both, in support of the application.
 - (3) In determining whether to grant permission to be a resident of a reserve, Council will take into consideration each of the following:
 - (a) whether the applicant has secured a suitable dwelling to reside in on the reserve;

- (b) whether the applicant's residence on the reserve would be compatible with the culture, society and community of the Nation and welfare of the Members;
 - (c) whether, in Council's opinion, the applicant is of good moral character;
 - (d) the availability on reserve of suitable housing, land and services for the applicant; and
 - (e) any other consideration that, in the opinion of Council, is relevant to the health, safety, good order and advancement of the Nation.
- (4) Within 30 days after a meeting held pursuant to subsection 5(1) of this bylaw Council will decide the residency application by:
- (a) granting the applicant permission to be a resident of the reserve for an indefinite or defined period of time; or
 - (b) denying the application by giving written notice of its decision and incorporating reasons in support of its decision.
- (5) Council shall direct the Clerk to notify a residency applicant, in writing, of its decision to permit or deny the application within 30 days of the meeting at which the decision was made.
- (6) A refusal by Council of any residency application under this section shall be final and binding.

Reapplication

- 6 If a residency application made under section 4 of this bylaw is denied by Council, Council is not required to consider any further application by that person for a period of one year from the date of the denial, unless the applicant can show that there has been a material and significant change of circumstances that would reasonably warrant a reconsideration by Council.

Rights to Visit a Reserve

- 7 Subject to section 8 of this bylaw, all Members are entitled to visit any reserve.

Revocation of Entitlement to Reside or Visit

- 8 (1) Council may revoke the entitlement of any person, including a Member, to reside or visit a reserve if the person breaches any customary law or validly enacted bylaw of the Nation.
- (2) A Member ceases to be entitled to reside on a reserve if his or her name has been deleted from the membership list pursuant to the Nation's membership rules.
- (3) Subject to subsection 8(4) of this bylaw, a person whose right to reside on reserve has been revoked or terminated pursuant to this bylaw must vacate his or her residence on reserve no later than 30 days following his or her receipt of Council's decision to revoke that person's entitlement to reside on a reserve, without set-off, reimbursement or compensation from Council or the Nation.
- (4) Notwithstanding any other section or subsection of this bylaw, the entitlement of any person, whether Member or non-Member, to reside on or visit any reserve is immediately and without further notice, hearing or appeal, revoked, if that person is convicted of any sexual offence against a minor pursuant to the *Criminal Code* for which a pardon has not been granted, and such person must vacate all reserve lands immediately upon such conviction and shall not reside, visit or pass

through any portion of a reserve without express written consent from Council, which consent may be arbitrarily withheld.

- (5) For the purposes of subsection 8(4) of this bylaw, where Council has reason to believe that a person residing on or visiting a reserve has been convicted of a sexual offence against a minor pursuant to the *Criminal Code* for which a pardon has not been granted, Council may request that the person provide Council with an RCMP Certified Criminal Record Check in respect of that person completed not earlier 30 days prior to Council's request.
- (6) A request made by Council pursuant to subsection 8(5) of this bylaw must state the basis on which Council believes that the person may have been convicted of a sexual offence against a minor.
- (7) A person who receives a request from Council pursuant to subsection 8(5) of this bylaw must deliver the requested RCMP Certified Criminal Record Check to Council within 30 days of receiving the request, or such longer period as Council may set in its absolute discretion.
- (8) If a person fails to provide the RCMP Certified Criminal Record Check as required under subsection 8(7) of this bylaw, Council may revoke the person's entitlement to reside on or visit a reserve, and subsection 8(3) of this bylaw shall apply to that revocation.
- (9) Council shall ensure that any RCMP Criminal Record Check that it receives pursuant to subsection 8(7) of this bylaw is kept confidential, except to the extent necessary to enforce this bylaw.
- (10) Where a Certified RCMP Criminal Record Check provided to Council pursuant to subsection 8(7) of this bylaw discloses no conviction for a sexual offence against a minor, Council shall destroy all copies of the Certified RCMP Criminal Record Check in its possession or control and shall reimburse the person who provided it for the cost of obtaining it.
- (11) A decision by Council to revoke a person's entitlement to reside on or visit a reserve is final and binding.

Enforcement & Penalties

- 9 A person whose entitlement to reside on or visit a reserve has been revoked or terminated pursuant to this by-law, other than pursuant to subsection 8(4) of this bylaw, shall be given 30 days' notice in writing by Council to vacate his or her residence on the reserve, and the person shall vacate all reserve lands before the expiry of that 30-day notice period.
- 10 Any person who fails or refuses to comply with an order made under this bylaw, or who assists a person who has been ordered to cease to reside on or visit a reserve to continue to reside on or visit a reserve, 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 30 days, or both.

Severability

- 11 If any part of this bylaw is declared or adjudged by a court to be invalid or unenforceable, such invalidity or unenforceability will not affect the validity or enforceability of any other part of this bylaw.

General

- 12 Hartley Bay Indian Band Residency Bylaw No. 01-1988 enacted on the 10th day of November, 1988, being a Bylaw to regulate the residence of Members or other persons on reserve, is hereby repealed in its entirety.

13 Subject to section 18.1 of the *Indian Act* and to *Family Homes on Reserves and Matrimonial Interests or Rights Act*, S.C. 2013, c. 20, no person will reside on a reserve except in accordance with the foregoing provisions of this bylaw.

14 This bylaw will come into force when it is published pursuant to section 86(1) of the *Indian Act*.

THIS BYLAW IS HEREBY enacted at a duly convened meeting of Council of the Gitga'at First Nation this ___ day of _____, 2017. Voting in favour of the bylaw are the following members of Council:


Arnold Clifton, Chief Councillor


Bruce Reece, Councillor


Spencer Greenling, Councillor


Marven Robinson, Councillor

Cameron Hill, Councillor

being a majority of those members of Council of the Gitga'at First Nation present at the aforesaid meeting of Council.

The quorum of Council is three (3) members.

Number of members of Council present at the meeting: _____

I, **ARNOLD CLIFTON**, Chief/Councillor of the Nation, do hereby certify that a true copy of the foregoing bylaw was mailed to the Minister of Indian Affairs and Northern Development at the District/Regional/Hull office (as the case may be) pursuant to subsection 82(1) of the *Indian Act*, this 13 day of January, 2017.

(Witness) (Chief/Councillor)


