



Qualicum Band of Indians

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QUALICUM INDIAN BAND

RESIDENCY BY-LAW NO. 01-1987

A by-law regarding the residence of Band members and other persons on the reserve of the Qualicum Indian Band.

Whereas the reserve of the Qualicum Indian Band has been set apart by Her majesty for the use and benefit of the members of the Band; and,

Whereas the Council of the Qualicum Indian Band derives its authority from and is responsible to the Band membership for the peace, order and good government of the reserve lands of the Band; and,

Whereas section 81(1) (p.1) and (p.2) of the Indian Act, RSC 1970, c. I-6 as amended by the Indian Act, SC 1985, c.27 provides that the Council of a Band may make by-laws regarding the residency rights of Band members and other persons on the reserve lands of the Band; and,

Whereas sections 35 and 25 of the Constitution Act, 1982 recognize and protect the existing and future aboriginal and treaty rights of the aboriginal peoples of Canada;

Now therefore, the Council of the Qualicum Indian Band enacts this by-law pursuant to section 81(1)(p), (p.1), (p.2), (q) and (r) of the Indian Act.

TITLE

1. This by-law may be cited as the QUALICUM INDIAN BAND RESIDENCY BY-LAW No. 01-1987.

PART I

INTERPRETATION

2. In this by-law:

- (1) "Act" means the Indian Act, SC 1985, c.27, amending the Indian Act, RSC 1970, c. I-6;
- (2) "Band" means the Qualicum Indian Band;
- (3) "Band List" means a list of Band Members which is maintained by the Band;
- (4) "Band member" means a person whose name appears on the Band List;
- (5) "Council of the Band" (the "Council") means the Chief and Council chosen according to the custom of the Band;

(6) "Minister" means the Minister of Indian Affairs and Northern Development;

(7) "non-Band member" means any person who is not a member of the Qualicum Indian Band;

(8) "ordinarily resident" means a person who normally lives on the reserve as evidenced by receiving his mail at his home address located on the reserve and includes students studying off the reserve who return to their permanent home located on the reserve;

(9) "reserve" means a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of the Band, or which may be acquired by way of land claim settlement;

(10) "Rules" means the Qualicum Indian Band Membership Rules; and,

(11) Use of words denoting the male gender is deemed to include the female gender.

PART II

RESIDENCY ENTITLEMENT

3. Only a Band Member shall be entitled to reside on the reserve, subject to the availability of suitable residential land and adequate housing resources.

4. A non-Band Member may be permitted by Council to reside on the reserve providing he:

(1) ordinarily resides with a Band Member who is his legal spouse; or,

(2) ordinarily resides with his dependent children who are Band Members and over whom he has legal custody; or,

(3) is widowed from his legal spouse who was a Band Member, and his previous conduct in the community demonstrates his lifestyle is compatible with the culture, society and community standards of the Band; or,

(4) is renting accommodation from the Band.

5. Non-Band member dependent children in the legal custody of a Band member may reside on the reserve pursuant to section 81(1)(p.2) of the Act in the permanent residence of the Band Member who has legal custody over him.

6. A non-Band member who has been authorized to reside on the reserve by the Minister pursuant to sections 28(2) of the Act may reside on the reserve for the period specified in the Ministerial Permit.

7. Persons referred to in sections 5 and 6 need not apply for a residency permit but must prove to the satisfaction of Council their legal entitlement to reside on the reserve.

8. Non-Band members, who reside on reserve by virtue of Part II of this by-law, will not benefit in any way from funding allocated by the Federal and other governments on behalf of the duly registered members of the Band.

9. Band members returning to the Reserve to live must apply to the Council in writing to be put on the existing waiting list for accomodation.

PART III

APPLICATION PROCEDURE

10. A non-Band member wishing to reside on the reserve pursuant to section 4 must apply to Council for permission by submitting a written letter of application explaining his circumstances and the reason for the application for residency.

11. All letters of application shall include a commitment by the applicant that he will maintain the peace and tranquility of the community and uphold the customs and by-laws of the Band if he is granted a residency permit.

12. All applications shall be addressed to the attention of the Council who shall promptly acknowledge receipt and advise the applicant of the date of the next scheduled

Council meeting, at which time the application shall be considered.

13. The applicant may attend at the Council meeting to explain his reasons for applying for a residency permit.

14. The Council may:

- (a) deny the application;
- (b) issue a residency permit for a specified period of time, with or without conditions; or,
- (c) issue a residency permit for an unspecified period of time revocable by Council upon any breach of the peace, customs or by-laws of the Band.

15. The Council shall notify the applicant, in writing, of its decision to permit or deny the application within thirty days of the meeting at which the decision was made.

PART IV

RESIDENCY RIGHTS OF NON-BAND MEMBERS

16. The community rights of a non-Band Member who has been permitted to reside on the reserve include:

- (1) quiet enjoyment of his residence on the reserve;
- and,
- (2) expressing his opinion about community affairs which directly affect himself and his immediate family.

17. For greater certainty, a resident non-Band member shall not vote at Band elections nor shall he be eligible

to run for any elected office on the reserve.

PART V

LOSS OF RESIDENCY RIGHTS

18. Any Band Member whose name has been deleted from the Band List pursuant to the Qualicum Indian Band Membership Rules ceases to be entitled to reside on the reserve.

19. The Council may rescind the right of a non-Band Member to reside on the reserve if he:

- (1) has been convicted of an indictable offence against the person or property of another resident; or,
- (2) engages in any illegal or unscrupulous activity which proves harmful to the general welfare and good reputation of the Band; and,
- (3) a majority of the adult, resident Band Members recommend to the Council at a Band referendum, of which one month's notice is given, that his right to reside on the reserve be withdrawn.

PART VI

PROHIBITION OF RESIDENCY

20. Subject to Part II, no person may reside on a Reserve at any time unless:

- (a) he has the permission of the Council to reside there as a permanent or conditional resident, and
- (b) he maintains his residency in accordance with the conditions of the permission.

21. No person may at any time use, occupy or temporarily reside on any land on a Reserve unless the use, occupation or temporary residency

(a) has been specifically permitted by the Council;

or,

(b) is pursuant to a permit or lease granted under section 28(2) of the Act.

22. Any person who provides a residence, either temporary or permanent, for some other person who does not have permission pursuant to this by-law to reside on the Reserve is in contravention of this by-law.

PART VII

ENFORCEMENT AND PENALTY

23. A person whose right to reside on the reserve has been terminated pursuant to Part V of this by-law, shall be given thirty (30) days notice in writing by the Council to vacate his residence on the reserve and failure to comply with the notice shall constitute an offence.

24. Any person who contravenes any provision of this by-law is guilty of an offence punishable on summary conviction and, if convicted, is liable to a fine of not more than one thousand dollars or imprisonment for a term not exceeding thirty days, or both.

PART VIII

SEVERABILITY

25. If any part of this by-law is declared or adjudged to be invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the validity or enforceability of any other part of this by-law.

26. Read, considered and adopted at a duly convened meeting of the Council of the Qualicum Indian Band on the 30th day of November, 1987.

WITNESSED BY:

Mark [Signature]
Chief

Gordon Walker

[Signature]
Councillor

David J. Reed
Councillor