

**NICOMEN INDIAN BAND
RESIDENCY BYLAW, NO. 01-93**

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PART 1

A Bylaw regarding the residence of Band members and other persons on the reserves of the Nicomen Indian Band.

WHEREAS the reserves of the Nicomen Indian Band have been set apart by Her Majesty for the use and benefit of the members of the Band; and,

WHEREAS the Indian Act, R.S.C. 1985, c. I-5, authorizes Band Councils to pass Bylaws to provide for the residence of Band members and other persons on the reserves of the Band, and to provide for the rights of spouses and children who reside with Band members on the reserve;

AND WHEREAS the Council of the Nicomen Indian Band is responsible to the Band membership for the peace, order, and good government of the Nicomen reserve lands;

NOW THEREFORE, the Council of the Nicomen Indian Band enacts this Bylaw pursuant to subsections 81.(1)(c), (d), (p), (p.1), (p.2), (q) and (r) of the Indian Act, R.S.C. 1985, c.I-5.

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TITLE

1. This Bylaw may be cited as the: "Nicomen Indian Band Residency Bylaw, No. 01-93."

INTERPRETATION

2. In this Bylaw:
 - (1) "Act" means the Indian Act, R.S.C. 1985, c. I-5, as amended from time to time;
 - (2) "Band" means the Nicomen 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 or who is entitled to have his or her name appear on the Band List;
 - (5) "child" includes a child born in or out of wedlock, a legally adopted child and a child adopted in accordance with Indian custom;
 - (6) "Council" means the Chief and Council of the Band chosen according to the election provisions set out under section 74 of the Act;
 - (7) "ordinarily resides" means that a person has adopted a housing unit located on a reserve of the Band as his home, in which he ordinarily eats and sleeps and to which he intends to return after temporary absences;

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- (8) "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, and includes any lands which may be acquired by way of a land claim settlement;
- (9) "spouse" includes a common law union of a least two years' continuous duration between two persons of the opposite sex; and,
- (10) Use of words denoting the male gender is deemed to include the female gender, and the singular the plural where the context requires.

PART 2

RESIDENCY ENTITLEMENT

3. A Band member is entitled to reside on the reserves of the Band, subject to:

- (1) the availability of suitable residential land; and,
- (2) the existence of adequate housing resources of the Band or of the Band member; and,
- (3) his obtaining a residency permit from the Council.

4. A person who is not a Band member and who ordinarily resides on a reserve of the Band on the date this Bylaw comes into force may apply to Council for permission to continue to reside on the reserve providing he:

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- (1) ordinarily resides with a Band member who is his spouse;
or,
- (2) ordinarily resides with his dependent child who is a Band member and over whom he has legal custody; or,
- (3) is widowed from his spouse who was a Band member, and he has not subsequently married a person who is not a Band member.

5. A Band member who has ordinarily resided on a reserve of the Band prior to this Bylaw coming into force need not obtain a residency permit from the Council, as long as he remains ordinarily resident on the reserve.

6. Persons entitled to live on the reserves of the Band pursuant to sections 18.1, 28(2) and 58(3) of the Act need not apply for a residency permit, but may be required to present documentary evidence to Council, upon its request, which proves the legal entitlement of that person to live on the reserve.

PART 3

APPLICATION PROCEDURE

7. Upon this Bylaw coming into force, both Band members and non-Band members who wish to reside on a reserve of the Band shall apply to Council for a residency permit issued in the form attached as Schedule "A" to this Bylaw.

8. An application for a residency permit shall be initiated by the head of a family writing a letter to the Council which specifies whether:

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- (1) a building lot on reserve land is desired in order for the head of the family to privately build a home with the family's own funds; or,
- (2) a Band-owned housing rental unit is desired to accommodate the family; or,
- (3) a rent-to-own housing unit is desired on an agreement for sale.

9. Upon receipt of a letter of application for a residency permit, Council shall reply by:

- (1) informing the applicant of the Bands' housing policy and the extent of the housing waiting list; and,
- (2) providing the applicant with a copy of this Bylaw.

10. If the application is for a building lot on reserve, Council may issue the residency permit providing it is satisfied the applicant has the funds necessary to pay for the house construction and servicing charges to the building lot.

11. If the application is for rental of a Band-owned housing unit or occupation of a rent-to-own housing unit, the Council shall require the applicant to sign the Rental Tenancy Agreement attached as Schedule "B" to this Bylaw.

12. The Council may deny the application if the applicant has previously demonstrated disrespect for the health, safety, peace, order or good government of the Band, even if the applicant otherwise qualifies for a residency permit.

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13. The Council may appoint a Band Housing Committee to review all applications for residency permits and to recommend to Council the issuance or denial of same.

PART 4

RIGHTS OF RESIDENT NON-BAND MEMBERS

14. Non-Band members who reside on Nicomen reserve lands pursuant to this Bylaw will not be entitled to receive or to benefit from any funding allocated by the federal or provincial governments on behalf of the members of the Band, unless those funds are specifically allocated to resident non-Band members who are ordinarily resident on Nicomen reserve lands.

15. The community rights of a non-Band member who has been issued a residency permit include:

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

PART 5

LOSS OF RESIDENCY RIGHT

16. A person whose name has been lawfully deleted from the Band List pursuant to the Nicomen Indian Band Membership Rules ceases to be entitled to reside on the reserve.

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17. The Council may revoke a residency permit issued under section 11 of this Bylaw if:

- (1) rent remains unpaid on the 1st day of each month, and remains unpaid after notice has been duly served pursuant to section 6 of the Rental Tenancy Agreement, attached as Schedule "B" hereto; or,
- (2) his conduct, ~~or the conduct of a person permitted by him~~ on or ~~in~~ the residential property, unreasonably disturbs the enjoyment of other persons lawfully entitled to be on the reserve; or,
- (3) he causes extraordinary damage, beyond ordinary wear and tear, to any residential property owned by the Band; or,
- (4) the numbers of persons permanently occupying the residential premises is unreasonable or more than those authorized under the residency permit; or,
- (5) he has purported to assign or sublet the residential property; or,
- (6) the permit holder marries a member of another Band and ordinarily resides on the reserve lands of the other Band.

18. For greater certainty a Band member who ceases to be entitled to reside on the reserves of the Band shall be entitled to six months within which to dispose of his property on the reserve, pursuant to section 25 of the Act.

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**PART 6
APPEAL PROCEDURE**

19. If the Council decides to:

- (1) deny an application for a residency permit; or,
- (2) revoke a previously issued residency permit,

the applicant or previous permit holder may appeal Council's decision to the members of the Band by filing a letter of appeal with the Council within one (1) year of the date of Council's decision.

20. Within two months of receiving the appeal, the Council shall call a general Band meeting to review the merits of the application.

21. If a majority of the adult members of the Band who are present at the Band meeting, of which two weeks written notice has been given, vote in favour by secret ballot that the appeal be granted, the Council shall issue or re-issue the residency permit to the applicant.

**PART 7
ENFORCEMENT AND PENALTY**

22. Failure to comply with any provision of this Bylaw shall constitute an offence punishable upon summary conviction and, if convicted, a person who fails to comply with a notice to vacate is liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding thirty days or to both, for

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each day the offence continues within the meaning of subsections 81(2) and 81(3) of the Act.

PART 8

AMENDMENTS AND SEVERABILITY

23. If any part or section of this Bylaw 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 Bylaw.

24. This Bylaw may be amended by the Council from time to time.

READ, CONSIDERED AND ADOPTED AT A DULY CONVENED MEETING OF THE COUNCIL OF THE NICOMEN INDIAN BAND ON THE 28 DAY OF July, 1993.

Cyril Spence
Chief Cyril Spence

Arlene Quinn
Councillor Arlene Quinn

Fred Drynock
Councillor Fred Drynock

I, Cyril Spence, Chief of the Nicomen Indian Band, do hereby certify that a true copy of the foregoing Bylaw was forwarded to the Minister of Indian Affairs and Northern Development pursuant to subsection 82(1) of the Indian Act this 28 day of July, 1993.

(Signature)

(Signature)

Witness
Witness

Cyril Spence
Chief Cyril Spence

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SCHEDULE OF AMENDMENTS

The Council of the Nicomen Indian Band hereby adopts the following amendments to the NICOMEN INDIAN BAND RESIDENCY BYLAW, No. 01-93, which came into force on September 28, 1993:

1. Section 1, "Title" is amended by repealing the number "01" and substituting the number "02", as follows:
 1. This Bylaw may be cited as the: "Kanaka Bar Indian Band Residency Bylaw, No. 02-93".
2. Section 3(3) is amended by repealing the words "residency permit" and substituting the words "Certificate of Residence" therefor, as follows:
 3. A Band member is entitled to reside on the reserves of the Band, subject to:
 - (3) his obtaining a Certificate of Residence from the Council.
3. Section 5 is amended by repealing the words "residency permit" and substituting the words "Certificate of Residence" therefor, as follows:
 5. A Band member who has ordinarily resided on a reserve of the Band prior to this Bylaw coming into force need not obtain a Certificate of Residence from the Council, as long as he remains ordinarily resident on the reserve.
4. Section 6 is amended by repealing the words "residency permit" and substituting the words "Certificate of Residence" therefor, as follows:
 6. Persons entitled to live on the reserves of the Band pursuant to sections 18.1, 28(2) and 58(3) of the Act need not apply for a Certificate of Residence, but may be required to present documentary evidence to Council, upon its request, which proves the legal entitlement of that person to live on the reserve.

5. Section 7 is amended by adding the words "who are not ordinarily resident but", and by repealing the words "residency permit" and substituting the words "Certificate of Residence" therefor, as follows:
 7. Upon this Bylaw coming into force, both Band members and non-Band members who are not ordinarily resident but who wish to reside on a reserve of the Band shall apply to Council for a Certificate of Residence issued in the form attached as Schedule "A" to this Bylaw.
6. Section 8(3) is amended by repealing the words "residency permit" and substituting the words "Certificate of Residence" therefor, and by adding the words "requests that a Certificate be issued to him and the members of his family, and which", and by adding the words "for purchase from the Band under", as follows:
 8. An application for a Certificate of Residence shall be initiated by the head of a family writing a letter to the Council which requests that a Certificate be issued to him and the members of his family, and which specifies whether:
 - (3) a rent-to-own housing unit is desired for purchase from the Band under an Agreement for Sale.
7. Section 9 is amended by repealing the words "residency permit" and substituting the words "Certificate of Residence" therefor, as follows:
 9. Upon receipt of a letter of application for a Certificate of Residence, Council shall reply within thirty (30) days by:
 - (1) informing the applicant of the Bands' housing policy; and,
 - (2) giving a time estimate for the housing waiting list; and,
 - (3) providing the applicant with a copy of this Bylaw.
8. Section 10 is amended by repealing the words "residency permit" and substituting the words "Certificate of Residence to the head of the household" therefor, and by repealing the word "it" and substituting the word "Council" therefor, as follows:
 10. If the application is for a building lot on reserve, Council may issue the Certificate of Residence to the head of the household providing Council is satisfied the applicant has the funds necessary to pay for the house construction and servicing charges to the building lot.

9. Section 11 is amended by repealing the words "residency permit" and substituting the words "Certificate of Residence" therefor, as follows:
 11. If the application is for rental of a Band-owned housing unit or the purchase of a rent-to-own housing unit, the Council shall require the applicant to sign the Rental Tenancy Agreement attached as Schedule "B" to this Bylaw before issuing the Certificate of Residence.
10. Section 12 is amended by repealing the whole section and substituting a new section therefor, as follows:
 12. The Council may refuse to issue a Certificate of Residence if the applicant has previously demonstrated disrespect for:
 - (a) the health or safety of the Band members; or
 - (b) the peace, customs or bylaws of the Band.
11. Section 13 is amended by repealing the words "residency permits" and substituting the words "Certificates of Residence" therefor, as follows:
 13. The Council may appoint a Band Housing Committee to review all applications for Certificates of Residence and to recommend to Council the issuance or denial of same.
12. Section 15 is amended by repealing the words "residency permit" and substituting the words "Certificate of Residence" therefor, as follows:
 15. The community rights of a non-Band member who has been issued a Certificate of Residence include:
 - (1) quiet enjoyment of his residence on the reserve; and,
 - (2) expressing his opinion at Band meetings about community affairs which directly affect himself and his immediate family.
13. Section 17 and subsections (3), (4), and (6) are amended by:
 - (a) repealing the words "residency permit" and substituting the words "Certificate of Residence" therefor, and by adding the words "to a person" in section 17; and
 - (b) adding the words "either" and "or a Band member" in subsection (3); and

- (c) adding the words "for the size and design of the residence," and substituting the words "residency permit" with "Certificate of Residence" in subsection (4); and
- (d) repealing the words "permit holder" and substituting the words "head of household named in the Certificate of Residence" therefor in subsection (6), all as follows:

17. The Council may revoke a Certificate of Residence issued to a person under this Bylaw if:

- (3) he causes extraordinary damage, beyond ordinary wear and tear, to any residential property owned either by the Band or a Band member; or,
- (4) the numbers of persons permanently occupying the residential premises is unreasonable for the size and design of the residence, or more than those authorized under the Certificate of Residence; or,
- (6) the head of household named in the Certificate of Residence marries a member of another Band and ordinarily resides on the reserve lands of the other Band.

14. Section 19 is amended by repealing the words "residency permit" in both places it appears and substituting the words "Certificate of Residence" therefor, and by substituting the word "Certificate" for the word "holder", and by substituting the words "ninety (90) days" for the words "one (1) year", all as follows:

19. If the Council decides to:

- (1) deny an application for a Certificate of Residence; or,
- (2) revoke a previously issued Certificate of Residence,

the applicant or previous Certificate holder may appeal Council's decision to the members of the Band by filing a letter of appeal with the Council within ninety (90) days of the date of Council's decision.

15. Section 20 is amended by repealing the words "two months" and substituting the words "thirty (30) days" therefor, as follows:

20. Within thirty (30) days of receiving the appeal, the Council shall call a general Band meeting to review the merits of the application.

16. Section 21 is amended by repealing the words "two weeks" and substituting the words "fourteen days" therefor, and by substituting the phrase "vote by secret ballot in favour of granting the appeal" for the phrase "vote in favour by secret ballot that the appeal be granted", and by substituting the words "residency permit" with the words "Certificate of Residence", all as follows:
 21. If a majority of the adult members of the Band who are present at the Band meeting, of which fourteen (14) days written notice has been given, vote by secret ballot in favour of granting the appeal, the Council shall issue or re-issue the Certificate of Residence to the applicant.
17. Section 22 is amended by repealing it in its entirety and substituting therefor five (5) new sections numbered 22, 23, 24, 25 and 26, all as follows:
 22. A person who ordinarily resides on a reserve of the Band and whose name does not appear on a Certificate of Residence, as required by sections 3 and 4 of this bylaw, commits an offence.
 23. The Council may, by written order, demand any person described in section 22 to cease to reside on the reserve within thirty (30) days of the date of the order.
 24. A person who fails or refuses to cease to reside on the reserve within thirty (30) days in accordance with an order issued under section 23 commits an offence against this bylaw.
 25. If an offence is committed, the Council may lay an information against the person committing the offence for prosecution under this Bylaw.
 26. Where a person is convicted of breach of this bylaw, he is liable to a fine upon summary conviction not exceeding \$1,000.00 or imprisonment for a term not exceeding thirty (30) days, or both, in addition to any court order prohibiting that person's continued residence on the reserve pursuant to sections 81(1)(r) and 81(2) of the Act, or as amended from time to time.
18. Sections 23 and 24 are renumbered as sections 27 and 28.
19. Schedule "A" is amended by replacing the words "Residency Permit" with the words "Certificate of Residence", and by adding the words "Head of Household" all as shown on the new Schedule "A" attached hereto.

This ends the amendments.

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CERTIFICATE OF RESIDENCE

Schedule "A"

This Certificate of Residence authorizes the following persons to reside on NICOMEN INDIAN RESERVE # _____ pursuant to section ____ of the Residency Bylaw:

_____	_____
[Head of Household]	
_____	_____
_____	_____

This Certificate of Residence may be revoked by the Council upon any breach of the peace or bylaws of the Nicomen Indian Band.

Chief _____
(Print name)

_____	_____
Councillor _____	Councillor _____
(Print name)	(Print name)

Date Issued: _____

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