

Hartley Bay Band Council

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CERTIFIED"

HARTLEY BAY INDIAN BAND RESIDENCY BYLAW NO. 01-1988

A BYLAW regarding the residence of Band members and other persons on the reserves of the Hartley Bay Indian Band.

WHEREAS the reserves of the Hartley Bay Indian Band have been set apart by Her majesty for the use and benefit of the members of the Band; and,

WHEREAS the Council of the Hartley Bay 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;

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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 Hartley Bay 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 HARTLEY BAY INDIAN BAND RESIDENCY BY-LAW No. 01-1988.

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 Hartley Bay 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) "Clerk" means the Membership Clerk within the meaning of the Hartley Bay Band Membership Rules who shall also perform the duties of registrar of residency permits;

(6) "Council of the Band" (the "Council") means the Chief and Council chosen according to the custom of the Band;

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

(8) "non-Band member" means any person who is not a member of the Hartley Bay Indian Band;

(9) "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;

(10) "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;

(11) "resident" means any Band member who ordinarily resides on the reserve and any non-Band member who is authorized to reside on the reserve pursuant to this by-law or sections 18.1, 28(2) or 58(3) of the Act;

(12) "Rules" means the Hartley Bay Indian Band Membership Rules; and,

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

PART II

RESIDENCY ENTITLEMENT

3. All Band members are entitled to reside on the reserve.

4. A non-Band member may apply to Council for permission to reside on the reserve providing he:

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

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

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

(4) works on the reserve periodically, temporarily or for an indefinite term.

5. Non-Band member dependent children, or children in the custody of a Band member may reside on the reserve pursuant to section 18.1 of the Act.

6. Non-Band members who have been authorized by the Minister pursuant to section 28(2) or 58(3) of the Act may live on the reserve, subject to the terms of the permit.

PART III

APPLICATION PROCEDURE

7. A non-Band member wishing to reside on the reserve pursuant to section 4(1), (2), (3) or (4) must apply to Council for permission by submitting a written letter of application explaining his circumstances and the reason for the application.

8. 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.

9. All applications shall be addressed to the attention of the Clerk 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.

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

11. 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.

12. The Council shall direct the Clerk to 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

LOSS OF RESIDENCY RIGHTS

13. A Band member ceases to be entitled to reside on the reserve if:

(1) his name has been deleted from the Band List pursuant to Part V of the Rules; or,

(2) he has been convicted of a sexual offence against a minor pursuant to the Criminal Code.

14. The Council may revoke any residency permit if the holder breaches any customary law or validly enacted by-law of the Band.

PART V

ENFORCEMENT AND PENALTY

15. A person whose right to reside on the reserve has been terminated pursuant to Part IV of this by-law, shall be given one month notice in writing by the Council to vacate his residence on the reserve.

16. Any person who violates any provision of this by-law is guilty of an offence and is punishable upon summary conviction to a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty days or both.

PART VI

SEVERABILITY

17. 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.

18. Read, considered and adopted at a duly convened meeting of the Council of the Hartley Bay Indian Band on the 10 day of NOVEMBER, 1988. A quorum of the Council consists of three (3) Councillors.

WITNESSED BY:

Chief Councillor William Clifton Band Manager

Councillor Clarence Innes

Lynn Hill

Councillor Lynn Hill

Albert Clifton

Councillor Albert Clifton

Bruce Reece

Councillor Bruce Reece

