

SUNCHILD FIRST NATION RESIDENCY BY-LAW 2019

A BY-LAW GOVERNING THE RESIDENCE OF MEMBERS AND OTHER PERSONS ON THE SUNCHILD FIRST NATION RESERVE:

WHEREAS the Chief and Council of the Sunchild First Nation desire to make a by-law governing the residence of its members and other persons on Sunchild First Nation reserve lands.

AND WHEREAS the Sunchild First Nation is empowered by its inherent right to govern, including jurisdiction over its reserve lands and membership as recognized and affirmed by s. 91(24) of the *Constitution Act, 1867* and s. 35(1) of the *Constitution Act, 1982*, to enact the present by-law.

AND WHEREAS nothing in this by-law may be interpreted as abrogating or derogating from the rights of the Sunchild First Nation under Treaty No. 6.

AND WHEREAS the Sunchild First Nation is empowered to make such a by-law pursuant to paragraphs 81 (1)(p.1), (q) and (r) of the *Indian Act*.

AND WHEREAS the Sunchild First Nation Community and the Chief and Council of the Sunchild First Nation are deeply concerned by incidents of violence and undesirable activity on the Sunchild reserve, the presence of illegal gang and drug activity, and the dangers that such circumstances present to peace, life and safety of persons present on the Sunchild reserve.

AND WHEREAS Sunchild First Nation Chief and Council affirm the right and entitlement of membership to follow a traditional lifestyle, including hunting and being able to possess and use firearms for the pursuant of those traditional purposes provided they are used safely, healthily and peacefully within the community and traditional territories and nothing herein is intended to abrogate or derogate this right and entitlement.

AND WHEREAS Sunchild First Nation Chief and Council affirm the right and entitlement of members to live on the reserve and to participate in the rights, entitlements, traditions and culture of the Sunchild First Nation Community and in particular those relating to living on the reserve and that these rights and entitlements are to be respected for so long as a member pursues those purposes safely, healthily and peacefully within the reserve, subject at all times to the inherent right of the Sunchild First Nation Chief and Council to govern to have a safe, healthy and peaceful community.

AND WHEREAS residing on the Sunchild reserve and participating in the culture, traditions and way of life on the reserve is a privilege afforded to persons that adopt and support a safe, healthy and peaceful community.

AND WHEREAS it is considered necessary for the peace, life and safety of persons present on the Sunchild reserve and to have a safe, healthy and peaceful community to regulate the residence of its members and other persons on the reserve.

NOW THEREFORE the Chief and Council of the Sunchild First Nation hereby make the following by-law:

Short Title

1. This by-law may be cited as the "Sunchild First Nation Residency By-Law".

Interpretation

2. In this by-law

"applicant" means a person who has submitted an application for permission to be a resident of the reserve in accordance with section 5;

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

"Council" means the duly elected Chief and Council of the Sunchild First Nation;

"dwelling" means any house, apartment, mobile home, or a room located therein, or any similar lodging, whether or not condemned or suitable for habitation;

"indictable offence" includes a hybrid offence that proceeded by way of summary conviction;

"member of the Nation" means a person whose name appears on the Sunchild First Nation's membership list or who is entitled to have their name appear on the Sunchild First Nation's membership list;

"Nation" means the Sunchild First Nation;

"officer" means any police officer, police constable or other person charged with the duty to preserve and maintain the public peace, and any by-law enforcement officer or other person duly appointed by the Council for the purpose of maintaining law and order on the reserve;

"principal residence" means the place at which a person resides on a more permanent basis than any other place at which the person may reside from time to time;

"reserve" means the Sunchild Indian Reserve No. 203;

"reside" means to live in a dwelling as one's primary place of abode;

"resident" means a person who resides on the reserve, and includes persons who are temporarily absent from the reserve because of schooling, work, travel, or similar purposes, and includes persons whose right to reside on the reserve has been revoked on an interim basis in accordance with this by-law, but excludes persons visiting the reserve for 30 days or less;

"spouse" means a person who is married to, or who co-habits in a relationship of some permanence and commitment, akin to a conjugal relationship, with a resident of the Sunchild First Nation.

Entitlement to Reside on Reserve

3. (1) A person is entitled to reside on the reserve only if the person

- (a) Resides on the reserve at the time this by-law comes into force and only until they cease to have a residence on the reserve;
 - (b) Is authorized to reside on the reserve pursuant to one of the following provisions of the *Indian Act*: sections 18.1, 20, and 24 and sub-sections 28(2) and 58(3); or
 - (c) Has been authorized to reside on the reserve pursuant to this by-law.
- (2) A spouse or dependent child of a person who is entitled to reside on the reserve under sub-section (1), who actually resides with that person at or after the time the entitlement arises, is entitled to reside on the reserve until such time as the spouse or dependent child ceases to reside on the reserve, and such entitlement is independent of the entitlement of that person.
- (3) Any spouse or dependent child of a person who has been granted permission to reside on the reserve under sub-section(2) unless otherwise provided for in this by-law shall be permitted to continue to reside after the end of residency of the person that they initially resided with.

Registrar of Residents and Residency Tribunal

4. (1) The Council shall appoint a Registrar of Residents, who may be a member of the Residency Tribunal to provide for the administration of applications, reapplications, petitions and re-hearings made under this by-law and to maintain records related to the residents of the reserve.
- (2) The Registrar of Residents shall maintain a Residents List, on which is recorded
- (a) The name of each resident;
 - (b) An indication as to whether each resident is a resident for an indefinite or defined period;
 - (c) The length of any defined period residence;
 - (d) The location of each resident's dwelling; and
 - (e) Whether each resident is a Status/Treaty Indian.
- (3) The Council shall appoint, and prepare a written mandate and terms of reference for, a Residency Tribunal of three (3) or more members of the Nation to hear and determine applications for residence pursuant to section 5, and petitions for revocation of entitlement to reside on reserve pursuant to section 9.
- (4) The Residency Tribunal may establish rules governing the conduct of hearings and procedures under this by-law and shall retain records of its proceedings.

- (5) For the purposes of hearing and determining applications under this by-law, a quorum of the Residency Tribunal shall require at least three (3) members of the Nation.

Application to be a Resident

5. (1) Other than a person or family that resides on the reserve at the time this by-law comes into force, any person or family who wishes to reside on the reserve must apply to the Residency Tribunal for permission to be a resident or residents of the reserve or to extend any defined period for which permission was previously granted to the person or family to be a resident or residents of the reserve.
- (2) Where a family wishes to apply to the Residency Tribunal to reside on reserve, it shall do so through the eldest member of the family who shall be identified in the family's application as the applicant.
- (3) An application for residency on the reserve shall be filed with the Registrar of Residents and shall include:
- (a) The applicant's reasons for applying to be a resident;
 - (b) If the applicant proposes to reside on the reserve for a limited time, the approximate duration of the proposed residence;
 - (c) The location at which the applicant proposes to reside;
 - (d) The name of any spouse with whom the applicant proposes to reside;
 - (e) The names of any dependent children with whom the applicant proposes to reside;
 - (f) The names of any additional persons with whom the applicant proposes to reside;
 - (g) Any additional information the applicant wishes to provide relating to the considerations listed in sub-section 7(2);
 - (h) Signed written authorizations in a form satisfactory to the Registrar authorizing the Registrar to seek and obtain a criminal records check for the applicant and all other persons over the age of 12 years with whom the applicant proposes to reside; and
 - (i) For each person who is proposed to reside on the reserve, copies of that individual's driver's licence and status card, if any.
- (4) Notwithstanding anything else in this by-law, any person that is incarcerated or in judicial custody at the time this by-law comes into force shall be required to apply to reside on the reserve.

Hearing of Application to be a Resident

6. (1) As soon as is reasonably practicable after the filing of a properly completed application, but subject to the notice requirements of sub-section (2), the Residency Tribunal shall

hold a hearing with respect to the application.

- (2) At least fourteen (14) days prior to the hearing, the Registrar of Residents shall:
 - (a) Give written notice to the applicant of the date, time and place of the hearing and inform the applicant that he or she has a right to appear at the hearing and to be heard in support of the application; and
 - (b) Post publicly in the Administration building, a copy of the notice.
- (3) At the hearing, the Residency Tribunal shall:
 - (a) Declare for the record if any member of the Residency Tribunal has a conflict of interest relationship to an application coming before the Residency Tribunal (conflict of interest relationship is defined to include: spouse (including common-law), father and mother (including natural, step or common-law), child(ren), stepchild(ren), foster child(ren), siblings, grandparents (including common-law), and father-in-law or mother-in-law (including common-law).
 - (b) In the event of a conflict of interest relationship, the member shall refrain from taking part in any discussion or decision related to the application, leave the meeting if applicable, and not participate or vote when the application arises.
 - (c) Provide the applicant with an opportunity to present evidence and to make oral and written submissions, or both, in support of the application; and
 - (d) Provide any resident present at the hearing with an opportunity to be heard insofar as time and circumstances reasonably permit.
- (4) In the event of a Special and/or Emergency Hearing, the Residency Tribunal may make an interim decision in the absence of complying with the notice requirements of sub-section (2). In the event of a Special and/or Emergency Hearing, the Residency Tribunal shall within seven (7) days of the interim decision, provide written notice to the affected person to hold a hearing in accordance with sub-sections (2) and (3).
- (5) Notwithstanding sub-sections (2) and (3) in the event the Residency Tribunal has reviewed the application and is of the view that no hearing is required in order to approve the application, it may grant a summary approval of residency for an undefined or defined period without the necessity of holding a hearing. The Residency Tribunal shall have no authority to dismiss an application without complying with sub-sections (2) and (3).

Decision on Application to be a Resident

7. (1) After it has heard all of the evidence and submissions, the Residency Tribunal shall meet in private to consider the application.
- (2) In determining whether an application for permission to be a resident of the reserve should be granted, the Residency Tribunal shall take into consideration each of the following:

- (a) Whether the applicant has arranged for a place to reside on the reserve;
 - (b) Whether the applicant's residing on the reserve would be compatible with the culture, society and community of the Nation and welfare of the members of the Nation residing on the reserve;
 - (c) Whether the applicant is of good moral character;
 - (d) The extent to which the applicant is prepared to commit his personal and economic resources to the welfare and advancement of the community residing on the reserve;
 - (e) The availability on the reserve of adequate housing, land and services;
 - (f) Whether the applicant is or will be employed on the reserve; and
 - (g) Whether the entitlement of the applicant to reside on the reserve has previously been revoked, the circumstances surrounding any such revocation, any change in the person's circumstances, and whether the presence of the person on the reserve presents or would present a danger to the health or safety of the community.
- (3) As soon as is reasonably practicable after a hearing, the Residency Tribunal shall dispose of an application for permission to be a resident on the reserve by:
- (a) Granting the applicant permission to be a resident of the reserve until such time as the applicant ceases to reside on the reserve;
 - (b) Granting the applicant permission to be a resident of the reserve for a defined period;
 - (c) Extending any defined period for which permission was previously granted to the person by the Residency Tribunal to be a resident of the reserve; or
 - (d) Refusing the application.
- (4) The Residency Tribunal shall give written notice of its decision to the applicant, incorporating reasons in support of its decision.
- (5) The Residency Tribunal shall post publicly a notice of its decision in the Administration Building.
- (6) A decision by the Residency Tribunal pursuant to sub-section (4) shall be final and not subject to appeal or review save in accordance with section 13.

Reapplication for Residence

8. Where an application is made under section 5 is refused pursuant to sub-paragraph 7(4)(d), the Residency Tribunal is not required to consider any further application by that person for a period of one (1) year from the date of the refusal, unless the applicant can show that there has been a

material change of circumstances.

Petition to Revoke Resident's Right to Reside on Reserve

9. Any fifteen (15) residents who each are an assigned housing occupant may submit a petition to the Registrar of Residents for revocation of the entitlement of any person to reside on the reserve on an interim or permanent basis on the basis that:
- (1) There are reasonable grounds to believe that the person, while a resident of the reserve, has committed an indictable offense contrary to the *Criminal Code* or other federal enactment, which offense has endangered the life or safety of one or more persons;
 - (2) That person while a resident on the reserve has been charged with committing the offense referred to in sub-section (1); and
 - (3) There are reasonable grounds to believe that the presence of the person on the reserve presents or may present a danger to the peace, life and safety of other persons on the reserve or danger to a safe, healthy and peaceful community.

Hearing of Petition for Revocation of Right to Reside on Reserve

10. (1) Following the receipt of a petition pursuant to s. 9, and subject to the advance notice provisions in sub-sections (2), (3) and (4), the Residency Tribunal shall hold a hearing as soon as is reasonably practicable, but may, in its sole discretion, grant reasonable adjournments at the request of an affected party.
- (2) At least seven (7) days prior to the hearing of a petition submitted pursuant to s. 9, the Registrar of Residents shall:
- (a) Give written notice by way of personal service upon the affected resident or their legal counsel informing the affected resident of the date, time and place of the hearing and that they have a right to present submissions to the Residency Tribunal in writing, by telephone, or in person;
 - (b) Use reasonable efforts to give written notice by mail to each petitioner at the date, time and place of the hearing and informing each petitioner that they have a right to appear at to present submissions in writing or in person; and
 - (c) Post publicly a copy of the notice in the Administration building.
- (3) If the affected resident is incarcerated, service of notice pursuant to sub-section 2(a) will be sufficient if it is sent to the attention of the affected resident at the correctional facility.
- (4) If the affected resident is less than eighteen (18) years of age, notice pursuant to sub-section (2)(a) shall also be given to the affected resident's parents or guardians who reside on the reserve, as well as the Nation's Child Welfare department.
- (5) At the hearing, the Residency Tribunal shall:

- (a) Provide each petitioner, the affected resident, and if sub-section (4) applies, the affected resident's parents or legal guardians, and local child welfare agency, an opportunity to present evidence and to make oral and written submissions, or both, on the petition; and
- (b) Provide any resident present at the hearing with an opportunity to be heard insofar as time and circumstances reasonably permit.

Special And / Or Emergency Hearing

- 11. (1) In the event that an offence is committed against any by-law or law by a person, or the behavior of a person is a risk or threat to the peace, life and safety of other persons on the reserve or risk or threat to a safe, healthy and peaceful community, the Residency Tribunal of its own volition, or Council may direct the Residency Tribunal to convene in order to address the matter as urgently as is reasonably possible to determine if the continued residency of a person is in the best interests of the community or other residents, and or alternatively if the person's residency should be terminated.
- (2) The person under sub-section (1) may have their residency revoked immediately should the Residency Tribunal determine that the offence was serious enough that it would be potentially significantly detrimental to the best interests of Nation to permit the person to continue to reside on the reserve with consideration given but not limited to those considerations contained in sub-section 7.2.
- (3) Where the offence under sub-section (1) is committed by a dependent minor and is determined to be serious enough that the Residency Tribunal may have their residency revoked immediately along with the parent(s) and / or legal guardian(s) should the Residency Tribunal determine that the offence was serious enough that it would be detrimental to the best interests of Nation, or the community or other members of the Nations to permit the person to continue to reside on the reserve.

Decision on Revocation of Right to Reside on Reserve

- 12. (1) As soon after a hearing as is reasonably practicable, the Residency Tribunal shall meet in private to consider and determine whether or not, in the opinion of the Residency Tribunal, the requirements of sections 9 or 11 are present.
- (2) The Residency Tribunal shall then dispose of a petition pursuant to section 9 by:
 - (a) Revoking the entitlement of the affected resident to reside on reserve on a permanent or on an interim basis on such terms as the Residency Tribunal may consider appropriate and in the Nation's interests; or
 - (b) Refusing the petition.
- (3) The Residency Tribunal shall then dispose of matter pursuant to section 11 by:
 - (a) Revoking the entitlement of the affected resident to reside on reserve on a permanent or an interim basis on such terms as the Residency Tribunal may consider

appropriate and in the Nation's interests; or

- (b) Refusing to revoke the residency of the affected resident.
- (4) The Residency Tribunal may resolve to revoke the entitlement of a resident to reside on reserve on an interim basis pending the resolution of any criminal charges. The revocation of a person's residency shall be in the discretion of the Residency Tribunal in consideration of the peace, life and safety of other persons on the reserve and the safety, health and peacefulness of the community and not conditional upon any criminal charge conviction.
- (5) As soon after a hearing as is reasonably practicable, the Residency Tribunal shall dispose of a petition pursuant to section 9 or matter pursuant to section 11 by:
 - (a) The revocation of the entitlement of the person to reside on the reserve permanently;
 - (b) The revocation of the entitlement of the person to reside on the reserve for a defined period with such terms and conditions as the Residency Tribunal may deem fit and proper in the circumstances;
 - (c) The revocation of the entitlement be extended by any defined period for which the person's entitlement to reside on the reserve was previously revoked with such terms and conditions as the Residency Tribunal may deem fit and proper in the circumstances;
 - (d) Refusing the revocation.
- (6) A decision of the Residency Tribunal pursuant to sub-sections (2), (3), (4), or (5) shall be final and not subject to appeal or review, but shall be subject only to a re-hearing in accordance with section 13.

Council Re-hearing on Revocation of Member's Right to Reside on Reserve

- 13. (1) If the Residency Tribunal has revoked the residency of any resident pursuant to this by-law, the person may apply to the Residency Registrar to have Council review the decision of the Residency Tribunal, any review shall be in the form of a new hearing heard by Council.
- (2) Council shall hear all re-hearing applications at a general band assembly and shall appoint one (1) or two (2) elders to assist in the re-hearing and to make recommendations to Council.
- (3) Any recommendations from the elders will be given strong consideration in the Council decision making process.
- (4) Council may deliberate and make their decision in private after hearing the re-hearing.
- (5) Declare for the record if any member of Council has a conflict of interest relationship to an application coming before Council (conflict of interest relationship is defined to

include: spouse (including common-law), father and mother (including natural, step or common-law), child(ren), stepchild(ren), foster child(ren), siblings, grandparents (including common-law), and father-in-law or mother-in-law (including common-law).

In the event of a conflict of interest relationship, the member of Council shall refrain from taking part in any discussion or decision related to the application, leave the meeting if applicable, and not participate or vote when the application arises.

- (6) The Council may make rules of procedure governing the re-hearing of applications and shall keep records of its proceedings.
- (7) Council may:
 - (a) Revoke the entitlement of the person to reside on the reserve permanently;
 - (b) Revoke the entitlement of the person to reside on the reserve for a defined period;
 - (c) Extend any defined period for which the person's entitlement to reside on the reserve was previously revoked;
 - (d) Grant permanent or defined residency with such terms and conditions for residency as Council may deem fit and proper in the circumstances;
 - (e) Make such further or other resolution as the Council deems appropriate and necessary for ensuring the peace, health and safety of other persons on the reserve and the safety, health and peacefulness of the community.
- (8) Pending any application and a re-hearing by Council, the decision of the Residency Tribunal shall remain in full force and effect.

Notice of Revocation

- 14. A decision by the Residency Tribunal or Council to revoke a person's residency shall be sent to the RCMP, Crown Prosecutor, the petitioners, the affected resident, and if the affected resident is less than eighteen (18) years of age, the affected resident's parents or legal guardians who reside on the reserve, any interested child welfare agency, and the Residency Tribunal of the Sunchild First Nation and shall be posted publicly in the Administration building.

Effective Time of Revocation

- 15. Where the right of a resident to reside on reserve has been revoked by a decision or resolution under this by-law, the resident's right to reside on the reserve shall expire 24 hours from the time that the decision is communicated to the resident, and if the affected resident is less than eighteen (18) years of age, 24 hours from the time that the decision is communicated to the affected resident's parents or legal guardians who reside on the reserve.

Harbouring a Non-Resident

- 16. Any person that provides or continues to provide shelter on the reserve to a person who has had

their residency revoked pursuant to this by-law may have their own residency revoked.

Cessation of Services

17. Where the entitlement of a person to reside on reserve has been revoked on an interim basis, permanently or for a defined period, all services provided by the Nation to the person shall be discontinued throughout the currency of the revocation.

Notwithstanding the foregoing a person may apply to the Residency Tribunal in accordance with section 18, for a determination in the sole discretion of the Residency Tribunal to access traditional healing assistance and services.

Visits

18. (1) A person whose entitlement to reside on reserve has been revoked on an interim basis, permanently, or for a defined period, may apply to the Residency Tribunal for permission to visit the reserve for the purposes of funerals, ceremonies, and other special occasions.
- (2) A person making application under sub-section (1) shall include in their application, the dates upon which the person proposes to visit the reserve, the purpose of the visit, where on the reserve the person will be present, and any additional information or submissions the person wishes the Residency Tribunal to consider.
- (3) The Residency Tribunal shall use its best efforts to consider and determine the applications under this section expeditiously, and in advance of the proposed visitation dates.
- (4) The Residency Tribunal may consider and determine applications pursuant to sub-section (1) on the basis of written application, and is not required to hold a hearing into the matter.
- (5) A decision by the Residency Tribunal under this section is final and not subject to appeal or re-hearing.

Persons Not Affected by Revocation

19. No revocation of a resident's entitlement to reside on the reserve shall in itself affect the entitlement of the spouse or children of that resident to continue to reside on the reserve.

Enforcement

20. (1) An officer may order any person who is, or in the absence of evidence to the contrary, appears to be residing on the reserve contrary to this by-law, and who is not entitled to reside on the reserve, to cease to reside on the reserve.
- (2) Any person who fails or refuses to comply with an order made under sub-section 19 (1) commits an offense and is subject to the applicable penalties.
- (3) It is acknowledged and agreed by the Chief and Council and the members of the Nations

that an officer has full and sufficiently authority to enforce this by-law and other lawful by-laws of the Sunchild First Nation to the best of their ability, including the authority to arrest and/or forcibly remove persons from the reserve who are not authorized to be present upon the reserve.

Judicial Review

21. On any application for judicial review in respect of a decision or resolution made pursuant to this by-law, the Court shall take notice of the specialized knowledge and expertise of the members of the Residency Tribunal and Council with respect to the history, culture and values of the Sunchild First Nation community.

Penalties

22. Any person who contravenes any of the provisions of this by-law commits an offense and is liable on summary conviction to a fine not exceeding one thousand (\$1,000.00) dollars or to imprisonment for a term no exceeding thirty (30) days, or both.

Severability

23. Should a court determine that a provision of this by-law is invalid for any reason, the provision shall be severed from the by-law and the validity of the rest of the by-law shall not be affected.

Amendments

24. This by-law may only be amended by a quorum of the Council at a duly convened Council meeting.

Reviews

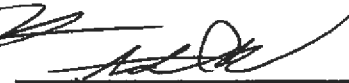
25. This by-law and proceedings taken under it shall be reviewed every three (3) years, or so often as Council may direct, by persons appointed by Council for this purpose, and the product of such reviews shall be laid before Council and made available to any resident of the reserve or members of the Nation of the Sunchild First Nation upon request.

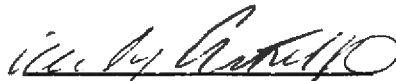
THIS BY-LAW IS HEREBY enacted at a duly convened meeting of the Council of the Sunchild First Nation this ^{20th} day of ~~October~~ ^{November}, 2019.

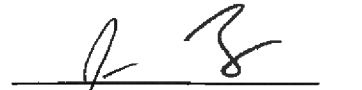

Chief Jonathan Frencheater


Councillor Clint McHugh


Councillor Joey Pete


Councillor Adriel Bigchild


Councillor Audrey Crookedlegs


Councillor James Frencheater

Being a majority of those members of the Council of the Sunchild First Nation present at the aforesaid meeting of the Council.

The quorum of the Council is four (4) members.

Number of members present at the meeting: _____