

**BY-LAW NO. 49**  
**A By-law for Residency**

**Whereas** Walpole Island is unceded Indian Territory;

**And Whereas**, lands have been set aside for the sole use and benefit of Indians;

**And Whereas**, it is the custom and convention of the Council of Walpole Island to establish laws for the protection and preservation of our culture and way of life, the Walpole Island First Nation shall regulate the residence of Band members and Non-Band members on the Reserve;

**And Whereas**, the Council of Walpole Island is empowered under Section 81(1), (p1), (q) and (r) of the Indian Act;

**And Whereas**, the Council of Walpole Island did enact By-law Number 48 on the 20<sup>th</sup> of September 1999, and wishes to repeal the said By-law Number 48 and replace it with this By-law;

**Now Therefore**, the Council of Walpole Island First Nation hereby make the following by-law:

**1. SHORT TITLE**

This law shall be cited as the "Walpole Island First Nation Residency By-Law"

**2. INTERPRETATION**

In this law:

"applicant" means a person who has submitted an application for permission to reside on Walpole Island First Nation.

"Band" means the Walpole Island First Nation.

"Banish" means the removal of a non-Band member from permission to reside for 5 years unless otherwise stated.

**"Council"** means the Council of the Walpole Island First Nation.

**"Member"** means a person whose name appears on the Walpole Island First Nation Band list or who is entitled to have his name appear on the Walpole Island First Nation Band list pursuant to the Indian Act or the membership rules of the Band.

**"Non-member"** means a person whose name does not appear on the Walpole Island Band list nor is entitled to have his name appear on the Walpole Island First Nation Band list pursuant to the Indian Act or the membership rules of the Band.

**"Officer"** means a police officer, police constable or other person charged with the duty to preserve, maintain public peace, and any by-law enforcement officer or other person appointed by Council for the maintaining of law and order.

**"Permanent Residence"** means the dwelling where a person resides on a more permanent basis than any where else.

**"Reserve"** means the Walpole Island First Nation, No. 46.

**"Reside"** means to live in a dwelling.

**"Residency Review Board"** means the members of Walpole Island delegated the authority to deal with all residency matters.

**"Residency Fee"** means the fee set and periodically reviewed by administration and subject to service charges.

**"Resident"** means a person who is entitled to reside on the reserve as provided by section 3 of this by-law.

**"Sponsorship"** means a Band member who agrees to take responsibility for an individual who is requesting to reside.

**"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 member of the Walpole Island First Nation.

**"Squatter"** means a non-member who has resided on Walpole Island First Nation without notice to the band or permission to reside.

**"Temporary Resident"** means a person who has been granted temporary permission to reside on Walpole Island First Nation for a specific period of time and under certain conditions.

**"Undesirable"** means a non-member who has committed or has been convicted of an offence under the bylaws of Walpole Island First Nation and/or an indictable offense under the Criminal Code of Canada or Young Offenders Act; any conviction in the United States; contravened International Laws or covenants; violates an aboriginal or treaty right or misrepresents themselves as an Indian.

**"Visitor"** means a person who is visiting Walpole Island First Nation for a period not exceeding sixty (60) days under the sponsorship of a band member.

### **3. RESIDENCY**

- (1) A person is entitled to reside on the Reserve only if:
  - (i) They are a registered member of the Reserve or entitled to be registered on the band list; according to the Indian Act.
- (2) They are non-members, but are:
  - (ii) a spouse of a member of the Reserve currently residing on the Reserve at the time this by-law comes into force;
  - (iii) a dependent child of a member of the Reserve under the age of eighteen years.

### **4. RESIDENCY CATEGORIES**

- (1) Any non-member may apply to the Residency Review Board (hereinafter referred to as the Board) for any of the following:
  - (i) Visitors Pass to stay for a period not exceeding 60 days;

- (ii) Temporary permission to reside;
- (iii) Permission to reside, or
- (iv) to reapply for permission to reside upon expiration of previously granted permission.

The Board may grant permission to reside for a period not exceeding one (1) year.

## **5. RESIDENCY REVIEW BOARD**

- (1) The Residency Review Board shall consist of five (5) members to:
  - (i) receive all residency requests;
  - (ii) to schedule and attend all residency and revocation hearings;
  - (iii) to make decisions regarding residency requests and revocation petitions.

## **6. APPLICATION FOR PERMISSION TO RESIDE**

- (1) All requests for Permission to Reside must be filed with the Membership Administrator and shall include the following:
  - (i) the applicant's reasons for applying for permission to reside;
  - (ii) the approximate time requesting for permission to reside;
  - (iii) the location at which the applicant proposes to reside;
  - (iv) the name of the spouse of the applicant; if any
  - (v) the name/s of the applicant's dependent children; if any
  - (vi) criminal check; and
  - (vii) any other information the applicant is requested to provide;
  - (viii) verification of source of income;
  - (ix) verification of hospitalization coverage and disability insurance coverage.
- (2) A non-refundable fee for processing of all applications and renewals will be set by administration and reviewed periodically.

## **7. HEARING**

- (1) Within sixty (60) days after the filing of a properly completed application, the Board shall invite the applicant to a regularly scheduled Board meeting, to review the application.
- (2) At least fourteen (14) days prior to the hearing, the Membership Administrator shall:
  - (i) give written notice to the applicant of the date, time and place of the next scheduled Board meeting and notify the applicant that they are to appear at the meeting and be heard in support of the application; and
  - (ii) post in the Band office a copy of the notice.
- (3) At the hearing, the Board shall:
  - (i) provide the applicant with an opportunity to present evidence and to make oral or written submissions, or both, in support of the application; and
  - (ii) provide any member present at the Board hearing with an opportunity to be heard.
- (4) The Board may make, draft and submit for Council approval, of procedure governing the hearing of the applications and shall keep records of its proceedings.

## **8. DECISION**

- (1) The Board shall make a decision regarding the application at the meeting.
- (2) In determining whether an application for permission to reside should be granted, the Board shall take into consideration the following:
  - (i) whether the applicant has arranged a place to reside on the reserve;
  - (ii) whether the applicant's residing on the reserve would be compatible with the culture, society of the reserve;

- (iii) whether the applicant is of good moral character;
  - (iv) whether the applicant is employed or has own source income;
  - (v) whether the applicant is prepared to commit his personal and economic resources for the betterment of the community;
  - (vi) the availability of adequate housing on the reserve.
- (3) The Board shall deal with all residency requests in the following manner:
- (i) Grant visitor's permit for less than 60 days under the sponsorship of a member;
  - (ii) grant temporary permission to reside for a specific period of time and under certain conditions;
  - (iii) grant permission to reside for one year;
  - (iv) grant an extension of previously granted permission to reside for a period of one additional year, or
  - (v) deny the application with stated reasons.

And shall give written notice of its decision to the applicant within five (5) business days of formal hearing.

- (4) Records of all Board meetings and decisions shall be recorded and compiled by designated staff.
- (5) Any applicant whose application is refused under this section may appeal to a Council of Elders pursuant to section 11.
- (6) Upon approval, a Residency Permit will be issued by the Membership Department.

## 9. REAPPLICATION

- (1) Where an application made under section 6 is refused pursuant to the provisions of section 8, the Board is not required to consider any further application from the applicant for a period of one (1) year from the date that the application was refused; unless the applicant can demonstrate that there has been a material change of circumstances.

**10. REVOCATION OF PERMISSION TO RESIDE**

(1) On the petition of ten (10) members, the Board may revoke the entitlement of any person to reside or banish any person from the Reserve who is referred to in section 3, other than a member or a **person granted permission by the Minister of Indian Affairs**; where after a hearing it has been shown that:

- (i) The person, while a resident of the reserve, has been convicted of an indictable offence under the Criminal Code (Canada); or is deemed undesirable according section 2 of this by-law;
- (ii) the person, within the period of their permission to reside has violated the conditions set by the Board;

And that it would be detrimental to the best interests of the reserve to permit the person to continue to be a resident of the reserve.

(2) Within thirty (30) days after the petition referred to in subsection (1) is received, the Board shall hold a hearing into the matter.

(3) At least fourteen (14) days prior to the hearing, the Membership Administrator shall:

- (i) give written notice to each petitioner and to the affected resident of the date, time and place of the hearing and informing the petitioner and the affected resident he/she has a right to appear at the hearing and to be heard;
- (ii) post in the Band office a copy of the notice.

(4) At the hearing the Board shall:

- (i) provide each petitioner and the affected resident with an opportunity to present evidence and to make oral or written submissions, or both, on the petition; and
- (ii) provide any member present at the hearing with an opportunity to be heard.

(5) The Board may draft and submit for Council approval rules of procedure governing the hearing of petitions under this section and shall keep records of its proceedings.

- (6) After it has heard all of the evidence and submissions, the Board shall meet in private to consider the petition.
- (7) Any revocation of entitlement of a person to reside on the reserve shall require a special majority of three-quarters (3/4) of the Board voting in favour of the petition and shall incorporate written reasons in support thereof.
- (8) The Board shall render its written decision within fifteen (15) days.
- (9) The date the Board renders its decision a notice of the decision shall be posted in the Band office.
- (10) A petition shall not be considered under this section for a resident who is under the age of sixteen (16) years.
- (11) No revocation or banishment of a resident's permission to reside on the reserve shall affect the entitlement of the spouse and children of that resident to continue to reside on the reserve.
- (12) A resident whose entitlement to reside on the reserve has been revoked or banished by the Board under this section may appeal the decision of the Board to the Council of Elders pursuant to section 11.

## **11. COUNCIL OF ELDERS**

- (1) The Council shall appoint a Council of Elders, consisting of five (5) Elders of Walpole Island First Nation to:
  - (i) hear appeals pursuant to sections 8 and 10 and to make recommendations to the Council.
- (2) Any recommendations of the Council of Elders requires the support of at least three (3) Elders.
- (3) The Council of Elders may draft and submit for Council approval rules of procedure governing appeals and shall keep records of its proceedings.



(4) All decisions of the Council of Elders shall be final.

**12. APPEALS**

(1) All decisions of the Board may be appealed to the Council of Elders; within thirty (30) days of the decision being rendered.

(2) Within thirty (30) days after the filing of the request, the Council of Elders shall conduct a hearing with respect to the appeal.

(3) At least fourteen (14) days prior to the date, time and place of the hearing, the Membership Administrator shall:

- (i) give written notice to the appellant of the date, time and place of the hearing and shall inform the appellant that he/she has a right to appear and make oral or written submissions, or both, at the hearing in support of the appeal; and
- (ii) post in the Band office a copy of the notice.

(4) At the hearing, the Council of Elders shall:

- (i) provide the appellant with an opportunity to present evidence and to make oral or written submissions, or both, in support of the appeal; and
- (ii) provide any member present at the hearing with the opportunity to be heard.

(5) After the Council of Elders has all of the evidence and submissions, they shall meet in private to consider the appeal.

(6) In determining whether to grant permission to reside the Council of Elders shall take into consideration the criteria set out in sections 8 and 10.

(7) Within ten (10) days the Council of Elders shall render a written decision regarding the application for permission to reside.

### **13. ENFORCEMENT**

- (1) An officer may order any person who is residing on the reserve and deemed a squatter according to section 2 of this by-law, to:
  - (i) cease to reside on the reserve.
- (2) where a person who has been ordered under subsection (1) to cease to reside on the reserve fails or refuses to do so within thirty (30) days after the order is made under this section, an officer may order the person to leave the reserve for a period of sixty (60) days.
- (3) any person who fails or refuses to comply with an order made under subsection (2) commits an offence.

### **14. PENALTIES**

Any person who contravenes any of the provisions of this by-law commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars (\$1000.00) or to imprisonment for a term not exceeding thirty (30) days, or both.

### **15. RESIDENCY FEE**

A residency fee, for the privilege of residing in this community and any services rendered shall be set and reviewed periodically by Walpole Island Administration.

**THIS BY-LAW IS HEREBY** made at a duly convened meeting of the Council of the Walpole Island Band this 2<sup>nd</sup> day of December, 1999.

Voting in favour of the by-law are the following members of the Council:

  
Member of Council

  
Member of Council

  
Member of Council

  
Member of Council

  
Member of Council

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Member of Council

The quorum is set at 5.

Number of members of the Council present at the meeting 5.

I, Joseph B. Gilbert, Chief of the Band, do hereby certify that an original of the foregoing By-law No. 49 was **mailed** to the Minister of the Indian Affairs pursuant to section 82 (1) of the Indian Act, this 2<sup>nd</sup> day of December 1999.

  
Chief

  
Witness

# BKEJWANONG TERRITORY

## RESOLUTION

### The Council of Three Fires



The Council of <b>WALPOLE ISLAND FIRST NATION</b>	Province <b>ONTARIO</b>	Chronological No. <b>#1855-99</b>						
Date of duly convened meeting	<table border="1"> <tr> <td>D</td> <td>M</td> <td>Y</td> </tr> <tr> <td>02</td> <td>12</td> <td>99</td> </tr> </table>	D	M	Y	02	12	99	Reference No.
D	M	Y						
02	12	99						

DO HEREBY RESOLVE:

### RESIDENCY BY-LAW

**Moved by:** Donald D. Isaac  
**Seconded by:** Helena Ermatinger

**WHEREAS** the Anishnabek of Walpole Island unceded Territory have inhabited these lands since the beginning of time, and have developed our own languages and culture in accord with the Creator, Mankind, and Nature;

**AND WHEREAS**, through this relationship, we have maintained the right and freedom to determine our own path.

**AND WHEREAS**, Walpole Island First Nation is land that has been set aside for the use and benefit of Indians;

**AND WHEREAS**, the members of Walpole Island First Nation have been born with a right to occupy these lands;

**AND WHEREAS**, it is the custom and convention of the Council of Walpole Island to establish laws for the protection and preservation of our culture and way of life, the Walpole Island Council shall regulate the residence of Non-Band members residing on the Reserve;

**AND WHEREAS**, the Council of Walpole Island is empowered under Section 81 (1) (p1), (q) and (r) of the Indian Act,

**NOW THEREFORE**, the Council of Walpole Island First Nation hereby approves the attached Residency By-law #49, dated this 2<sup>nd</sup> of December, 1999.

**CARRIED**

Quorum 5

*Shub Luthy*  
Councillor

*Helena Ermatinger*  
Councillor

*Ray Isaac*  
Councillor

*Erndy Band*  
Councillor

*Joseph B. Miller*  
Chief

*Donald D. Isaac*  
Councillor

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E: The words "from our Band Funds" "capital" or "revenue", whichever is the case, must appear in all resolutions requesting expenditures from Band Funds.