

DUNCAN FIRST NATION BAND RESIDENCY BY-LAW

BY-LAW NO. 1

OF THE DUNCAN FIRST NATION BAND

**A BY-LAW GOVERNING THE RESIDENCE OF
BAND MEMBERS AND OTHER PERSONS ON THE
DUNCAN FIRST NATION INDIAN RESERVE**

WHEREAS the Council of the Duncan First Nation Band desires to make a by-law governing the residence of Band Members and other persons on the reserve;

AND WHEREAS the Council of the Duncan First Nation Band is empowered to make such by-law pursuant to paragraphs 81(1) (p.1) (q) and (r) of the Indian Act;

AND WHEREAS it is considered necessary for the health and welfare of the Duncan First Nation Band to regulate the residence of Band Members and other persons on the reserve;

NOW THEREFORE the Council of the Duncan First Nation Band hereby makes the following by-law:

Short Title

1. This by-law may be cited as the "Duncan First Nation Band 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;

"*band*" means the Duncan First Nation Band;

"*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 Council, as defined in the Indian Act, of the Duncan First Nation Band;

"*dwelling*" means any house, apartment, mobile home, or a room located therein, or any similar lodging suitable for habitation;

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

"*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 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 at any other place at which the person may reside from time to time;

"*reserve*" means the Duncan First Nation Indian Reserve number 151A;

"*reside*" means to live in dwelling, otherwise than as a visitor to the reserve;

"*resident*" means a person who is entitled to reside on the reserve, as provided by section 3;

"*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 Duncan First Nation Band.

Entitlement to Reside on Reserve

3. (1) A person is entitled to reside on the reserve only if the person
- (a) has his principal residence on the reserve at the time this by-law comes into force and only until he ceases to have a principal 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 subsections 28(2) and 58(3); or
 - (c) has the permission of the Council pursuant to section 7, or of the Committee of Elders pursuant to section 12, to be a resident of the reserve.
- (2) A spouse or dependent child of a person who is entitled to reside on the reserve under subsection (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) Notwithstanding subsection (2), any spouse or dependent child of a person who has been granted permission to reside on the reserve for a defined period is not entitled to reside on the reserve after the end of that defined period.

Registrar of Residents

4. (1) The Council shall appoint a Registrar of Residents to provide for the administration of applications, petitions and appeals 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 of residence; and
 - (d) the location of each resident's dwelling.

Application to be a Resident

5. (1) Any person may apply to the Council for permission to be a resident of the reserve or to extend any defined period for which permission was previously granted to the person by the Council to be a resident of the reserve.
- (2) The application 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 the applicant's spouse, if any;
 - (e) the names of the applicant's dependent children, if any; and
 - (f) any additional information the applicant wishes to provide relating to the considerations listed in subsection 7(2).

Hearing

- 6.(1) Within sixty (60) days after the filing of a properly completed application, the Council 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 has a right to appear at the hearing and be heard in support of the application; and
 - b) post in the Band office a copy of the notice.
- (3) At the hearing, the Council shall
 - (a) provide the applicant with an opportunity to present evidence and to make oral and written submissions, or both, in support of the application; and
 - (b) provide any resident present at the hearing with an opportunity to be heard.
- (4) The Council may make rules of procedure governing the hearing of applications and shall keep records of its proceedings.

Decision

- 7.(1) After it has heard all of the evidence and submissions, the Council 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 Council 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 Band and welfare of the members of the Band 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; and
 - (f) whether the applicant is or will be employed on the reserve.
- (3) Where the applicant is a member of the Band, the Council shall consider only the criteria enumerated in paragraphs (2) (a) and (e).
- (4) Within ten (10) days after the hearing, the Council shall dispose of the application by
 - (a) granting the applicant permission to be a resident of the reserve for an indefinite period 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 Council to be a resident of the reserve;
 - (d) or refusing the application,and shall give written notice of its decision to the applicant, incorporating reasons in support of its decision.

- (5) Within five (5) days after disposing of the application, the Council shall post a notice of its decision in the Band office.
- (6) Any applicant whose application is refused under this section may appeal to the Committee of Elders pursuant to section 12.

Reapplication

8. Where an application made under section 5 is refused pursuant to the provisions of section 7, the Council 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.

Enforcement

9. (1) An officer may order any person who is residing on the reserve, and who is not a resident, to 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 subsection (1), an officer may issue a further order prohibiting the person from being on or re- entering 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 offense.
- (4) Every one who assists a person who has been ordered to cease to reside on the reserve, to continue to reside on the reserve commits an offence.

Revocation of Entitlement to Reside

10. (1) On the petition of any ten (10) residents, the Council may revoke the entitlement of any person to reside on the Reserve who is referred to in section 3, other than a member of the Band or a person referred to in paragraph 3(1)(b), where, after a hearing, it has been shown that
 - (a) the person, while a resident of the reserve, has been convicted of an indictable offence under the Criminal Code (Canada) for which a pardon has not been granted; or

- (b) the person, within any period of two years while residing on the reserve, has committed two (2) or more offenses under the Criminal Code (Canada), against the person or property of another resident, for which he has been convicted and for which a pardon or pardons have not been granted;

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

- (2) Within thirty (30) days after the petition referred to in subsection (1) is received by Council, the Council shall hold a hearing into the matter.
- (3) At least fourteen (14) days prior to the hearing, the Registrar of Resident shall
 - (a) 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 that he has a right to appear at the hearing and to be heard; and
 - (b) post in the Band office a copy of the notice.
- (4) At the hearing, the Council shall
 - (a) provide each petitioner and the affected resident with 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.
- (5) The Council may make 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 Council 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 two-thirds (2/3) of the Council voting in favour of the petition and shall incorporate written reasons in support thereof.
- (8) Within ten (10) days after the hearing, the Council shall render its decision in writing to the petitioners and the affected resident.
- (9) Within five (5) days after the Council's decision, the Council shall post a notice of the decision in the Band office.

- (10) A petition shall not be considered under this section in respect of a resident who, at the time of the petition, is under the age of sixteen (16) years.
- (11) No revocation of a resident's entitlement 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 by the Council under this section may appeal the decision of Council to the Committee of Elders pursuant to section 12.

Committee of Elders

11. (1) The Council shall appoint a Committee of Elders, consisting of five (5) Elders of the Duncan's First Nation Band, to hear appeals pursuant to sections 7 and 10 and to make recommendations to the Band Council.
- (3) Any recommendation of the Committee of Elders requires the support of at least three (3) Elders.
- (3) The Committee of Elders may make rules of procedure governing appeals and shall keep records of its proceedings.

Appeals

12. (1) Within thirty (30) days after the posting of a notice of the Council's decision in the Band office, the applicant in the case of section 7, or the affected resident in the case of section 10, may appeal the Council's decision to the Committee of Elders by filing a written request with the Registrar of Residents that the Committee of Elders hear the appeal.
- (2) Within thirty (30) days after the filing of the request, the Committee of Elders shall conduct a hearing with respect to the appeal.
- (3) At least fourteen (14) days prior to the date of the hearing, the Registrar of Residents shall
 - (a) give written notice to the appellant of the date, time and place of the hearing and shall inform the appellant that he has the right to appear and make oral or written submissions, or both, at the hearing in support of the appeal; and
 - (b) post in the Band office a copy of the notice.

- (4) At the hearing, the Committee of Elders shall
 - (a) provide the appellant with an opportunity to present evidence and to make oral or written submissions, or both, in support of the appeal; and
 - (b) provide any resident present at the hearing with the opportunity to be heard.
- (5) After it has heard all of the evidence and submissions, the Committee of Elders shall meet in private to consider the appeal.
- (6) In determining whether an appeal should be allowed, the Committee of Elders shall take into consideration the criteria set out in subsections 7(2) and (3) in the case of a section 7 appeal, and the criteria set out in subsection 10(1) in the case of a section 10 appeal.
- (7) Within ten (10) days after hearing the appeal the Committee of Elders shall make written recommendations to the Council.
- (8) The Committee of Elders shall give written notice of its decision to the appellant.

Final Decision

13. (1) Within ten (10) days after the Council has received the recommendations referred to in subsection 12(7), the Council shall dispose of the application by
 - (a) granting the applicant permission to be a resident of the reserve for an indefinite period 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; extending any defined period for which permission was previously granted to the person by the Council to be a resident of the reserve;
 - (c) or refusing the application,and shall give written notice of its decision to the applicant.
- (2) Within five (5) days after disposing of the application, the Council shall post a notice of its decision in the Band office.

Penalties

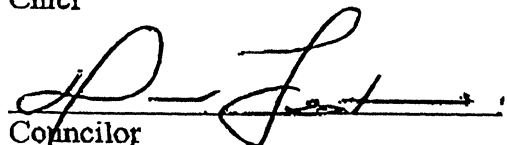
14. Any person who contravenes any of the provisions of this by-law commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars (\$1,000.00) or to imprisonment for a term not exceeding thirty (30) days, or both.

THIS BY-LAW IS HEREBY enacted at a duly convened meeting of the Council of the DUNCAN FIRST NATION BAND this 9th day of May, 2005.

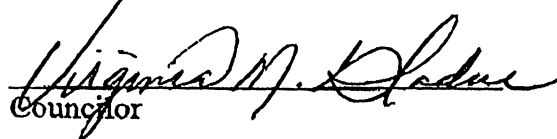
Voting in favour of the by-law are the following members of the Council:



Chief



Councillor



Councillor

being a majority of those members of the Council of the Duncan First Nation Band present at the aforesaid meeting of the Council.

The quorum of the Council is Two (2) members.

Number of members of the Council present at the meeting: three.