

**Halfway River First Nation**

**By-law No. 2016-002**

**A By-law Governing Residency of Members and Other Persons on Reserve**

**WHEREAS** the Council of the Halfway River First Nation desires to make a by-law governing the residency of Members and other persons on the Halfway River Reserve No. 168 (the "Reserve") with respect to any matter arising out of or ancillary to the exercise of powers under section 81 of the *Indian Act*, and for the imposition of a penalty for a violation thereof;

**AND WHEREAS** the Council of the Halfway River First Nation is empowered to make such a by-law pursuant to section 81(1) paragraphs (c), (d), (p), (p.1), (q), (r); 81(2); and 81(3) of the *Indian Act*, R.S.C., c. I-5;

**AND WHEREAS** it is considered to be expedient and necessary for the benefit, comfort and safety of the inhabitants of the Halfway River First Nation Reserve to provide for the residency of Members and other persons on the Reserve;

**NOW THEREFORE** the Council of the Halfway River First Nation hereby enacts the following by-law:

**PART 1 - INTERPRETATION AND APPLICATION**

**Short title**

1. This by-law may be cited as the "*Halfway River First Nation Residency By-law*".

**Application**

2. This by-law applies to all Members and Residents on the Reserve.

**Interpretation**

3. In this by-law:

“**Band Housing**” means any Residence located on the Reserve that is owned by Halfway River First Nation;

“**Council**” means the Chief and Council of the Halfway River First Nation, as defined in the *Indian Act* and lawfully elected in accordance with the *Indian Act* or custom election code, as the case may be;

“**Criminal History Information Check**” means a search being made by a police enforcement agency of the automated criminal records retrieval system maintained by the Royal Canadian Mounted Police (“RCMP”).

“**Halfway River First Nation**” means the Halfway River First Nation, a band within the meaning of the *Indian Act*;

“**Legal Justification**” means, an individual entitled to be present on The Reserve, either by being a Resident on The Reserve, being a Member of the Halfway River First Nation, or on an implied invitation to the public;

“**Member**” means a registered Member of the Halfway River First Nation as recorded in the membership list maintained by Aboriginal Affairs and Northern Development Canada;

“**Officer**” means any peace officer or other person charged with the duty to preserve and maintain the public peace, a by-law enforcement officer, or any other person appointed by the Council for the purpose of maintaining law and order on the Reserve;

“**Order**” includes an order for the payment of money;

“**Proceedings**” means:

- (a) proceedings in respect of offences, and
- (b) proceedings in which a Justice is authorized by an enactment to make an order;

“**Reserve**” means Halfway River Indian Reserve No. 168, any land held for the use and benefit of the Halfway River First Nation pursuant to section 36.1 of the *Indian Act*, and any future Reserve set aside by Her Majesty for the use and benefit of the First Nation;

**"Reside"** means to live in a Residence as one's primary place of abode;

**"Residence"** means any Band Housing, or other dwelling, house, apartment, mobile home, travel trailer, or room located therein, situated on The Reserve, which the Member or other person is lawfully entitled to occupy;

**"Resident"** means:

- (a) a Member who was residing on the Reserve prior to the date of enactment of this by-law;
- (b) a Member who applied pursuant to the provisions contained within this by-law and who was granted permission by Council to Reside on the Reserve;
- (c) a non-Member who has been granted permission by Council to Reside on the Reserve; and
- (d) Resident Members who are temporarily absent from their Residence on the Reserve because of schooling, work, travel, medical treatment, or similar purposes;

**"Resolution"** means a decision made at a duly-convened meeting of a quorum of Council, and recorded in writing;

**"Specified Use"** in relation to a Residence means use of the Residence:

- (a) for the production, manufacture, supply, sale, transfer, or exchange of an intoxicating substance where there is a reasonable basis to believe that the recipient will use or consume the substance as an intoxicant, or cause or permit the substance to be used or consumed as an intoxicant;
- (b) for the possession, use, production, consumption, sale, transfer, or exchange of, or traffic in, a controlled substance as defined in the *Controlled Drugs and Substances Act* (Canada) in contravention of that Act; or
- (c) for prostitution or activities related to prostitution.

## PART 2 - ENTITLEMENT TO RESIDE ON RESERVE

### Entitlement to Reside on Reserve

4. A person is entitled to Reside on the Reserve only if the person is a Resident and:
  - (a) Resides on the Reserve at the time this by-law comes into force and that person's right to so Reside does not expire and is not revoked either pursuant to this by-law or pursuant to the Halfway River First Nation *Law and Order By-law 2016-001* (the "Law and Order By-law");
  - (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) is authorized to Reside on the Reserve pursuant to subsections 7(4)(a),(b),(c), or (d) of this by-law.

### Registrar of Residents on Reserve

5. (1) Council may appoint a Registrar of Residents to provide for the administration of applications, and reapplications made under this by-law and to maintain records related to Reserve residency.
  - (2) Council or the Registrar of Residents, as the case may be, shall maintain a Resident 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 residency;
    - (d) the location of each Resident's Residence; and
    - (e) whether each Resident is a Status Indian.

## **Application to be a Resident**

6. (1) Any person or family who wishes to become a Resident of the Reserve must apply to Council or the Registrar of Residents, as the case may be, for permission to Reside on the Reserve or to extend any defined period for which permission was previously granted to the person or family to Reside on the Reserve.
- (2) An application for residency 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 residency;
  - (c) the location at which the applicant proposes to Reside, if known;
  - (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 subsection 7(1);
  - (h) copies of a Criminal History Information Checks provided by the applicant for themselves and for all persons over the age of eighteen (18) years who are likely to Reside with the applicant; and
  - (i) copies of driver's licenses, and Status Cards, if any for each person who is included in the application to Reside on the Reserve.

## Decision on Application for Residency

7. (1) In determining whether an application for permission to be a Resident of the Reserve should be granted, 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 residing on the Reserve would be compatible with the culture, society and community of Halfway River First Nation and welfare of the Members of Halfway River First 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 their personal and economic resources to the welfare and advancement of the community residing on the Reserve;
  - (e) the availability of adequate housing, land and services on the Reserve;
  - (f) whether the applicant is or will be employed on the Reserve;
  - (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 applicant's circumstances;
  - (h) whether the person has previously been issued an Order under the *Law and Order By-law*; or
  - (i) whether the presence of the applicant on the Reserve presents or would present a danger to the health or safety of the community.
- (2) Notwithstanding subsection 7(1), where the applicant is a Member, Council shall only consider the criteria enumerated in subsections 7(1)(a),(e),(g),(h) and (i).

- (3) Prior to making a determination regarding an application for residency under section 7(1) Council shall give a reasonable opportunity for and shall consider the views of the applicant and Reserve Residents.
- (4) Within thirty (30) days after receiving an application for residency and after hearing and considering the views of the applicant and Reserve Residents, Council shall, by Resolution, dispose of the application by either expressly:
  - (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) granting the applicant provisional permission to be a Resident of the Reserve, on the condition that suitable Band Housing becomes available to the applicant within one (1) year, after which time the provisional permission to be a Resident will automatically expire;
  - (d) extending any defined period for which permission was previously granted to the person by Council to be a Resident of the Reserve; or
  - (e) dismissing the application;

and Council shall give written notice of its decision to the applicant, incorporating the reasons in support of its decision.

- (5) A decision by Council pursuant to subsection 7(4) shall be final and not subject to appeal.

### **Reapplication for Residency**

8. (1) A person can re-apply for permission to be a Resident upon the expiry of:
  - (a) any provisional permission to be a Resident that was previously granted by Council pursuant to subsection 7(4)(c); or

- (b) any extension of a defined period for which permission was previously granted to the person by Council to be a Resident on Reserve pursuant to subsection 7(4)(d).
- (2) Where an application for residency is dismissed pursuant to subsection 7(4)(e), unless a material change in circumstances has occurred, Council is not required to consider a further application for residency by that person for a period of one (1) year from the date of dismissal of the application for residency.

### **Revocation of Resident Status**

- 9. (1) Council may, by Resolution, issue an Order revoking the right of a person to Reside on the Reserve where activities occurring at or near their Residence gives rise to a reasonable inference that the Residence is being habitually used for a Specified Use, or where unreasonable damage to Band Housing is occurring.
- (2) Prior to making a determination regarding revocation of a person's right to Reside on the Reserve under section 9(1), Council shall give a reasonable opportunity for and shall consider the views of the person whose Resident status is at issue, as well as the views of other Reserve Residents.
- (3) Council's Order revoking a person's right to Reside on the Reserve pursuant to subsection 9(1) may be either of a fixed or indeterminate duration.
- (4) A decision by Council pursuant to subsection 9(1) shall be final and not subject to appeal.
- (5) A person whose right to Reside on the Reserve was revoked under subsection 9(1) may submit an application to regain their Resident status either:
  - a) upon the expiry of the initial subsection 9(2) Order revoking their right to Reside on the Reserve; or
  - b) upon the expiry of one (1) year from the date upon which the Order revoking the person's right to Reside on the Reserve was issued by Council.



- (6) A copy of Council's decision to revoke a person's right to Reside on the Reserve pursuant to subsection 9(1) shall be sent to the Royal Canadian Mounted Police ("RCMP") detachment in Fort St. John, and to any other relevant police agency.

### **Effective Time of Revocation**

10. (1) Where the right of a person to Reside on the Reserve has been revoked by a Resolution pursuant to subsection 9(1) of this by-law or revoked or limited by sections 4 or 5 of the *Law and Order By-law*, the Resident's right to Reside on the Reserve shall expire twenty-four (24) hours from the time that the decision is communicated to the Resident.  
  
(2) A person whose right to Reside on the Reserve has been revoked pursuant to subsection 9(1) of this by-law or revoked or limited by sections 4 or 5 of the *Law and Order By-law*, shall not attend on the Reserve for any purposes whatsoever without obtaining the prior written consent of Council in accordance with section 11.

### **Visits**

11. (1) A person whose entitlement to Reside on the Reserve has been revoked pursuant to subsection 9(1) of this by-law or where their ability to occupy the Reserve is revoked or limited by section 4 of the *Law and Order By-law* may apply to Council for permission to visit the Reserve for the purposes of funerals, ceremonies, and other special occasions.  
  
(2) A person making application to attend on the Reserve for a visit under subsection 11(1) shall include in his or her application the dates upon which the person proposes to visit the Reserve, the purpose of the visit, where on Reserve the person will be present, and any additional information or submissions the person wishes Council to consider.  
  
(3) Council shall use its best efforts to consider and determine applications under this section expeditiously, and in advance of the proposed visitation dates.  
  
(4) Council may, without holding a hearing into the matter, consider and determine applications to visit submitted pursuant to subsection 11(1) on the basis of the written

application, and by Resolution, issue an Order either granting or dismissing the application.

(5) A decision by Council under this subsection is final and not subject to appeal.

### **PART 3 - ENFORCEMENT**

#### **Removal of Trespassers by an Officer**

12. (1) A person will have entered on the Reserve without Legal Justification and will be deemed to be trespassing on the Reserve in accordance with Section 5 of the *Law and Order By-law* or the where a person Resides on the Reserve without being entitled to do so pursuant to subsection 4 of this by-law, or where a Resident fails or refuses to comply with an Order revoking their right to Reside on the Reserve pursuant to subsection 9(1) of this by-law, or refuses to comply with an Order revoking or limiting a person from occupying the Reserve under section 4 of the *Law and Order By-law*.

(2) An Officer may take such reasonable measures as may be necessary to remove a person from the Reserve who is trespassing pursuant to subsection 12(1).

#### **Offences**

13. (1) A person commits an offence who:

(a) fails or refuses to comply with an order dismissing an application for residency issued pursuant to subsection 7(4)(e), revoking their right to Reside on Reserve pursuant to subsection 9(1) or dismissing an application to visit on the Reserve pursuant to subsection 11(4); or

(b) resists or interferes with an Officer acting under subsection 12(2).

(2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding one thousand dollars (\$1,000), or to imprisonment for a term not exceeding thirty (30) days, or to both fine and imprisonment.

(3) Each day that a contravention of this by-law persists constitutes a separate offence.

### **Enforcement Proceedings**

14. Council may obtain a court order, pursuant to s. 81(3) of the *Indian Act*, restraining a person from acting in contravention of this by-law.
15. Sections 8 through 33 of Halfway River First Nation's Law and Order By-law apply with respect to commencing and proceeding with enforcement of this by-law.

## **PART 4 - GENERAL PROVISIONS**

### **Enactment**

16. This by-law comes into force after it is executed by a quorum of Council of Halfway River First Nation and on the date that the by-law is first published in either the *First Nations Gazette* or on Halfway River First Nation's website.
17. If a court determines that a provision of this by-law is invalid for any reason, then the provision shall be severed from the by-law and the validity of the rest of the by-law shall not be affected.

### **Amendment**

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

### **Repeal**

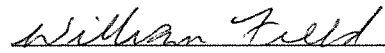
19. Any previous Halfway River First Nation Residency By-laws are repealed and


replaced by this by-law: *By-law No 2016-002 A By-law Governing Residency of Members and Other Persons on Reserve.*

The quorum of Council is two (2).

The following members of the Council, constituting a majority, voted in favour of this by-law at a duly convened meeting held this 8 day of MARCH, 2016:

  
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Chief Darlene Hunter

  
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Councillor William Field

  
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Councillor Cynthia Wolter