

## Halfway River First Nation

### By-law No. 2014-

#### A By-law for the Observance of Law and Order

**WHEREAS** the Council of the Halfway River First Nation desires to make a by-law governing the observance of law and order and the residence of band members and other persons on 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 paragraphs 81(1)(c), (p.1), (q), and (r) 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 observance of law and order on the reserve and for the residence of band members and other persons on reserve;

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

#### 1. SHORT TITLE

1.1. This by-law may be cited as the “Halfway River First Nation Law and Order By-law”.

#### 2. INTERPRETATION

2.1. In this by-law:

“**Band Council Resolution**” means a resolution in writing of a Council, passed by the majority of the Councillors present at a meeting at which a quorum is constituted;

“**Council**” means the Chief and Council of the Halfway River First Nation, elected in the accordance with the *Indian Act*;

“**dangerous person**” means a person that has been convicted, without receiving a pardon, of one or more of the offences listed in s. 762 of the *Criminal Code of Canada* as a “designated primary offence” and any person designated as a “dangerous person” pursuant to this by-law;<sup>i</sup>

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

“**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;

“**Reserve**” means Halfway River Indian Reserve No. 168, any land held for the use and benefit of the First Nation pursuant to section 36 of the *Indian Act*, and any future reserve set aside by Her Majesty for the use and benefit of the First Nation; and

“**Reserve Resident**” means any person that ordinarily resides on the Reserve or has lawful authority to use, possess, or occupy land on the Reserve.

### 3. CRIMINAL RECORD PRODUCTION ORDER

3.1. If Council reasonably believes that the presence of a person on the Reserve may pose a threat to the observance of law and order on the Reserve, Council may, by Band Council Resolution, issue to such a person a Criminal History Information Order requiring that person to provide to Council, within 30 days of receiving the order:

3.1.1. a written consent authorizing Council to conduct a criminal record check; or

3.1.2. a signed declaration indicating whether the person been convicted, without receiving a pardon, of one or more of the offences listed as a “designated primary offence” in s. 762 of the *Criminal Code of Canada*, and where the person has been so convicted, a signed declaration listing which of these offences the person has received a conviction.

3.2. If:

3.2.1. Council believes on the basis of a criminal record check conducted pursuant to section 3.1.1 or a written declaration received pursuant to section 3.1.2 that a person has been convicted of one or more of the offences listed as a “designated primary offence” in s. 762 of the *Criminal Code of Canada*; or

3.2.2. a person fails or refuses to comply with an order received pursuant to section 3.1 within 30 days of receiving that order;

then Council may, by Band Council Resolution, designate such a person as a dangerous person.

#### **4. DANGEROUS PERSONS ON RESERVE**

4.1. Subject to the limitations imposed by law and to sections 4.2 and 4.3, Council may, by Band Council Resolution, do one or more of the following to restrict or prohibit the residence of a dangerous person on Reserve:

4.1.1. post the name of a dangerous person in a public place, or otherwise inform Reserve Residents of the presence of a dangerous person on the Reserve;

4.1.2. issue an order to:

4.1.2.1. prohibit or restrict the dangerous person from attending specified locations or events on the Reserve;

4.1.2.2. prohibit a dangerous person from being within a prescribed distance from a particular person or persons;

4.1.2.3. limit the duration for which a dangerous person may occupy the Reserve on a given visit;

4.1.2.4. limit the number of times a dangerous person may frequent the Reserve within a specified period of time;

4.1.2.5. evict a dangerous person from housing on reserve; and

- 4.1.2.6. banish a dangerous person from using, occupying, or possessing land on the Reserve, either for a specified duration or until express permission is granted in the form of a Band Council Resolution, for a period not exceeding one (1) year.
- 4.2. For greater certainty, a order made pursuant to section 4.1.2.6 may be renewed by Council on a yearly basis, subject to sections 4.3 and 4.4.
- 4.3. When considering whether to impose any prohibitions or conditions pursuant to section 4.1, Council may consider the following:
- 4.3.1. whether the behaviour for which the conviction was received, if repeated, poses any threat to the peace or safety of Reserve Residents or to Council's ability to ensure the observation of law and order on Reserve;
  - 4.3.2. the circumstances and the particulars of the offence or offences for which the dangerous person has been convicted, including:
    - 4.3.2.1. whether the offence or offences occurred on the Reserve;
    - 4.3.2.2. whether the offence or offences involved a Reserve Resident;
    - 4.3.2.3. the age of the dangerous person when the offence or offences occurred;
    - 4.3.2.4. any extenuating circumstances;
    - 4.3.2.5. the length of time that has elapsed between the commission of the offence or offences, including:
      - 4.3.2.5.1. what the dangerous person has done during that period of time;
      - 4.3.2.5.2. whether the dangerous person has shown any tendencies to repeat the kind of behaviour for which he or she received the conviction or convictions;

- 4.3.2.6. whether the dangerous person has shown a firm intention to rehabilitate himself or herself;
- 4.3.2.7. whether the dangerous person has failed to comply with previous orders issued pursuant to section 4; and
- 4.3.2.8. any other factor that Council reasonably believes is relevant to the determination of whether the residence of the dangerous person on the Reserve represents a threat to the peace and safety of Reserve Residents or to the observance of law and order on the Reserve.

4.4. Prior to imposing any prohibitions or conditions pursuant to section 4, Council shall give a reasonable opportunity for and shall consider the views of the dangerous person and Reserve Residents concerning whether the dangerous person represents a threat to the peace and safety of Reserve Residents or to the observance of law and order on the Reserve;

## **5. ENFORCEMENT**

5.1. Where a person who has received an order pursuant to section 4 fails or refuses to comply with such an order, an officer may take such reasonable measures as are necessary to enforce that order.

## **6. OFFENCE AND PENALTY**

6.1. A person who fails or refuses to comply with an order made under sections 3 or 4, or who resists or interferes with an officer acting under section 5, is guilty of an offence and liable on summary conviction to a fine not exceeding one (1) thousand dollars or to imprisonment for a term not exceeding thirty (30) days or to both.

## **7. TRESPASSING**

7.1. A person commits an offence of trespass if the person does any of the following:

- 7.1.1. enters the Reserve without lawful justification;
- 7.1.2. frequents reserve for a prohibited purpose;
- 7.1.3. enters premises without the occupier's permission;

7.1.4. engages in an activity on or in a premise after the person has had notice from the occupier of the premises that the activity is prohibited; or

7.2. For greater certainty, section 7.1, does not apply to a person who is Reserve Resident.

**8. ENFORCEMENT**

8.1. Where a person who has been ordered to leave the Reserve in accordance with section 7 and fails or refuses to comply with such an order, an officer may take such reasonable measures as are necessary remove that person from the Reserve.

**9. OFFENCE AND PENALTY**

9.1. A person who fails or refuses to comply with an order made under section 7, or who resists or interferes with an officer acting under section 8, is guilty of an offence and liable on summary conviction to a fine not exceeding one (1) thousand dollars or to imprisonment for a term not exceeding thirty (30) days or to both.

**10. BY-LAW ENFORCEMENT OFFICER**

10.1. Council may, by Band Council Resolution, provide for the appointment and the reasonable remuneration of a by-law enforcement officer.

**11. ENACTMENT**

11.1. This By-law is hereby enacted by the Council of the Halfway River First Nation at a duly convened meeting held on the 18 day of December, 2014.

The quorum of Council is two (2).

Chief

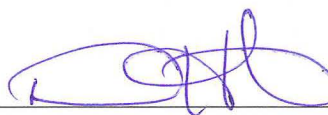
Councillor

Councillor

I, Darlene Hunter, Chief / Councillor of the Halfway River First Nation do hereby certify that a true copy of the foregoing By-Law was mailed to the Minister of Aboriginal Affairs and Northern Development pursuant to section 82(1) of the *Indian Act*, this 18 day of December 2014.



Witness



Chief/Councillor

<sup>i</sup> Section 762:

"primary designated offence" means

(a) an offence under any of the following provisions:

- (i) section 151 (sexual interference),
- (ii) section 152 (invitation to sexual touching),
- (iii) section 153 (sexual exploitation),
- (iv) section 155 (incest),
- (v) section 239 (attempt to commit murder),
- (vi) section 244 (discharging firearm with intent),
- (vii) section 267 (assault with weapon or causing bodily harm),
- (viii) section 268 (aggravated assault),
- (ix) section 271 (sexual assault),
- (x) section 272 (sexual assault with weapon, threats to third party or causing bodily harm),
- (xi) section 273 (aggravated sexual assault), and
- (xii) subsection 279(1) (kidnapping),

(b) an offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as they read from time to time before January 4, 1983:

- (i) section 144 (rape),
- (ii) section 145 (attempt to commit rape),
- (iii) section 149 (indecent assault on female),
- (iv) section 156 (indecent assault on male),
- (v) subsection 245(2) (assault causing bodily harm), and
- (vi) subsection 246(1) (assault with intent) if the intent is to commit an offence referred to in any of subparagraphs (i) to (v) of this paragraph,

(c) an offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as enacted by section 19 of *An Act to amend the Criminal*

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*Code in relation to sexual offences and other offences against the person and to amend certain other Acts in relation thereto or in consequence thereof*, chapter 125 of the Statutes of Canada, 1980-81-82-83:

- (i) section 246.1 (sexual assault),
  - (ii) section 246.2 (sexual assault with weapon, threats to third party or causing bodily harm), and
  - (iii) section 246.3 (aggravated sexual assault),
- (d) an offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as they read from time to time before January 1, 1988:
- (i) subsection 146(1) (sexual intercourse with female under age of 14), and
  - (ii) paragraph 153(1)(a) (sexual intercourse with step-daughter), or
- (e) an attempt or conspiracy to commit an offence referred to in any of paragraphs (a) to (d);