

WAGMATCOOK BAND RESIDENCY AND MEMBERSHIP BY-LAW

WHEREAS:

The Reserve lands and other benefits available to the Wagmatcook Band represent the heritage and legacy of the Wagmatcook First Nation and are intended for the sole use, benefit and enjoyment of Wagmatcook Band members;

The Wagmatcook Band members' right and access to those benefits must be protected and preserved for the benefit of the Wagmatcook Band membership;

The capacity to gain Band membership and Band residency, and the benefits such status brings, affects all aspects of life on the Reserve; including but not limited to capital and operational budgeting, service delivery, cultural protection and advancement, efforts to secure fair exercise of treaty and aboriginal rights, the health and general welfare of the community and its members, and all other aspects of life as First Nations' people;

The Wagmatcook Band Council believes that the Wagmatcook community must have its own voice heard with respect to the addition of any new Band member and, except where a person specifically gains Band membership as a result of any legislative change by the Parliament of Canada or any final and binding decision of a superior court of Canada, the community shall the right to vote whether or not to admit new Band members seeking to join the Band membership by application;

A stable and cohesive Band community, regulated by fair and understandable membership and residency rules, is essential to long-term survival of the Wagmatcook Band as one of Canada's First Nations;

The Wagmatcook Band Council intends hereby to enact clear and fair rules for membership and residency for the benefit of all present and future Wagmatcook Band members and residents.

DEFINITIONS:

The following definitions shall apply to the whole of this By-law. Where the *Indian Act* defines a word or term used in this By-law, that definition shall apply as well as the definition herein, and any contradiction will be resolved in favour of the definition in the *Indian Act*:

"Applicant" means a person who is not a Band member who applies for Band membership or residency.

"Band" means, in this By-law, the Wagmatcook Band.

"Band member" means a member of the Wagmatcook Band.

“Elder” means a Band member of sixty (60) years of age or more.

“Registrar” means Band Council, or a person appointed from time to time by Band Council to carry out the duties of a Registrar described herein.

“Reserve” means any land with reserve status under the *Indian Act* that is held for the benefit of the Wagmatcook Band as set out in the *Indian Act*.

“Resident” means any person authorized by this By-law to reside on the Reserve, and does not include a temporary visitor to the Reserve, or someone staying on Reserve as a temporary guest of Resident.

“Spouse” means a lawfully married husband or wife, and includes a common-law spouse where the spouse has been in the common-law relationship for five (5) years or more.

PART I - REGISTRAR:

1. Council may appoint a Registrar who will administer all applications for residency or membership and ensure that the Band’s records accurately reflect all those who are granted residency or membership under this By-law, and that the records are kept confidential, secure and current.

PART II - MEMBERSHIP:

2. Chief and Council have the sole authority under this By-law to determine Band membership.
3. A Band membership list shall be maintained by the Registrar and located at the Band administration offices. Inclusion on this list shall be prima facie proof of Band membership.
4. The following persons shall have the right to be included, without having to make application to Council, on the Band membership list:
 - a) any person who was a listed Band member at the date of this By-law coming into effect;
 - b) any person who is the natural child of parents who are or, if deceased, were listed Band members; and
 - c) any person who specifically becomes entitled to Band membership as a result of any legislative change by the Parliament of Canada or any final and binding decision of a superior court of Canada;

5. The following persons shall, upon application to Council, have the right to be considered for inclusion in the Band membership list:
 - a) any person who is the natural child of parents, one of whom was a Band member at the time of that child's birth;
 - b) any person who was once a Band member but, for any reason, lost that status;
 - c) any person whose parents, whether alive or not, would have both been, at any time, entitled to apply for membership under this section; and
 - d) a spouse or a child of a Band member, where that spouse or child is not otherwise entitled to Band membership under this By-law.
6. Notwithstanding Section 5 above, no person under twenty-one (21) years of age may make an application for Band membership
7. Subject to the provisions respecting plebiscite voting contained herein, Band Council is the final authority regarding applications for Band membership, and Council's discretion in these decisions is final and not appealable.
8. For greater clarity, and notwithstanding anything else in this By-law, no applicant shall be considered for Band membership unless that person can establish that he/she is 50% aboriginal by blood and is descended from a Band member.
9. No applicant may be a member of the Band who is a member of another First Nations Band.
10. Anybody granted Band membership upon application shall be subject to a probationary period of ten (10) years during which time Council may terminate the probationary Band member's membership for any reason upon ten (10) days' notice. In the event a probationary Band member is given such a notice, that person shall be entitled to address Band Council during that ten (10) day period, or at such later time as Council deems appropriate, and may present whatever argument or evidence the person deems fit to show why his/her probationary Band membership ought not be terminated.
11. A decision to add a person to the Band membership upon application, or to terminate a probationary Band member, may only be made by the vote of a majority of all sitting and elected Councilors, regardless of the number of Councilors actually present at the time the vote is taken.
12. The decision of Council to add a person to the Band membership is not effective until and unless the Wagmatcook community votes in favour of Council's decision in a plebiscite directed by Council.

13. Council shall provide for an annual plebiscite at which time it will put to the Wagmatcook community the list of persons Band Council has approved for Band membership. Only those listed persons approved for Band membership who are then approved for membership by at least fifty percent (50%) plus one votes, of those community members who actually cast votes, shall be thereafter added to the Band's membership list.
14. Band Council shall, prior to commencing any plebiscite under this By-law, provide for rules and procedures that shall govern the conduct of any such plebiscite.

PART III - RESIDENCY:

15. Subject to the exceptions set out herein, or to a specific Band Council resolution to the contrary being in effect; any Band member is entitled to reside on Reserve.
16. Any provisions regarding Residency in this By-law are subject to the provisions of the *Family Homes on Reserve and Matrimonial Interests and Rights Act*, or any other By-law enacted by the Band thereunder.
17. Any entitlement to reside on Reserve recognized or created by this By-law does not create the right to occupy a home or dwelling unit on Reserve. Nor does it create an obligation upon the Band to provide a home or dwelling unit.
18. A spouse or child of a Resident may only reside on Reserve if, upon application, they are designated a Resident by Band Council pursuant to this By-law. A spouse's or child's residency designation, if they are not otherwise a Resident of the Band by their own qualification, is entirely derivative of the Resident's rights and terminate if the Resident, under whom the spouse or child applied for residency, has his/her residency revoked.
19. A person who is not a Band member may only become a Resident by applying to the Band Council to be designated a Resident. If the application is not accepted by Band Council by a unanimous vote at a duly convened meeting, Band Council shall schedule a hearing to determine if the application shall be accepted.
20. A person other than a Band member who wishes to reside on the Reserve, or to extend any defined period for which permission to reside on Reserve was previously granted under this By-law, must apply to Council for permission to reside on the Reserve for a defined or undefined period by completing an application form provided by the Band and paying any applicable fees set by Council.
21. A person other than a Band member applying to become a Resident must satisfy the Band Council that he/she is entitled to reside on Reserve under the terms of the *Indian Act*, or has been accepted as a Resident by Band Council pursuant to this By-law.
22. A person, whether a Band member or not, who has ever, at any time prior making

application for residency, been removed or banished from the Reserve by resolution or motion of Council is not eligible to be granted residency unless Band Council specifically rescinds the motion or resolution that effected the removal of the person from Reserve.

23. The application for residency may be made by the applicant alone, or by the applicant on behalf of the applicant and his or her spouse and child or children, or any one or all of them.
24. Upon receipt of an application, Band Council shall consider the application and may take into account any of the following factors:
 - a) whether the applicant has arranged for a suitable and appropriate place to reside on the Reserve;
 - b) whether the applicant is a spouse or dependent child of a Band member;
 - c) whether the applicant is, or is the parent, child or grandchild of, a person who is registered as an Indian or entitled to be registered as an Indian under the *Indian Act*;
 - d) whether granting the applicant residency 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;
 - e) whether the applicant is of good moral character;
 - f) the extent to which the applicant is prepared to commit his/her personal and economic resources to the welfare and advancement of the Reserve community;
 - g) the availability on the Reserve of adequate housing, land and services;
 - h) whether the applicant is or will be employed on the Reserve; and
 - i) any other consideration that, in the opinion of Council, is relevant to the health, safety, good order and advancement of the Wagmatcook First Nation.
20. The application must be delivered to Band Council or the Registrar and shall include:
 - a) the name and marital status of the applicant;
 - b) the name of the applicant's spouse and dependent children and whether or not they are Band members, if applicable;
 - c) the applicant's reasons for applying to be a Resident;

- d) if the applicant proposes to reside on the Reserve for a limited time, the duration of the proposed residence;
 - e) the location at which the applicant proposes to reside;
 - f) the applicant's current employer;
 - g) how the applicant intends to contribute to the community;
 - h) the applicant's knowledge of Mi'kmaq and Wagmatcook First Nation history, culture and language;
 - i) two (2) letters of reference, with at least one being from a Band member;
 - j) a completed child abuse registry check;
 - k) a completed criminal background check by the Canadian Police Information Centre ("CPIC"); and
 - l) any additional information the applicant wishes to provide relating to the considerations listed herein:
21. Non-Band members that are visiting the Reserve are not required to apply for an application to reside on the Reserve. For the purposes of this By-law, a person is visiting the Reserve if they stay for less than forty-five (45) days in total during any calendar year. The exception is, where the visiting person is a child and is visiting pursuant to a valid custody and access agreement further to a separation or divorce, the child may visit to the extent contemplated by the order.
22. Council may determine from time to time the form or manner of any application required pursuant to this By-law and may determine any fees or charges payable by the applicant regarding the making of any application.
23. (1) All non-Band members currently residing on the Reserve at the time this By-law is enacted will automatically be granted permission from the Band Council to reside on the Reserve pending consideration of the non-Band member's application for residency.
- (2) Any non-Band member currently residing on Reserve at the time of enactment of this By-law, if that person was not already granted residency by a specific resolution on motion of Band Council, must make application for residency within ninety (90) days of the enactment of this By-law.
- (3) The Registrar will assist in filling out applications for all non-Band members currently residing on Reserve at the time this By-law is enacted.

- (4) Any fees or other requirements may be waived and no hearing for those Band members currently residing on Reserve at the time this By-law is enacted.
- (5) If a non-Band member currently residing on Reserve at the time this By-law is enacted refuses to sign the application, permission will not be given to reside on Reserve pursuant to this section and that person will have to make application for residency as if he/she is not currently residing on Reserve.
- (6) Upon being given permission to reside on the Reserve, non-Band member residents will be issued confirmation in writing that contains:
 - a) the name of the Resident;
 - b) the name of the Band member associated with that Resident;
 - c) a residency number;
 - d) the address of the Resident;
 - e) the expiry date of the permission (if applicable); and
 - f) the Resident's signature.

PART IV - DRUG TRAFFICKING CONTROL AND PROTECTION OF ELDERS MEASURES

Purpose of Part IV

The Wagmatcook Band Council considers the elimination of the illicit drug trade, and its various destructive effects from the community to be one of its major priorities. This is consistent with Band Council's statutory obligation to promote law and order and the general welfare of the Wagmatcook community.

Band Council recognizes the trade in, and use of, illicit drugs to be a significant detriment to a healthy, safe and lawful community that Band Council and Wagmatcook Band Members strive towards.

Drug addiction carries many costs, direct and indirect, that the Band has to bear. These are resources that could better be spent on improving the everyday quality of life on Reserve. Those who trade in illicit drugs also cost the Band directly by obtaining and using Band resources to which they are not entitled.

Definitions

24. In this Part the following definitions will be used:

- a) "Band Residence" means any Band owned dwelling on the Wagmatcook reserve;
- b) "Community" means the Wagmatcook Reserve;
- c) "Consume" means to inhale as smoke or otherwise, inject into the body, or ingest or absorb into the body system by any other means;
- d) "Illicit drug" means a controlled substance or precursor, the import and sale or possession of which is prohibited or restricted pursuant to *the Controlled Drugs and Substances Act* of Canada;
- e) "First Nations person" means a person who is registered as an aboriginal person under the *Indian Act* of Canada;
- f) "Peace Officer" means any representative of a recognized police force in Canada;
- g) "Sell" means to offer for sale, expose for sale, or possess for the purpose of sale and distribution, whether or not the distribution is made for consideration; and
- h) "Seller" means a person who sells illicit drugs in the community.

Offences

- 25. Any Band member or resident who commits a criminal act that has the direct effect of victimizing an Elder violates this By-law.
- 26. Any Band member or resident who sells an illicit drug in the community violates this By-law.
- 27. Any Band member or resident who sells an illicit drug to another Band member or resident violates this By-law.
- 28. Any Band member or resident who sells illicit drugs from a Band-owned dwelling in the community violates this By-law.
- 29. Any Band member or resident who aids or abets in the sale of illicit drugs from a Band-owned residence in the community violates this By-law.

Remedies

- 30. Any Band member or resident who is found by Band Council to have violated Sections 25, 26, 27, 28 or 29 of this Part is liable, in addition to any other measures authorized by this By-law:

- a) to banishment by operation of a Band Council Resolution from the community for a period of not less than six (6) months;
- b) to immediate and permanent termination of employment with the Wagmatcook Band;
- c) to eviction from a Band residence; and
- d) to a fine not exceeding one thousand dollars.

PART V - PROCEDURE FOR TERMINATION OF BAND MEMBERSHIP AND RESIDENCY:

- 31. Band Council may, upon receiving a complaint under this By-law from a Band member, or by Council's own initiative, convene a hearing to consider: termination of a Band member's membership in the Band, or residency upon the Reserve, or the imposition of any of the measures permitted under Section 30 of this By-law where the complaint against the person involves an alleged violation of Sections 25, 26, 27, 28, 29, 30 or 32 herein.
- 32. A person's Band membership or residency, or both, may only be terminated if Band Council makes any of the following findings against the person:
 - a) that the person has been granted membership by another Band;
 - b) that the person no longer qualifies, or has never qualified, for Band membership; and
 - c) that the person has violated Sections 25, 26, 27, 28, 29, 30 or 32 of this By-law.
- 33. A person's Band residency may only be terminated if, in addition to finding that the person has violated Sections 25, 26, 27, 28, 29, 30 or 32 of this By-law, Band Council also makes any of the following findings against the person:
 - a) that the person presents a threat to the peace and order of the Reserve by being involved in criminal activities;
 - b) that the person has been convicted of an offence that requires registration of that person in a child abuse registry;
 - c) that the person is otherwise an unsuitable candidate for residency on the Reserve; and
 - d) that the person has, in any other manner, and by wrongful act, caused physical

or emotional harm, or direct financial harm, to an Elder.

34. Band Council, in making any determinations under this Part IV or Part V of this By-law, shall apply the balance of probabilities standard of proof.

PART VI - HEARINGS:

35. Part VI shall apply to Band Council deliberations taken under Part II, III, IV or V of this By-law.
36. Within ninety (90) days after receiving an application or complaint, or self-initiating a complaint under this By-law, Council shall hold a hearing with respect to the matter.
37. At least fourteen (14) days prior to the hearing, the Registrar shall:
- a) give written notice to the applicant or respondent of the date, time and place of the hearing and inform the applicant/respondent that he or she 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.
38. At the hearing, Council shall:
- a) provide the applicant/respondent with an opportunity to present evidence and to make oral and written submissions, or both;
 - b) provide any Resident present at the hearing with an opportunity to be heard; and
 - c) accept any written evidence by any Resident received prior to the hearing.
39. Council may make rules of procedure governing hearings and shall keep records of its proceedings.

Enacted by the Wagmatcook Band Council November 3, 2015. Council authorizes Chief Norman Bernard to sign this By-law into effect.

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Chief Norman Bernard