

BY-LAW NO. 2023-01
of the Tla-o-qui-aht First Nations

**A BY-LAW GOVERNING THE RESIDENCE OF MEMBERS AND OTHER PERSONS ON
THE TLA-O-QUI-AHT FIRST NATIONS' RESERVES**

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PREAMBLE

WHEREAS the Chief and Council of the Tla-o-qui-aht First Nations, desire to make a by-law governing the residence of its citizens and other persons on the Tla-o-qui-aht Nations' reserve lands;

AND WHEREAS the Tla-o-qui-aht First Nations is empowered by its inherent right of self-government, including jurisdiction over its reserve lands and citizenship as recognized and affirmed by s.35(1) of the *Constitution Act, 1982*, to determine the entitlement to residency on its reserve lands, including when such rights can be revoked;

AND WHEREAS Tla-o-qui-aht First Nations, since time immemorial, have had a traditional practice of banishment where an individual has, through certain acts, lost the trust of the community and thus the right to reside on Tla-o-qui-aht First Nations lands;

AND WHEREAS Tla-o-qui-aht First Nations wishes to regulate residency on its reserve lands by enacting the present by-law;

AND WHEREAS nothing in this by-law may be interpreted as abrogating or derogating from the rights of the Tla-o-qui-aht First Nations for unceded territories;

AND WHEREAS the Tla-o-qui-aht First Nations is empowered to make such a by-law pursuant to paragraphs 81(1)(p), (p.1), (p.2), (q), and (r) of the *Indian Act*;

AND WHEREAS the Chief and Council of the Tla-o-qui-aht First Nations are deeply concerned by recent incidents of violence and undesirable activity on the Tla-o-qui-aht reserves, and the dangers that such circumstances present to life and safety of the persons present on the Tla-o-qui-aht reserves;

AND WHEREAS it is considered necessary for the health and welfare of the Tla-o-qui-aht First Nations to regulate the residence of its citizens and other persons on the reserve;

NOW THEREFORE the Chief and Council of the Tla-o-qui-aht First Nations hereby make the following by-law:

1.0 Short Title

1.1 This by-law may be cited as the "Tla-o-qui-aht First Nations Residency By-Law".

2.0 Interpretation

2.1 In this by-law

"applicant" means an individual or family who has applied for permission to be a resident or residents of the reserve in accordance with section 7.0;

"board member" means a member of the Residency Board;

"child" includes a child born in or out of wedlock, a legally adopted child and a child adopted in accordance with Tla-o-qui-aht custom;

"conflict of interest" means any interest, relationship, association or activity that is incompatible with a person's roles and responsibilities under this by-law, or that can compromise that person's impartiality. Conflicts of interest may be actual or perceived and may be pecuniary or non-pecuniary in nature;

"Council" means the duly elected Chief and Council of the Tla-o-qui-aht First Nations;

"Councillors" means all members of Council, including the Chief, and **"Councillor"** means any one of them;

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

"indictable offence" means an indictable offence contrary to the Criminal Code of Canada, and includes any hybrid offences that may proceed by way of either by indictment or summary conviction;

"Justice Manager" means the person employed as the Tla-o-qui-aht First Nations Justice Manager, who has the responsibilities as set out in sub-section 6.1, or, if there is no person employed in that position, means the Residence Administrator;

"Member" means a person whose name appears on the Tla-o-qui-aht First Nations' membership list or who is entitled to have their name appear on the Tla-o-qui-aht First Nations' membership list;

"Nation" means the Tla-o-qui-aht First Nations;

"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 duly appointed by the Council, for maintaining law and order on the reserve;

"reserve" means all Tla-o-qui-aht Reserve Lands, including but not limited to the Esowista Indian Reserve No.3 & Opitsaht No. 1;

"reside" means to live in a dwelling on a more permanent basis than at any other place at which a person may reside from time to time;

"Residence Administrator" means the Tribal Administrator, or if Council appoints another person appointed as Residence Administrator by Simple Resolution, then that other person;

"Residency Board" means the residency board established under sub-section 5.1;

"resident" means a person who resides on the reserve, and includes persons who are temporarily absent from the reserve because of schooling, work, travel, or similar purposes, and includes persons whose right to reside on the reserve has been revoked on an interim basis in accordance with this by-law, but excludes persons visiting the reserve for 30 days or less;

"Simple Resolution" means a resolution of Council at a duly convened Council meeting with a simple majority of more than fifty (50) percent of the Chief and Councillors present at the Council meeting voting in favour of such resolution, failing which the resolution shall be of no force or effect;

"Special Resolution" means a resolution of Council at a duly convened Council meeting with a special majority of at least two-thirds (2/3) of the Chief and Councillors present at the Council meeting to vote in favour of such resolution, failing which the resolution shall be of no force or effect;

"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 another person;

"Tribal Administrator" means the most senior employee in the Tla-o-qui-aht administration, whether the position is title "Tribal Administrator", or otherwise, and includes an acting Tribal Administrator.

3.0 Entitlement to Reside on Reserve

3.1 A person is entitled to reside on the reserve only if the person:

- (a) resides on the reserve at the time this by-law first comes into force and only until they cease to have a 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 sub-sections 28(2) and 58(3); or
- (c) has been authorized to reside on the reserve pursuant to this by-law.

3.2 For the purposes of section 3.1(a), a person who is incarcerated is deemed to cease to reside on reserve, and must re-apply for residence pursuant to this by-law.

3.3 A spouse or dependent child of a person who is entitled to reside on the reserve under sub-section 3.1 who resides with that person at or after the time the entitlement arises, is entitled to reside on the reserve until the spouse or dependent child ceases to reside on the reserve,

and such entitlement of the spouse or dependent child is independent of the entitlement of that person.

- 3.4 Notwithstanding sub-section 3.3, 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.

4.0 Residence Administrator

- 4.1 Except as otherwise provided by Resolution, the Residence Administrator will be responsible for the administration of applications, reapplications, and resolutions made under this by-law.

- 4.2 In fulfilling their roles and responsibilities under this by-law, including with respect to any hearings, the Residence Administrator, at all times:

- (a) has a duty to be fair, impartial, and to maintain objectivity;
- (b) shall ensure that their mandate is carried out with integrity and dignity; and
- (c) will be free of a conflict of interest, and where a potential conflict of interest exists, recuse themselves from the matter in question.

- 4.3 Where the Residence Administrator is in a conflict of interest in respect of a matter addressed under this by-law, the Residence Administrator shall, at first opportunity, advise Council the of the conflict of interest, and recuse themselves.

- 4.4 Where the Residence Administrator recuses themselves under this by-law, Council will, by Simple Resolution, appoint another a replacement person to perform the Residence Administrator's duties in respect of the matter in which the Residence Administrator has recused themselves.

5.0 Residency Board

- 5.1 The Residency Board is hereby established as an independent tribunal of Tla-o-qui-aht First Nations, and shall

- (a) consist of at least three (3) or more members, as appointed by Council;
- (b) Consist of representatives from the Justice Committee, Housing Committee and Membership Committee;
- (c) conduct hearings and determine applications for residence pursuant to section 9.0; and

(d) hear appeals of decisions of Council regarding the revocation of the entitlement of persons to reside on reserve, pursuant to section 17.0.

5.2 Council shall appoint and prepare a written mandate and terms of reference for the Residency Board, which shall include

(a) the qualifications and the appointment of board members;

(b) representation of the Justice Committee, Housing Committee and Membership Committee;

(c) term length of board members;

(d) the quorum of the Residency Board, providing that quorum must not be fewer than three (3) board members; and

(e) procedures for dealing with conflicts of interest of the Residency Board.

5.3 The Residency Board may establish such additional rules governing the conduct of hearings and procedures under this by-law and shall retain records of its proceedings.

5.4 Board members shall not adjudicate in, and shall recuse themselves from, any matter in which they have a conflict of interest. Where a conflict of interest exists, Council will, by Simple Resolution, appoint a replacement board member for the purposes of adjudicating that matter.

6.0 Justice Manager

6.1 The Council shall appoint a Justice Manager, as per Human Resources Policy, who will be responsible for

(a) the administration and investigation of complaints against residents that may result in the revocation of their residency, in accordance with section 12.0; and

(b) unless another person is appointed by Council in accordance with sub-section 13.5, or the Justice Manager recuses themselves in accordance with sub-section 6.3, the presentation of evidence to the Residency Board for residency revocation hearings in accordance with section 13.0.

6.2 In fulfilling their roles and responsibilities under this by-law, including with respect to any hearings, the Justice Manager, at all times:

(a) has a duty to be fair, impartial, and to maintain objectivity;

(b) shall ensure that their mandate is carried out with integrity and dignity; and

- (c) will be free of a conflict of interest, and where a potential conflict of interest exists, recuse themselves from the matter in question.

6.3 Where the Justice Manager is in a conflict of interest in respect of a matter addressed under this by-law, the Justice Manager shall, at first opportunity, advise the Tribal Administrator of the conflict of interest, and recuse themselves.

6.4 Where the Justice Manager recuses themselves under this by-law, unless Council by Simple Resolution authorizes otherwise, the Tribal Administrator shall be responsible for performing the Justice Manager's duties in respect of the matter in which the Justice Manager has recused themselves.

7.0 Application to be a Resident

7.1 Any person or family who wishes to reside on the reserve and is not yet entitled to reside on the reserve pursuant to section 3.0 of this by-law must submit a residency application to the Residence Administrator for permission to be a resident or residents of the reserve or to extend any defined period for which permission was previously granted to the person or family to be a resident or residents of the reserve.

7.2 An application by a person or family for residency on the reserve shall include

- (a) their reasons for applying to be a resident or residents;
- (b) if they propose to reside on the reserve for a limited time, the approximate duration of the proposed residence;
- (c) the location at which they propose to reside;
- (d) the name of any spouse within the family or with whom they propose to reside;
- (e) the names of any dependent children within the family or with whom they propose to reside;
- (f) the names of any additional persons with whom they propose to reside;
- (g) any additional information they wish to provide relating to the considerations listed in sub-section 8.2;
- (h) signed written authorizations in a form satisfactory to the Residence Administrator authorizing the Residence Administrator to seek and obtain a criminal record check for all persons over the age of 19 years who are proposed to reside on the reserve; and
- (i) for each person who is proposed to reside on the reserve, copies of that individual's driver's license, and Status Card, if any.

7.3 The Residence Administrator may make a written request for additional or supporting information from the applicant in order to review and consider their application.

8.0 Consideration of Application to be a Resident

8.1 As soon as is reasonably practicable after the filing of a properly completed residency application, but subject to the notice requirements of sub-section 9.2, the Residence Administrator will

- (a) in the case of an individual applicant who is a Member and has not had their residency revoked pursuant to this by-law, or a family applicant which has at least one Member and where no family members have had their residency revoked pursuant to this by-law, and provided that the criteria under sub-sections 8.2(a) and 8.2(e) are met or can otherwise be reasonably accommodated, approve the application, or if the criteria under sub-sections 8.2(a) and 8.2(e) are not met and cannot otherwise be reasonably accommodated, decline the application with written reasons;
- (b) in the case of an individual applicant who is not a Member and has not had their residency revoked pursuant to this by-law, or a family applicant without a Member and where no family members have had their residency revoked pursuant to this by-law, and provided that all of the applicable criteria under sub-section 8.2 are met or can otherwise be reasonably accommodated, approve the application, or, if the applicable criteria under sub-section 8.2 are not met and cannot otherwise be reasonably accommodated, decline the application with written reasons;
- (c) in the case of an individual applicant who has had their residency revoked pursuant to this by-law, or a family applicant where any family members have had their residency revoked pursuant to this by-law, or in any circumstances where the Residence Administrator otherwise reasonably determines doing so is in the best interests of the Nation, refer the application to the Residency Board.

8.2 In determining whether an individual or family's application for permission to be a resident or residents of the reserve should be granted, the Residence Administrator or Residency Board, as the case may be, shall take into consideration each of the following, as applicable:

- (a) whether they have arranged for a place to reside on the reserve;
- (b) whether their residing on the reserve would be compatible with the culture, society and community of the Nation and welfare of the Members of the Nation residing on the reserve;
- (c) whether they are of good moral character;

- (d) if they have recently been incarcerated, as well as the nature of the offence and length of the incarceration, and any effect that may have on the community;
- (e) the extent to which they are prepared to commit their personal and economic resources to the welfare and advancement of the community residing on the reserve;
- (f) the availability on the reserve of adequate housing, land and services;
- (g) whether they are or will be employed on the reserve; and
- (h) whether the entitlement of the individual or any family members to reside on the reserve has previously been revoked, the circumstances surrounding any such revocation, any change in that person's circumstances, and whether the presence of that person on the reserve presents or would present a danger to the health or safety of the community.

8.3 Where an applicant was previously incarcerated, the Residence Administrator may, in approving an application pursuant to section 8.1(a) or 8.1(b), approve the application subject to any reasonable conditions that the Residence Administrator may require.

9.0 Decision on Application to be a Resident

9.1 Where the Residence Administrator refers an application to the Residency Board, the Residency Board shall

- (a) if it is satisfied that the applicant has adequately met the grounds as set out in section 8.2 in their application, grant an application for permission to reside on the reserve in accordance with the procedures and criteria in this section 9.0; or
- (b) hold a hearing with respect to the application.

9.2 If the Residency Board determines that a hearing is required for the application, at least fourteen (14) days prior to the hearing, the Residence Administrator shall

- (a) give written notice to the applicant of the date, time and place of the hearing and inform the applicant that they have a right to appear at the hearing and to be heard in support of the application; and
- (b) give written notice to the applicant of the reasons for the hearing and any concerns or questions that may result in the application being denied.

9.3 At the hearing, the Residency Board 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 the Residence Administrator, or any resident present at the hearing with an opportunity to be heard insofar as time and circumstances reasonably permit.
- 9.4 After it has reviewed a residency application, or in the event of a hearing after it has heard all the evidence and submissions, the Residency Board shall meet in private to consider the application.
- 9.5 As soon as is reasonably practicable after submission of an application or after a hearing, the Residency Board shall, by majority decision, dispose of an application for permission to be a resident or residents on the reserve by
 - (a) granting the individual or family permission to be a resident or residents of the reserve, until they cease to reside on the reserve;
 - (b) granting the individual or family permission to be a resident or residents of the reserve for a defined period, with written reasons in support of its decision if the period is shorter than requested in the application;
 - (c) extending any defined period for which permission was previously granted to the individual or family by the Residency Board to be a resident or residents of the reserve; or
 - (d) refusing the application of all or any of the persons proposed to reside on the reserve, with written reasons in support of its decision.
- 9.6 The Residence Administrator shall give the applicant written notice of the Residency Board's decision and unless otherwise directed by the Residency Board, post publicly a notice of the decision in the Tla-o-qui-aht Administration building, Mears Island Cultural Centre and Tiic-Mis-Aq'kin Health Centre.
- 9.7 Subject to sub-section 10.1, a decision by the Residency Board pursuant to sub-section 9.5 shall be final and not subject to appeal.
- 9.8 Where a person whose right to reside on the reserve has been and remains revoked by resolution of the Council pursuant to section 14.0, no decision by the Residency Board to grant permission to that person to reside on the reserve shall be valid unless affirmed by a Special Resolution.

10.0 Reapplication for Residence

- 10.1 Where an individual or family's application for residence is refused pursuant to sub-section 8.1(a), the Residence Administrator may reconsider an application once the applicant can demonstrate that

(a) In the case of an applicant under section 8.1(a), the criteria in sub-sections 8.2(a) and 8.2(e) are met or can otherwise be reasonably accommodated;

(b) In the case of an applicant under section 8.1(b), the applicable criteria in sub-section 8.2 are met or can otherwise be reasonably accommodated.

10.2 Where any person's application for residence is refused pursuant to sub-section 9.5(d), the Residency Board 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 person can demonstrate that there has been a material change of circumstances.

10.3 All reapplications for residence shall be submitted in accordance with section 7.0.

11.0 Grounds for Revocation of Residency

11.1 A resident's right to reside on reserve may be revoked on a temporary basis where there are reasonable and probable grounds to believe that:

- (a) the resident has committed an indictable offence, which offence has endangered the life or safety of one or more persons;
- (b) the resident has been or will be charged with committing the offence referred to in sub-section 11.1(a);
- (c) the resident's charges have not yet been brought to trial or otherwise resolved; and
- (d) the presence of the resident on the reserve presents or is likely to present a danger to the health or safety of the community.

11.2 A resident's right to reside on reserve may be revoked on a temporary or permanent basis where the following grounds are present:

- (a) the resident has been convicted of an indictable offense for which a pardon has not been granted, which offense has endangered the life or safety of one or more persons; or
- (b) the resident, within any period of two (2) years while residing on the reserve, has been convicted of two (2) or more criminal offenses against the person or property of another person, for which a pardon has not been granted; and, in either case
- (c) the presence of the resident on the reserve presents or is likely to present a danger to the health or safety of the community.

12.0 Direction to Consider Revocation of Residency

- 12.1 Any person may bring a complaint against a resident to the Justice Manager on the basis that the grounds for revocation of residency under sub-sections 11.1 or 11.2 apply to that resident.
- 12.2 The Justice Manager shall be responsible for receiving any complaints under sub-section 12.1, either directly or referred to the Justice Manager by Council, the Residency Board or any other person. The Justice Manager will open a file in respect of the complaint and will in a timely manner undertake an initial review of the complaint.
- 12.3 The Justice Manager shall investigate to determine whether a complaint is credible and could reasonably meet the grounds for interim or permanent revocation of residency under sub-sections 11.1 or 11.2, which investigation may include, but is not limited to
- (a) contacting the resident who is the subject of the complaint or other parties who may have relevant knowledge about the complaint;
 - (b) the safety and quality of live of those who have been harmed by the resident who is the subject of the complaint;
 - (c) consulting with law enforcement or other agencies; and
 - (d) examining the resident's background and record.
- 12.4 If, after investigating, the Justice Manager determines that the complaint was clearly incorrect, frivolous, vexatious, or submitted in bad faith, the Justice Manager will dismiss the complaint, and provide written notification of the dismissal to the person who submitted the complaint, with or without reasons.
- 12.5 If, after investigating, the Justice Manager determines that a complaint against a resident is credible and could reasonably meet the criteria for interim or permanent revocation of residency under sub-sections 11.1 or 11.2, the Justice Manager will provide a report to Council recommending that Council
- (a) hold a hearing pursuant to sub-section 13.1; or
 - (b) where the circumstances as set out in sub-section 16.1 exist, hold a special emergency hearing pursuant to section 16.0.
- 12.6 Except to the extent reasonably necessary to properly investigate the complaint, during the investigation process as set out in sub-section 12.3 the Justice Manager shall keep the complaint confidential.
- 12.7 Where Council receives a report from the Justice Manager under sub-section 12.5 that grounds for the revocation of residency of a resident under sub-section 11.1 in respect of a resident are present, then it may, by Simple Resolution

- (a) hold a hearing to consider whether to revoke the entitlement of the resident to reside on the reserve on an interim basis; or
- (b) where circumstances warrant, hold a special emergency hearing pursuant to section 16.0.

12.8 Where Council receives a report from the Justice Manager under sub-section 12.5 that grounds for the revocation of residency of a resident under sub-section 11.2 in respect of a resident are present, then it may, by Simple Resolution, hold a hearing to consider whether to revoke the entitlement of the resident to reside on the reserve either permanently, or for a defined period.

12.9 A Simple Resolution under sub-sections 12.7 or 12.8 shall not be considered under this section 12.0, and in any event shall not be valid, in respect of a resident who, at the time of the Simple Resolution, is under the age of majority.

13.0 Hearing for Revocation of Residency

13.1 Following the receipt of a Simple Resolution pursuant to sub-sections 12.7 or 12.8, Council shall hold a hearing as soon as is reasonably practicable, but the Justice Manager may, in their sole discretion, grant reasonable adjournments at the request of the affected resident, a Council member, or on the Justice Manager's own initiative.

13.2 At least fourteen (14) days prior to the hearing under sub-section 13.1, the Justice Manager shall

- (a) give written notice by way of personal service upon the affected resident, setting out
 - i. the date, time and place of the hearing;
 - ii. the reasons for the hearing; and
 - iii. that the affected resident has a right to present submissions to the Residency Board in writing, and to participate fully in the hearing, including to have submissions made on their behalf; and

(b) post publicly a copy of the notice to the affected resident in the Tla-o-qui-aht Administration building, Mears Island Cultural Centre and Tiic-Mis-Aq'kin Health Centre.

13.3 If it is impractical for the Justice Manager to serve an affected resident by personal service as required by sub-section 13.2, or if, in the opinion of the Justice Manager, acting reasonably, the affected resident is evading personal service, the Justice Manager may serve the documents by either:

- (a) posting a copy of the documents on the front door of the affected resident(s)' known dwelling, which shall be deemed to be served after 24 hours of being posted, or
 - (b) by mailing the documents to the affected resident(s)' known dwelling by registered mail, which shall be deemed to be served one week later on the same day of the week as the day of mailing.
- 13.4 If an affected resident is incarcerated, service of notice pursuant to sub-section 13.2 will be deemed sufficient if it is sent to the attention of the affected resident at the correctional facility, which shall be deemed to be served one week later on the same day of the week as the day of mailing.
- 13.5 Unless otherwise directed by Council by Simple Resolution and in accordance with the duties set out in sub-section 6.2, the Justice Manager will be responsible for presenting evidence and making submissions on behalf of Tla-o-qui-aht First Nations in respect of the grounds for revocation of residency as set out in sub-sections 11.1 or 11.2.
- 13.6 Where Council appoints another person to fulfill the responsibilities set out in sub-section 13.5, the duties of the Justice Manager as set out in sub-section 6.2 shall apply to that person in respect of the hearing in which the person is appointed.
- 13.7 At the hearing, Council:
 - (a) shall provide the affected resident and the Justice Manager an opportunity to present evidence and to make oral and written submissions, or both; and
 - (b) may, in its discretion, and acting reasonably, provide any Councillors, residents or other persons present at the hearing with an opportunity to be heard insofar as time and circumstances reasonably permit.

14.0 Decision for Revocation of Residency

- 14.1 As soon as is reasonably practicable after a hearing is held pursuant to sub-section 13.1, the Council shall meet in private to consider the evidence and submissions presented at the hearing, and shall determine whether, in the opinion of Council, the grounds in sub-sections 11.1 or 11.2 are established.
- 14.2 Council shall dispose of a hearing held pursuant to sub-section 13.1 of whether to revoke the entitlement of a resident to reside on the reserve, and may, by Special Resolution
 - (a) In the case of a hearing involving the grounds in sub-section 11.1,

- i. revoke, by Special Resolution, the entitlement of the affected resident to reside on reserve on an interim basis, pending the final resolution of the charges, if any;
- ii. decline, by Simple Resolution, to revoke the entitlement of the affected resident to reside on reserve on an interim basis pending the final resolution of the charges, if any; or
- iii. make such further or other resolutions in respect of the affected resident's residency as the Council deems appropriate and necessary for ensuring the health and safety of the community, including declaring the affected resident a trespasser and ordering that they be removed from and refrain from entering on reserve, either permanently or for a specified period of time.

(b) In the case of a hearing involving the grounds in sub-section 11.2,

- i. revoke, by Special Resolution, the entitlement of the person to reside on the reserve permanently;
- ii. revoke, by Special Resolution, the entitlement of the person to reside on the reserve for a defined period;
- iii. extend, by Special Resolution, any defined period for which the person's entitlement to reside on the reserve was previously revoked;
- iv. decline, by Simple Resolution, to revoke the entitlement of the person to reside on the reserve; or
- v. make such further or other resolutions in respect of the affected resident's residency as Council deems appropriate and necessary for ensuring the health and safety of the community, including declaring the affected resident a trespasser and ordering that they be removed from and refrain from entering on reserve, either permanently or for a specified period of time.

14.3 Where the person who is subject to a hearing to revoke the entitlement of their residency on reserve is a Member, then in making a decision under sub-section 14.2, Council shall also consider

- (a) whether the person has family members who are resident on reserve, and how revoking the person's residency would affect those family members;
- (b) the person's degree of connection to the Tla-o-qui-aht community and Tla-o-qui-aht culture; and

- (c) whether there are any other personal circumstances or compassionate considerations that apply or would be impacted by revoking that person's residency.
- 14.4 A Special Resolution made by Council pursuant to sub-section 14.2 shall be in writing and incorporate written reasons.
- 14.5 Where Council issues a Special Resolution pursuant to sub-section 14.2(a) revoking the entitlement of a resident to reside on reserve on an interim basis, such revocation shall expire
- (a) where the final resolution of the charges after trial and any resulting appeals is an acquittal or stay of proceedings, on the date that the charges are so resolved;
 - (b) where the final resolution of the charges after trial and any resulting appeals is a conviction, and where no further Simple Resolution has been passed by Council pursuant to sub-section 12.8 in respect of the offender, on the date that is 30 days from the date of the conviction; or
 - (c) where the affected resident is convicted of the charges, and where a further Simple Resolution has been passed by Council pursuant to sub-section 12.7 in respect of the offender, in accordance with the terms of the final decision by Council following a hearing pursuant to section 14.0.
- 14.6 Copies of a Special Resolution by Council issued pursuant to sub-section 14.2 shall be sent to the RCMP, the Justice Manager and the affected resident, and shall be posted publicly in the Tla-o-qui-aht Administration building, Mears Island Cultural Centre and Tiic-Mis-Aq'kin Health Centre.

15.0 Removal of Non-Residents

- 15.1 Council may, by Special Resolution,
- (a) deem a non-resident to be a trespasser on reserve and order the person removed from reserve, for a defined period or on a permanent basis, where Council is satisfied:
 - i. the grounds in either sub-sections 11.1 or 11.2 are present;
 - ii. the person is or has engaged in "disorderly conduct" within the meaning of the Tla-o-qui-aht First Nations Disorderly Conduct By-Law; or
 - iii. the person otherwise presents a danger to the health or safety of the community; or

- (b) revoke the residency of a person whose residency is subject to conditions made pursuant to sub-section 1.1, where that person has materially breached those conditions.
- 15.2 Council may, but is not obligated to, provide the person referred to in sub-section 15.1 with an opportunity to be heard, at or prior to the Council meeting in which the Special Resolution is being considered.
- 15.3 A Special Resolution pursuant to sub-section 15.1
 - (a) must be in writing and include written reasons;
 - (b) is final and binding, and not subject to appeal; and
 - (c) comes into force upon serving the affected person by personal service, or if personal service is impractical, by either:
 - i. posting a copy of the Special Resolution on the front door of the affected non-resident's known dwelling, which shall be deemed to be served after 24 hours of being posted; or
 - ii. mailing the Special Resolution to the affected person's known dwelling by registered mail, which shall be deemed to be served one week later on the same day of the week as the day of mailing.

16.0 Special Emergency Hearings

- 16.1 Upon receipt of a report from the Justice Manager under sub-section 12.5, or on its own initiative where circumstances warrant, Council may, by Simple Resolution, hold a special emergency hearing where:
 - (a) a person has been charged with a violent offence under the Criminal Code of Canada; and
 - (b) that person's continued residence on reserve may put the safety and security of the community at risk.
- 16.2 At least forty-eight (48) hours prior to a special emergency hearing, the Justice Manager shall
 - (a) give written notice to the affected resident, whatever the case may be, of the date, time and place of the hearing and inform the affected resident of the reasons for the hearing and that they may appear at the hearing and make representations in support of their position; and

- (b) post a copy of the notice in the Tla-o-qui-aht Administration building, Mears Island Cultural Centre and Tiic-Mis-Aq'kin Health Centre.
- 16.3 If it is impractical for the Justice Manager to serve an affected resident by personal service as required by sub-section 16.2, the Justice Manager may serve the documents by posting a copy of the documents on the front door of the affected resident(s)' known dwelling, which shall be deemed to be served after 24 hours of being posted.
- 16.4 At the special emergency hearing, Council shall
 - (a) provide the affected person, whatever the case may be, with an opportunity to present evidence and to make oral and written submissions, or both, in support of their position at the hearing; and
 - (b) provide the Justice Manager, or any Councillor or resident present at the hearing with an opportunity to be heard.
- 16.5 After the conclusion of the special emergency hearing, Council shall meet in private to consider whether the grounds in sub-section 16.1 are established, and shall make a determination as to whether or not the affected person's right to reside on reserve should be revoked and may
 - (a) revoke, by Simple Resolution, the entitlement of the person to reside on reserve on an interim basis pending the resolution of the charges;
 - (b) decline, by Simple Resolution, to revoke the entitlement of the person to reside on reserve; or
 - (c) make such further or other resolutions in respect of the affected resident's residency as Council deems appropriate and necessary for ensuring the health and safety of the community.
- 16.6 Council shall not revoke an affected person's right to reside on reserve pursuant to sub-section 16.5(a) where there are reasonable and available alternatives that would allow the person to continue to reside on reserve and preserve the safety and security of the Tla-o-qui-aht community.
- 16.7 Within five (5) days of the special emergency hearing, Council shall notify the affected resident, of its decision in writing. The decision shall also be posted in the Tla-o-qui-aht Administration office, Mears Island Cultural Centre and Tiic-Mis-Aq'kin Health Centre.
- 16.8 A resolution issued pursuant to sub-section 16.5(a) shall expire as follows
 - (a) where the final resolution of the charges after trial and any resulting appeals is an acquittal or stay of proceedings, on the date that the charges are so resolved;

- (b) where the final resolution of the charges after trial and any resulting appeals is a conviction, and where no Simple Resolution has been passed by Council pursuant to sub-section 12.8 in respect of the offender, thirty (30) days from the date of the conviction; and
- (c) where the final resolution of the charges after trial and any resulting appeals is a conviction, and a Simple Resolution has been passed by Council pursuant to sub-section 12.7 within 30 days of the date of the conviction, upon the final decision and resolution of Council pursuant to sub-section 14.2.

16.9 A resolution by Council pursuant to sub-section 16.5(a) shall be sent to the RCMP, the Residency Board, the Justice Manager, the affected resident, and shall be posted publicly in the Tla-o-qui-aht Administration building, Mears Island Cultural Centre and Tiic-Mis-Aq'kin Health Centre.

16.10 A Simple Resolution under sub-section 16.1 shall not be considered, and in any event shall not be valid, in respect of a resident who, at the time of the Simple Resolution, is under the age of majority.

17.0 Appeals

17.1 A decision of Council to revoke, or extend the period of revocation of, a resident's right of residency pursuant to sub-sections 14.2 or 16.5(a) may be appealed to the Residency Board in accordance with this section 17.0.

17.2 A decision by Council's not to revoke a person's residency pursuant to sub-section 14.2 or 16.5 may be appealed by other residents in accordance with this section 17.0.

17.3 Notwithstanding any right to appeal under this section 17.0, a decision of Council to revoke, or extend the period of revocation of, a resident's right of residency under this By-law remains effective and in force until and unless overturned in accordance with this section 17.0. For greater certainty, any person who wishes to submit an appeal must not reside on reserve during the appeal process, and if Council has directed the person to remain off reserve, the person must not attend on reserve unless they are directed to attend any appeal hearing or are expressly permitted in advance by the Tribal Administrator to attend on reserve to deliver documents relevant to an appeal.

17.4 An appeal under this section 17.0 may only be made on one or more of the following grounds:

- (a) there is a material change in circumstances which could have reasonably affected the outcome of the decision of Council pursuant to 14.2 or 16.5(a)

- (b) the decision contained a palpable and overriding error that was material to the outcome of the decision of Council;

(c) the decision of Council was not made on the basis of the grounds for revocation set out in section 11.0; or

(d) reasons for the decision of Council were not provided.

17.5 A person may appeal a decision of Council to revoke, or extend the period of revocation of, the resident's right of residency pursuant to sections 14.2 or 16.5(a) by submitting a notice of appeal to the Tribal Administrator within thirty (30) days from the date they were notified of the decision.

17.6 A notice of appeal

(a) must be in writing;

(b) set out the grounds for the appeal pursuant to section 17.4, and the facts supporting those grounds; and

(c) include any supporting documentation.

17.7 The Tribal Administrator may dismiss an appeal, and inform the appellant, in writing, that the appeal will not receive further consideration, where:

(a) the grounds of appeal set out in the notice of appeal do not reasonably meet the requirements of section 17.4, are without merit, or have no reasonable prospect of success; or

(b) the appeal is frivolous, vexatious, or made in bad faith.

17.8 The Tribal Administrator shall, within thirty (30) days of receipt of a completed notice of appeal in accordance with sub-section 17.6, schedule a hearing of the Residency Board to consider the appeal, and provide written notice to the appellant.

17.9 A hearing scheduled pursuant to sub-section 17.8 shall occur within thirty (30) days after the date written notice is provided under that section.

17.10 At a hearing to consider an appeal brought under this section 17.0, the Residency Board shall

(a) provide the appellant with an opportunity to present evidence and to make oral and written submissions, or both, in support of their position at the hearing; and

(b) provide the Justice Manager, or any Councillor or resident present at the hearing with an opportunity to be heard.

- 17.11 After the conclusion of the appeal hearing, the Residency Board shall meet in private and render a decision, by majority, as to whether or not, on a balance of probabilities, grounds exist to allow the appeal of the decision being appealed, and shall
- (a) allow the appeal, and set aside Council's decision and allow the appellant to continue to reside on reserve; or
 - (b) confirm Council's decision and dismiss the appeal.
- 17.12 A decision of the Residency Board under sub-section 17.11
- (a) shall be in writing and include reasons; and
 - (b) is final and binding, and not subject to further appeal.
- 17.13 Within five (5) days of the appeal hearing, the Tribal Administrator shall notify the appellant of the Residency Board's decision in writing. The Residency Board's decision shall also be posted in the Tla-o-qui-aht Administration office, Appeals by other people regarding Council's decision not to revoke the person's residency.

18.0 Mode of Hearings

- 18.1 Any hearing pursuant to this by-law may be conducted either in person, by telephone, or by videoconference, at the discretion of the entity adjudicating the hearing.

19.0 Effective Time of Revocation

- 19.1 Where the right of a person to reside on reserve has been revoked by a decision or resolution under this by-law, the person's right to reside on the reserve shall expire twenty-four (24) hours from the time that the decision is communicated to the resident.

20.0 Cessation of Services

- 20.1 Where the entitlement of a person to reside on reserve has been revoked on an interim basis, permanently or for a defined period, all services provided by the Tla-o-qui-aht First Nations to the person shall be discontinued throughout the currency of the revocation, including events, programs and activities organized and hosted by Tla-o-qui-aht First Nations outside our communities.

21.0 Visits

- 21.1 A person whose entitlement to reside on reserve has been revoked on an interim basis, permanently, or for a defined period, may apply to the Justice Manager for permission to visit the reserve for the purposes of funerals, ceremonies, and other special occasions.
- 21.2 A person making application under sub-section 21.1 shall include in their 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 the Justice Manager to consider.
- 21.3 The Justice Manager shall use their best efforts to consider and determine applications pursuant to sub-section 21.1 expeditiously, and in advance of the proposed visitation dates.
- 21.4 The Justice Manager may consider and determine applications pursuant to sub-section 21.1 based on the written application and is not required to hold a hearing into the matter.
- 21.5 A decision by the Justice Manager under this section is final and not subject to appeal.

22.0 Persons Not Affected by Revocation

- 22.1 No revocation of a resident's entitlement to reside on the reserve by a decision or resolution under this by-law shall affect the entitlement of the spouse or any children or dependents of that resident to continue to reside on the reserve.

23.0 Enforcement

- 23.1 An officer may order any person who is, or in the absence of evidence to the contrary, appears to be, residing on the reserve contrary to this by-law, and who is not entitled to reside on the reserve, to cease to reside on the reserve.
- 23.2 Any person who fails or refuses to comply with a decision of Council revoking residency under this by-law commits an offense and is subject to the applicable penalties.
- 23.3 Everyone who assists a person who has been ordered to cease to reside on the reserve, to continue to reside on the reserve, commits an offense.
- 23.4 It is acknowledged and agreed by the Chief and Council and the Members of the Nation that an officer has full and sufficient authority to enforce this by-law and other lawful by-laws of the Tla-o-qui-aht First Nations to the best of their ability, including the authority to arrest and/or forcibly remove persons from the reserve who are not authorized to be present upon the reserve.

24.0 Judicial Review

24.1 On any application for judicial review in respect of a decision or resolution made pursuant to this by-law, the Court shall take notice of the specialized knowledge and expertise of the Residency Board and Council with respect to the customary law, history, culture and values of the Tla-o-qui-aht First Nations, as well as the best interests of the Tla-o-qui-aht First Nations community.

25.0 Penalties

25.1 Any person who contravenes any of the provisions of this by-law commits an offense 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.

26.0 Severability

26.1 Should a court determine that a provision of this by-law is invalid for any reason, the provision shall be severed from the by-law and the validity of the rest of the by-law shall not be affected.

27.0 Amendments

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

28.0 Reviews

28.1 This by-law and proceedings taken under it shall be reviewed annually, or so often as Council may direct, by persons appointed by Council for this purpose, and the product of such reviews shall be laid before Council and made available to any resident of the reserves or Member of the Tla-o-qui-aht First Nations upon request.

29.0 Enactment

THIS BY-LAW IS HEREBY enacted at a duly convened meeting of the Council of the Tla-o-qui-aht First Nations this 23 day of August, 2023.