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**WIIKWEMKOONG UNCEDED TERRITORY
RESIDENCY LAW
A LAW GOVERNING THE RESIDENCE OF MEMBERS AND OTHER PERSONS
ON THE WIIKWEMKOONG UNCEDED TERRITORY**

WHEREAS the Wiikwemkoong Unceded Territory has the inherent right of jurisdiction over its lands and its members as recognized and affirmed by section 35(1) of the *Constitution Act, 1982* to enact this law; and,

WHEREAS it is considered necessary for the life, health, safety and welfare of the Wiikwemkoong Unceded Territory to regulate the residence of its members and other persons on Wiikwemkoong Unceded Territory; and,

WHEREAS the Chief and Council of Wiikwemkoong Unceded Territory shall make a law governing the residence of its members and other persons on the Wiikwemkoong Unceded Territory lands as empowered by our GChi-Naaknigewin; and,

WHEREAS nothing in this law may be interpreted as abrogating or derogating from the rights of the Wiikwemkoong Unceded Territory and its members; and,

WHEREAS the Chief and Council and Band Membership need to address incidents of violence and undesirable activity on the Wiikwemkoong Unceded Territory, and the dangers and harm that such circumstances present to the life, health, safety and welfare of the persons present on the Wiikwemkoong Unceded Territory;

NOW THEREFORE the Chief and Council of the Wiikwemkoong Unceded Territory hereby make the following law:

Short Title

1. This law may be cited as the “Wiikwemkoong Residency Law”.

Interpretation

2. In this law, the terms set out below are defined as follows:

“Applicant” means a person who has submitted an application for permission to be a resident of Wiikwemkoong territory in accordance with section 9;

“Abrogating or Derogating” abrogate means to abolish it entirely and derogate means to enact something that is contrary to it;

“Child” means a child 0 to 18 years of age, who may also be legally adopted or adopted by recognized custom;

“Chief and Council” means the duly elected Chief and Council of the Wiikwemkoong Unceded Territory;

“Dwelling” means any house, apartment, mobile home, or cottage, or a room located therein or any similar lodging;

“Entitlement” means having the right to something.

“Indictable Offence” means an indictable offence under the Criminal Code of Canada;

“Member” means a person whose name appears on the Wiikwemkoong Unceded Territory’s membership list or who is entitled to have his or her name appear on the Wiikwemkoong Unceded Territory’s membership list;

“Principle Residence” means the place at which a person resides on a more permanent basis than at any other place at which the person may reside from time to time;

“Reside” means to live in a dwelling as one’s Principle Residence;

“Resident” means a person who resides on Wiikwemkoong Unceded Territory, and includes a person who is temporarily absent from Wiikwemkoong Unceded Territory because of schooling, work, travel or similar purposes, and includes a person whose right to reside on Wiikwemkoong Unceded Territory has been revoked on an interim basis in accordance with this law, but excludes persons visiting Wiikwemkoong Unceded Territory for 30 days or less;

“Spouse” means a person who is married to, or who co-habits in a relationship of some permanence and commitment, akin to a conjugal relationship, with a Resident of the Wiikwemkoong Unceded Territory.

“Wiikwemkoong Unceded Territory” is situated on the east end of Manitoulin Island Ontario in Georgian Bay of Lake Huron. Our territory includes the main village of Wiikwemkoong and satellite areas known as Pointe Grondine, Rabbit Island, Cape Smith, Wiikwemkoongsing, Kaboni, South Bay, Murray Hill, and Buzwah;

“Wiikwemkoong Tribal Police Service” means the body established for the purpose of providing primary policing service throughout the Wiikwemkoong Unceded Territory and includes 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 Chief and Council for the purpose of maintaining law and order on Wiikwemkoong Unceded Territory;

Preamble

We are Wiikwemkoong Anishinaabek. Our home is Odawa Mnis and surrounding islands. Our lands are Unceded.

We have retained these lands for our future generations so that they can continue to be Anishinaabe. We have not relinquished any of our rights to any of the lands in the Great Lakes Basin to any nation. We continue to govern the waters, airs, and lands including Islands, as our ancestors have since time immemorial.

The Wiikwemkoong GChi-Naaknigewin will ensure the protection of our Rights, both as individuals and as a collective.

Entitlement to Reside on Reserve

3. A person is entitled to reside on Wiikwemkoong Unceded Territory only if the person
 - a. Resides on Wiikwemkoong Unceded Territory at the time this law comes into forces and only until he or she ceases to have a Principal Residence on Wiikwemkoong Unceded Territory;
 - b. Has been authorized to reside on Wiikwemkoong Unceded Territory pursuant to this law.
 - c. A Spouse or dependent Child of a person who is entitled to reside on Wiikwemkoong Unceded Territory under sub-section 3(a) is entitled to live on Wiikwemkoong Unceded Territory if they actually reside with that person. They are entitled to reside on Wiikwemkoong Unceded Territory until such time as they cease to reside on Wiikwemkoong Unceded Territory, and their entitlement to live on Wiikwemkoong Unceded Territory is independent of the entitlement of the person entitled under 3(a).
4. Notwithstanding section 3, any Spouse or Dependent Child of a person who has been granted permission to reside on Wiikwemkoong Unceded Territory for a defined period is not entitled to reside on Wiikwemkoong Unceded Territory after the end of that defined period of time.

Residents List

5. The Registrar of Residents, as appointed by the Chief and Council, shall maintain a Residents List on which is recorded:
 - a. the name of each Resident;
 - b. an indication as to whether each Resident is a Resident for an indefinite or defined period, including cottage lot leases;
 - c. the length of any defined period of residence;

- d. the location of each Resident's Dwelling; and
- e. whether each Resident is a Status Indian.

Residency Tribunal

6. The Chief and Council shall appoint, and prepare a written mandate and terms of reference for, a **Residency Tribunal** of three (3) or more members of Wiikwemkoong Unceded Territory to hear and determine applications for residency pursuant to section 11, and petitions for revocation of entitlement to reside on reserve pursuant to section 23.
7. The **Residency Tribunal** may establish rules governing the conduct of hearings and procedures under this law and shall retain records of its proceedings.
8. For the purposes of hearing and determining applications under this law, a quorum of the **Residency Tribunal** shall require at least three (3) members.

Application to be a Resident

9. Any person or family who wishes to reside on Wiikwemkoong Unceded Territory must apply to the Residency Registrar for permission to be a Resident or Residents of Wiikwemkoong Unceded Territory or to extend any defined period for which permission was previously granted to the person or family to be a Resident or Residents of Wiikwemkoong Unceded Territory.
10. Where a family wishes to apply to the **Residency Tribunal** to reside on Wiikwemkoong Unceded Territory, it shall do so through the eldest member of the family who shall be identified as the family's application as the Applicant.
11. An application for residency on Wiikwemkoong Unceded Territory shall be filed with the Residents List and shall include the following components or proposals:
 - a. The Applicant's reasons for applying to be a Resident;
 - b. If the Applicant proposed to reside on Wiikwemkoong Unceded Territory for a limited time, the approximate duration of the proposed residence;
 - c. The location at which the Applicant proposes to reside;
 - d. The name of 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 section 16;
 - h. Signed written authorizations in a form satisfactory to the Registrar authorizing the Registrar to seek and obtain a criminal records check for the Applicant and all other persons over the age of 16 with whom the Applicant proposed to reside; and
 - i. For each person who is proposed to reside on Reserve, copies of that individual's driver's license, and Indian Status Card, if any;

- j. Minimum of three (3) Letters of Support from Band Members who reside in Wiikwemkoong Unceded Territory.

Hearing of Application to be a Resident

12. As soon as is reasonably practicable after the filing of a properly completed application, but subject to the notice requirements of section 13, the Residency Tribunal shall hold a hearing with respect to the application.
13. At least fourteen (14) days prior to the hearing, the Residents List shall:
 - a. give written notice to the Applicant of the date, time and place of the hearing and inform the Applicant that he or she has a right to appear at the hearing and to be heard in support of the application; and
 - b. Publicly post a copy of the notice at the Wiikwemkoong Unceded Territory Administration Office.
14. At the hearing of the Applicant, the Residency Tribunal shall:
 - a. provide the Applicant with an opportunity to present evidence and to make oral and written submissions, or both, in support of the application; and
 - b. provide any resident present at the hearing with an opportunity to be heard in an oral and/or written submission.

Decision on Application for Residency

15. After the hearing described in section 12, the Residency Registrar shall meet in private to consider the application.
16. In determining whether to approve an application for residency, the Residency Tribunal shall take into consideration each of the following:
 - a. whether the Applicant has arranged for a place to reside on Wiikwemkoong Unceded Territory;
 - b. whether the Applicant residing on Wiikwemkoong Unceded Territory would be compatible with the culture, society and community of the Wiikwemkoong Unceded Territory and the welfare of its members residing on Wiikwemkoong Unceded Territory;
 - c. whether the Applicant is of good character based on letters of support;
 - d. the extent to which the application is prepared to commit his or her personal and economic resources to the welfare and advancement of the community residing on Wiikwemkoong Unceded Territory;
 - e. the availability of adequate housing, and services on Wiikwemkoong Unceded Territory;
 - f. whether the Applicant is or will be employed on Wiikwemkoong Unceded Territory; and
 - g. whether the entitlement of the Application to reside on Wiikwemkoong Unceded Territory has previously been revoked, the circumstances surrounding any such revocation, any change in the person's circumstances, and whether the presence of the person on Wiikwemkoong Unceded Territory presents or would present a danger to the life, health, safety and welfare of the community.

17. Where the Applicant is a Member, the Residency Tribunal shall consider only the criteria in sub-sections 16 a), e) and g).
18. Within twenty (20) days of the hearing, the Residency Tribunal shall deal with an application for permission to be a Resident on Wiikwemkoong Unceded Territory by
 - a. granting the Applicant permission to be a Resident of Wiikwemkoong Unceded Territory until such time as the Applicant ceases to reside on Wiikwemkoong Unceded Territory; or
 - b. granting the Applicant permission to be a Resident of Wiikwemkoong Unceded Territory for a defined period of time; or
 - c. extending any defined period for which permission was previously granted to the person by the Residency Tribunal to be a Resident of Wiikwemkoong Unceded Territory; or
 - d. refusing the application;
 - e. and shall give written notice of its decision to the Applicant, incorporating reasons in support of its decision.
19. Within thirty (30) days of the hearing the Residency Tribunal shall post a notice of its decision in the Wiikwemkoong Unceded Territory Administration Office where it is clearly visible to the public.
20. A decision by the Residency Tribunal pursuant to section 18 is final. The Applicant may appeal the decision pursuant to the WUIR Dispute Resolution Policy – to be replaced by the “ADR” upon analysis by the Governance Committee – or reapply after a period of one (1) year as per Section 22.
21. Where the Applicant is a person whose right to reside on Wiikwemkoong Unceded Territory has been and remains revoked by resolution of the Chief and Council pursuant to section 38, no decision by the Residency Tribunal to grant permission to the Applicant to reside on Wiikwemkoong Unceded Territory shall be valid unless affirmed by a resolution of the Chief and Council at a duly convened meeting with a special majority of at least two-thirds of the Chief and Council present at the meeting voting in favour of such resolution.

Re-Application for Residence

22. Where an application made under section 11 is refused pursuant to sub-section 18 d., the Residency Registrar is not required to consider any further application by that person for a period of one (1) year from the date of the refusal, unless the Applicant can show that there has been a material change of circumstances.

Petition to Revoke Resident’s Right to Reside on Reserve

23. One Hundred and Twenty Five (125) Registered Band Members, eighteen (18) years of age and older, may submit a written petition to the Residency Tribunal for revocation of the entitlement

of any person to reside on Wiikwemkoong Unceded Territory on an interim basis on the basis that:

- a. there are reasonable grounds to believe that the person, while a Resident of Wiikwemkoong Unceded Territory has committed an Indictable Offense, which has endangered the life, health, safety and welfare of one or more persons, including drug related offenses;
 - b. the Resident has been charged with committing an indictable offense referred to in subsection 23 a.;
 - c. the Resident's charge(s) have not yet been brought to trial or otherwise resolved; or
 - d. there are reasonable grounds to believe that the presence of the person on Wiikwemkoong Unceded Territory presents or would present a danger to the life, health, safety and welfare of the community.
24. One hundred and twenty five (125) Registered Band Members eighteen (18) years of age or older, may submit a written petition to the Residency Tribunal for revocation of the entitlement of any person to reside on Wiikwemkoong Unceded Territory permanently or for a defined period of time on the basis that:
- a. the person while a Resident of Wiikwemkoong Unceded Territory, has been convicted of an Indictable Offense for which a pardon has not been granted, which offense has endangered the life, health, safety and welfare of one or more persons; or,
 - b. the person, within any period of two (2) years while residing on Wiikwemkoong Unceded Territory, has been convicted of two (2) or more offenses against the person or property of another Resident and for which a pardon has not been granted and that the presence of the person on Wiikwemkoong Unceded Territory presents or would present a danger to the life, health, safety and welfare of the community.
25. A petition shall not be considered under sections 23 and 24 in respect of a Resident who, at the time of the petition, is under the age of sixteen (16) years.

Hearing of Petition for Revocation of Right to Reside on Reserve

26. Following the receipt of a petition pursuant to section 23 or section 24, and subject to the advance notice provisions in sections 27, 28 and 29 the Residency Tribunal shall hold a hearing within thirty (30) days, but may, in its discretion, grant reasonable adjournments at the request of the affected party.
27. At least seven (7) days prior to the hearing of a petition submitted pursuant to section 23 or section 24, the Residents List shall
- a. give written notice by way of personal service upon the affected Resident or their legal counsel informing the affected Resident of the date, time and place of the hearing and that he or she has a right to present submissions to the **Residency Tribunal** in writing, or in person; and
 - b. use reasonable efforts to give written notice by registered mail to each petitioner of the date, time and place of the hearing and informing each petitioner that he or she has a right to appear at the hearing in person or present submissions in writing; and
 - c. publicly post a copy of the notice in the Wiikwemkoong Unceded Territory Administration building.

28. If the affected Resident is incarcerated, service of notice pursuant to sub-section 27 a, will be sufficient if it is sent to the attention of the affected Resident at the correctional facility where the affected Resident is being held.
29. If the affected Resident is less than eighteen (18) years of age, notice pursuant to sub-section 27 a. shall also be given to any of the affected Resident's parents or guardians who reside on Wiikwemkoong Unceded Territory.
30. At the hearing, the Residency Tribunal shall
 - a. provide each petitioner, the affected Resident and if section 29 applies, the affected Resident's parents or legal guardian an opportunity to present evidence and to make oral and written submissions or both, on the petition; and
 - b. provide any Resident present at the hearing with an opportunity to be heard in an oral or written submission.

Decision on Petition for Revocation of Right to Reside on Reserve on an Interim Basis

31. As soon after a hearing as is reasonably practicable, the Residency Registrar shall meet in private to consider the petition, and shall determine whether or not, in the opinion of the Residency Tribunal, the requirements of sections 23 or 24 as the case may be, are present.
32. The Residency Tribunal shall then deal with the petition pursuant to section 23 by
 - a. revoking the entitlement of the affected Resident to reside on Wiikwemkoong Unceded Territory on an interim basis pending the final resolution of the charges; or
 - b. refusing the petition.
33. Where the Residency Tribunal has resolved to revoke the entitlement of a Resident to reside on Wiikwemkoong Unceded Territory on an interim basis pending the resolution of the criminal charges, such revocation shall expire
 - a. In any case 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. In any case where the final resolution of the charges after trial and any resulting appeals is a conviction, and where no petition pursuant to section 28 has been submitted to the Residents List in respect of such person within thirty (30) days from the date of the conviction; or
 - c. In any case where the affected Resident is convicted of the charges and a petition has been submitted to the Residents List in respect of such person within thirty (30) days from the date of the conviction, upon the final resolution of such petition by the Residency Tribunal or the Chief and Council, as the case may be.
34. Within Thirty (30) days, the Residency Tribunal shall deal with the petition pursuant to section 23 to revoke the entitlement of a person who is **not** a member of the Wiikwemkoong Unceded Territory to reside on Wiikwemkoong Unceded Territory by:

- a. revoking the entitlement of the person to reside on Wiikwemkoong Unceded Territory permanently;
 - b. revoking the entitlement of the person to reside on Wiikwemkoong Unceded Territory for a defined period;
 - c. extending any defined period for which the person's entitlement to reside on Wiikwemkoong Unceded Territory was previously revoked; or
 - d. refusing the petition.
35. Within thirty (30) days, the Residency Tribunal shall deal with the petition pursuant to section 23 to revoke the entitlement of a person who is a member of the Wiikwemkoong Unceded Territory to reside on Wiikwemkoong Unceded Territory by:
- a. recommending that the Chief and Council revoke the entitlement of the person to reside on Wiikwemkoong Unceded Territory permanently;
 - b. recommending that the Chief and Council revoke the entitlement of the person to reside on Wiikwemkoong Unceded Territory for a defined period;
 - c. Recommending that the Chief and Council extend any defined period for which the person's entitlement to reside on Wiikwemkoong Unceded Territory was previously revoked; or
 - d. Refusing the petition.
36. A decision of the Residency Tribunal pursuant to sections 32, 34 or 35 shall be final. However, the person subject to the petition may appeal the decision pursuant to the Wiikwemkoong Unceded Territory Dispute Resolution Policy – **To be determined by Governance.**
37. A decision by the Residency Tribunal pursuant to sections 32, 33 or 35 shall be sent to the Tribal Police, the petitioners, the affected Resident, and shall be posted publicly in the Wiikwemkoong Unceded Territory Administration office.

Council Resolution on Petition to Revoke a Member's Right to Reside on Reserve

38. If the Residency Tribunal recommends that the Chief and Council revoke the entitlement of a Member to reside on Wiikwemkoong Unceded Territory pursuant to sub-sections 35 a, b or c, the Chief and Council shall consider such recommendation at a duly convened meeting, and may:
- a. revoke the entitlement of the person to reside on Wiikwemkoong Unceded Territory permanently;
 - b. revoke the entitlement of the person to reside on Wiikwemkoong Unceded Territory for a defined period of time;
 - c. extend any defined period for which the person's entitlement to reside on Wiikwemkoong Unceded Territory was previously revoked;
 - d. dismiss the petition; or
 - e. make such further or other resolution as the Chief and Council deems appropriate and necessary for ensuring the life, health, safety and welfare of the community.

39. Any resolution to revoke the entitlement of a person who is a Member to reside on Wiikwemkoong Unceded Territory pursuant to section 38 shall require a special majority of at least two-thirds of the Chief and Councilors present at the Chief and Council meeting to vote in favour of such resolution, failing which the resolution shall be of no force or effect.
40. A resolution by the Chief and Council pursuant to section 39 shall be sent to the Tribal Police, the petitioners, the affected Resident and if the affected Resident is less than eighteen (18) years of age, the affected Resident's parents or legal guardians who reside on Wiikwemkoong Unceded Territory, and shall be posted publicly in the Wiikwemkoong Unceded Territory Administration office.

Effective Time of Revocation

41. Where the right of a Resident to reside on Reserve has been revoked by a decision or resolution under this by-law, the Resident's right to reside on Wiikwemkoong Unceded Territory shall expire twenty-four (24) hours from the time that the decision is communicated to the Resident, and if the affected Resident is less than eighteen (18) years of age, twenty-four (24) hours from the time that the decision is communicated to the affected Resident's parents or legal guardians who reside on Wiikwemkoong Unceded Territory.

Cessation of Services

42. Where the entitlement of a person to reside on Wiikwemkoong Unceded Territory has been revoked on an interim basis, permanently or for a defined period, all services provided by the Wiikwemkoong Unceded Territory to the person shall be discontinued through the currency of the revocation.

Visits

43. A person whose entitlement to reside on Wiikwemkoong Unceded Territory has been revoked on an interim basis, permanently or for a defined period of time, may apply to the Residency Tribunal for permission to visit Wiikwemkoong Unceded Territory for the purposes of funerals, ceremonies and other special occasions.
44. A person making application under section 43 shall include in his or her application the dates upon which the person proposed to visit Wiikwemkoong Unceded Territory, the purpose of the visit, where on Wiikwemkoong Unceded Territory the person will be present, and any additional information or submissions the person wishes the Residency Tribunal to consider.
45. The Residency Tribunal shall use its best efforts to consider and determine applications under section 43 expeditiously and in advance of the proposed visit dates.

46. The Residency Tribunal shall use its best efforts to consider and determine applications under section 43 on the basis of the written application and is not required to hold a hearing into the matter.
47. A decision by the Residency Tribunal under section 46 is final. Applicants may appeal the decision pursuant to the Wiikwemkoong Unceded Territory Dispute Resolution Policy – **to be determined by Governance.**

Persons Not Affected by Revocation

48. No revocation of a Resident's entitlement to reside on Wiikwemkoong Unceded Territory shall affect the entitlement of the Spouse or Children of that Resident to continue to reside on Wiikwemkoong Unceded Territory.

Enforcement

49. An officer of Wiikwemkoong Tribal Police Service may order any person who is, or in the absence of evidence to the contrary, appears to be, residing on Wiikwemkoong Unceded Territory contrary to this law, and who is not entitled to reside on Wiikwemkoong Unceded Territory to cease to reside on Wiikwemkoong Unceded Territory.
50. Any person who fails or refuses to comply with an order made under section 49 commits an offense under this law and is subject to the applicable penalties.
51. Every person who assists a person who has been ordered to cease to reside on Wiikwemkoong Unceded Territory, to continue to reside on Wiikwemkoong Unceded Territory, commits an offense under this law and is subject to the applicable penalties – **to be determined by Child Welfare Committee.**
52. It is acknowledged and agreed by the Chief and Council and the Members and Residents that Wiikwemkoong Tribal Police Service constables have full and sufficient authority to enforce this law and other lawful laws of the Wiikwemkoong Unceded Territory to the best of his or her ability, including the authority to arrest and/or forcibly remove persons from Wiikwemkoong Unceded Territory who are not authorized to be present on Wiikwemkoong Unceded Territory.

Judicial Review

53. On any application for judicial review in respect of a decision or resolution made pursuant to this law, the Court shall take notice of the specialized knowledge and expertise of the members of the Residency Tribunal and the Chief and Council with respect to the history, culture and values of the Wiikwemkoong Unceded Territory, as well as the best interests of the community.

Penalties

54. 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) or to imprisonment for a term not exceeding thirty (30) days, or both.

Severability

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

Amendments

56. This law may only be amended by two thirds of Council of the Chief and Council at a duly convened Council meeting.

Reviews

57. This law and proceedings taken under it shall be reviewed annually or as often as the Chief and Council may direct, by persons appointed by the Chief and Council for this purpose, and the outcome of such review shall be presented to Chief and Council and made available to any Resident on Wiikwemkoong Unceded Territory or Member upon request.

THIS LAW IS HEREBY enacted at a duly convened meeting of the Chief and Council of the Wiikwemkoong Unceded Territory this 8th day of August, 2016.