



MISSISSAUGA FIRST NATION

LAW NO.?
A Law for Residency

Whereas we the citizens of Mississauga First Nation exercise our inherent aboriginal and treaty rights to govern ourselves through enacting our own laws through our own *Misswezahging Constitution*, duly ratified March 15, 2015;

And Whereas the Mississauga First Nation has entered into the Framework Agreement on First Nation Land Management with Canada (February 12, 1996, as amended: the "Framework Agreement"), which was ratified on behalf of the Government of Canada by the *First Nations Land Management Act* (1999);

And Whereas the Mississauga First Nation ratified the Framework Agreement and brought its *Land Code* into effect on August 1, 2009;

And Whereas, pursuant to the *Mississauga Land Code*, laws may be enacted to protect Mississauga Land, the use and benefit of Mississauga Land, the occupation of Mississauga Land, residence on Mississauga Land, and the creation of offences, penalties, and remedies for violations of Mississauga laws; and

And Whereas, it is the custom and convention of the Council of Mississauga First Nation to establish laws for the protection of its members and preservation of Ojibwe culture and way of life, the Mississauga First Nation shall regulate the residence of Band Members and Non-Band Members on the Reserve;

And Whereas, the Council of Mississauga First Nation is also empowered under Section 81(1), (p1), (q) and (r) of the *Indian Act* to make laws in relation to residency on the Reserve;

Now Therefore, the Council of Mississauga First Nation hereby enact this law:

1. SHORT TITLE

This law shall be cited as the "Mississauga First Nation Custom Residency Law".

2. DEFINITIONS

1) In this Law, unless the context otherwise requires:

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| “Assurity” | means |
| “Applicant” | means a person who has submitted an application for permission to reside on Mississauga First Nation. |
| “Band” | means the Mississauga First Nation. |
| “Band Council Resolution” | means a resolution passed by a majority vote at a duly called and convened meeting of the Chief and Council of the Mississauga First Nation. |
| “Band Member” | means a person whose name appears on the Mississauga First Nation Band list or who is entitled to have his name appear on the Mississauga First Nation Membership Code of the Band. |
| “Council” | means the body composed of those persons elected pursuant to the <i>Misswezahging Constitution</i> and the <i>Mississauga First Nation Custom Election Code</i> . |
| “dependent child” | means a person under the age of 18 years who has not withdrawn from, or a person older than 18 years of age unable by reason of illness or disability to withdraw from, the care and control of his or her parent or other person standing <i>in loco parentis</i> . |
| "dwelling" | means any house, apartment, mobile home, or a room located therein, or any similar lodging suitable for human habitation. |
| “Member” | means a person whose name appears or is entitled to appear on the Mississauga First Nation Band Membership List. |
| “Mississauga First Nation, MFN or First Nation” | means the Mississauga First Nation, also commonly referred to as Mississagi, Misswezahging, Mississauga #8, Mississauga Reserve, Mississauga Indian Band, Mississauga River Band of Indians or any other commonly referred to names. |

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| “Mississauga Land” | means Mississauga First Nation Land and has the same meaning as is set out in Section 5 of the <i>Mississauga First Nation Land Code</i> , as amended from time to time. |
| “Misswezahging Constitution” | means the supreme law ratified and adopted by the Mississauga First Nation on March 15, 2015, and as may be amended thereafter, under which all other laws can be created and that we, the citizens of Misswezahging, have created through our inherent Indigenous and treaty rights to govern ourselves and our traditional territory. |
| “Non-Member” | means a person whose name does not appear or is entitled to appear on the Mississauga First Nation Band Membership List. |
| “Officer” | means a police officer, police constable or other person charged with the duty to preserve, maintain public peace, and by-law enforcement officer or other person appointed by Council for the maintaining of law and order. |
| “Reserve” | means the Mississauga First Nation, No. 8. |
| “Reside” | Means, for the purposes of this law and subject to proof to the contrary, a person who occupies a dwelling for a period exceeding 30 days on lands reserved for the Mississauga First Nation shall be deemed to reside thereon. A person who occupies dwelling or temporary structure for a period, a permit is required. |
| | “Residence” |
| “Residency Committee” | means the committee members of Mississauga First Nation hereinafter created which is delegated the authority to deal with all residency matters under this law. |
| “Residency Fee” | means the yearly fee set by Band Council Resolution which is charged for i) the privilege of residing in the community, and ii) to recover the reasonable costs to the First Nation of any |

services rendered to residents, which includes, but is not limited to, the costs for maintenance of infrastructure, roads, waste removal, policing, and fire protection. The Residency Fee shall be reviewed periodically by the Committee, who may recommend changes to Council.

“Resident” means a person who is entitled to reside on the reserve as provided by Section 3 of this law.

“Sponsorship” means a Band member who agrees to take responsibility for an individual who is requesting to reside.

“Spouse” means a person who is married to another, whether by a traditional, religious or civil ceremony and includes any person who is cohabiting with an individual in a conjugal relationship for a continuous period of no less than one year immediately prior to the time a common-law marriage is claimed.

“Temporary Resident” means a person who has been granted temporary permission to reside on Mississauga First Nation for a specific period of time and under certain conditions.

“Visitor” means a person who is visiting Mississauga First Nation for a period not exceeding sixty (60) days under the sponsorship of a band member.

3. RESIDENTS

- 1) A person is entitled to reside on the reserve only if:
 - i) they had their principal residence on the reserve at the time this law comes into force and only until they cease to have a principal residence on the reserve;
 - ii) they are a registered member of the First Nation or entitled to be registered on the band list;
 - iii) band member will be held accountable if visitor is residing within their residence;
 - iv) they are:
 - (a) a spouse of a member of the First Nation currently residing on the Reserve at the time this law comes into force;

- (b) a spouse as defined under the Land Code exercising the rights and privileges granted under the Land Code.
 - (c) a dependent child of a member of the First Nation under the age of eighteen;
 - (d) holding a land interest that reasonably implies residential use of the land under the Land Code; or,
 - v) they have an existing Residency Permit issued under this law.
- 2) The Council shall appoint a Registrar of Residents to provide for the administration of applications, petitions and appeals made under this law and to maintain records related to the residents of the reserve. The Registrar of Residents shall maintain a Residents List, on which is recorded:
- i) the name of each resident;
 - ii) an indication as to whether each resident is a resident for an indefinite or defined period;
 - iii) the length of any defined period of residence;
 - iv) the location of each resident's dwelling;
 - v) Council must approve any lease with band members wishing to reside on the community; and
 - vi) A contract with owners should be drawn with the Band Office whom have Certificate of Ownership and wish to rent out their residence.

4. RESIDENCY CATEGORIES

- 1) Any non-member may apply to the Residency Committee (hereinafter referred to as the "Committee") for a Residency Permit for any of the following:
- i) a Visitors Pass to stay for a period not exceeding sixty (60) days;
 - ii) a temporary permit to reside; or,
 - iii) permission to reside;
- 2) The Committee may grant a Residency Permit to reside for a period not exceeding one (1) year.

5. RESIDENCY COMMITTEE

- 1) The Residency Committee shall consist of five (5) members to:
- i) receive all Residency Permit requests;
 - ii) to schedule and attend all residency and revocation hearings; and,
 - iii) to make decisions regarding residency requests and revocation petitions.
- 2) Council shall appoint members to Residency Committee from a list of qualified members of the First Nation who have expressed an interest in being on the Committee.
- 3) A person is qualified to be on the Residency Committee if they:
- i) are a member of the First Nation;
 - ii) are at least 18 years of age;

- iii) reside within 75 kilometers of where the Residency Committee holds their hearings; and,
 - iv) have provided a CPIC or other applicable police records search that does not show any convictions or charges inconsistent with their position on the Committee;
- 4) Where there is a reasonable apprehension that a member of the Committee is in a conflict of interest with respect to any specific matter before the Residency Committee, then that member shall be replaced for that matter by Council selecting a replacement from the list of qualified members of the First Nation under subsection (2) above;
- 5) For the purposes of this law, and without limiting the scope and content of the term, a conflict of interest exists where a member of the Residency Committee has an outside interest in a matter before the Committee that a reasonable person, apprised of all of the facts, believes could conflict with that Committee member's duties to the Committee.

6. APPLICATION FOR PERMISSION TO RESIDE

- 1) All requests for a Residency Permit must be filed with the Residency Committee and shall include the following:
- i) the applicant's reasons for applying for permission to reside
 - ii) the approximate time requesting for permission to reside
 - iii) the location at which the applicant proposes to reside
 - iv) the name of the spouse of the applicant, if any
 - v) the name(s) of the applicant's dependent children, if any
 - vi) a CPIC or other criminal check completed within the preceding 60 days
 - vii) verification of the applicant's sources of income
 - viii) any other information the applicant is requested to provide relating to the considerations of the Residency Committee as set out in section 8. (a)
 - ix)
- 2) The Band Member can sponsor a non-band member temporarily until the application to reside is processed.
- 3) Anyone making an application for a Residency Permit, including the extension of an existing Residency Permit, must pay the non-refundable application fee. The application fees shall be set, from time to time, by Band Council Resolution, and are intended to recover the First Nation's costs of processing, considering, and enforcing the Residency permits granted under this law.
- 4) a two-year transition grace period will be given to non-band members that acquire a residency permit;
- 5) instated within the Land Code, renter will be required to obtain a Residency Permit regardless if they are renting from a person with C/O or the Band;

7. HEARING

- 1) After the filing of a properly completed application, the Committee shall invite the applicant to a regularly scheduled Committee meeting to review the application within 30 days.
- 2) At least fourteen (14) days prior to the hearing, the Committee shall:
 - i) give written notice to the applicant of the date, time, and place of the next scheduled Committee meeting and notify the applicant that they are to appear at the meeting and be heard in support of the application; and
 - ii) post in the Band Office a copy of the notice.
- 3) At the hearing, the Committee shall:
 - i) provide the applicant with an opportunity to present evidence and to make oral or written submissions, or both, in support of the application;
 - ii) provide any member present at the hearing with an opportunity to be heard on the application; and
 - iii) if the applicant does not appear without reasonable excuse acceptable to the Committee, may consider the application *in absentia* or may dismiss the application.
- 4) The Committee shall keep records of its proceedings and may delegate the recording of proceedings to Committee staff.
- 5) The rules of procedure governing the hearing of applications shall be set by Band Council Resolution. The Committee may draft and submit proposed amendments to the Rules for Council's consideration.
- 6) The Committee shall only allow evidence or argument that is relevant to the matters before the Committee.

8. DECISION

- 1) In determining whether an application for a Residency Permit should be granted, the Committee shall take into consideration the following:
 - i) whether the applicant has arranged a place to reside on the reserve
 - ii) whether the applicant residing on the reserve would be compatible with the culture and society of the First Nation
 - iii) whether the applicant is of good moral character
 - iv) whether the applicant is employed or has own source of income
 - v) whether the applicant is prepared to commit his personal and economic resources for the betterment of the community
 - vi) the availability of adequate housing on the reserve
 - vii) the availability of adequate resources on the reserve
 - viii) the orderly settlement and development of reserve lands
 - ix) the best interests of the First Nation, its members, lands, assets and invitees.
- 2) The Committee shall dispose of with all applications for a Residency Permit by:

- i) granting a Visitor's Permit for less than sixty (60) days under the sponsorship of a member;
 - ii) granting a temporary Residency Permit for a specific period of time less than one year and subject to any conditions the Committee deems appropriate;
 - iii) granting a Residency Permit for one year;
 - iv) granting a subsequent Residency Permit for a period of one year, or
 - v) denying the application.
- 3) After hearing from the Applicant and any members who wish to make submissions on the application, the Committee may retire in private consider the matter *in camera* and shall make best efforts to render its decision as quickly as possible.
 - 4) All Residency Committee decisions shall be made by consensus, however, if consensus cannot be reached in a reasonable time, then by majority vote.
 - 5) The Residency Committee shall issue written reasons for all decisions.
 - 6) Written notice of the Residency Committee decision shall be sent to the applicant, to the community, and posted at the Band Office within five (5) business days of the Committee reaching its decision.
 - 7) Any Applicant whose application is refused under this section may appeal to Chief and Council pursuant to Section 11.
 - 8) Upon approval, a Residency Permit will be issued by the Committee.
 - 9) A Residency Permit issued under this law
 - i) Is a personal privilege and is not transferrable; and,
 - ii) does not, and shall not, confer on the holder any rights or privileges other than the privilege of residing in and crossing reserve lands to and from the dwelling specified therein.

9. RE-APPLICATION

- 1) Where an application made under section 6 is denied pursuant to the provisions of section 8, the Committee is not required to consider any further application from the Applicant for a period of one year from the date that the application was refused; unless the Applicant can demonstrate that there has been a material change of circumstances.
- 2) Band members have an existing right to reside under s.3 of the Residency Law.

10. REVOCATION OF RESIDENCY PERMITS

- 1) On the receipt of a petition from at least ten (10) Mississauga Band Members residing on the Reserve, the Residency Committee may revoke the Residency Permit of any non-member who is referred to in section 3 where, after a hearing, it has been shown that the person, while resident on the reserve,

- i) has been convicted of an offence under the *Criminal Code of Canada* for which a pardon has not been granted, involving:
 - (a) violence or the threat of violence to a person
 - (b) sexual abuse or assault
 - (c) a hate crime or a racially motivated crime
 - (d) the abuse of an elder, including financial abuse or
 - (e) environmental damage;
 - ii) has been convicted of an offence in another country of a substantially similar nature to those in s.10.(1)(i);
 - iii) has been convicted of an offence under the law of the Mississauga First Nation;
 - iv) violates an Aboriginal or Treaty right, or misrepresents themselves to be a status Indian or member of a First Nation;
 - v) within any period of two years while residing on the reserve, has committed two (2) or more offenses under the *Criminal Code* (Canada), against the person or property of another resident, for which he has been convicted and for which a pardon or pardons have not been granted;
 - vi) has been charged with a crime or crimes as set out in (a) or (b) that create a reasonable apprehension of an increased risk of harm to the First Nation members, invitees, or their property on the reserve;
 - vii) the Resident's personal circumstances have changed such that they would no longer be appropriate for them to continue to reside on the Reserve; or,
 - viii) the Resident presented false or misleading information to the Residency Committee on a material matter during the application process, and that it would be detrimental to the best interests of the Band to permit the person to continue to be a resident on the reserve.
- 2) A petition under s.10(1) must,
- i) clearly state the factual allegation being made against the non-member on each signature page;
 - ii) contain allegation(s) based on one or more of the reasons set out in s.10(1);
 - iii) have a clear written warning to signatories that the petition will be given to the subject of the petition if it submitted to the Residency Committee;
 - iv) include the following information about each person signing the petition,
 - (a) their full legal name;
 - (b) their current address;
 - (c) their band number or status number;
 - (d) date when they signed the petition; and,
 - v) have at least 10 signatures collected within 60 days of the date when the petition is submitted to the Residency Committee.
- 3) Within fourteen (14) days after the petition referred to in subsection (1) is received, the Committee shall hold a hearing into the matter.
- 4) At least seven (7) days prior to the hearing, the Committee shall:
- i) give to each petitioner and to the affected resident,

- (a) written notice of the date, time and place of the hearing and informing the petitioner that the affected resident he/she has a right to appear at the hearing and be heard; and,
 - (b) a copy of the petition filed with the Residency Committee;
- ii) post in the Band Office a copy of the required notice.
- 5) At the hearing the Committee shall:
 - i) provide each petitioner and the affected resident with an opportunity to present evidence and to make oral or written submissions, or both, on the petition;
 - ii) provide the police and/or the Band Council Administration the opportunity to make submissions on the petition before the Residency Committee; and,
 - iii) provide any member present at the hearing the opportunity to be heard.
- 6) The Council may make rules of procedure governing the drafting, collecting, hearing and adjourning of petitions under this section. The Residency Committee may draft and recommend rules for Council's consideration.
- 7) The Committee shall only allow evidence or argument that is relevant to the matters before the Committee.
- 8) The Residency Committee shall keep records of its proceedings.
- 9) After it has heard all the evidence and submissions, the Committee shall adjourn to consider the petition in private.
- 10) Any revocation of entitlement of a person to reside on the reserve shall require a majority vote of the Committee voting in favour of the petition.
- 11) The Committee shall render its written decision, with reasons, within seven (7) days of the conclusion of the hearing.
- 12) The day the Committee renders its decision, a notice of the decision shall be posted in the Band Office.
- 13) A petition can be considered under this section for a resident who is under the age of sixteen (16) years.
- 14) No revocation of a resident's Residency Permit shall affect the entitlement of the spouse or children of that resident to continue to reside on the reserve.
- 15) A resident whose entitlement to reside on the reserve has been revoked by the Committee under this section may appeal the decision to the Chief and Council pursuant to section 11.
- 16) Whether or not the Resident may continue to reside on the Reserve while awaiting the appeal hearing before Chief and Council will be determined by Chief and Council based on the best interests and safety of the First Nation, its members, invitees and property.

11. CHIEF AND COUNCIL

- 1) The Chief and Council shall hear appeals pursuant to sections 8 and 10.
- 2) All decisions of Chief and Council shall be made by Band Council Resolution.
- 3) All decisions of the Chief and Council shall be final.

12. APPEALS

- 1) All final decisions of the Residency Committee may be appealed to the Chief and Council by,
 - i) the applicant for a Residency Permit;
 - ii) the petitioners, if any; or,
 - iii) any member of the First Nation affected by a decision of the Residency Committee.
- 2) A request for an appeal must be filed within thirty (30) days of the Residency Committee decision being posted.
- 3) Within fourteen (14) days after the filing of the appeal request, the Chief and Council shall conduct a hearing with respect to the appeal.
- 4) At least seven (7) days prior to the date of the hearing, the Chief and Council shall:
 - i) give written notice of the date, time and place of the hearing and notice of the right to appear and make oral and written submissions, or both, at the hearing to,
 - (a) the Appellant; and,
 - (b) the petitioners, if any;
 - ii) post in the Band Office a copy of the notice.
- 5) At the hearing, the Chief and Council shall:
 - i) provide the Appellant with an opportunity to present evidence and to make oral or written submissions, or both, in support of the appeal; and,
 - ii) provide the Respondents(s) with an opportunity to present evidence and to make oral or written submissions, or both, against the appeal; and,
- 6) The Chief and Council shall only allow evidence or argument that is relevant to the matters before the Council.
- 7) In determining whether to grant a Residency Permit, the Chief and Council shall take into consideration the criteria set out in section 8 and 10.
- 8) Within fourteen (14) days the Chief and Council shall render a written decision, with reasons, regarding the application for permission to reside.

13. ENFORCEMENT

- 1) An officer may order any person who is residing on the reserve, and who is not lawful entitled to reside on the Reserve according to section 3 of this law, to cease to reside on the reserve.
- 2) Where a person who has been ordered under subsection (1) to cease to reside on the reserve fails or refuses to do so within thirty (30) days after the order is made under this section, an officer may issue a further order prohibiting the person from being on or re-entering the reserve for a period of sixty (60) days.
- 3) Any person who fails or refuses to comply with an order made under subsection (2) commits an offence.
- 4) Every person who assists a person who has been ordered to cease to reside on the reserve to continue to reside on the reserve commits an offence.
- 5) The summary conviction procedures of Part XXVII of the *Criminal Code*, R.S.C., 1985, c. C-46, as amended from time to time, apply to all offences under this law.

14. PENALTIES

- 1) Any person who contravenes any of the provisions of this law commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars (\$3,000.00) or to imprisonment for a term not exceeding thirty (30) days, or both.

15. RESIDENCY FEE

- 1) All residents shall pay a year residence fee as a condition of their Residency Permit.

16. JUDICIAL REVIEW

- 1) A decision made by the Band Council under s.12 is final and binding on the parties in respect of whom the decision is made and, subject to subsection (2), shall not be questioned, reviewed or restrained by any proceeding in the nature of an application for judicial review or otherwise in any court.
- 2) On a question of jurisdiction only, a decision is reviewable on an application for judicial review of the decision.
- 3) An application referred to in subsection (2) for judicial review of a decision must be commenced within 15 days from the day the decision is made.

17. ENACTMENT

- 1) This law was proposed by _____(Councillor or Chief) at the Council meeting dated _____, 2020, and the law was then tabled by Council;
- 2) The draft of this law was posted at the public buildings on the First Nation on _____, 2020;
- 3) The draft of this law was deposited with the Chair of the Lands Committee on _____, 2020.

- 4) Council, by resolution passed on ____, 2020, approved and enacted the law, subject to confirmation by the community, and set a ratification vote on this law pursuant to s.14.1(g) of the *Land Code* to be held pursuant to the *Community Approval Law*.
- 5) The ratification vote was held on ____, 2020 where the law was supported by a majority, and it is effective as of the date of that ratification vote.

18. AMENDMENT PROCESS

This law may be amended utilizing sections 15-18 of the *Misswezahging Constitution, 2015*.

THIS LAW IS HEREBY made at a duly convened meeting of the Chief and Council of The Mississauga First Nation this _____2020, subject to confirmation by Community Ratification vote held under the Community Approval Law.

Voting in favour of the law are the following members of Chief and Council:

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Certification of Ratification Vote