

**PEERLESS TROUT FIRST NATION
RESIDENCY BYLAW**

**A BYLAW GOVERNING THE RESIDENCY OF
PEERLESS TROUT FIRST NATION MEMBERS AND NON-
MEMBERS ON THE PEERLESS TROUT FIRST NATION RESERVES**

WHEREAS Chief and Council derives its authority from the Membership of the Peerless Trout First Nation and is responsible for the peace, order and good government of the Peerless Trout First Nation;

AND WHEREAS Chief and Council have decided that it is in the best interests of the Peerless Trout First Nation to enact a Peerless Trout First Nation Residency Bylaw;

AND WHEREAS Chief and Council may enact a Bylaw governing the residency of Members and Non-Members of the Peerless Trout First Nation Reserves pursuant to ss. 81(1)(p), (p.1), (p.2), (q), 81(2) and 81(3) of the *Indian Act*, R.S.C. 1985, c I-5, as amended;

AND WHEREAS Chief and Council has decided it is necessary for the health, safety and welfare of the Members of the Peerless Trout First Nation to regulate the residency of Peerless Trout First Nation Members and Non-Members on the Reserves;

AND WHEREAS nothing in the Bylaw shall deem to alter, diminish, derogate or abrogate any Aboriginal or Treaty rights of the Peerless Trout First Nation or its Members;

**NOW THEREFORE CHIEF AND COUNCIL OF THE PEERLESS
TROUT FIRST NATION HEREBY ENACTS THE FOLLOWING BYLAW:**

**Part 1
Interpretation**

1.0 SHORT TITLE

1.1 This Bylaw may be cited as the *Peerless Trout First Nation Residency Bylaw*.

2.0 DEFINITIONS

2.1 In this Bylaw:

- (a) “Applicant” means a person who has submitted an application for permission to be a Resident of the Peerless Trout First Nation in accordance with Section 5.0 herein;

- (b) “Council” means the Chief and Council of the Peerless Trout First Nation;
- (c) “Dependent” means:
 - (i) a child under eighteen (18) years of age who is the natural child of a Member of the Peerless Trout First Nation or a child adopted by a Member of the Peerless Trout First Nation either legally or by Indian Custom;
 - (ii) a child under eighteen (18) years of age who is in the custody of an adult Member of the Peerless Trout First Nation; or
 - (iii) a person over the age of eighteen (18) years who is unable, due to illness, disability or other cause to withdraw from the care of the adult Member of the Peerless Trout First Nation having custody of that person;
- (d) “Dwelling” means any home, apartment, mobile home or room located therein or any similar lodging suitable for habitation;
- (e) “Indian Act” means the *Indian Act* R.S.C. 1985, c. I-5, as amended;
- (f) “Indian Custom” means a traditional Indian practice;
- (g) “Indictable Offence” means a criminal offence as defined in the *Criminal Code* R.S.C. 1985, c. C-46, as amended;
- (h) “Member” means a person who is registered as a Member of the Peerless Trout First Nation according to the Peerless Trout First Nation Membership Code;
- (i) “Minor” means any person under the legal age of eighteen (18) years in the Province of Alberta;
- (j) “Non-Member” means a person who is not registered as a Member of the Peerless Trout First Nation under the Peerless Trout First Nation Membership Code;
- (k) “Officer” means any R.C.M.P., police officer, bylaw enforcement officer, Peace Officer or any other person appointed by the Chief and Council to preserve and maintain the public peace;
- (l) “Person” means Member or Non Member;

- (m) “Principal Residence” means the place at which a person ordinarily resides on a more frequent basis than at any other place at which the person may reside from time to time;
- (n) “PTFN” means Peerless Trout First Nation;
- (o) “R.C.M.P.” means Royal Canadian Mounted Police;
- (p) “Reserve” means the lands that have been set apart, the legal title of which is vested in Her Majesty in Right of Canada for the use and benefit of the Members of the Peerless Trout First Nation and includes any other lands which may be acquired by way of land claims agreements;
- (q) “Reside” means to live in a dwelling otherwise than as a visitor on the Peerless Trout First Nation Reserves;
- (r) “Residency/Trespass Bylaw Board” means PTFN Residency/Trespass Bylaw Board;
- (s) “Resident” means a person who is entitled to reside on the Peerless Trout First Nation Reserve as provided by Section 3.0 herein;
- (t) “Rural Area” means that part of the Reserve which is not surveyed as a townsite;
- (u) “Spouse” means the legal or common law spouse of a Member of the Peerless Trout First Nation;
- (v) “Summary Offence” means a criminal offence as defined in the Criminal Code of Canada R.S.C. 1985, c.C-46 as amended;
- (w) “Townsite” means an area of the Reserve which is surveyed and divided into lots;

Part 2

Residency/Trespass Bylaw Board

3.0 RESIDENCY/TRESPASS BYLAW BOARD

- 3.1** A Residency/Trespass Bylaw Board shall be constituted and consist of the members of PTFN Chief and Council pursuant to Terms of Reference set out by Chief and Council. The Board shall be governed for the administration of residency applications, petitions and complaints made under this Bylaw and to maintain records related to the Residents of the PTFN Reserve.

- 3.2** Chief and Council shall have the option to appoint PTFN Members to the Residency/Trespass Bylaw Board in addition to the Members of Chief and Council.

Part 3

Right to Reside on Reserve

4.0 ENTITLEMENT TO RESIDE ON RESERVE

- 4.1** A person is entitled to reside on the PTFN Reserves only if the following criteria are met:
- (a) has his/her principal residence on the PTFN Reserves at the time this Bylaw comes into force; and
 - (b) is authorized to reside on the PTFN Reserves pursuant to one of the following provisions of the Indian Act: Sections 18.1, 20 and 24 and subsections 28(2) and 58(3); or
 - (c) is granted the right by means of this Bylaw.

4.2

- (a) In the event that a Member and a Non-Member Spouse or Non-Member Partner cease to live together as a result of a Marriage or Common-Law union breakdown or other reason, then the Non-Member Spouse or Non-Member Partner shall no longer be entitled to reside on Reserve and shall immediately leave the Reserve subject to 4.2 (b).
- (b) In the event that the Non-Member Spouse or Non-Member Partner has resided on Reserve for a minimum of five (5) years then the Non-Member Spouse or Non-Member Partner shall within thirty (30) consecutive days of ceasing to live with the Member, apply to the Residency/Trespass Bylaw Board for residency on the Reserve. If the Non-Member Spouse or Non-Member Partner fails to apply to the Residency/Trespass Bylaw Board within the specified thirty (30) day period, then the Non-Member Spouse or Non-Member Partner shall immediately leave the Reserve.

Part 4

Residency Application Process

5.0 APPLICATION TO BE A RESIDENT

- 5.1** A person shall apply to the Residency/Trespass Bylaw Board for permission to be a Resident of the PTFN Reserve or to extend any defined period of residency for which permission was previously granted to the person by the Residency/Trespass Bylaw Board or Chief and Council.

5.2 The application shall be filed with the Residency/Trespass Bylaw Board and shall include:

- (a) the applicant's reasons for applying to be a Resident,
- (b) if the applicant proposes to reside on the PTFN Reserve for a limited time then the approximate duration of the proposed residence,
- (c) the location at which the applicant proposes to reside,
- (d) the name of the applicant's spouse, if any,
- (e) the names of the applicant's dependent children, if any,
- (f) the name(s) of any other person(s) who is a dependent of the applicant,
- (g) any additional information the applicant wishes to provide relating to the criteria indicated in section 7.2 herein,
- (h) Police Information Check with a Vulnerable Sector Check,
- (i) whether the applicant is a Treaty Indian or a Non-Treaty Indian,
- (j) letter in support of the application signed by 25 Members of PTFN excluding Family Members if the applicant is applying to be a permanent Resident, and
- (k) any other information required by the Residency/Trespass Bylaw Board;

5.3 Within thirty (30) consecutive days of receipt of a fully completed application for residency as specified in Section 5.2 herein, the Residency/Trespass Bylaw Board shall meet to review the application in accordance with the criteria indicated in Section 7.2 herein.

5.4 At their meeting, the Residency/Trespass Bylaw Board shall decide whether the application can be approved without a hearing or whether a hearing is required.

5.5 In the event that the Residency/Trespass Bylaw Board decides that an application can be approved without a hearing then the application shall be approved and written notice of the approval shall be sent to the applicant within fourteen (14) consecutive days from the date of the approval of the application and posted in the PTFN Administration Office.

- 5.6** In the event that the Residency/Trespass Bylaw Board decides that a hearing is required then the application shall be dealt with in accordance with Section 6.0 herein.

6.0 RESIDENCY HEARING

- 6.1** Within thirty (30) consecutive days from the date on which the Residency/Trespass Bylaw Board decided that a hearing was required the Residency/Trespass Bylaw Board shall hold a hearing with respect to the application.
- 6.2** At least fourteen (14) consecutive days prior to the hearing, the Residency/Trespass Bylaw Board shall:
- (a) give written notice to the applicant of the date, time and place of the hearing and inform the applicant that he/she may appear at the hearing, and
 - (b) post in the PTFN Administration office a copy of the notice of the hearing.
- 6.3** At the hearing, the Residency/Trespass Bylaw Board shall:
- (a) provide the applicant with an opportunity to present evidence and to make oral and written submissions in support of the application, and
 - (b) provide any PTFN Member present at the hearing with an opportunity to make a submission with respect to the application.
- 6.4** The Residency/Trespass Bylaw Board may make rules of procedure governing all hearings and shall keep records of its proceedings.

7.0 RESIDENCY DECISION

- 7.1** The Residency/Trespass Bylaw Board shall meet in private to consider the application after hearing and receiving all the submissions with respect to the application.
- 7.2** In determining whether an application for permission to be a Resident of the PTFN Reserve should be granted, the Residency/Trespass Bylaw Board shall take into consideration but shall not be limited to the following criteria:
- (a) whether the applicant has arranged for an approved dwelling to reside on the PTFN Reserve,

- (b) whether the applicant's residing on the PTFN Reserve would be compatible with the safety, culture, society and welfare of the Members residing on the PTFN Reserve,
 - (c) whether the applicant is of good moral character,
 - (d) the extent to which the applicant is prepared to commit his / her personal and economic resources to the advancement and welfare of PTFN,
 - (e) Police Information Check with a Vulnerable Sector Check,
 - (f) whether the applicant is a Treaty Indian or a Non-Treaty Indian,
 - (g) the applicant's dependents,
 - (h) whether the applicant has taken reasonable steps to rehabilitate himself or herself if the applicant does have past criminal conviction(s),
 - (i) the purpose of the application of the Applicant.
- 7.3** Within twenty one (21) consecutive business days after the hearing, the Residency/Trespass Bylaw Board shall notify the applicant in writing of their decision and shall post a notice of its decision in the PTFN Administration office and indicate on the notice the date of posting of the decision.
- 7.4** In all decisions concerning residency in this Bylaw the Residency/Trespass Bylaw Board shall give their decisions in writing and provide reasons for their decision.

Part 5

Cancellation of Residency by Special and/or Emergency Hearing

8.0 CANCELLATION OF RESIDENCY BY SPECIAL AND /OR EMERGENCY HEARING OF THE RESIDENCY/TRESPASS BYLAW BOARD:

- 8.1** a) In the event that a Resident of the PTFN Reserve is or has been:
- (1) convicted of a summary offence under the Criminal Code of Canada; or
 - (2) charged with a summary offence under the Criminal Code of Canada; or

- (3) convicted of an indictable offence under the Criminal Code of Canada; or
- (4) charged with an indictable offence under the Criminal Code of Canada; or
- (5) acting in a manner that is a threat to the health, safety and welfare of other PTFN Members on the Reserve;

then the Residency/Trespass Bylaw Board on its own initiative or at the direction of Chief and Council shall hold a hearing as soon as possible on an urgent basis to determine whether it is in the best interests of the PTFN Members on Reserve that the residency of the Resident be cancelled immediately.

- b) In determining whether the residency of the Resident referred to in section 8.1(a)(1), (2), (3), (4) and (5) be cancelled immediately the Residency/Trespass Bylaw Board shall take into consideration but shall not be limited to the criteria indicated in section 7.2 herein.
- c) In the event that the Resident referred to in section 8.1(a)(1), (2), (3), (4) and (5) is a minor the Residency/Trespass Bylaw Board shall hold a hearing as soon as possible on an urgent basis to determine whether it is in the best interests of the PTFN Members on Reserve that the residency of the parent(s) and/or legal guardian(s) of the minor should be cancelled immediately.

8.2 Any hearing to be held in accordance with this section shall require notice to be served on the Resident personally three (3) consecutive days prior to the date of the hearing, or if such notice is not practical in the circumstances then such notice specifying the place, date, and time of the hearing shall be posted in the PTFN Administration Office no less than three (3) consecutive days prior to the date of the hearing.

8.3 At the hearing the Residency/Trespass Board may:

- (a) Provide the applicant with an opportunity to present evidence and make oral and written submissions in regards to the hearing, and
- (b) Provide any PTFN Member or other person at the hearing with an opportunity to make oral and written submissions in regards to the hearing.

8.4 A Resident whose right to reside on the PTFN Reserve has been cancelled by the Residency/Trespass Bylaw Board under this section shall leave the Reserve immediately from the date that the notice of the decision was posted in the PTFN Administration Office and shall not be permitted to enter the Reserve. The notice of the decision shall indicate the date that the notice was posted.

Part 6
Cancellation of Residency by Petition

9.0 CANCELLATION OF RESIDENCY BY PETITION

- 9.1** A Resident(s) may present a Petition in writing to the Residency/Trespass Bylaw Board signed by Members on the Reserve who are a minimum of eighteen (18) years of age demanding that the residency of a Resident(s) of the PTFN Reserve be cancelled by the Residency/Trespass Bylaw Board which shall contain details as to why the residency of the Resident(s) should be cancelled subject to the following minimum requirements:
- (a) in order to cancel the residency of a Resident(s) residing in Peerless Trout First Nation Reserves, the Petition must be signed by a minimum of 100 PTFN Members residing in Peerless Trout First Nation Reserves;
- 9.2** Within three (3) business days or as soon as possible thereafter after the Petition referred to in subsection 9.1 is received the Residency/Trespass Bylaw Board shall hold a hearing into the matter.
- 9.3** At least two (2) business days prior to the hearing, the Residency/Trespass Bylaw Board shall:
- (a) give written notice to each Petitioner and to the Resident(s) at their last known address of the date, time and place of the hearing and informing the Petitioner and the Resident(s) that he/she shall appear at the hearing, and
 - (b) post in the PTFN Administration Office a copy of the notice of the hearing.
- 9.4** At the hearing, the Residency/Trespass Bylaw Board shall:
- (a) provide each Petitioner and the Resident(s) with an opportunity to present evidence and to make oral and written submissions, with respect to the Petition, and
 - (b) provide any PTFN Member present at the hearing with an opportunity to make submissions with respect to the Petition.
- 9.5** The Residency/Trespass Bylaw Board shall make rules of procedure governing the hearing of Petitions under this section and shall keep records of its proceedings.
- 9.6** The Residency/Trespass Bylaw Board shall after the hearing meet in private to consider the Petition after receiving all submissions with respect to the Petition.

- 9.7** Within five (5) business days after the hearing, the Residency/Trespass Bylaw Board shall notify the Petitioners and the Resident(s) in writing of their decision and post a notice of its decision in the PTFN Administration Office and indicate on the notice the date of posting of the notice.
- 9.8** A Resident whose right to reside on the PTFN Reserve has been cancelled by the Residency/Trespass Bylaw Board under this section shall leave the Reserve immediately from the date that the notice of the decision was posted in the PTFN Administration Office and shall not be permitted to enter the Reserve. The notice of the decision shall indicate the date that the notice was posted.

Part 7

Cancellation of Residency by Complaint

10.0 CANCELLATION OF RESIDENCY BY COMPLAINT

- 10.1** A PTFN Resident(s) may present the Residency/Trespass Bylaw Board with a written complaint against another Resident of the Peerless Trout First Nation which shall contain details as to why the behavior of that Resident is a threat to the health, safety and welfare of other PTFN Members on the Reserve.
- 10.2** Within five (5) business days of receipt of the complaint the Residency/Trespass Bylaw Board shall cause an investigation into the complaint and may review the complaint with the R.C.M.P. and/or Peace Officer.
- 10.3** If after an investigation the Residency/Trespass Bylaw Board concludes that the complaint is valid then a first warning letter shall be delivered to the Resident who is the subject of the complaint requiring that he/she act in a lawful and peaceful manner while on the Reserve and notifying the Resident that any further written complaints against that Resident may result in the cancellation of that Resident's residency on the PTFN Reserve and the removal of the Resident from the PTFN Reserve.
- 10.4** In the event that a second written complaint is received by the Residency/Trespass Bylaw Board against a PTFN Resident from a PTFN Resident containing details that are different from the first written complaint as to why this Resident is a threat to the health, safety and welfare of other PTFN Members on the Reserve then the Residency/Trespass Bylaw Board shall cause an investigation into the complaint. In the event that the Residency/Trespass Bylaw Board concludes that the second written complaint is valid then it shall proceed as follows:

- (1) Within five (5) business days from the receipt of the second written complaint the Residency/Trespass Bylaw Board shall:
 - (c) send a second final warning letter to the Resident indicating that a third written complaint against the Resident found to be valid shall result in the cancellation of his/her residency and removal from the PTFN Reserve and ordering the Resident to immediately keep the peace and act in a lawful manner while on the Reserve, and
 - (d) post the second final warning letter in the PTFN Administration Office;

10.5 In the event that a third written complaint is received by the Residency/Trespass Bylaw Board against a PTFN Resident from a PTFN Resident containing written complaints as to why the Resident is a threat to the health, safety and welfare of other PTFN Members on the Reserve then the Residency/Trespass Bylaw Board shall cause an investigation into the complaint. In the event that the Residency/Trespass Bylaw Board concludes that the third written complaint is valid then it shall proceed as follows:

- (1) Within five (5) business days from receipt of the third written complaint the Residency/Trespass Bylaw Board shall:
 - (a) take whatever steps are necessary to cancel the residency of that Resident and order that the Resident be removed from the PTFN Reserve,
 - (b) serve the Resident with the cancellation letter informing him/her that his/her residency has been cancelled and that he/she shall leave the Reserve within twenty four (24) hours from the date of service of the cancellation letter. In the event that the Residency/Trespass Bylaw Board is unable to serve the Resident with the cancellation letter then the Resident shall leave the Reserve immediately from the date that the cancellation letter is posted in the PTFN Administration Office, and
 - (c) post the cancellation letter in the PTFN Administration Office and indicate on the letter the date of posting of the letter.
- (2) In the event that the Resident does not leave the Reserve as required then the Residency/Trespass Bylaw Board shall immediately demand that the R.C.M.P. and or Peace Officer enforce the order of the Residency/Trespass Bylaw Board.

Part 8
Reapplication for Residency

11.0 REAPPLICATION

- 11.1** In the event that an application made under section 5.0 is denied or a residency under section 8, 9 or 10 is cancelled the Residency/Trespass Bylaw Board shall not be required to consider any further application by that Resident for a period of three (3) years from the date of the decision of the Residency/Trespass Bylaw Board.
- 11.2** A Resident whose residency has been cancelled may after a period of three (3) years from the date of the decision of the cancellation of the residency reapply for residency under Section 5.

Part 9
Appeal Process

12.0 APPEALS

- 12.1** All appeals with respect to this bylaw shall be made to the Federal Court of Canada.

Part 10
Powers of Enforcement

13.0 POWERS OF OFFICER & ENFORCEMENT

- 13.1** An Officer who finds a person residing on the PTFN Reserve who is not a Resident in accordance with this bylaw shall order the person to immediately leave the PTFN Reserve.
- 13.2** Any person who fails or refuses to comply with an order made under section 13.1 herein commits an offence punishable on summary conviction and may be arrested in accordance with s. 495(2) of the Criminal Code (Canada) and is subject to a fine not more than \$1,000.00 or imprisonment for a term not more than thirty (30) days, or both for having committed an offence.
- 13.3** It is acknowledged and agreed by Chief and Council and the Members of the PTFN that an officer as defined in section 2.1 herein, has full and sufficient authority to enforce this bylaw to the best of his / her ability.

Part 11
Aiding and Abetting

14.0 AIDING AND ABETTING

- 14.1** Any Resident who provides shelter or accommodation or any other assistance on the PTFN Reserve to a person who has been ordered pursuant to the provisions of this bylaw to immediately leave the PTFN Reserve, may have their own right to reside on the PTFN Reserve cancelled in accordance with the provisions of this bylaw.

Part 12
General Matters

15.0 GENERAL MATTERS

- 15.1** The right to reside on the PTFN Reserve shall not mean that a Member or Non-Member will be provided housing or receive a land allocation. The provision of housing or land shall only be done by a written resolution of Chief and Council or as set out in its adoption of written policies on housing and land use. A Non-Member who resides on the Reserve shall not participate in the governmental affairs of the Peerless Trout First Nation.
- 15.2** A Non-Member who resides on the PTFN Reserve is not entitled to make use of the resources, land or property of the Peerless Trout First Nation for his/her personal profit.
- 15.3** A Non-Member who resides on the PTFN Reserve shall keep the peace and respect the customs, bylaws and policies of the Peerless Trout First Nation.
- 15.4** In the event that a Non-Member is in breach of any provision of this Bylaw, the Residency/Trespass Bylaw Board may cancel the Non-Members residency on the Reserve in accordance with this Bylaw.
- 15.5** A person who is not a Resident of the PTFN Reserve in accordance with this Bylaw shall not be entitled to receive any services or benefits from the Peerless Trout First Nation.

15.6 NOTICES

Address for Notice. Any notice, request, consent, acceptance, waiver or other communication required or permitted to be given under this Agreement (a "**Notice**") shall be in writing and shall be given by personal delivery or written electronic communication which results in

a written or printed notice being given to the applicable address set forth below:

- a. in the case of the Peerless Trout First Nation Chief and Council addressed to:

Peerless Trout First Nation
P.O. Box 128
Peerless Lake, Alberta T0G 2W0
Attention: Chief and Council
Email: _____

and in the case of the Resident addressed to:

TBD

- b. **Receipt of Notice.** Any Notice, if personally delivered, shall be deemed to have been validly and effectively given and received on the date of delivery if received prior to 5:00 p.m. on a Business Day, otherwise the date of delivery shall be deemed to be on the Business Day next following such date. Any Notice, if sent by telegraphic, fax communication, or email, shall be deemed to have been validly and effectively given and received on the date of transmission if transmitted prior to 5:00 p.m. on a Business Day, otherwise the date of delivery shall be deemed to be on the Business Day next following such date.
- c. Change of Address for Notice. By giving to the other Party at least 3 Business Days' Notice, any Party may, at any time and from time to time, change its address for delivery or communication for the purposes of this Section 15.

16.0 TREATY RIGHTS

- 16.1** This Bylaw shall be interpreted in accordance with the traditions, customs and values of the Peerless Trout First Nation and nothing in this Bylaw shall be interpreted as to deny, abrogate or derogate any Aboriginal or Treaty rights of the Peerless Trout First Nation or its Members.

17.0 INVALIDITY

- 17.1** If any provision of this Bylaw is determined by the Court to be invalid for any reason the provision shall be severed from the Bylaw and shall not affect the validity of the remaining provisions of the Bylaw.

18.0 AMENDMENT

18.1 This Bylaw may be amended by Chief and Council in accordance with the following procedure:

- (a) in the first reading, a draft of the proposed amendment(s) shall be tabled with Chief and Council after which the proposed amendment(s) shall be available to Members of the Peerless Trout First Nation for their information;
- (b) in the second reading, Chief and Council, shall review the proposed amendment(s) on a clause by clause basis and during this period shall consult with the PTFN membership as deemed necessary by Chief and Council;
- (c) in the third reading, the proposed amendment(s) shall be voted upon by Chief and Council.