



## **SAINT REGIS MOHAWK TRIBE**

### **RESIDENCY ORDINANCE**

#### **I. TITLE**

This Ordinance shall be known as the “Saint Regis Mohawk Tribe Residency Ordinance”.

#### **II. AUTHORITY AND PURPOSE**

A. The Saint Regis Mohawk Tribal Council (“Tribal Council”) is the duly recognized governing body of the Saint Regis Mohawk Tribe (“Tribe”) and is responsible for the health, safety, education and welfare of all members of the Tribe. The Tribe has the inherent authority to govern matters concerning residency within its Territory and jurisdiction subject to the requirements of applicable Tribal law.

B. The purpose of this Saint Regis Mohawk Tribe Residency Ordinance (“Ordinance”) is to protect the peace, safety, property, health, and general welfare of Tribal Members; and to preserve the Tribe’s culture, language and identity as a distinct Mohawk community, ensure the safety of the Mohawk community and preserve land and housing for the benefit of Tribal Members.

C. This Ordinance recognizes and confirms the right of Tribal Members to reside on the Saint Regis Mohawk Indian Reservation and other lands over which the Tribe has jurisdiction (all such lands referred to herein as “Mohawk Territory” or “Territory”) without the need for a Permit. This Ordinance also recognizes that there may be Non-Tribal Members who might qualify for residency under certain situations.

D. This Ordinance establishes laws for Non-Members to obtain Residency Permits allowing them to reside on Mohawk Territory under the conditions established herein.

#### **III. DEFINITIONS**

A. The following are definitions of terms and words used in this Ordinance.

1. “Akwasasne Community” means all Tribal Members who reside legally within Mohawk Territory (Akwasasne).

2. “Child” or “Children” means biological, adopted, step, and foster children as well as legal wards or orphans.

3. "Child with special needs" means a child over the age of majority with physical or mental disabilities or who otherwise requires the special attention of the parents or guardians.

4. "Close ties to the Akwesasne Community" is a term that is based upon a number of factors, including, but not limited to: years living within the Community; participation in Community events; knowledge of the Mohawk language and culture; active participation in tribal affairs; and other social and economic ties to the Community.

5. "Legal guardian" means a person who acts as the primary caretaker of a child who may be personally selected by the child's biological parents or appointed by a court.

6. "Life Partner" for purposes of this Ordinance, means a person who is in a relationship with another person that has all of the characteristics of a legal marriage. Some factors in deciding if a life partnership exists include: legal capacity to marry, length of the relationship, whether the couple is holding themselves out to the community as being married and whether they have joint and holding joint bank accounts and credit cards.

7. "Married" or "marriage" for purpose of this ordinance, refers to the legal or formal union of two people as partners in a personal relationship which may include same-sex marriages.

8. "Member of Other Tribe" means a person who is a member of a tribe, band, nation or community other than the Saint Regis Mohawk Tribe.

9. "Membership Code" or "Tribal Membership Code" means the 1986 Tribal Membership Code (sometimes referred to as Code "E"), adopted by Tribal Council Resolution 86-14 as amended.

10. "Membership Court" means the three Tribal Sub-Chiefs who are designated under the Tribal Membership Code as the Membership Court.

11. "Minor" or "Minor Children" means a person who under twenty-one (21) years of age.

12. "Mohawk Territory", "Territory" or "Akwesasne" means all lands within the 1796 Treaty with the Seven Nations of Canada (97 Stat. 55) and includes any other lands over which the Tribe exercises jurisdiction.

13. "Non-Member" or "Non-Members" any person, Native or Non-Native, who is not a member, nor is eligible to be a member of the Saint Regis Mohawk Tribe.

14. "Parent" means the mother or father of a child as defined in this Ordinance.

15. "Provincial law" means the laws of the provinces of Ontario or Quebec, Canada.
16. "Private Residence" means a housing unit that is owned by a person rather than a housing unit that is rented or leased by a person. Housing under the Akwesasne Housing Authority will be considered, for purposes of this Ordinance, Private rather than Rental residences.
17. "Rental Property" or "Rental Properties" means a housing unit that has rooms or units that are rented or leased out to guests on a for profit basis and includes, but is not limited to, apartments and boarding rooms, boarding houses and extended stay hotels.
18. "Reside" or "Residency" or "Long Term Residency" means physically residing on a permanent basis rather than a short term, temporary basis. Whether the residency is permanent or temporary, long term or short term, will be based on, but not limited to, the following factors: number of years living on the Territory, percentage of time a person has continuously lived on the Territory, whether the person considers the residency as his or her permanent address.
19. "Saint Regis Mohawk Tribe" or "Tribe" means the federally recognized Saint Regis Mohawk Tribe with government offices in Akwesasne, New York.
20. "Saint Regis Mohawk Tribal Court" means the judicial system established by Tribal Council pursuant to TCR 2007-01 as the Saint Regis Mohawk Tribal Court, an independent entity with independent judicial authority.
21. "Saint Regis Mohawk Tribal Police" means the law enforcement department for the Saint Regis Mohawk Tribe with police authority over Mohawk Territory.
22. "Spouse" for the purpose of this ordinance, refers to a person who is legally married under tribal, state or provincial law and shall include same-sex marriages.
23. "Tribal Council", for purposes of this Ordinance, means the three duly elected Chiefs of the Saint Regis Mohawk Tribe.
24. "Tribal Clerk" refers to the duly elected Tribal Clerk of the Saint Regis Mohawk Tribe.
25. "Tribal Ethics Code" means the law established by the Tribe in 2007, by TCR 2007-61, as amended.
26. "Tribal Election and Referendum Code" means Tribal Election and Referendum Ordinance enacted by the Tribe in 2008 (TCR 2008-36) to govern the conduct of all elections and tribal referenda, as amended.

27. "Tribal Procedures Act" means the Ordinance enacted by the Tribe in 2013 (TCR 2013-32) setting forth the general powers of the Tribal Council, clarifying referendum, ordinance and tribal resolution procedures, and related matters.

28. "Tribal Member", "Member" or "Mohawk" means a person who is enrolled under the Tribe's Membership Code or a person who is eligible to be enrolled regardless of where they reside.

2. "Widow" or "widower" means a person whose spouse or partner died while the couple was married and who has not remarried.

#### **IV. GENERAL PROVISIONS**

A. Tribal Members. Tribal Members shall have the right to reside on Mohawk Territory without a Permit. Issues regarding whether a person is a Tribal Member will be decided by the Tribal Clerk pursuant to the Membership Code.

B. Non-Members. Non-Members must obtain a Residency Permit under the Ordinance in order to reside on Mohawk Territory.

C. Eligibility for Residency Permits. The following are the only persons eligible to obtain a Residency Permit:

1. A Non-Member Spouse or Life Partner of a Tribal Member provided that the Spouse or Life Partner resides with the Tribal Member spouse or life partner on the Territory.

2. A Non-Member parent or legal guardian of a Tribal Member child provided that the Non-Member and the Tribal Member child reside together on the Territory.

3. A Non-Member Widow or Widower of a Tribal Member provided that the couple were long term residents on the Territory.

4. A Member of Other Tribe provided there is proof of close community ties to Akwesasne.

5. A Non-Member minor child who is residing with a parent or legal guardian who is either a Tribal Member or has a valid Residency Permit.

6. A Non-Member with special needs who is residing with a parent or legal guardian who is either a Tribal Member or has a valid Residency Permit.

D. Board Approval Subject to Investigation Findings. Final approval by the Residency Board of the above eligible Non-Members will be subject to Residency Board investigation and background checks.

## V. TRIBAL RESIDENCY BOARD

A. Composition. The Ordinance will be administered by a five (5) member Tribal Residency Board “Board” consisting of five (5) Board Members and two (2) Alternate Board Members. Alternate Members may substitute for Board Members, at the direction of the Board, in the event of vacancies or absences.

B. Initial Board. Tribal Council shall appoint each initial Board Member to a three (3) year concurrent term. Within twenty (20) days of the adoption of the Ordinance, the Tribal Council will post Residency Board positions. Appointment of the entire Board will be made no later than January 1, 2020.

C. Elected Board. After expiration of the Initial Board’s term, Board Members will be elected to staggered terms, and thereafter will be elected to three (3) terms. Elections will be held pursuant to the Tribe’s Election and Referendum Ordinance. Board Members are not prohibited from seeking re-election and there are no term limits for elected Board members.

D. Board Member Qualifications. Board Members (appointed and elected) must, at a minimum, satisfy the Election and Referendum Ordinance qualifications for elected officials. In addition, an appointed or elected Board member must.

1. Be a Member of the Saint Regis Mohawk Tribe.
2. Be at least twenty-five (25) years old (on date of appointment or election).
3. Be of good moral character and not have been convicted of a serious crime as defined in the Tribe’s Election and Referendum Ordinance, as amended.
4. Be willing to take, and must pass, a background check administered by the Tribe and/or Tribal Police.
5. Be willing and capable of maintaining communications through technology (email, texts, mobile phone) so as to be accessible to the Board.

6. For elected Members, be able to satisfy all qualification requirements in the Tribal Election and Referendum Ordinance and any Tribal laws that may be applicable to elected officials.

7. For the initial appointed Board, preference will be given to candidates who possess at least a two (2) year of degree from an accredited college or university.

E. Duties. The Board shall, at a minimum, have the following duties and responsibilities:

1. Adopt Board By-Laws and be responsible for performing its duties in accordance with this Ordinance, including drafting any regulations or hearing procedures in compliance with Tribal law.

2. Develop and distribute Residency Permit forms and applications.

3. Make all decisions required by the Board as set forth in this Ordinance and in Board Regulations. This shall include, at a minimum, decisions regarding qualifications of applications for Residency Permits, renewal and revocation of Permits.

4. Maintain accurate and organized records regarding Board activities and all actions the Board takes under this Ordinance including all of its decisions regarding residency. This may also include creating a Database of all Residency Permits and related data.

5. Report to the Tribal Council and Tribal Clerk on a regular basis (at least bi-annually) on its activities.

F. Board Compensation. Board members may also be entitled to compensation to be determined by the Tribal Council in accordance with the standard schedule of fees and compensation provided for Tribal boards, committees and commissions in general.

G. Board Officers. The Board will nominate a Chairperson by motion and majority vote for a one (1) year term or until a successor is elected. The Chairperson will preside over all meetings and perform all duties of that office as required by Board By-Laws. The Board will also nominate and elect other Officers (Vice-Chair, Treasurer, Secretary) with duties and requirements to be set forth in Board By-Laws.

H. Removal of Board Members. Board Members appointed by the Tribal Council may be removed by Tribal Council, either by the Council itself or upon recommendation by the Board. Board Members may be removed based upon violation of any provision of this Ordinance, failure to perform duties as a Board Member, excessive absences from Board

meetings, failure to recuse oneself due to a conflict of interest or conduct unbecoming a Board Member.

I. Vacancies. Appointed Board Member vacancies will be filled by the Tribal Council under the same procedure as for appointment. Board members appointed to fill vacancies will serve the remainder of the vacant seat. Elected Board Member vacancies will be filled through a special election to be called by the Election Board under Election and Referendum Ordinance rules and procedures. Board members elected to fill a vacancy will serve the remainder of the vacant seat.

## VI. RESIDENCY PERMITS

A. Residency Permits. There will be at least three categories of Residency Permits.

1. “Grandfather Resident” Permit. These Permits will be for Non-Members who are long term residents, as defined in the Ordinance, and who are residents on the effective date of the Ordinance. To obtain a Grandfather Residency Permit, the application must submit proof that he or she: (1) was a resident on Mohawk Territory on the date when the Residency Ordinance was approved; and (2) resided continuously on the Territory for at least the past five (5) years prior to that date. If these conditions are not satisfied, applications for Grandfather permits may be converted by the Board to applications for Regular Private Residency Permits. This Grandfather Residency Permit will allow the Non-Member to reside indefinitely on the Territory since it will not need to be renewed. The Fee for this Permit is a one-time non-refundable fee of \$50.00. The Term of the Permit is indefinite (no term and does not need to be renewed).

2. Regular Residency Permit. This Permit is for Non-Members who seek to reside in privately owned properties who do not qualify for the Grandfather Residency Permits (not long term resident pre-dating the Ordinance). This type of permit is for a term of five (5) years that must be renewed. A regular residency permit that has been granted four (4) consecutive times will no longer be subject to renewal. There is non-refundable fee of \$50.00 to apply for this Permit.

3. Tenant Permits. These are Permits for Non-Members who reside or seek to reside in Rental Properties, as defined by in the Ordinance. Residency Permits will be required for tenants who rent or lease housing on a “long term basis”, as defined in this Ordinance. Persons



who rent or lease housing on a short term basis may also be required to obtain a Permit under conditions that the Board shall prescribe. The Fee for Tenant Permits will be \$50.00, non-refundable and shall be good for the length of the tenant's lease or rental agreement.

B. General Permit Application Requirements. In addition to the requirements above, all Residency Permit Applications (Grandfather, Regular Residency and Tenant) must contain, at a minimum, the following information:

1. Name, address, date of birth, occupation, and other personal information about the Applicant.
2. How long the Applicant has lived on Mohawk Territory and the date when residence began.
3. Previous addresses (for at least the last ten years).
4. Whether the person is a Non-Native or Other Native.
5. If the person is an Other Native, what tribe, nation, community or band and any enrollment information.
6. Whether the person is married to, or is a "life partner" with, a Tribal Member and information on the marriage or partnership (copy of marriage license, length of marriage).
7. Name of Tribal Member spouse and enrollment information.
8. Information on any children in the household (whether biological, adopted, step, foster).
9. Information on all other persons in the household (including any with special needs).
10. If the person is a widow or widower, name of Tribal Member spouse and date of death.
12. Consent to a criminal background investigation.
13. Agreement that the applicant will agree to comply with Tribal laws.
14. Board will also provide information to applicants regarding deadlines for submitting and supplementing applications.
15. References (names and addresses and contact information) from at least three (3) persons.
16. Any family ties to Akwesasne.
17. Any criminal record.
18. Explanation on why applicant desires to reside on the Territory.

C. Additional Board Authorization. The Board is authorized to develop Regulations that will assist and promote the Permitting process. Such Regulations may require Owners and Landlords of Rental Properties to carry out certain acts and duties such as informing Tenants of the Permit requirements, providing Permit forms to their Tenants and reporting and certifying to the Board regarding Tenant compliance and updating information on an Owner's or Landlord's tenants. The Board is also authorized to develop additional Permit forms, if warranted, for "short term" residents on the Territory.

## VII. BOARD REVIEW OF APPLICATIONS

A. Investigation. Before the Board considers an Application for a Residency Permit, the Tribal Clerk shall verify the contents of the application form in accordance with the provisions provided in the regulations. The Tribal Clerk shall provide a Report to the Residency Board of any additional information obtained in the verification of the contents of the Application.

B. Board Review of Application. The Board's review of an Application after receipt of fee and verification that the Application is complete, may include, but not be limited to, the following:

1. An informal meeting with the applicant to answer any questions relevant to the Application.

2. A formal hearing, if necessary, to consider further information relevant to the Application.

3. If the Board decides to hear comments from Community members who have requested to be heard on the Application, the Community Member shall be notified of the date of the Hearing. The hearing under this section shall be conducted in accordance with the provisions provided in the regulations.

4. Any decision of the Board shall be by majority vote of the quorum.

5. The successful Applicant shall be issued the appropriate Residency Permit.

C. Required Notifications to Applicant, Others. In its Permit Application review process, the Board is required to provide, at a minimum, the following notifications:

1. Notification to the Applicant that the Application is complete and that the Board will begin its review.

2. Notification that the Applicant has a right to a hearing and respond to any questions that the Board may have.

3. Public Notice that Community Members may comment on Application.

4. If the Board decides to hear comments from Community Members, the Applicant will be notified and provided an opportunity to respond.

5. Notification of deadlines within which to respond.

6. The Applicant will be apprised of any hearing dates and right to submit evidence and present witnesses.

D. Permit Decision and Denials. Decisions of the Board shall be by majority vote of the quorum. The Board shall render a decision within sixty (60) days of receipt of the application unless good cause exists warranting an extension. An Applicant who is denied a Residency Permit shall be informed in person or by Certified Mail/Return Receipt Requested, by being provided with a written Notice of Denial that contains the reasons for the denial and the right to file an appeal and the deadline for filing.

E. Requirement to Leave Territory. Non-Members shall have thirty (30) days to leave the Territory under the following circumstances:

1. When Non-Members are required to obtain an Application for a Permit but have not applied with the required time frame. In this case, the thirty (30) day time period shall run from the date when they are ordered by the Board to leave the Territory because they have not filed an Application. The Non-Member may file an Application after receipt of the Board Order, but may not reside on the Territory until and unless the Application is approved.

2. When Non-Members have filed an Application but the Application has been denied and they have exhausted all appeals. In this case, the thirty (30) day time period shall run from the date of the final decision (Board decision and Tribal Court decision including an appeal).

3. The thirty (30) day time period may be extended for good cause but only for any additional seven (7) days.

4. Any Applicant that remains on the Territory beyond the time period ordered to leave the Territory may be charged by the Tribal Police with trespassing.

F. Permit Renewals. Permits may be renewed under the same terms as the original Permit by filing a Permit Renewal Application with the Residency Board and paying a non-refundable processing fee.

G. Publication of Board Decisions and Reports. Decisions of the Residency Board or the Tribal Court with respect to an Application for a Residency Permit, shall be published in a community newspaper. On or before January 1st of each year, beginning in the first full year following adoption, the Residency Board will provide the Tribal Council with a written report listing all persons residing on the Territory under a Residency Permit (including the expiration date), and the identity of any applicant who has been denied, or whose Residency Permit has been revoked.

## VIII. REVOCATION OF PERMITS

A. Revocation of Permits. Tribal Members may file a request with the Board seeking revocation of a Residency Permit. The request must be in writing and state the specific reasons why the Permit should be revoked. The Board will also have the authority to revoke a Permit with or without a formal complaint if grounds exist.

B. Grounds for Revocation. The Board has the right to revoke a Residency Permit of any person who:

1. Presents a substantial and immediate threat to the safety and welfare of the Tribe as a whole, to any individual member thereof, or to any other person within the Territory.
2. Has caused, or threatens to cause, destruction, injury or other impairment to real or personal property, whether held by the Tribe or by an individual.
3. Whose actions interfere with the administration, operation and processes of Tribal government.
4. Has committed a criminal offense classified as a felony or the equivalent in any jurisdiction or a misdemeanor involving injury or damages or threats to persons or property in violation of Federal, State, Tribal, or Provincial law, regardless of whether such offense has been expunged or otherwise forgiven.
5. Has engaged in tortious conduct in violation of Federal, State, Tribal or Provincial law.

6. Has engaged in activities causing or resulting in breach of the peace, public unrest or other disruption of the peace, health, morals or welfare of the Tribe or Tribal Members.

7. Has engaged in exploratory, investigatory or other analytical activities involving, in any manner, Tribal natural resources without prior permission of the Tribe.

8. Has engaged in solicitation for business, religious, or charitable purposes without prior permission of the Tribe.

9. Has interfered with tribal ceremonies without consent of the Tribal Members involved. (Under this subsection the meaning of the term "interference" shall include, but is not limited to, intrusion upon, disruption of, photographing, taping or other duplication of cultural and/or ceremonial activities); or

10. Has settled upon, established or has attempted to establish a residence or business upon, or to otherwise occupy or enter upon any land, either tribal or individually possessed, without first obtaining the consent of the Tribe.

11. Has failed to pay child support obligations under Child Support Order, from a Court of competent jurisdiction.

12. Whose eligibility status has changed such that he/she no longer meets the residency requirements.

C. Notice and Opportunity for Hearing. The person whose Permit is being considered for revocation shall be provided formal notice of the pending request for revocation and shall have an opportunity to respond to any allegations made which may include a hearing before the Residency Board.

D. Consistency with Exclusion Policy. Grounds for permit revocation set forth above in Section VIII, B. 1-10 are based upon the Tribe's Exclusion Policy as amended from time to time.

## **IX. APPEALS**

A. Appeals. Decisions of the Residency Board denying a Residency Permit, that do not involve enrollment or eligibility determinations, may be appealed to the Saint Regis Mohawk Tribal Court which includes the Tribal Appellate Court. When the Board renders a decision denying a Permit it shall notify the applicant of the right to appeal and provide appeal

information. Tribal Court proceedings will, to the extent consistent with this Ordinance, follow Tribal Court rules.

B. Enrollment-Related Decisions. If the Board's decision to deny an application is based upon the application's membership related claim or eligibility for membership under the Tribe's Membership Code that decision will be treated as a decision of the Tribal Clerk and it is appealable to the Tribal Membership Court under the Membership Code. When the Board renders a decision denying a Permit based upon the application's membership or eligibility for membership under the Tribe's Membership Code it shall notify the applicant of the right to appeal to the Membership Court and provide appeal information.

C. Standard of Review. The Tribal Court's review of the Board's decision to deny a Permit application shall be limited to a review of the Application and any materials submitted by the Applicant to the Board and the Board's decision. The Tribal Court shall review the Board's decision under an "Arbitrary and Capricious, Contrary to Law" standard of review.

D. No Further Appeal. Any decision of the Tribal Court (including any appeal to the Tribal Appellate Court) is final for the Tribe and there is no appeal to the Tribal Council.

## **X. ENFORCEMENT AND PENALTIES**

A. Enforcement Generally. Any final orders, decisions or other determinations that are issued by the Residency Board or by the Tribal Court shall be enforced by the Saint Regis Mohawk Tribal Police and/or by a State or County District Attorney under New York's Indian Law provisions. Orders, decisions and other determinations that may be enforced include, at a minimum.

1. Residency Board decisions orders that deny Permit applications.
2. Tribal Court or final Appellate Court orders affirming the Board's denial of Permit applications.
3. Orders by the Residency Board, or Tribal Court (including Appellate Court) that order a person to leave the Territory because he/she have not obtained a necessary Permit or that his/her permit has been revoke.
4. Any other final order, decision or supplemental determination under this Ordinance issued to a Person who has violated this Ordinance.

B. Exclusion Policy Not Affected. The Tribe's Exclusion Policy shall remain in force and effect and may be enforced against any one even if the person has been issued a Permit under this Ordinance. In such cases, the resident will not have the rights accorded under Section VII, C.

C. Penalties. Any person found to be on the Territory in violation of this Ordinance is subject to any or all of the following penalties:

1. Being charged with trespassing under Tribal Law and referral to State Court for criminal prosecution.
2. Liability for money damages to the Tribe in an amount to be determined by the Tribal Court.
3. An Order of Exclusion from the Territory which shall be executed by the Tribal Police within twenty-four (24) hours of the receipt of such an order.
4. Any other penalty available to the Tribe or Tribal Court under tribal, federal or state law.

## **XI. REGULATIONS**

A. The Residency Board may issue Regulations as appropriate for the proper administration of this Ordinance provided that such regulations are consistent with the provisions in this Ordinance.

## **XII. EFFECTIVE DATE**

A. Residency Permits will not be required until the Residency Board is seated and until the Board is able to develop Residency Forms, host Community educational meetings and fully apprise the Community of the Ordinance requirements and the Permit process. Within ninety (90) days, after it is seated, the Board shall notify the Community of the date(s) within which Non-Members must apply for and obtain required Permits. In the interim time period after enactment and when the Board is seated, the Tribal Council is authorized to take any actions needed to administer the provisions of this Ordinance.

### **XIII. AMENDMENTS**

A. This Ordinance may be amended by: (1) a duly conducted Referendum; or (2) by the Board through a Board Resolution recommending amendment, provided the amendment is confirmed by a vote of the Tribal Council. The amendment shall be processed following the Tribal Procedure Act and include notice to, and review by, the Community. Amendments through a Board Resolution may not change the residency eligibility requirements set forth in the Ordinance.

### **XIV. SEVERABILITY**

A. The provisions of this Ordinance shall be severable and if any part or provision shall be held void by any Court of competent jurisdiction, the decision of the Court so holding shall not affect or impair any of the remaining parts or provisions of this Ordinance.

### **XV. REPEAL OF PRIOR LAWS**

A. This Ordinance repeals any other Tribal Council Resolutions, Ordinances, Acts or Laws that inconsistent herein.