

THE SAMIAJIJ MIAWPUKEK FIRST NATION

Community Zoning By-Law No.2008

**A By-law Dividing the Reserve into Zones
and Regulating the Use of Land**

WHEREAS the Council of the Miawpukek First Nation desires to make a by-law dividing the reserve into zones and regulating the use of land;

AND WHEREAS the Council of the Miawpukek First Nation is empowered to make such by-law, and with respect to any matter arising out of or ancillary to the exercise of the power, and for the imposition of a penalty for a violation thereof, pursuant to paragraphs 81(1) (b), (c) and (r) of the *Indian Act*.

NOW THEREFORE the Council of the Miawpukek First Nation enacts the following by-law;

PART 1 - GENERAL

SHORT TITLE

1. This by-law may be cited as the "Miawpukek First Nation Community Zoning By-Law".

DEFINITIONS

2. In this by-law

"accessory building or structure" means a detached building or structure, the use of which is incidental or secondary to that of the main building;

"accessory use" means a use of which is incidental or secondary to that of the main building;

"agriculture" means a use of land, buildings or structures for the purpose of field crops or fruit, market gardening, dairying, animal husbandry, poultry raising, bee keeping and such uses as are customarily and normally related to agriculture;

"assembly hall" means a building or part of a building in which facilities are provided for such purposes as meetings for civic, education, political, religious or social purposes, and includes a banquet hall;

“attached” means a building otherwise complete in itself, which depends for structural support or complete enclosure, upon a division wall or walls shared in common with adjacent building or buildings;

“band” means the Miawpukek First Nation Band;

“bed and breakfast” means an establishment that provides lodging and breakfast.

“buffer zone” means a strip of land left undisturbed to preserve or enhance or reduce the effect of an impact of development within a specific zone

“building” means any structure used or designed to be used for shelter, accommodation or enclosure of persons, animals, or chattels;

“business and professional office” means an office in which any business is carried on or any profession is practiced;

“community center” means buildings or any part of any buildings used for community activities, whether used for commercial purposes or not, and the control of which is vested in the band council;

“convenience store” means a retail commercial establishment supplying groceries, sundries and other daily household necessities to the immediate surrounding area;

“council” means the Council of the Miawpukek Band, as defined in the Indian Act

“dwelling” means a house or residence.

“apartment dwelling house” means the whole of a building not otherwise defined herein, which contains a dwelling unit used for rental.

“dwelling - duplex” means a building that is divided into two dwelling units, each of which has an independent entrance;

“dwelling unit area” means the floor area of a dwelling unit measured between the exterior faces of the exterior walls of the dwelling unit;

“eating establishment” means a building or part of a building where food is offered for sale or sold to the public for immediate consumption therein, and includes a restaurant, café, tea or lunch room, dairy bar, and refreshment room or stand, but does not include a boarding or lodging house;

“erect” means build, construct, reconstruct, or any altering of an existing building by an

addition, extension or other structural change;

“farm” means land used for the tillage of soil and the growing of vegetables, fruits, grains and other staple crops, and includes land used for livestock raising, dairying or woodlots;

“forestry” means the management of forested lands,

“garage, commercial” means a building, structure or lot where vehicles may be stored or where vehicles are repaired or maintained;

“gas bar” means a gas station without a garage, consisting of a kiosk and pumps only;

“gravel pit” means any open excavation made for the removal of any soil, earth, clay, sand, gravel or unconsolidated rock or mineral in order to supply material for construction, manufacturing or industrial purposes;

“group home” means a home where several related and or unrelated people live together under supervision or care;

“hazard land” means land which is not suitable to be used for the erection of any building because it is on a flood plain, is subject to erosion, has steep slopes, has organic soil or has a high water table;

“height” means, when used with reference to a building, the vertical distance between the finished surface of the ground and the highest point of the building;

“home industry” means a use accessory to a single family dwelling, and includes a carpentry shop, a craft shop, a plumbing shop, a metal working shop, an electrical shop, a welding shop, a storage building for school buses, boats or snowmobiles, a repair shop for farm equipment, or any similar use;

“home worker” means a person who makes things or carries out a profession at home or on the general premises of the home;

“mobile home” means a large transportable structure equipped with living accommodations and used as a residence;

“non-conforming” means that which does not conform, comply or agree with the provisions of this by-law as of the date it was made;

“noxious use” means any use which is offensive or dangerous by reason of the emission of odor, smoke, dust, noise, light, gas, fumes, vibration or refuse matter;

“nursery” means a place used for the growing of sod, flowers, bushes, trees or other

gardening, landscaping or orchard stock for wholesale or retail trade;

“official plan” means a document that designates for use and development land on the reserve and is accompanied by maps and charts;

“person” includes an individual, an association, a chartered organization, a firm, a partnership and a corporation;

“place of entertainment” means indoor or outdoor place such as a motion picture or other theater, arena, auditorium, public hall, billiard or pool room, bowling alley, ice or roller skating rink, dance hall, music hall, bingo hall, amusement arcades, but does not include any place of entertainment or amusement otherwise defined or classified herein;

“reserve” means that tract of land set apart by Her Majesty for the use and benefit of the Band known as the Samiajij Miawpukek Indian Reserve No. 047

“reasonable hours” means 8am to 9pm seven days a week

“resident” means any person lawfully in possession of land, buildings or who resides on land or in buildings within the reserve;

“restaurant” means commercial establishment where meals are prepared, served and eaten on the premises.

“retail store” means a building or establishment where merchandise and services are available for sale at retail prices;

“stone quarry” means any open excavation made for the removal of any consolidated rock or mineral, including limestone, sandstone or shale, in order to supply material for construction, industrial or manufacturing purposes;

“structure” means anything constructed or erected, the use of which requires location on or in the ground or attached to something having location on or in the ground.

“Take Out” means commercial establishment where meals are prepared, served and sold and not eaten on the premises.

“water setback” means the straight line horizontal distance from the high water mark of a watercourse, bay or lake to the nearest part of any excavation, building, structure or open storage use on the land;

“zone” means a designated area of land subject to particular planning restrictions as shown in Schedule “A”;

"zoning administrator" means the person appointed or designated by the Council under this by-law and charged with the duty of administering and enforcing the provisions of this by-law.

Application of By-Law

3. (1) The provisions of this by-law apply to all lands of the reserve of the Indian Band as shown on Schedule "A".
- (2) Schedule "A", which is attached hereto, is a part of this by-law as fully and to all intents and purposes as though recited in full herein.

PART II - ADMINISTRATION

Zoning Administrator

- 4 (1) The Council may, by resolution, appoint or designate a person as Zoning Administrator, whose duty it shall be to administer and enforce this by-law.
- (2) The Council may, in the resolution, provide for reasonable remuneration to be paid to the Zoning Administrator.

PART III - GENERAL ZONING PROVISIONS

Prohibition

5. (1) building or structure shall hereafter be erected or altered, nor shall the use of any land, building or structure hereafter be changed, in the whole or in part, except in conformity with the provisions of this by-law.
- (2) Notwithstanding any other by-law of the Council, no building permit shall be issued where the proposed building, structure or use would be in violation of any provision of this by-law.

Non-Conforming Uses

6. (1) Subject to Subsection (2), nothing in this by-law prevents the use of any land, building or structure for any purpose prohibited by the by-law if such land,

6. (1) Subject to Subsection (2), nothing in this by-law prevents the use of any land, building or structure for any purpose prohibited by the by-law if such land, building or structure was lawfully used for such purpose on the day this by-law was made, so long as it continues to be used for that purpose.
- (2) If a non-conforming use should be damaged or destroyed by causes beyond the control of the owner, this by-law restricts the structure to be restored to the non-conforming use.

Prior Building Permits

7. Nothing in this by-law prohibits the erection of a building or structure for which a building permit was issued prior to the date this by-law was made.

Height

8. The height limitations of 100 feet will apply to chimneys, church steeples, water tanks, flag poles, television or radio antennas, electrical transmission facilities, ventilators or skylights.

Accessory Buildings and Structures

9. Accessory uses, buildings and structures, including private garages, are permitted in any zone within the reserve, but shall not
 - a) be used for human habitation, exception where a dwelling is a permitted accessory use;
 - b) exceed eight meters in height in any residential zone;
 - c) be built within two meters of the main building; or
 - d) be considered an accessory building attached to the main building in any way;
 - e) be built closer than two metres to any lot line.

Frontage on Public Street

10. No building permit shall be issued for any new structure unless the lot or parcel of land upon which the structure is to be erected abuts and fronts upon a public street. This

provision shall not apply to a permit being issued when an existing structure is to be renovated, rebuilt, or moved to another location on its original lot.

Temporary Permitted Construction Use

11. Nothing in this by-law prevents uses incidental to construction, such as a construction camp or other such temporary work camp, a tool shed, scaffold or structure incidental to the construction, or a sign not more than four and one-half (4.5) square meters in area incidental to the construction, if these uses are permitted only for so long as they are necessary for work in progress which has neither been finished nor abandoned.
12. These temporary structures will require a permit from the appropriate band department.

Occupancy of Incomplete Buildings

13. In any zone, no new buildings shall be occupied before the main side walls and roof has been erected and roofing has been completed and, in the case of a dwelling, kitchen, heating and sanitary conveniences have been installed and rendered useful.

Setbacks

14. Buildings and structures erected in any residential zone shall conform to the following setback requirements from road center lines and high water marks of any water course, bay or lake:
 - a) All provincial highways, reserve roads and other roads - 18 meters
 - b) Water setback - a minimum water setback of 15 meters shall be provided, but accessory boathouses and boat decks are not required to meet the water setback.
15. Buildings and structures erected in any commercial / industrial zone shall conform to the following setback requirements from road center lines and high water marks of any water course, bay or lake:
 - a) All provincial highways, reserve roads and other roads - 18 meters
 - b) Water setback - a minimum water setback of 30 meters shall be provided, but accessory boathouses and boat decks are not required to meet the water setback.

Occupation of Vehicles

16. No car, truck, coach or streetcar body shall be used for permanent human habitation in any

zone, whether or not mounted on wheels.

Mobile Homes

17. Mobile homes are permitted only in the Amobile home and trailer park@ zone.

Piece Worker

18. A piece worker is permitted in any residential zone if

- a) there is no external display or advertising other than a non-illuminated sign, not more than three tenths of a square meter (.3m²) in area, to indicate to persons outside that any part of the dwelling unit or lot is being used for a purpose other than residential;
- b) not more than 25% of the dwelling unit area is used for the purpose of the piece worker occupation;
- c) the home piece work is secondary to the main residential use and does not change the residential character of the dwelling home or dwelling unit;
- d) there are no goods, wares or merchandise, other than arts and crafts produced on the premises, offered or exposed for sale or rent on the premises;
- e) the piece worker occupation does not create or become a nuisance, in regard to noise, traffic or parking or other noxious uses;
- f) the piece worker occupation does not interfere with television or radio reception;
and
- g) no accessory building is used for the piece worker occupation.

Noxious Uses

19. No use is permitted which is offensive or dangerous by reason of the emission of odor, smoke, dust, noise, light, gas, fumes, and vibration or refuse matter, or which from its nature or the materials used therein is declared to be a noxious trade, business or manufacturer under the **Canadian Environmental Protection Act**.

Home Industry

20. A home industry is permitted in a residential or rural zone if

- a) not more than 10% or ten square meters of the dwelling unit area, whichever is the lesser, is used for the purposes of the home industry;
- b) not more than fifty square meters of the gross floor area of all accessory buildings are used for the purposes of the home industry; and
- c) not more than five persons, other than those residing on the premises, are engaged on the premises in the home industry.

Gravel Pits, Stone Quarries

- 21. Gravel pits and stone quarries are prohibited, except in an industrial zone where allowed by permit.

Multiple Uses

- 22. Where any land or building is used for more than one purpose, all provisions of this by-law related to each use shall be satisfied and, where there is a conflict, the higher or more stringent standard shall prevail.

Parking Requirement

- 23. (1) No building permit shall be issued for any new or expanded structure or use unless off-street parking having unobstructed access to a street or lane is to be provided and maintained in conformity with the following schedule:

<u>Type of Building</u>	<u>Parking Required</u>
a) a building containing not more than three (3) dwelling units	one (1) parking space (10ft) for each dwelling unit
b) all other dwellings except senior citizens apartments	one and one-half (1.5) parking spaces for each dwelling unit
c) churches, church halls, auditoriums, restaurants, theaters, arenas, halls, stadiums, private clubs, and other places of assembly	one (1) parking space for one hundred square feet of floor area devoted to public use

- d) hospitals, nursing homes, schools one (1) parking space for five hundred forty square (540) feet of floor area
- e) senior citizen=s apartments one (1) parking space for every two (2) dwelling units
- f) hotels and motels one (1) parking space per suite or cabin and inns rental unit plus one (1) plus one (1) additional parking space for each one hundred (100) square feet of floor area which is open to the general public (taverns, restaurants, and auditoria) exclusive
- g) bowling alleys and curling three (3) parking spaces per bowling lane and four (4) parking spaces for each curling sheet. For other parts of the building additional parking spaces shall be provided in accordance with the requirements set out in this By-Law for the use to which the other parts of the building are to be used
- h) industrial uses one (1) parking space for each five hundred forty (540) square feet of floor space
- i) medical clinics and medical practitioners= offices four (4) parking spaces each practitioner

- j) all other uses, except convenience stores, and home occupations
- k) one (1) parking space for every three hundred twenty-five (325) square feet of floor area

Standards for Parking Areas

- 24. 1. Where parking facilities for more than four (4) vehicles are provided:
 - a) the parking area shall be treated so as to prevent the raising of dust and loose particles;
 - b) the parking area shall be on the same lot as the use it is intended to serve and shall be situated in the same Zone or in a Zone in which parking lots are a permitted use;

PART IV - SPECIFIC ZONING

Zones

- 25. The reserve is divided into the following zones, as shown on Schedule AA@ (Zoning map).

<u>Zones</u>	<u>Zone Symbols</u>
Residential	Zone R
Commercial	Zone C
Industrial	Zone I
Hazard Land	Zone HL
Community & Cultural	Zone CC
Mobile Home and Trailer Park	Zone MHTP
Forestry	Zone F
Conservation & Protection	Zone CP

Residential (R) Zone Permitted Uses

- 26. Land may be used and buildings and structures erected, altered or used in a Residential (R) Zone only for
 - a) a single family dwelling, other than a mobile home;
 - b) a two family dwelling, other than a mobile home;
 - c) a duplex dwelling;
 - d) an apartment dwelling;

- e) a group home, other than a mobile home;
- f) a piece worker;
- g) a park or playground;
- h) senior citizen apartments;
- i) nursing home
- j) a use accessory to any of the foregoing permitted uses.

27. Land may be used and buildings and structures may be erected, altered or used in a Residential (R) Zone only where the following specifications are complied with:

maximum lot area	125 x 125 feet
minimum lot frontage	75 feet
maximum lot frontage	125 feet
minimum front yard depth	25 feet
maximum front yard depth	50 feet
minimum side yard width	10 feet or half the height of building, whichever is greater
minimum rear yard depth	25 feet
minimum dwelling unit area	320 square feet
maximum building height	40 feet

Mobile Home and Trailer Park

28. Land may be used and buildings and structures may be erected, altered or used in a Mobile Home (MHTP) Zone only where the following specifications are complied with:

maximum lot area	50 x 125 feet
frontage	30 feet

Commercial (C) Zone Permitted Uses

29. Land may be used and buildings and structures may be erected, altered or used in a Commercial (C) Zone only for

- a) an automobile service station, commercial garage or automobile business, including sales and rentals;
- b) a car wash;
- c) a bank or other financial institution;
- d) a personal service shop;
- e) a boat, snowmobile, trailer or cycle business, including sales and rentals;
- f) a business or professional office;
- g) a convenience store;
- h) a gas bar

- i) a green house and nursery
- j) a laundry or dry-cleaning establishment;
- k) a restaurant or other eating establishment;
- l) a hotel;
- m) a lounge
- n) a parking lot;
- o) a place of entertainment;
- p) a post office;
- q) a recreational use;
- r) commercial wharf
- s) a taxi stand;
- t) a retail store, or
- u) a use accessory to any of the foregoing permitted uses.

Commercial (C) Zone Specifications

30. Land may be used and buildings and structures may be erected, altered or used in a Commercial Zone only where the following specifications have been complied with:

- a)

minimum lot area	10, 000 square feet
minimum frontage	75 feet
maximum height	45 feet
minimum front yard depth	30 feet
minimum side yard width	10 feet or half the height of the building whichever is greater

- b) no building permit shall be issued in a Commercial Zone for a lounge, cabaret, or beverage room which is located within two hundred (200) feet of any area of land Zoned as R or MHTP.

Industrial (I) Zone Permitted Uses

31. Land may be used and buildings and structures may be erected, altered or used in an Industrial (I) Zone only for

- a) an industry or manufacturing establishment;
- b) a warehouse or storage establishment;
- c) a retail outlet, wholesale outlet or business office accessory to a permitted use;
- d) a yard for fuel, lumber, building material, contractor=s equipment or similar

- material;
- e) a contractor or tradesman=s shop;
- f) a farm implement sales or repair business;
- g) a parking lot;
- h) a junkyard or automobile wrecking yard but, where visible from a public road, only if screened from view by a fence not less than seven feet in height on all sides;
- i) a building for the owner, or for the use of a watchman or other employee whose presence on the premises is essential;
- j) a use accessory to any of the foregoing permitted uses.

Industrial (I) Zone Specifications

32. Land may be used and buildings and structures may be erected, altered or used in an Industrial (I) Zone, only where the following specifications have been complied with

minimum area	10, 000 square feet
minimum frontage	100 feet
minimum front yard	40 feet
minimum side and rear	10 feet
maximum height	45 feet

Forestry (F) Zone Permitted Uses

33. Land may be used and buildings and structures may be erected, altered or used in a Forestry (F) Zone only for
- a) an existing building at the date this by-law was made;
 - b) conservation;
 - c) forestry, including harvesting, silviculture and management;
 - d) hunting, fishing or trapping;
 - e) outdoor recreation;
 - f) a structure for the prevention of erosion or for flood control;
 - g) a boathouse or dock;
 - h) a use accessory to any of the foregoing permitted uses.

Forestry (F) Zone Specifications

34. Land may be used and buildings and structures may be erected, altered or used in a FORESTRY (F) Zone, only where the following specification have been complied with
- a) that any buildings or structures are not constructed for permanent habitation, (for

example a hunting or fishing camp);

- b) removal of timber from a forestry Zone must be done in accordance with the Miawpukek Timber Regulations.

Community Cultural (CC) Zone Permitted Uses

- 35. Land may be used and buildings and structures may be erected, altered or used in a Community Cultural (CC) Zone only for
 - a) an assembly hall;
 - b) a school;
 - c) a park;
 - d) a church;
 - e) a community center or arena
 - f) medical clinic or hospital;
 - g) a band council office or other administrative office of the band;
 - h) a cemetery;
 - i) recreational use;
 - j) a fairground;
 - k) waste water treatment facility
 - l) a use accessory to any of the foregoing permitted uses.

Conservation & Protected (CP) Zone Permitted Uses

- 36. Land may be used and buildings and structures may be erected, altered or used in a Conservation & Protected (CP) Zone only for
 - a) water shed management area
 - b) wetlands
 - c) Parks and historical sites

PART V - OWNER APPLICATIONS

Minor Variance

- 37. The owner of any land, building or structure affected by this by-law may apply to the appropriate band department for a minor variance from the provisions of this by-law, in respect of the land, building or structure, or use thereof. Any owner who applies must set out in the application the reasons for the variance and submit detailed site plans, where

applicable.

- 38. In determining whether an application for a minor variance should be granted, the appropriate band department shall take into consideration
 - a) whether the minor variance is desirable for the appropriate development or use of the land, building or structure;
 - b) whether the general intent and purpose of this by-law and the official plan, if any, will be maintained.

PART VI - ENFORCEMENT

- 39. The appropriate department may, at all reasonable hours, enter and inspect any land, building, structure or other property for the purpose of determining whether this by-law is being complied with.

Offence

- 40. (1) A person who uses land, or who erects or uses any building or structure or any part of land or a building or structure, in a manner contrary to any provision of this by-law, or who causes or who permits such use or erection, or who otherwise violates any provision of this by-law or causes or permits any such violation, commits an offence.
- (2) A person who interferes with or obstructs the Zoning Administrator/department and or designate of the appropriate department in the administration and enforcement of this by-law commits an offence.
- (3) Where an act or omission in contravention of this by-law continues for more than one day, such an act or omission may be deemed to be a separate offence committed on each day during which it continues, and may be punished as such.

Penalty

- 41. A person who commits an offence under Section 48 is liable on summary conviction to a fine not exceeding \$1, 000.00 or to imprisonment not exceeding thirty days, or to both.

This by-law is hereby made at a duly convened meeting of the Council of the Indian Band this 28 day of April, 2008

Voting in favor of the by-law are the following members of the Council:

Rod Jeddas

Craig Benoit

(Member of the Council)

Mardina Jau
(Member of the Council)

Inna Benot
(Member of the Council)

(Member of the Council)

Gaye McDool
(Member of the Council)

Rembert J. J. J. J.
(Member of the Council)

being the majority of those members of the Council of the MIAWPUKUK Indian Band present at the aforesaid meeting of the Council.

The quorum of the Council is four (4) members.
Number of members of the Council present at the meeting:

I, Mess, Chief/Councillor of the Indian Band, do hereby certify that a true copy of the foregoing by-law was mailed to the Minister of Indian Affairs and Northern Development at the Regional office, pursuant to subsection 82(1) of the Indian Act, this day of 28th April, 2008

Denise John
(Witness)

Mess
(Chief/Councillor)