

Residency By-Law No. 01-14
Being a By-Law to repeal and replace
Residency By-Law No. 02-09
Enacted on the 3 day of August 20 09.

AND WHEREAS the Council of the Band enacted Residency By-Law No. 01-14 on the 5 day of November, 20 14, thereby repealing the said Residency By-Law No. 02-09 and replacing it with Residency By-Law No. 01-14.

Approved and passed at a duly convened meeting of the Council,

This 5 day of Nov, 20 14,

Stewart Etheridge
Councillor

[Signature]
Councillor

[Signature]
Councillor

[Signature]
Councillor

Aida Roberts
Councillor

Councillor

The quorum is set at 4.

I, [Signature], Chief of the Band of Indians do hereby certify that an original of the foregoing By-Law 01-14 was mailed to the Minister of *Indian Affairs* pursuant to section 82, ss (i) of the *Indian Act*, this 5th day of Nov, 20 14.

[Signature]
Chief

[Signature]
Witness

BY-LAW NO. 01-14
of the Miawpukek Band
A BY-LAW GOVERNING THE
RESIDENCE OF BAND MEMBERS AND OTHER PERSONS
ON THE MIAWPUKEK INDIAN RESERVE

WHEREAS the Council of the Miawpukek Band desires to make a bylaw governing the residence of Band Members and other persons on the reserve;

AND WHEREAS the Council of the Miawpukek Band is empowered to make such by-law pursuant to paragraphs 81(1) (p.1), (q) and (r) of the Indian Act;

AND WHEREAS it is considered necessary for the health and welfare of the Miawpukek Band to regulate the residence of Band members and other persons on the reserve;

NOW THEREFORE the Council of the Miawpukek Band hereby makes the following by-law:

Short Title

1. This by-law may be cited as the "Miawpukek Band Residency By-Law".

Interpretation

2. In this by-law

"*applicant*" means a person who has submitted an application for permission to be a resident of the reserve in accordance with section 5;

"*band*" means the Miawpukek Band;

"*child*", includes a child born in or out of wedlock, a legally adopted child and a child adopted in accordance with Indian custom;

"*council*" means the Council, as defined in the Indian Act, of the Miawpukek Band;

"*dependent child*" means a child as defined above who derives his or her main support from a parent or guardian;

"*dwelling*" means any house, apartment, mobile home, or a room located therein, or any similar lodging suitable for habitation;

"*elder*" means a person who is 60 years of age and older and who's name appears on the band register;

"*member of the Band*" means a person whose name appears on the Miawpukek Band list or who is entitled to have his name appear on the Miawpukek Band list pursuant to the Indian Act or the membership rules of the Band;

"*peace officer*" means any police officer, police constable or other person charged with the duty to preserve and maintain the public peace;

"*permanent residence*" means the place at which a person resides in their own dwelling or with relatives or friends continuously and permanently;

"*person*" means a human being that has the capacity for rights or duties;

"*reserve*" means the Miawpukek Indian Reserve number(s) 1 ;

"*reside*" means to live in a dwelling continuously and permanently, otherwise than as a visitor to the reserve;

"*resident band member*" means a person who is entitled to reside on the reserve, has a present intent to remain on the reserve for a period of time and is not transitory in nature, and establishes an ongoing physical presence in the community. Any resident band member who has a change in permanent residency for a period of six (6) consecutive months other than:

- a) incarceration;
- b) post secondary educational leave;
- c) medical leave;
- d) short term institutional care;
- e) leave of absence from work for professional reasons up to twelve (12) months;

shall be deemed to be a non-resident.

"*spouse*" means a person who is married to , or who co-habits in a relationship of some permanence and commitment, akin to a conjugal relationship, with a resident of the Miawpukek Band;

"*youth*" means a person who is of the age of 18 to 25 years of age whose name appears on the band register.

Entitlement to Reside on Reserve

3. (1) A person is entitled to reside on the reserve only if the person
- a) Has his/her permanent residence on the reserve at the time this by-law comes into force and only until (s)he ceases to have a permanent residence on the reserve;
 - b) is authorized to reside on the reserve 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) shall be a registered member of Miawpukek Band.

(2) A spouse of an applicant has to make separate application for residency.

(3) A dependent child of a resident is entitled to reside on the reserve under subsection 3 (1). There does not need to be a separate application for the dependent child as long as (s)he actually resides with his/her parent and/ or a resident.

(4) Notwithstanding subsection 3(2), any spouse or dependent child of a person who has been granted permission to reside on the reserve for a defined period is not entitled to reside on the reserve after the end of that defined period.

(5) A dependent child can have an application made on his or her behalf by a resident band member. This resident band member will be the legal guardian of the dependent child. The dependent child must reside with that resident band member.

Temporary Resident

4. With the exception of above, for the purposes of a defined service as deemed necessary by Chief and Council

Registration of Residents

5. **(1)** The Council shall appoint a Residency Administrator to provide for the administration of applications, petitions and appeals made under this by-law and to maintain records related to the residents of the reserve.

(2) The Residency Administrator shall maintain a Residents List, on which is recorded

- a) the name of each resident;
- b) an indication as to whether each resident is a resident for an indefinite or defined period;
- c) the length of any defined period of residence; and
- d) the location of each resident's dwelling.

First Stage of Application to be a Resident

6. (1) Any person must apply to the Residency Administrator for permission to temporarily reside on the reserve or to extend any defined period for which permission was previously granted to the person by the Council to be a resident of the reserve.

(2) The application must be filed with the Residency Administrator and must include

- a) the applicant must physically present to Residency Administrator;
- b) the applicant's reasons for applying to be a resident;
- c) if the applicant proposes to reside on the reserve for a limited time, the approximate duration of the proposed residence;
- d) the location at which the applicant proposes to reside;
- e) the name of the applicant's spouse, if applicable;
- f) the names of the applicant's dependent children, if applicable; and
- g) any additional information the applicant wishes to provide relating to the considerations listed in subsection 7(2);
- h) a criminal records check.

Residency Committee

7. (1) The committee shall be comprised of:

- (i) one Elder
- (ii) one Youth

(iii) three on-reserve band members at large

each with a term of two years.

(2) The community shall appoint the elder, youth and on-reserve band member representatives through a nomination and election process at an annual assembly.

Application Process

8. (1) Within fifteen (15) clear days after the filing of a properly completed application, the residency committee shall hold a hearing with respect to the application.

(2) At least seven (7) days prior to the hearing, the Residency Administrator shall

a) give written notice to the applicant of the date, time and place of the hearing and inform the applicant that (s)he has a right to appear at the hearing and be heard in support of the application; and

b) post in the Band office a copy of the notice.

(3) At the hearing, the Residency Committee shall

a) provide the applicant with an opportunity to present evidence and to make oral and written submissions, or both, in support of the application; and

b) provide any resident present at the hearing with an opportunity to be heard.

(4) The residency committee shall make rules of procedure governing the hearing of applications and shall keep records of its proceedings.

Application Review Process By Residency Committee

9. (1) After it has heard all of the evidence and submissions, the Residency Committee shall meet in private to consider the application.

(2) In determining whether an application for permission to be a resident of the reserve should be granted, the Committee shall take into consideration each of the following:

- a)** whether the applicant has arranged for a place to reside on the reserve;
- b)** whether the availability on the reserve of adequate housing, land and services;
- c)** Applicant's residing on the reserve would be compatible with the culture, society and community of the Band and welfare of the members of the Band residing on the reserve;
- d)** whether the applicant has a criminal record that would potentially affect the health and well-being of the community residents;
- e)** the extent to which the applicant is prepared to commit his personal and economic resources to the welfare and advancement of the community residing on the reserve;
- f)** whether the applicant is or will be employed on the reserve;
- g)** knowledge of community's culture, customs, traditions, and history.

(3) Where the applicant is a member of the Band, the Residency Committee shall consider only the criteria enumerated in paragraphs (2) (a) and (b).

(4) Within three (3) clear days after the hearing, the Residency Committee shall dispose of the application by

- a)** granting the applicant permission to be a temporary resident of the reserve;
- b)** extending any defined period for which permission was previously granted to the person by the Residency Committee to be a resident of the reserve; or
- c)** refusing the application,

and shall give written notice of its decision to the applicant, incorporating reasons in support of its decision.

(5) Within five (5) days after disposing of the application, the Residency Committee shall notify the Residency Administrator.

(6) Within five (5) days after disposing of the application, the Residency Committee shall post a notice of its decision in the Band office.

(7) Any applicant whose application is refused under this section may appeal to the Council.

Residency Hearing

10. (1) After the twelve (12) consecutive months, the Committee shall be presented with the application by the Residency Administrator.

11. (1) Within twenty (20) clear days after the Committee is presented shall hold a hearing with respect to the application.

(2) In determining whether an application for permission to be a resident of the reserve should be granted, the Committee shall take into consideration each of the following:

- a)** whether the applicant has arranged for a place to reside on the reserve;
- b)** whether the applicant's residing on the reserve would be compatible with the culture, society and community of the Band and welfare of the members of the Band residing on the reserve;
- c)** whether the applicant has a criminal record that would potentially affect the health and well-being of the community residents;
- d)** the extent to which the applicant is prepared to commit his personal and economic resources to the welfare and advancement of the community residing on the reserve;
- e)** the availability on the reserve of adequate housing, land and services;
- f)** whether the applicant is or will be employed on the reserve;
- g)** knowledge of community's culture, customs, traditions, and history;
- h)** The applicant must have met a twelve (12) consecutive month requirement for residency with the date of temporary residency as determined by the Residency Committee; and
- i)** a criminal records check.

(3) Where the applicant is a member of the Band, the Residency Committee shall consider the criteria enumerated in paragraphs (2) (a) (b) and (h).

(4) Within three (3) clear days after the hearing, the Residency Committee shall dispose of the application by

- a)** granting the applicant permission to be a permanent resident of the reserve;
 - b)** extending any defined period for which permission was previously granted to the person by the Residency Committee to be a resident of the reserve;
- or

c) refusing the application,
and shall give written notice of its decision to the applicant, incorporating reasons in support of its decision.

(5) Within five (5) days after disposing of the application, the Residency Committee shall post a notice of its decision in the Band office.

(6) Any applicant whose application is refused under this section may appeal to Chief and Council.

(7) Should the Committee not be able to render a decision in the specified time outline above, the applicant will be notified of the delay and the reasons for the delay.

Residency Requirements

12. Being deemed a resident of Miawpukek reserve is based on a totality of evidence that clearly demonstrates the person resides on the Miawpukek reserve year round. The various types / forms of evidence that will demonstrate a person resides on reserve can include the following:

- (1) having and maintaining a residence on reserve;
- (2) having a drivers license, social insurance number, and other forms of identification listing Miawpukek Reserve / Conne River as persons principle address;
- (3) having employment on Miawpukek reserve;
- (4) having forms of involvement and connection on reserve such as membership on committees, partaking in community events and activities;
- (5) other forms of connection and proof of residency.

Any one of the above connecting factors may not in of itself demonstrate residency but the totality of all evidence will be reviewed to determine residency.

Duration of Residency

13. Being a resident on Miawpukek Reserve requires continued residency. Periodic visits to maintain residency is not sufficient to meet the criteria. To be deemed a resident on Miawpukek reserve a member shall reside a minimum of seventy (70%) percent of a calendar year on reserve and such percentage need not be continuous occupation on reserve land. For greater certainty this will mean that as long as a member resides seventy (70%) percent of a calendar year even though the occupation that resulted in 70% occupancy was not continuous that person will maintain their on reserve status.

Enforcement

14. (1) An officer may order any person who is residing on the reserve, and who is not a resident, to cease to reside on the reserve.

(2) Any person who fails or refuses to comply with an order made under subsection (1), commits an offence can be prohibited by a court of competent jurisdiction.

Appeal Committee

15. (1) The appeal committee shall be comprised of band members selected by Chief and Council.

(2) The registry administrator cannot be a member of the Appeal Committee.

(3) Committee members shall be disqualified from voting where the Applicant is the Appeal Committee member's spouse, child, sibling, parent, grandparent or grandchild.

(4) The Appeal Committee may make rules of procedure governing appeals and shall keep records of its proceedings.

Appeals

16. (1) Within thirty (30) days after the posting of a notice of the Residency Committee's decision in the Band office, the applicant in the case of section 7, or the affected resident in the case of section 10, may appeal the Committee's decision to the Appeal Committee by filing a written request with the Residency Administrator .

(2) Within thirty (30) days after the filing of the request, the Appeal Committee shall conduct a hearing with respect to the appeal.

(3) At least fourteen (14) days prior to the date of the hearing, the Registrar of Residents shall

- a)** give written notice to the appellant of the date, time and place of the hearing and shall inform the appellant that he has the right to appear and make oral or written submissions, or both, at the hearing in support of the appeal; and
- b)** post in the Band office a copy of the notice.

(4) At the hearing, the Appeal Committee shall

- a)** provide the appellant with an opportunity to present evidence and to make oral or written submissions, or both, in support of the appeal; and
- b)** provide any resident present at the hearing with the opportunity to be heard.

(5) After it has heard all of the evidence and submissions, the Appeal Committee shall meet in private to consider the appeal.

(6) In determining whether an appeal should be allowed, the Appeal Committee shall take into consideration the criteria set out in subsections 9(2) and (3) in the case of a section 9 appeal, and the criteria set out in subsection 10(1) in the case of a section 10 appeal.

(7) Within ten (10) days after hearing the appeal the Appeal Committee shall make a final decision to dispose of the application by either of the following:

- a)** granting the applicant permission to be a resident of the reserve for an indefinite period until such time as the applicant ceases to reside on the reserve;
- b)** granting the applicant permission to be a resident of the reserve for a defined period;
- c)** extending any defined period for which permission was previously granted to the person by the Appeal Committee to be a resident of the reserve; or
- d)** refusing the application,

and shall give written notice of its decision to the applicant.

(8) The Appeal Committee shall give written notice of its decision to the appellant.

(9) Within five (5) days after disposing of the application, the Appeal Committee shall post a notice of its decision in the Band office.

Reapplication

17. Where an application made under section 5 is refused pursuant to the provisions of section 7, the Residency Committee is not required to consider any further application by that person for a period of twelve (12) month from the date of the refusal, unless the applicant can show that there has been a material change of circumstances.

Revocation of Entitlement to Reside

18. Any resident band member who has a change in permanent residency for a period of six (6) consecutive months other than:

- a)** incarceration;
- b)** post-secondary educational leave;
- c)** medical leave;
- d)** short term institutional care;
- e)** leave of absence from work for professional reasons up to twelve (12) months;

shall be deemed to be a non-resident.

19. (1) On the petition of any twenty five (25%) resident band members of voting age, the Council may revoke the entitlement of any person to reside on the Reserve who is referred to in section 3, other than a member of the Band or a person referred to in paragraph 3(1)(b), where, after a hearing, it has been shown that

- a)** the person, while a resident of the reserve, has been convicted of an indictable offence under the Criminal Code (Canada) for which a pardon has not been granted; or
- b)** the person, 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;

and that it would be detrimental to the health and well-being of the community to permit the person to continue to be a resident on the reserve.

(2) Within thirty (30) days after the petition referred to in subsection (1) is received by Council, the Council shall hold a hearing into the matter.

(3) At least fourteen (14) days prior to the hearing, the Residency Administrator shall

- a) give written notice to each petitioner and to the affected resident of the date, time and place of the hearing and informing the petitioner and the affected resident that he has a right to appear at the hearing and to be heard; and
- b) post in the Band office a copy of the notice.

(4) At the hearing, the Council shall

- a) provide each petitioner and the affected resident with an opportunity to present evidence and to make oral and written submissions, or both, on the petition; and
- b) provide any resident present at the hearing with an opportunity to be heard.

(5) The Council may make rules of procedure governing the hearing of petitions under this section and shall keep records of its proceedings.

(6) After it has heard all of the evidence and submissions, the Council shall meet in private to consider the petition.

(7) Any revocation of entitlement of a person to reside on the reserve shall require a quorum of the Council voting in favor of the petition and shall incorporate written reasons in support thereof.

(8) Within ten (10) days after the hearing, the Council shall render its decision in writing to the petitioners.

(9) Within ten (10) days after the hearing, the Council shall hand deliver its decision to the affected resident.

(10) Within five (5) days after the Council's decision, the Council shall post a notice of the decision in the Band office.

(11) A petition shall not be considered under this section in respect of a resident who, at the time of the petition, is under the age of sixteen (16) years.

(12) No revocation of a resident's entitlement to reside on the reserve shall affect the entitlement of the spouse and children of that resident to continue to reside on the reserve

(13) A resident whose entitlement to reside on the reserve has been revoked by the Council under this section may appeal the decision of Council to a court of competent jurisdiction.

Penalties

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

This by-law is hereby made enacted at a duly convened meeting of the Council of the _____ Band this _____ day _____ of . 20 _____.

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

Ada Roberts
(Member of the Council)

Volpe
(Member of the Council)

[Signature]
(Member of the Council)

[Signature]
(Member of the Council)

Being the majority of those members of the Council Miawpukek Band present at the aforesaid meeting of the Council.

The quorum of the Council is 4 members.

Number of members of the Council present at the meeting: 5.

I, [Signature] Chief/Councillor of the 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 _____ offices of the department pursuant to subsection 82(1) of the Indian Act, this 5 day of Nov, 2014.

[Signature]
(Chief/Council)

[Signature]
(Witness)