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**BY-LAW NO. 2003-003
of the Moricetown Band
A By-law Regulating the Use of Land**

WHEREAS the Council of the Moricetown Band desires to make a by-law regulating the use of land;

AND WHEREAS the Council of the Moricetown Band has the best interest in the building of membership owned businesses and this is to improve the success rate of businesses on reserve.

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

AND WHEREAS it is considered necessary for the development of the reserve lands of the Moricetown Band to regulate the use of reserve lands;

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

PART I - GENERAL

Short Title

1. This by-law may be cited as the "Moricetown Band Land Use By-law".

Interpretation

2. In this by-law,

"*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;

"*Band*" means the Moricetown Band;

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

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

"*dwelling unit*" means one or more habitable rooms designed for use by and occupied by not more than one family and in which separate kitchen and sanitary facilities are provided for the exclusive use of such a family, with a private entrance from outside the building or from a common hallway or stairway inside the building;

"*dwelling unit area*" means the floor area of a dwelling unit measured between the exterior faces of the exterior walls of the dwelling unit;

"*erect*" means build, construct, reconstruct, or relocate, and includes any preliminary physical operations such as cutting, grading, excavating, filling or draining, and any altering of an existing building by an addition, extension or other structural change;

"*home occupation*" means an occupation, trade, business profession or craft carried on as an accessory use to the use of a dwelling that is the private residence of the person carrying on the occupation, trade, business, profession or craft;

"*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 odour, smoke, dust, noise, gas, fumes, vibration or refuse matter;

"*official plan*" means a document that sets out proposals for future development on the reserve and is accompanied by maps and charts;

"*owner*" means any person lawfully in possession of land, buildings or structures;

"*person*" includes an individual, an association, a chartered organization, a firm, a partnership and a corporation;

"*reserve*" means the reserve of the Moricetown Band and includes the Band's Reserves No. 1, 2, 3, 17, 18, 19 and No. 28;

"*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.

Application of By-law

3. The provisions of this by-law apply to all lands of the reserve of the Moricetown Band.

PART II - ADMINISTRATION

Administrator

4.(1) The Council may, by resolution, appoint or designate a person as an Administrator of the Moricetown Band Land Use by-law 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 Administrator.

PART III - GENERAL LAND USE PROVISIONS

Prohibition

5. No building or structure shall hereafter be used for anything other than a home owners primary residence, nor shall the use of any land, building or structure hereafter be changed, in whole or in part, except in conformity with the provisions 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, 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 building or structure which does not conform with the requirements of this By-law with respect to use, lot occupancy, or height is destroyed, said building or structure may be restored to its original dimensions and strengthened to a safe condition, provided that such restoration or strengthening does not further increase the extent of non-conformity of such building or structure, and provided that all other applicable provisions of this By-law are complied with and the use is not a noxious use.

Home Occupations

7. A home occupation is permitted if

- (a) only members of the family are employed in the home occupation;
- (b) there is no external display or advertising other than a non-illuminated sign, not more than three tenths of a square metre (.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;
- (c) not more than 25% of the dwelling unit area is used for the purpose of the home occupation;
- (d) the home occupation is secondary to the main residential use and does not change the residential character of the dwelling home or dwelling unit;
- (e) 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;
- (f) the home occupation does not create or become a nuisance, in regard to noise, traffic or parking; or
- (g) the home occupation does not interfere with television or radio reception.

Commercial Uses

8. No person shall use the land for the following reasons unless that person is approved by council and holds a valid and subsisting permit issued pursuant to this by-law:

- (a) an automobile service station, commercial garage or automobile business, including sales and rentals;
- (b) a bank or other financial institution;
- (c) a personal service shop;
- (d) a boat, snowmobile, trailer, or cycle business, including sales and rentals;
- (e) a business or professional office;
- (f) a convenience store;
- (g) a laundry or dry cleaning establishment;
- (h) a hotel;
- (i) a parking lot;
- (j) a place of entertainment;
- (k) a post office;
- (l) a taxi stand;
- (m) a retail store;
- (n) a gas bar; or
- (o) a use accessory to any of the foregoing permitted uses.

Commercial Use Permits

9.(1) All commercial activities and applicants must be approved by council for a *commercial use permit*.

(2) All applicants must provide the following documents for a commercial use permit:

- (a) application for commercial use permit;
- (b) appropriate and complete business plan;
- (c) proof of tenure on proposed land; and
- (d) BCR showing support for start business.

(3) A *commercial use permit* is valid for one year from date of issuance.

(4) The fee for a *commercial use permit* will be \$250.

Noxious Uses

10. No use is permitted which is offensive or dangerous by reason of the emission of odour, smoke, dust, noise, gas, fumes, 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 Canada Health Act and regulations thereunder or the Canadian Environmental Protection Act, and regulations thereunder.

Multiple Uses

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

PART V - OWNER APPLICATIONS

Minor Variance

12. The owner of any land, building or structure affected by this by-law may apply to the Council for a minor variance from the provisions of this by-law, in respect of the land, building or structure, or use thereof.

Non-Conforming Uses

13. Where any land, building or structure, on the day this by-law was made, was used for a purpose prohibited by the by-law, the owner of any land, building or structure may apply to the Council for authorization to

- (a) enlarge or extend the building or structure, if the land, building or structure continues to be used in the same manner and for the same purpose as it was used on the day this by-law was made; or
- (b) to use such land, building or structure for a purpose that is similar to the purpose for which it was used on the day this by-law was made, or is more

compatible with the uses permitted by the by-law than the purpose for which it was used on the day this by-law was made.

Amendment

14.(1) The owner of any land, building or structure may apply to the Council for an amendment to this by-law.

(2) An owner who applies under subsection (1) must set out in the application the reasons for the amendment and submit detailed site plans, where applicable.

Hearing

15. Within ninety days of the filing of a properly completed application under section 14, 15 or 16, the Council shall hold a hearing with respect to the application.

Notice

16. At least fourteen days prior to the hearing, the Administrator shall

- (a) give notice to the applicant of the date, time and place of the hearing and informing the applicant, and any other resident of the reserve, that they have the right to appear at the hearing and to be heard in respect of the application; and
- (b) post in the Band Office a copy of the notice.

Hearing

17. At the hearing, the Council shall

- (a) provide the applicant with an opportunity to present evidence and to make oral or written submissions in support of the application; and
- (b) provide any resident present at the hearing with an opportunity to be heard.

Rules of Procedure

18. The Council may make rules of procedure governing the hearing of applications and shall keep records of its proceedings.

Decision

19. After it has heard all of the evidence and submissions, the Council shall meet in private to consider the application.

Criteria - Minor Variance

20. In determining whether an application for a minor variance should be granted, the Council shall take into consideration

- (a) whether the minor variance is desirable for the appropriate development or use of the land, building or structure; and
- (b) whether the general intent and purpose of this by-law and the official plan, if any, will be maintained.

Criteria - Non-Conforming Use

21. In determining whether an application for an extension or modification of a non-conforming use should be granted the Council shall take into consideration

- (a) whether the extension or modification is desirable for the appropriate development or use of the land, building or structure; and
- (b) whether the general intent and purpose of this by-law and the official plan, if any, will be maintained.

Criteria - Amendment

22. In determining whether an application for an amendment to this by-law should be granted, the Council shall take into consideration

- (a) whether the amendment is desirable for the appropriate development or use of the land, building or structure; and
- (b) whether the general intent and purpose of this by-law and the official plan, if any, will be maintained.

Notice of Decision

23. Within ten days after the hearing, the Council shall render its decision on the application and shall give a written notice of its decision to the applicant which incorporates written reasons in support of its decision.

Posting Decision

24. Within five days after disposing of the application, the Council shall post a notice of its decision in the Band office.

PART VI - ENFORCEMENT

Inspection

25. The Administrator 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

26.(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 Administrator in the administration and enforcement of this by-law commits an offence.

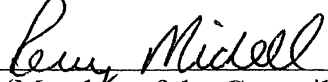
(3) Where an act or omission in contravention of this by-law continues for more than seven days, such act or omission shall be deemed to be a separate offence committed every seven days during which it continues, and may be punished as such.

Penalty

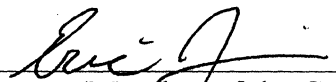
27. A person who commits an offence under section 26 is liable on summary conviction to a fine not exceeding \$200.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the Moricetown Band this 26th day of February, 2003.

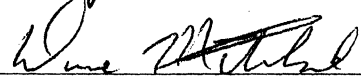
Voting in favour of the by-law are the following members of the Council:



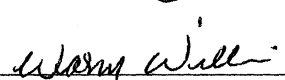
(Member of the Council)



(Member of the Council)



(Member of the Council)



(Member of the Council)



(Member of the Council)

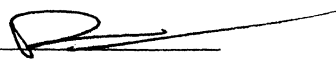
(Member of the Council)

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

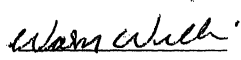
The quorum of the Council is five (5) members.

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

I, Janice Willm 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 Ottawa office of the department pursuant to subsection 82(1) of the Indian Act, this 19th day of February, 2003.



(Witness)



(Chief/Councillor)