

**Okanagan Indian Band
Law No. 2019-02
Cannabis Control Law**

WHEREAS the Syilx/Okanagan Indian Band have an existing and inherent right of self-determination and self-government, which includes inherent jurisdiction over their lands, people and resources;

AND WHEREAS the Syilx/Okanagan Indian Band's inherent right of self-government is enshrined and recognized under section 35 of the Constitution Act of 1982;

AND WHEREAS the Council of the Okanagan Indian Band is the duly elected governing body of the Syilx/Okanagan Indian Band and has the power to make laws for the peace, safety and good governance of the community in accordance with Inkumupulux law;

AND WHEREAS the Council of the Syilx/Okanagan Indian Band, in consultation with the community, has deemed it beneficial and necessary to enact a law respecting the cultivation, processing, distribution, sale, possession and use of Cannabis within and from its Reserves; and,

AND WHEREAS the aforementioned rights of the Syilx/Okanagan Indian Band, as Indigenous Peoples, have been recognized and affirmed in international covenants and declarations, including the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights* and the *United Nations Declaration on the Rights of Indigenous Peoples*;

AND WHEREAS, the Syilx/Okanagan Indian Band has the right to self-determination and to freely determine their political status and freely pursue their economic, social and cultural development, as recognized in Article 3 of *United Nations Declaration on the Rights of Indigenous Peoples*;

AND WHEREAS Syilx/Okanagan Indian Band has the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State, as recognized in Article 5 of *United Nations Declaration on the Rights of Indigenous Peoples*;

NOW THEREFORE the Council of the Okanagan Indian Band hereby makes the following law:

Short Title

This law may be cited as the *Okanagan Indian Band Cannabis Control Law*.

1. Definitions

1.1 In this Law, the following definitions will apply, unless otherwise required by context:

"**Applicant**" means a Person applying for a Licence under this Law, including the renewal of a licence;

"**Application Form**" means an application to obtain or to renew a Licence in the form provided by OKIB for that purpose;

"**Band**" and "**OKIB**" means the Okanagan Indian Band;

"**Cannabis**" has the same meaning as in the *Cannabis Act (Canada)*, S.C. 2018, c. 16, as amended, replaced or consolidated;

"**Community Safety Officer**" means the Band appointed representative who works on the day-to-day enforcement issues arising from the Law;

"**Council**" means the Council of the Okanagan Indian Band, as defined in the *Indian Act*, R.S.C., 1985, c. I-5, or any successor to such council of the Band pursuant to a federal statute or otherwise;

"**CP Holder**" means a holder of a valid Certificate of Possession, as defined in the *Indian Act*, R.S.C., 1985, c. I-5;

"**Dispensary**" means the use of Premises for the sale of Cannabis-containing products for consumption off Premises;

"**Executive Director**" means the Band's Executive Director or designate or successor thereto;

"**Law**" means this *Okanagan Indian Band Cannabis Control Law*;

"**Lessee**" means a Person that sub-leases from a head lessee, or leases or sub-leases from a CP Holder;

"**Licence**" means a business licence issued pursuant to this Law;

"**Licensee**" means a Person who has been issued a Licence;

"**OKIB IR No. 7**" means the Okanagan Indian Reserve Number 7;

"**Person**" means any natural person, corporation, partnership, trust, unincorporated organization, association, limited liability company, Indian Band or other governmental authority, or other entity;

"**Premises**" means a building or portion of a building or an area of land occupied, or capable of being occupied, by a Person for the purpose of carrying on a business, including, but not limited to: stores, offices, warehouses, factory buildings, houses, enclosures, yards, or other places;

"**Reserves**" means the OKIB reserve lands; and

"Temporary Structure" means anything on wheels, tents, shacks, or any other structure intended for temporary use.

2. Jurisdiction

- 2.1 The Inkumupulux of Okanagan, as part of the Okanagan Nation, and respecting the principles contained within the Okanagan Nation Declaration, are and have always been Sovereign Peoples.
- 2.2 The Inkumupulux of Okanagan Indian Band have existing, inherent and inalienable rights, which includes the right of self-determination, the right to promote and control economic development, and the right to preserve peace and righteousness within the Territory.
- 2.3 The aforementioned rights of the Syilx of Okanagan Indian Band have been recognized and affirmed in the domestic laws of Canada, including the *Constitution Act, 1982* and other federal and provincial legislation, and have been recognized and affirmed the *United Nations Declaration on the Rights of Indigenous Peoples*.
- 2.4 The Syilx of Okanagan Indian Band's inherent rights and jurisdiction over their lands, people and resources includes the inherent jurisdiction to regulate and control Cannabis within the Reserves, along with the cultivation, processing, distribution, sale, possession and use of Cannabis on the Reserves.
- 2.5 The Council of the Syilx of Okanagan Indian Band, as the duly elected, governing body over the lands and people under their care and control, has the responsibility and authority to enact this Law on behalf of the Syilx of Okanagan Indian Band.

3. Application of this Law

- 3.1 The provisions of this Law do not apply to production and distribution of Cannabis for medical purposes licensed by Health Canada under federal enactments.
- 3.2 Subject to s. 3.1, this Law applies to all activities related to the cultivation, processing, distribution, sale, possession and use of Cannabis within the Reserves.
- 3.3 The issuance of any Licence pursuant to this Law does not create an exception, defense, or immunity to any Person in regard to any potential criminal liability the Person may have for the production, distribution, or possession of Cannabis.
- 3.4 A licence issued by a regulatory authority outside of the Reserves has no validity within the Reserves unless the licence holder has also been issued a Licence under this Law.

4. Requirements for all Cannabis Dispensaries

4.1 General:

- (a) A business carrying on as a Dispensary must:
 - i. be at least 51% owned by a member, either directly or indirectly, of the Okanagan Indian Band;
 - ii. prominently display a sign on the Premises indicating that no persons under nineteen (19) years of age are permitted on the Premises;
 - iii. post on the Premises the health and safety warning signs that are provided by OKIB about the risks associated with Cannabis use;
 - iv. ensure that windows on any street frontage of the Premises are not blocked by translucent or opaque material, artwork, posters, shelving, display cases or similar elements;
 - v. Not allow a Person to smoke, vape, consume or otherwise ingest Cannabis or products containing Cannabis inside the Dispensary and must have in place a ventilation system to ensure that no areas of the Dispensary are affected by smoke from outside the Dispensary;
 - vi. must not permit Cannabis or Cannabis items to be available for sale from a vendor cart, Temporary Structure, or satellite location unless it is at an organized and authorized public market; and
 - vii. install video surveillance cameras that monitor all entrances and exits and the interior of the Premises at all times with a high definition resolution.

4.2 Cannabis Packaging:

- (a) The labeling of Cannabis packages sold by a Licence holder must include:
 - i. the tetrahydrocannabinol ("THC") or cannabidiol ("CBD") content;
 - ii. a list of all ingredients, particularly if the Cannabis products is edible, in the Cannabis product; and
 - iii. a control or batch number to enable tracking of the processing completion date and location of a Cannabis product;
- (b) A Dispensary shall not distribute Cannabis products that are packaged or designed in any manner designed to be appealing to children, such as the use of bright colours. The depiction of objects, such as toys, characters, cartoon characters, or movie characters is prohibited on the labels or packaging of any Cannabis package.

4.3 Advertising:

- (a) Each Dispensary is limited to signs identifying the retail outlet by the Licensee's business name that is affixed or hanging in the windows or on the outside of the Premises that is

visible to the general public from the public right of way. Signs must only be on the lot where the business is located. The size of the main sign is limited to four feet by eight feet;

- (b) All Cannabis advertising and labels of useable Cannabis products sold on the Reserves may not contain any statement, or illustration that:
 - i. Is false or misleading;
 - ii. Promotes over consumption;
 - iii. Represents that the use of Cannabis has curative effects;
 - iv. Is designed in any manner to appeal to children or other persons under nineteen (19) years of age;
 - v. Encourages children or other persons under nineteen years of age to consume Cannabis;
 - vi. Depicts a child consuming Cannabis, or includes:
 - 1. Objects, such as toys, characters, or cartoon or movie characters suggesting the presence of a child; or
 - 2. any other depiction designed to appeal to children or other persons under nineteen years (19) of age;
- (c) A Dispensary may not use giveaway coupons as promotional materials or conduct promotional activities such as games, lotteries or competitions to encourage sale of Cannabis or Cannabis products;
- (d) All advertising must contain the following warnings:
 - i. "For use only by adults nineteen (19) years of age and older";
 - ii. "Cannabis can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this substance";
 - iii. "There may be health risks associated with consumption of this product"; and
 - iv. "Keep out of the reach of children";
- (e) No Dispensary shall place or maintain, or cause to be placed or maintained, an advertisement of a Cannabis business or Cannabis product, including Cannabis concentrates, usable Cannabis, or Cannabis-infused product in any form or through any medium whatsoever within 500 meters of the perimeter of a school grounds, playground, recreation center or facility, child care center, public park, or on Round Lake Rd or anywhere within sight of the Round Lake Treatment Centre;
- (f) All advertising for Cannabis businesses or Cannabis products, regardless of what medium is used, must contain text stating that Cannabis products may be purchased or possessed only by persons nineteen (19) years of age or older; and

- (g) No Dispensary may use or employ a commercial Mascot outside of or in proximity to a Dispensary.

4.4 Hours of Operation:

- (a) A Dispensary must not be open for business between the following hours:
 - i. A Dispensary located on OKIB IR No. 7 must not be open for business between the hours of 11:00 pm and 7:00 am the next day; and
 - ii. For a Dispensary located on any OKIB Reserve that is not on OKIB No. 7, the Dispensary must not be open for business between the hours of 11:00 pm and 8:00 am the next day.

5. Restrictions for all Cannabis Dispensaries and Production Facilities

5.1 A Person carrying on a Dispensary or operating a Cannabis production facility must not:

- (a) allow a person under the age of nineteen (19) to enter or remain on the Premises;
- (b) advertise or promote the use of Cannabis to a person under nineteen (19) years of age, including through product displays, names, logos or other signage;
- (c) operate less than 500 metres from:
 - i. Schools;
 - ii. Playground or recreation centre;
 - iii. Head of the Lake Hall;
 - iv. Child or youth facilities;
- (d) Operate anywhere on Round Lake Rd or any place that is visible from Round Lake Treatment Centre.

6. Cannabis Production Facilities

6.1 In addition to the requirements found in section 5, Cannabis production facilities must:

- (a) Be at least 51% owned, either directly or indirectly, by a member of the Okanagan Indian Band; and
- (b) A Person with oversight over a Cannabis production facility, including a Licensee, owner or manager, must make every effort to hire Okanagan Indian Band members to perform the duties and roles within the Cannabis production facility.

6.2 A Licensee must ensure that the following security measures are complied with in respect of the site that is subject to the Licence:

- (a) the site is designed in a manner that prevents unauthorized access;
- (b) the site is surrounded by a physical barrier that prevents unauthorized access;
- (c) storage areas are surrounded by a physical barrier that prevents unauthorized access with security cameras; and
- (d) access to each storage area is restricted to individuals whose presence in the area is required by their duties.

7. Business Licence Requirements

7.1 A Person must not operate a Dispensary or Cannabis production facility unless the Person holds a valid Licence issued under the provisions of this Law.

7.2 An Applicant for a Licence to carry on a Dispensary or Cannabis production facility must:

- (a) complete and submit an Application Form;
- (b) provide a security plan for the Premises, acceptable to the Executive Director, that describes adequate security measures to mitigate risk of theft or robbery at the Premises, including:
 - i. video monitoring;
 - ii. alarms or alarm system;
 - iii. layout and design;
 - iv. security measures for doors and windows, such as deadbolts; and
 - v. any other security requirements set out in this Law;
- (c) provide proof that Applicant is CP Holder or Lessee or otherwise has legal possession of the Premises;
- (d) provide contact information for a responsible person or persons available to be contacted at any time;
- (e) Provide proof of business ownership by providing a copy of Business Registration and Incorporation documents that depicts percentage of ownership;
- (f) Provide a criminal record check for all owners of the business or, if the owner is a corporation, for each shareholder, officer and director; and

(g) Pay to OKIB the applicable fee to obtain a Licence as set out in the Application Form.

8. Authority to Refuse or Suspend a Business Licence

8.1 The Executive Director or designate may suspend, revoke or refuse to issue or renew a Licence for a Dispensary if the Applicant or Licensee, or a shareholder, officer, director or on-site manager of the Applicant or Licensee:

- (a) was convicted, found guilty of, or liable for any contravention or offence relating to the conduct of a business similar to that to which the Licence relates;
- (b) was convicted, found guilty of, or liable for any contravention or offence on the Reserves against this Law or against any law authorizing the issuance of a business licence or regulating the conduct of a business; or
- (c) was guilty of misrepresentation, nondisclosure or concealment of any material fact relating to the subject matter of the Licence or required to be stated in the Application Form.

8.2 The Executive Director has the right to refuse or suspend any Licence where the interests of the OKIB outweigh the interests of the Person seeking a Licence.

9. Severability

9.1 If any section, subsection, sentence, clause, or phrase of this Law is for any reason held to be invalid, void, illegal or unconstitutional, either on its face or as applied, such decision shall not affect the applicability, constitutionality, legality or validity of any remaining portions of this Law. The Council hereby declares its intention to have adopted this law, and each section, subsection, sentence, clause, and phrase of this chapter, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be declared invalid, void, illegal or unconstitutional, and that the same would have been adopted by the Council had such invalid, void, illegal or unconstitutional sections, subsections, sentences, clauses, or phrases, if any, not been included in this Law.

10. Penalties and enforcement

10.1 Every Person violating any provision of this Law commits an offence punishable on summary conviction to a fine of not less than one hundred dollars (\$100.00) or more than a thousand dollars (\$1,000.00) or to imprisonment of not more than six (6) months for each offence. A separate offence shall be deemed to be committed on each day during or on which a violation occurs or continues.

10.2 This Law may be enforced by a Community Safety Officer or the Executive Director.

- 10.3 Every Person who fails to comply with any order or notice issued by a Community Safety Officer, or who allows a violation of this Law and other applicable enactments to continue, contravenes this Law.
- 10.4 Any Person who disagrees with a decision made under this Law may dispute the decisions in accordance with the following dispute resolution process:
- (a) Notify the Community Safety Officer in writing of the dispute;
 - (b) The Community Safety Officer will make an initial determination about whether the dispute falls outside of the provisions in the Law or not;
 - (c) In minor situations, the Community Safety Officer along with the Executive Director will determine the course of action to be taken; and
 - (d) If Person disputes a matter under this section and is not satisfied with the outcome following a determination under sections 10.4 (b) or (c), the Person may make a request in writing that the matter be brought to Council for reconsideration.

11. Non-Derogation

- 11.1 This Law in whole or in part shall be construed so as to uphold, and not to abrogate or derogate from, the legal rights and interests of the Syilx Nation and the Inkumupulux/Okanagan Indian Band, including Aboriginal Title and rights.

THIS LAW IS HEREBY made at a duly convened meeting of the Council of the Band this 4th day of May, 2020.

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

Chief Byron Louis



Councillor Valerie Chiba

Councillor Cindy Brewer

Councillor Timothy Isaac



Councillor Garrett Lawrence

Councillor Allan Louis

Councillor Sharon Cullen

Councillor Sheldon Louis

Councillor Ryan Oliverius

Councillor Dan Wilson

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

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