

**Okanagan Indian Band  
Bylaw No. 2019-02  
Cannabis Dispensary Bylaw**

**WHEREAS** section 35 of the *Constitution Act*, 1982 recognizes and affirms the existing aboriginal self-government and treaty rights of the aboriginal peoples of Canada;

**AND WHEREAS** the Council of the Okanagan Indian Band desires to make a bylaw to provide for the regulation of Cannabis related businesses within Okanagan Indian Band reserve lands;

**AND WHEREAS** the Council of the Okanagan Indian Band is empowered to make such a bylaw pursuant to paragraphs and 83(1), (a1) and (g) of the Indian Act;

**NOW THEREFORE** the Council of the Okanagan Indian Band hereby makes the following bylaw.

**1. Short Title**

This bylaw may be cited as the Okanagan Indian Band Cannabis Regulation Bylaw.

**2. Definitions**

"Band" means the Okanagan Indian Band.

"Cannabis" has the same meaning as in the Cannabis Act (Canada), subject to any prescribed modifications.

"Executive Director" means the Band's Executive Director or appointed Bylaw Enforcement Officer or successor thereto.

"Council" means the Council of the Okanagan Indian Band, as defined in the *Indian Act*, 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.

"Dispensary" means the use of Premises for the sale of marijuana-containing products for consumption off Premises.

"Lessee" means a person that sub-leases from a head leasee or leases or sub-leases from a Certificate of Possession holder.

"Licence" means a business licence issued pursuant to this bylaw.

"Licensee" means a person who has been issued a Licence.

"Cannabis" means as defined in the Controlled Drugs and Substances Act and includes any products containing cannabis.

"Possession" means possession within the meaning of subsection 4(3) of the *Criminal Code*.

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

### 3. Application of this Bylaw

- (1) The provisions of this Bylaw do not apply to production and distribution of Cannabis licensed by Health Canada under the Cannabis for Medical Purposes Regulations or the Cannabis Medical Access Regulations of the *Controlled Drugs and Substances Act* (Canada).
- (2) The issuance of any licence pursuant to this bylaw 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) A Cannabis Dispensary Licensee must obtain the applicable permits and Licenses required to carry on a cannabis business and remain in compliance with those licenses.

### 4. Requirements for all Cannabis Dispensaries

#### (1) General

A person carrying on a Cannabis Dispensary must:

- (a) be the registered CP Holder or Lessee of the premises and acknowledge that:
  - a. the leased lands, lease, sublease(s) or any other interest granted under the lease will be subject to all By-Laws, Laws, Regulations, Land Use Plans, Fire Services Agreements and other Service Agreements currently in place by OKIB and to any future changes in any By-Laws, Laws, Regulations, Land Use Plans, Fire Services Agreements and other Service Agreements established by OKIB;
  - b. the lease, sublease(s) or any other interest granted under the lease will be subject to and compliant with ISC's requirements including policies, regulations and legislation;
  - c. the Applicant has executed a Release and Indemnity Agreement with the Okanagan Indian Band in relation to the potential impacts of UXO and munitions scrap on the proposed lease lands; and
  - d. the lease will not be executed until after the Applicant receives confirmation from ISC that the lease meets ISC requirements.
- (b) prominently display a sign on the premises indicating that no persons under nineteen (19) years of age are permitted on the premises;
- (c) post health and safety warning signs on the premises;
- (d) ensure that at least two employees are present on the premises at all times when the business is open to the public, including one manager;
- (e) ensure that windows on any street frontage of the premises are not
- (f) blocked by translucent or opaque material, artwork, posters, shelving, display cases or similar elements;

- (g) conduct business within a completely enclosed building, with the doors remaining closed when not in use for immediate ingress and egress;
  - (h) must not make Cannabis or Cannabis items available for sale from a vendor cart, temporary structure, or satellite location, or through exterior openings of the licensed premises, such as drive-thru facilities or walk up windows.
  - (i) install and maintain an air filtration system that effectively minimizes odour impacts on neighbouring properties;
  - (j) implement the following security measures:
    - a. install video surveillance cameras that monitor all entrances and exits and the interior of the business premises at all times with a high definition resolution;
    - b. retain video camera data for at least 21 days after it is gathered;
    - c. install a security and fire alarm system that is, at all times, monitored by a licenced third party; and
    - d. not allow Cannabis, products containing Cannabis or other valuables to remain on the premises when the business is not open to the public, unless the Cannabis, products and other valuables are securely locked in a safe on the premises.
  - (k) Promptly bring to the attention of the Executive Director:
    - a. the name of any new on-site manager, officer, director or shareholder of the licensee;
    - b. any criminal charge laid or pending against the licensee or an on-site manager, officer, director or shareholder of the licensee; and a current police information check, birth certificate and most recently issued driver's licence and passport for any new on-site manager, officer, director or shareholder of the licensee.
- (2) Cannabis Packaging
- (a) Cannabis Dispensary shall not distribute Cannabis products that mimic or imitate trademark protected products.
  - (b) Cannabis Dispensary shall not distribute Cannabis products that are packaged or designed in any manner that would be especially appealing to children. The depiction of objects, such as toys, characters, cartoon characters, or movie characters is prohibited on the labels or packaging of any Cannabis package.
- (3) Advertising
- (a) Each Cannabis Dispensary is limited to one sign 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. The size of the sign is limited to one square meter.
  - (b) All Cannabis advertising and labels of useable Cannabis products sold on Reserve may not contain any statement, or illustration that:
    - a. Is false or misleading;
    - b. Promotes over consumption;
    - c. Represents the use of Cannabis has curative or therapeutic effects;

- d. Depicts a child to consume Cannabis, or includes:
  - e. Objects, such as toys, characters, or cartoon or movie characters suggesting the presence of a child, or any other depiction designed in any manner to be especially appealing to children or other persons under nineteen years (19) of age to consume Cannabis; or
  - f. Is designed in any manner that would be especially appealing to children or other persons under nineteen (19) years of age.
- (c) A Cannabis Dispensary may not use giveaway coupons as promotional materials or conduct promotional activities such as games or competitions to encourage sale of Cannabis or Cannabis products.
- (d) All advertising must contain the following warnings:
- a. "For use only by adults nineteen (19) years of age and older";
  - b. "This product may have intoxicating effects and may be habit forming";
  - c. "Cannabis can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug";
  - d. "There may be health risks associated with consumption of this product."; and
  - e. "Keep out of the reach of children."
- (e) No Cannabis 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, Church, library, or a game arcade admission to which it is not restricted to persons aged nineteen (19) years or older.
- (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.
- (g) No Cannabis Dispensary may use or employ a Commercial Mascot outside of, and in proximity to, a Cannabis Dispensary business.

## 5. Restrictions for all Cannabis Dispensaries

A person carrying on a Cannabis Dispensary must not:

- (1) allow a person under the age of nineteen (19) to enter or remain on the premises;
- (2) 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;
- (3) allow a person to smoke, vape, consume or otherwise ingest Cannabis or products containing Cannabis on the premises;
- (4) sell Cannabis or other substances under the *Controlled Drugs and Substances Act* in edible form, including beverage form.
- (5) be open for business between the hours of 11 pm and 9am the next day;
- (6) mail or deliver any products from the business premises; and
- (7) use the premises to carry on business other than the Cannabis Dispensary.
- (8) operate at least 500 metres from:

- a. Schools;
  - b. Playground or recreation centre;
  - c. Library;
  - d. game arcade that is open to persons under nineteen years of age;
  - e. Community centers;
  - f. Child or youth facilities;
  - g. Churches
- (9) permit, suffer or allow, or facilitate the mailing or delivery of any produce or products from a Cannabis Dispensary.

## **6. Business Licence Requirements**

- (1) A person must not operate a Cannabis Dispensary unless the person holds a valid licence issued under the provisions of this Bylaw.
- (2) A person applying for the issuance or renewal of a licence to carry on a Cannabis Dispensary must:
- a. complete and submit an application for a licence in a form satisfactory to the Band;
  - b. provide a security plan for the premises that, in the opinion of the Executive Director, describes adequate security measures to mitigate risk of theft or robbery at the premises;
  - c. provide proof of a security alarm contract that includes monitoring at all times during the period for which the license is being sought;
  - d. provide proof of ownership or legal possession of the premises;
  - e. provide contact information for a responsible person or persons available to be contacted at any time;
  - f. provide a list of the names of all staff, together with a copy of photo identification for each staff member; and
  - g. provide a current police information check for:
    - i. the applicant;
    - ii. if the applicant is a corporation, each shareholder, officer and director, and;
    - iii. each on-site manager.

## **7. Authority to Refuse or Suspend a Business Licence**

The Executive Director may suspend, revoke or refuse to issue or renew a licence for a Cannabis Dispensary if the applicant or licensee, or a shareholder, officer, director or on-site manager of the applicant or licensee:

- (1) was convicted anywhere in Canada of an offence involving dishonesty;
- (2) 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;

- (3) was convicted, found guilty of, or liable for any contravention or offence on the Reserve against this bylaw or against any bylaw authorizing the issuance of a business licence or regulating the conduct of a business; or
- (4) 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.

## **8. Severability**

If any section, subsection, sentence, clause, or phrase of this bylaw 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 bylaw. The Council hereby declares its intention to have adopted this bylaw, 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 bylaw.

## **9. Penalties and enforcement**

- (1) Every person violating any provision of this bylaw commits an offence punishable on summary conviction to a fine of not less than one hundred dollars (\$100.00) or more ten thousand dollars (\$10,000.00) 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.
- (2) Every person who fails to comply with any order or notice issued by an Officer, or who allows a violation of this bylaw and other applicable enactments to continue, contravenes this bylaw.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the Band this \_\_\_\_ day of April, 2019.

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

\_\_\_\_\_  
Chief Byron Louis

\_\_\_\_\_  
Councillor Cindy Brewer

\_\_\_\_\_  
Councillor Valerie Chiba

\_\_\_\_\_  
Councillor Timothy Isaac

\_\_\_\_\_  
Councillor Garrett Lawrence

\_\_\_\_\_  
Councillor Allan Louis

\_\_\_\_\_  
Councillor Sharon Cullen

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Councillor Sheldon Louis

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Councillor Ryan Oliverius

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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.

I, Byron Louis, Chief 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 \_\_\_\_\_ office of the Department pursuant to subsection 82(1) of the Indian Act, this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Chief Byron Louis