

# **Atikameksheng Anishnawbek**

## **Cannabis Control Law**

Version control date: January 15, 2023

### **PREAMBLE**

WHEREAS the legalization of adult-use cannabis in 2018 by Canada calls for Atikameksheng Anishnawbek to address matters of public health, safety, and security;

AND WHEREAS. as an exercise of their inherent jurisdiction, the Atikameksheng Anishnawbek have approved a written Gchi-Naaknigewin, their Constitutional law, and, under section 7.1 of the Gchi-Naaknigewin, Atikameksheng Anishnawbek through its Gimaa and Council has the power to make laws, regulations and policies that are deemed necessary to ensure the well-being of Atikameksheng Anishnawbek;

AND WHEREAS under section 8.1 of Gchi-Naaknigewin, The Atikameksheng Anishnawbek has the power, privilege, jurisdiction and authority of governance and may pass laws with respect to paragraph (h) sub (1): Licencing and incorporation of businesses including the establishment of mechanisms and procedures for financial accountability;

AND WHEREAS under section 31.2 of the Atikameksheng Anishnawbek Land Management Code, Gimaa and Council may establish mandatory standards, criteria and forms for interests and licences in Atikameksheng Anishnawbek land;

AND WHEREAS under section 33.1 of the Atikameksheng Anishnawbek Land Management Code, Gimaa and Council may grant interests and licences in community lands, including permits;

AND WHEREAS it is the desire of the Atikameksheng Anishnawbek to provide opportunities for commercial cannabis activity to their citizens and their businesses and the Gimaa and Council recognize that this activity should be controlled through a permit-based (regulatory) system;

AND WHEREAS the Atikameksheng Anishnawbek has inherent jurisdiction to control the production, distribution, and consumption of Cannabis, and that jurisdiction is confirmed by international law, including the *United Nations Declaration on the Rights of Indigenous Peoples*, section 35 of the *Constitution Act, 1982*, and sections 2 and 81 of the *Indian Act*;

### **NOW THEREFORE, ATIKAMEKSHENG ANISHNAWBEK ENACTS THIS CANNABIS LAW.**

### **PURPOSES**

1. The purposes of this Law are to:
  - (a) Protect the health, safety, and security of the Atikameksheng Anishnawbek;

- (b) Control access to Cannabis, particularly by prohibiting access to children and young persons;
- (c) Place appropriate restrictions on in-community Cannabis use; and
- (d) Regulate the sale of Cannabis through a system of licencing.

## **DEFINITIONS**

2. In this Law:

- (a) “Appeal Committee” means the Atikameksheng Anishnawbek Appeal Committee;
- (b) “Approved Cannabis Product” has the meaning given in s. 47(g) and a regulation that defines the process of legalizing the approved supply for Atikameksheng Anishnawbek permit-holders, which may include arrangements with Ontario and Canada;
- (c) “Approved Supplier” has the meaning given in s. 47(f) and a regulation that defines the process of legalizing the approved supply for Atikameksheng Anishnawbek permit-holders, which may include arrangements with Ontario and Canada;
- (d) “Atikameksheng Anishnawbek” means Atikameksheng Anishnawbek Gimaa and Council, as empowered to act on behalf of the collective under this Law;
- (e) “Cannabis” means any part of a cannabis plant or any substance extracted from a cannabis plant, individually or in combination with non-cannabis substances;
- (f) “Cannabis Activities” means all activities related to the production, distribution, and consumption of Cannabis, including, without limiting the generality of the foregoing, cultivation, processing, sale, possession, and use;
- (g) “Commission” means the Cannabis Control Commission;
- (h) “Gimaa and Council” has the same meaning as “council of the band” in the *Indian Act*;
- (i) “Member” has the same meaning as “member of a band” in the *Indian Act*;
- (j) “Licence” has the meaning given in s. 37;
- (k) “Licence Fee” has the meaning given in s. 71;
- (l) “Licence Remittance” means the share of revenue a Licensee must remit to the Commission on a monthly basis;
- (m) “Licensee” means the holder of a Licence;

- (n) “Person” includes an individual, corporation, partnership, limited liability company, and any other lawful business entity;
- (o) “Reserve” means Atikameksheng Anishnawbek Reserve lands and territory;
- (p) “Retail Site” means the premises where a Licensee sells Cannabis, and, for greater certainty, does not include a website; and
- (q) “Use,” with respect to Cannabis, means to smoke, vape, inhale, ingest, absorb, or otherwise consume.

## **APPLICATION**

- 3. This Law applies to all Cannabis Activities on the Reserve.
- 4. Possession of a licence or other authorization under provincial or federal legislation does not exclude the application of this Law, including, for greater certainty, s. 8.
- 5. This Law is meant to accommodate the existing medical cannabis regime, and to promote access to a safe and legal supply of medical cannabis to Atikameksheng Anishnawbek;
- 6. In the event of a conflict between this Law and provincial or federal laws, this Law shall prevail to the extent of the conflict.

## **HARMONIZATION**

- 7. This Law may serve as the basis for:
  - (a) The harmonization of laws concerning Cannabis among the Atikameksheng Anishnawbek and other jurisdictions;
  - (b) Co-operation and mutual assistance among the Cannabis Control Commission and other regulatory and law enforcement agencies; and
  - (c) Agreements with other jurisdictions with respect to Cannabis Activities, including, without restricting the generality of the foregoing:
    - (i) The supply of Cannabis to Licensees; and
    - (ii) Coordination between Licensees and licensed Cannabis retailers in other jurisdictions.

## **PROHIBITION**

- 8. Commercial cannabis activities are prohibited except as authorized under this Law.

9. Notwithstanding any other provision of this Law, no person younger than 19 years of age may use Cannabis.
10. A person may possess Cannabis for his or her personal use provided that the person:
  - (a) Is at least 19 years of age;
  - (b) Acquires the Cannabis from a Licensee; and
  - (c) Possesses no more than 30 grams of Cannabis at any one time outside the person's dwelling-house.
11. The Atikameksheng Anishnawbek strongly believes that the Anishnawbek have an inherent right to personally use traditional plants, herbs, and medicines for food and ceremonial purposes. This law does not purport to interfere with the right of Members to use plants, herbs, and medicines for food and ceremonial purposes. This purpose of this law, for greater certainty, is to control cannabis use for recreational purposes to persons 19 years of age or older, and to provide a legal framework for the production, distribution and retail sales through licenced commercial activities.
12. A person may cultivate Cannabis in his or her dwelling house for personal use provided that the person:
  - (a) Is at least 19 years of age;
  - (b) Acquires the Cannabis from a Licensee;
  - (c) Cultivates the Cannabis for his or her personal use only;
  - (d) Ensures that any and all cannabis and cannabis related products are out of reach of children and youth; and
  - (e) Possesses no more than four plants at any one time. For clarity, this would be a limit of four plants per individual, over 19 years of age, in order to ensure that affordable cannabis is available to adult-users in Atikameksheng Anishnawbek.

## **CANNABIS CONTROL COMMISSION**

13. The Commission is hereby established as a legal entity under the legal supervision, but as an arms-length regulator, under the Gimaa and Council's governance authority.
14. The Commission shall administer this Law:
  - (a) In the Atikameksheng Anishnawbek's best interests;
  - (b) Consistently with the Gimaa and Council's policies; and
  - (c) According to the highest standards of impartiality, independence, transparency and integrity.

15. The Commission shall submit annual budgets to the Gimaa and Council.
16. The Gimaa and Council may approve an annual budget or request reasonable amendments.
17. Licence Fees and Licence Remittances shall go toward funding the Commission.

### **Commission Members**

18. The Commission shall have at least three Commission Members and no more than 5 Commission members.
19. Commission Members shall be selected for terms of two or four years, in accordance with the Cannabis Regulation governing the Commission's operations.
20. Despite section 19, the Gimaa and Council may appoint the initial Commission Members, to serve as interim Commissioners until the first selection process is finalized.
21. Any Member may be a Commission Member.
22. A Commission Member may be re-selected any number of times.
23. The Commission shall appoint a Commission Member as Chairperson to preside over Commission meetings.
24. The Gimaa and Council may remove a Commission Member for cause by resolution.
25. A Commission Member may resign by providing written notice of at least 60 days to the Gimaa and Council.
26. When a Commission Member position become vacant, the Gimaa and Council shall make the final decision to hold an individual selection or not within 30 days. The cost of the process and the proximity to a general timeline for selection of Commission members will be the main factors under consideration by the Gimaa and Council in making this decision.
27. The Commission may authorize persons or organizations to act as its agents.

### **Commission Meetings**

28. The Commission shall meet on a monthly basis.
29. The Chairperson may call additional meetings as necessary.
30. The Chairperson shall schedule meetings.
31. The Chairperson shall provide the other Commission Members at least five days' notice of a meeting unless the other Commission Members both waive this requirement.
32. Commission Members shall attend meetings in person if possible, but may attend meetings by teleconference or videoconference as necessary.

33. The quorum of the Commission is at least two Members. Specific reference to the terms prescribed in the Commission's regulations will set the circumstances where a quorum greater than two Commissioners will be required.
34. Commission decisions are made by majority vote.
35. Commission meetings shall presumptively be open to the public.
36. The Chairperson may choose to conduct part or all of a Commission Meeting privately, to the extent necessary to prevent the disclosure of confidential information.

## **LICENCES**

37. The Commission may issue Licences to sell Cannabis.
38. Subject to any regulations, after a period of several months of licenced activity, the Commission may restrict either production licences (if and when applicable) or retail store licences to five licences of that type, operational at any one time for a period of up to six months. This period is meant to foster sustainability for all present licence-holders and an orderly entry of new licence-holders after a formal review or audit.

### **Application for a Licence**

39. The owner of or holder of a majority interest in a Licensee must be one or more persons who is:
  - (a) A Member; and,
  - (b) At least 19 years of age.
40. An application for a Licence must include:
  - (a) The names of all persons with an ownership interest in the proposed Licensee;
  - (b) The names of any of the proposed Licensee's employees with managerial responsibilities prescribed in the regulation;
  - (c) One or more proposed Retail Sites; and
  - (d) Any other prescribed criteria.
41. The Commission may inspect proposed Retail Sites.

### **Issuance of a Licence**

42. The Commission shall approve an application for a Licence if, in its opinion, doing so would be consistent with the purposes of this Law.
43. The Commission may place terms and conditions on a Licence.

44. The Commission may amend the terms and conditions of a Licence at any time, at a Licensee's request or on its own initiative.
45. A Licence becomes invalid if the Licensee fails to pay any Licence Fees or Licence Remittances by the time the fees are due.
46. The Commission may renew a Licence if the Licensee is in good standing.

### **Standard Licence Terms and Conditions**

47. Subject to any regulations under s. 72(f), every Licence is deemed to have the following terms and conditions:
  - (a) The term of a Licence is five years;
  - (b) A Licensee shall not sell Cannabis to a person younger than 19 years of age, and shall verify a customer's age when necessary;
  - (c) A Licensee shall not sell Cannabis to an intoxicated person;
  - (d) A Licensee shall sell no more than 30 grams of Cannabis to a person per day;
  - (e) A Licensee shall only sell Cannabis at the Retail Site or Sites approved by the Licence;
  - (f) A Licensee shall only obtain Cannabis from Approved Suppliers;
  - (g) A Licensee shall only sell Approved Cannabis Products;
  - (h) A Licensee shall mark all Approved Cannabis Products with a Retail Seal provided by the Commission;
  - (i) A Retail Site shall be located in the First Nation's Business park unless it is already in operation at the time this Law is enacted;
  - (j) A Retail Site shall not be:
    - (i) Within 150 metres of a park, library, school, playground, community centre, or lifestyles centre;
    - (ii) In a residential lot that is meant for residential housing; or
    - (iii) In another prescribed place; and
  - (k) A Licensee will be required to employ Members who are at least 19 years of age.
  - (l) A Licensee shall only operate their store between the hours of 9 A.M. and 11 P.M.
  - (m) As a condition of all licences, a Licensee shall provide 15% of their net revenue to the Commission as a community benefit fee. The Licence shall set out the procedures for remittance of these revenues to the Commission.

- (n) The community benefit fee will be revenues for the Cannabis Commission operations and any excess funds may be provided to the First Nation's administration to fund projects for the benefit of the general membership of the First Nation.

## **Appeals**

- 48. If the Commission rejects a Licence application, the applicant may appeal the decision.
- 49. If the Commission approves a Licence application, any Member or person resident on the Reserve may appeal the decision.
- 50. The Atikameksheng Anishnawbek's Appeal Committee shall hear appeals.
- 51. The Appeal Committee shall only hear appeals initiated within 30 days of the decision being appealed.
- 52. Notwithstanding s. 51, the Appeal Committee may hear a late appeal if, in its discretion, doing so would be in the best interests of justice.

## **ENFORCING COMPLIANCE WITH LICENCES**

### **Investigation of Alleged Breaches**

- 53. The Commission may, at the written request of any person or on its own initiative, investigate a Licensee's alleged breach of this Law, including the terms and conditions of its Licence.
- 54. The Commission shall not investigate alleged breaches that, in its opinion, are unmeritorious, frivolous, or vexatious on their face.
- 55. The Commission shall investigate alleged breaches in the manner it considers adequate and proportionate to the significance of the alleged breach.
- 56. If, as a result of an investigation, the Commission is of the opinion that the alleged breach has occurred, it shall provide notice to the Licensee.
- 57. A notice shall include:
  - (a) The particulars of the alleged breach;
  - (b) All evidence in the Commission's possession or control relating to the alleged breach; and
  - (c) A deadline by which the Licensee may deliver written submissions, including reasonable amounts of time to retain legal counsel, gather evidence, draft submissions, or do any other thing necessary to prepare his or her defence within a reasonable amount of time.

58. Upon request by the Licensee, the Commission shall grant adjournments or time extensions that are reasonable and will not cause undue delay.

### **Determination of Alleged Breaches**

59. When the Licensee delivers written submissions to the Commission, or when the deadline for delivering written submissions passes, the Commission shall schedule an oral hearing with notice to the Licensee.
60. At the oral hearing, the Commission shall provide the Licensee a reasonable amount of time to make submissions.
61. After the oral hearing, the Commission may deliberate in a private meeting.
62. The Commission shall issue a decision, with written reasons, within a reasonable amount of time after the oral hearing.

### **Remedies**

63. If the Commission decides that the Licensee is liable for the breach, it shall order an appropriate remedy, including, without limitation:
  - (a) Issuing a warning;
  - (b) Amending the terms and conditions of the Licence;
  - (c) Revoking the Licence;
  - (d) Suspending the Licence;
  - (e) Prohibiting the Licensee, and the persons with ownership interests therein, from obtaining a Licence for a specific period of time;
  - (f) Imposing a fine of up to \$100,000; or
  - (g) Any other remedy consistent with the purposes of this Law.

### **Appeals**

64. The Licensee may appeal the Commission's decision to the Appeal Committee.
65. The Appeal Committee shall only hear appeals initiated within 30 days of the decision being appealed.
66. Notwithstanding s. 65, the Appeal Committee may hear a late appeal if, in its discretion, doing so would be in the interest of justice.

## OFFENCE

67. A person other than a Licensee that breaches this Law commits an offence, and is liable for a fine not exceeding \$100,000 or 30 days imprisonment.
68. The Gimaa and Council may enforce this “offence” section including any punishment listed in section 67, and may also obtain an injunction against a continuing breach of this Law.
69. The Gimaa and Council may obtain an injunction to prevent a breach of this Law if the breach:
  - (a) Is likely to occur imminently; and
  - (b) Is likely to cause significant harm to the Atikameksheng Anishnawbek.

## REGULATIONS

70. The Commission may make recommendations to the Chief and Council on the proper form and function of a Atikameksheng Anishnawbek business entity that the Commission may licence to distribute cannabis to licenced retail stores within the Atikameksheng Anishnawbek Unceded Reserve.
71. The Commission shall prescribe:
  - (a) The amount of Licence Fees;
  - (b) The formula for calculating Licence Remittances;
  - (c) The maximum allowable price markup;
  - (d) Approved Suppliers; and
  - (e) Approved Cannabis Products;
72. The Commission may make regulations respecting:
  - (a) Rules of procedure for Commission meetings;
  - (b) The maximum number of Licences the Commission may issue at any one time;
  - (c) Forms and procedures for making Licence applications;
  - (d) Procedures for processing Licence applications;

- (e) Procedures for inspecting proposed Retail Sites;
- (f) Standard Licence terms and conditions;
- (g) Quality standards and testing procedures;
- (h) Standards for Retail Sites;
- (i) Places where Licensees may not sell Cannabis;
- (j) Forms and procedures for requesting an investigation under s. 53;
- (k) Procedures for conducting investigations under s. 55;
- (l) Rules of practice and procedure for Licence reviews;
- (m) Rules for marketing Cannabis; and
- (n) any other matter consistent with the purposes of this Law.

### **COMING INTO FORCE**

73. This Law comes into force when posted on the Atikameksheng Anishnawbek's Internet site, in the *First Nations Gazette* or in a newspaper that has general circulation on the Reserve.