

**WESTBANK FIRST NATION
CANNABIS LAW 2020**

WHEREAS:

- A. Westbank First Nation has a duty, in the spirit of good governance, to protect and preserve the health and safety of its Members and the broader Westbank First Nation community;
- B. Westbank First Nation has jurisdiction and authority over public order, peace, safety, and dangers to public health on Westbank Lands;
- C. Westbank First Nation has the jurisdiction and authority to prohibit, and the inherent aboriginal right to regulate, the sale, barter, supply, manufacture, and possession of intoxicants on Westbank Lands, including cannabis;
- D. Westbank First Nation has the jurisdiction to license and regulate the operation of businesses on Westbank Lands; and
- E. It is in the interests of the continued social and economic development of Westbank First Nation to create a framework for regulating cannabis on Westbank Lands.

NOW THEREFORE the Council of Westbank First Nation enacts the following as Westbank law:

1. TITLE

- 1.1 This Law may be cited as the "*WFN Cannabis Law 2020*".

2. DEFINITIONS

- 2.1 In this Law, unless the context requires otherwise:

"ACMPR" means the *Access to Cannabis for Medical Purposes Regulations*, SOR/2016-230, as amended or replaced from time to time;

"Appeal Committee" means the Committee, comprised of three (3) members, appointed by the Council under section 9.8 of the Law;

"Cannabis" means any part of a cannabis plant, including the phytocannabinoids produced by, or found in, such a plant, and any substance or mixture of substances that is either identical to the phytocannabinoids produced by, or found in, such a plant, or that contains or has on it any part of such a plant. Cannabis does not include a non-viable seed of a cannabis plant, a mature base stalk or any fibre derived therefrom, or the root or any part of the root of such a plant.

"Cannabis Distributor" means any business license holder engaged in the business of carrying, transporting, or distributing Cannabis;

"Cannabis Plant" means a plant that belongs to the genus Cannabis;

"Cannabis Processor" means any business license holder engaged in the business of producing Cannabis using methods other than those employed by a Cannabis Producer, including manufacturing, synthesis, and altering chemical or physical properties;

"Cannabis Producer" means any business license holder engaged in the business of producing Cannabis through cultivation, propagation, and harvesting methods;

"Cannabis Retail Operation" means any business license holder engaged in the business of displaying, selling, or offering Cannabis for sale;

"Commission" means the five (5) member Commission appointed by Council under section 19 of this Law;

"Constitution" means the *Westbank First Nation Constitution*;

"Council" means the governing body of Westbank First Nation elected pursuant to the Constitution.

"Dried Cannabis" means Cannabis that has been subjected to any drying process, but does not include seeds.

"Federal Act" means the *Cannabis Act*, S.C. 2018, c. 16, as amended or replaced from time to time;

"Food Safe Packaging" means packaging that will not transfer noxious or toxic substances to the product it contains, ensuring the safety and quality of such product, and which meets or exceeds all mandatory packaging requirements established by the Commission, from time to time;

"License" means a license to develop and operate a Cannabis business issued pursuant to this Law;

"Minor" means an individual who has not attained the age of nineteen (19) years of age or older;

"MMAR" means the *Marihuana Medical Access Regulations*, SOR/2001-227, as repealed or replaced from time to time;

“MMPR” means the *Marihuana for Medical Purposes Regulations*, SOR/2013-119, as repealed or replaced from time to time;

“Peace Officer” means a member of the Royal Canadian Mounted Police or a member of the British Columbia Conservation Officer Service, or any delegate of either;

“Person” means any individual, firm, partnership, association, corporation, trustee, executor, administrator, or other legal representative;

“Public Outdoor Space” means any outdoor space that is accessible to the public;

“Public Premises” means all or any part of a building, structure, or other enclosed area to which the public has access as a right or by express or implied invitation;

“WFN Law Enforcement Officer” means a Person appointed by Council, from time to time, to administer and enforce the provisions of Westbank Laws, and includes any delegate and any Peace Officer.

2.2 Unless otherwise provided in this Law, words, expressions, and rules of construction used in this Law have the same meaning as in the Constitution.

POSSESSION AND CONSUMPTION OF CANNABIS

3. POSSESSION

- 3.1 No Person shall possess Cannabis on Westbank Lands unless authorized under this Law.
- 3.2 An individual that is not a Minor may possess Cannabis on Westbank Lands in accordance with this Law.
- 3.3 An individual must not possess more than four (4) Cannabis Plants on or within Westbank Lands.
- 3.4 An individual must not possess Cannabis in a Public Outdoor Space on Westbank Lands, or in a vehicle located in a Public Outdoor Space on Westbank Lands, in an amount exceeding the equivalent of thirty (30) grams of Dried Cannabis.
- 3.5 Notwithstanding section 3.4, a Person who is a common carrier, including any employee or agent thereof, shall be authorized to possess Cannabis in unlimited quantities, provided it is transporting or distributing Cannabis in the ordinary course of business and pursuant to a License.

4. CONSUMPTION

- 4.1 No individual shall consume Cannabis on Westbank Lands unless authorized under this Law.
- 4.2 An individual that is not a Minor may consume Cannabis on Westbank Lands in accordance with this Law.
- 4.3 An individual must not consume Cannabis in any Public Outdoor Space on Westbank Lands.
- 4.4 An individual must not consume Cannabis in a vehicle on Westbank Lands.

5. MEDICAL CANNABIS

- 5.1 Subject to section 5.4, an individual who is entitled to use Cannabis pursuant to:
 - (a) a medical document issued under the ACMPR;
 - (b) a prescription from a medical professional;
 - (c) a written diagnosis from a medical professional of a medical condition treatable by Cannabis; or
 - (d) by the written recommendation of a traditional healer recognized by Council,may consume Cannabis in any Public Premises on Westbank Lands.
- 5.2 An individual referred to in section 5.1 must, on demand of a Peace Officer, produce a copy of the person's medical document.
- 5.3 A Minor may possess and consume Cannabis pursuant to a medical document issued under the ACMPR.
- 5.4 An individual referred to in section 5.1 must not smoke or vape Cannabis:
 - (a) in or on a Public Premises;
 - (b) in, on, or within five (5) meters of a:
 - (i) school;
 - (ii) playground;
 - (iii) daycare; or

- (iv) sports field,
to which the public has access; or
- (c) within five (5) meters of an entrance or exit to a Public Premises.

6. EVENTS

- 6.1 The Commission may grant a permit to allow for the consumption, including smoking and vaping, of Cannabis in a Public Outdoor Space on Westbank Lands for an event, and may impose such terms and conditions on the permit as it sees fit, in its sole discretion.
- 6.2 An individual may smoke, vape, or consume Cannabis in a Public Outdoor Space on Westbank Lands at an event for which a permit has been granted by the Commission.
- 6.3 The Commission may suspend or revoke a permit issued pursuant to section 6.1 if it determines that a permit holder, or any Person at an event for which a permit has been issued, has contravened any of the terms or conditions under which the permit was granted, any Westbank law, or any Federal or Provincial laws.

LICENSING, DISTRIBUTION, AND SALE OF CANNABIS

7. REQUIREMENTS FOR A LICENSE

- 7.1 A Person must not carry on business on Westbank Lands as a:
 - (a) Cannabis Producer;
 - (b) Cannabis Processor;
 - (c) Cannabis Distributor; or
 - (d) Cannabis Retail Operation,unless that Person has a valid and subsisting License.
- 7.2 No Person shall contravene a term or condition of a License.
- 7.3 A License may only be issued in accordance with the requirements established under this Law.

- 7.4 A License holder may hold a License for more than one category of Cannabis business described in section 7.1.
- 7.5 A Cannabis Producer License permits the sale of Cannabis to Cannabis Distributors, Cannabis Processors, Cannabis Retail Operations, and the export of Cannabis outside of Westbank Lands, to a distributor, processor, or retailer who holds a valid license issued by the regulatory authority in the jurisdiction in which the Cannabis is being distributed, processed, or sold.
- 7.6 A Cannabis Processor License permits the sale of Cannabis to Cannabis Distributors, Cannabis Retail Operations, and the export of Cannabis outside of Westbank Lands, to a distributor, processor, or retailer who holds a valid license issued by the regulatory authority in the jurisdiction in which the Cannabis is being distributed, processed, or sold.
- 7.7 A Cannabis Distributor License permits the sale of Cannabis to Cannabis Retail Operations, or the export of Cannabis outside of Westbank Lands, to a distributor, processor, or retailer who holds a valid license issued by the regulatory authority in the jurisdiction in which the Cannabis is being distributed, processed, or sold.
- 7.8 To effect distribution of Cannabis outside of Westbank Lands, a Cannabis Distributor must obtain a license from a regulatory authority in the jurisdiction in which the Cannabis is being distributed, where such a license is required.
- 7.9 A Cannabis Distributor must obtain Cannabis from a Cannabis Producer, Cannabis Processor, or a producer or processor who is authorized to produce Cannabis under any of the MMAP, MMPPR, ACMPPR, or the Federal Act.
- 7.10 Cannabis Cultivators, Cannabis Distributors, and Cannabis Processors must not sell Cannabis directly to consumers on or outside of Westbank Lands.
- 7.11 Licenses will only be issued under this Law if the facility from which such business operations are to occur has been inspected, certified, and licensed by the health and safety authorities designated by the Commission.

8. APPLICATION FOR LICENSE

- 8.1 Every Person applying for a License pursuant to this Law must include in their application any information required or requested by the Commission.
- 8.2 An application for a License must be made in the form prescribed by the Commission, from time to time.
- 8.3 The Commission shall not consider an application for a License until the applicant pays the non-refundable annual license fee set out under a

governance instrument issued under this Law, and unless the application is submitted in full, in the form prescribed by the Commission under section 8.2.

- 8.4 The Commission may not issue a License, and may refuse to renew a License, if the Commission has reasonable and credible grounds to believe that the applicant is not of good character.
- 8.5 Without limiting the generality of the foregoing, each Person who applies for a License, or its duly appointed representative, must submit a statutory declaration confirming that the Person has or will only acquire Cannabis in compliance with section 13.1.
- 8.6 A Person must not provide false or misleading information with regard to any matter in connection with an application.

9. ISSUANCE, REFUSAL, SUSPENSION, AND REVOCATION OF A LICENSE

- 9.1 Upon receipt of an application for a License, the Commission may:
 - (a) issue a License with any terms and conditions that it deems necessary, in its sole discretion;
 - (b) require submission of further information; or
 - (e) refuse an application.
- 9.2 If the Commission issues a License under section 9.1, the License must contain the following information:
 - (a) the full legal name of the License holder;
 - (b) the location of the authorized business; and
 - (c) the terms and conditions, if any, imposed on the issuance of the License,and must include as a condition to every License that the License holder will only obtain Cannabis from a Cannabis Producer, Cannabis Processor, Cannabis Distributor, or a producer, processor, or distributor who is authorized to produce or process Cannabis under any of the MMAP, MMPR, ACMPR, or the Federal Act.
- 9.3 The Commission may suspend or revoke a License if it determines that a License holder or the License holder's business is in contravention of any provision of this Law, any applicable Westbank law, Federal or Provincial law, or if, in the Commission's opinion, there are fair, just, and reasonable grounds to suspend or revoke the License.

- 9.4 The Commission may suspend a License for up to ten (10) calendar days, after which it must make a decision to:
- (a) withdraw the suspension and restore the License;
 - (b) restore the License with amended terms or conditions; or
 - (c) revoke the License if, in the Commission's opinion, there are fair, just, and reasonable grounds to do so.
- 9.5 If the Commission refuses an application, or suspends or revokes a License, it must send written notice of the same to the Person that made the application or the License holder, with reasons for the refusal, suspension, or revocation.
- 9.6 A refusal or revocation of a License does not preclude submission of a new application for a License by the Person subject to the refusal or revocation.
- 9.7 Within five (5) business days of receipt of the Commission's decision under section 9.5, the Person that submitted the application or who holds the revoked License may file a written notice of appeal of the Commission's decision to Council, setting out the reasons for the appeal.
- 9.8 Upon receipt of a written notice of appeal pursuant to section 9.7, Council must:
- (a) establish an Appeal Committee within fourteen (14) calendar days; and
 - (b) forward a copy of the notice of appeal to the Appeal Committee immediately thereafter.
- 9.9 The Appeal Committee must hold a hearing within thirty (30) days of receipt of a written appeal filed pursuant to section 9.7. After reviewing the appeal and hearing evidence from the appellant at the appeal hearing, the Commission, and anyone else having information the Appeal Committee deems relevant, the Appeal Committee may confirm, vary, substitute, or cancel the Commission's decision. The Appeal Committee must issue its decision in writing to the Commission within fourteen (14) days of the hearing being closed, and to Council and the appellant within forty eight (48) hours following the delivery of such notice to the Commission.

10. TERM

- 10.1 A License in respect of a Cannabis business is valid for a term of one (1) year from the date of issuance specified on the License.

10.2 A Person may apply for a renewal of a License in the manner and form prescribed by the Commission within three (3) months before the expiration of the License term.

11. INSPECTIONS

11.1 If the Commission reasonably believes that a Person is carrying on a Cannabis business without a valid License, that Person must:

- (a) permit and assist in all inspections requested by the Commission; and
- (b) immediately furnish to the Commission all identification, information, or documentation related to the inspection or licensing requirement.

11.2 The Commission may request an inspection of any Cannabis business operating pursuant to a valid License, to ensure that the activities of the License holder comply with this Law.

11.3 Upon receipt of a request to inspect issued pursuant to section 11.2, the License holder must:

- (a) permit and assist in all inspections requested by the Commission; and
- (b) immediately furnish to the Commission all identification, information, or documentation related to the inspection.

11.4 A Person must not provide false or misleading information with regard to any matter in connection with an inspection.

12. TRANSFER OF LICENSES

12.1 A License is not transferable from one Person to another Person, from one Person's business to another business, or from one Cannabis business to another Cannabis business, whether or not that Cannabis business is operated by the License holder.

13. STORAGE AND SALE OF CANNABIS

13.1 All Cannabis offered for sale must be from a Cannabis Producer, Cannabis Processor, or a producer or processor who is authorized to produce Cannabis under any of the MMAP, MMPP, ACMPP, or the Federal Act.

13.2 A Cannabis Retail Operation may sell Dried Cannabis to an individual who is not a Minor for recreational purposes, provided the amount of Cannabis sold does not exceed thirty (30) grams per sale.

- 13.3 A License holder may sell Cannabis in any form for medical purposes to an individual who is not a Minor, upon the individual producing:
- (a) by the written recommendation of a traditional healer recognized by Council;
 - (b) a medical document issued under the ACMPR;
 - (c) a prescription from a medical professional; or
 - (d) a written diagnosis from a medical professional of a medical condition treatable by Cannabis.
- 13.4 A License holder must not sell or distribute Cannabis, either for sale or as a sample, that:
- (a) contains a poisonous or harmful substance; or
 - (b) is otherwise unfit for human consumption.
- 13.5 All Cannabis offered for sale in a Cannabis Retail Operation or stored in a Cannabis Retail Operation must be in Food Safe Packaging and be labelled with the following information:
- (a) the tetrahydrocannabinol ("THC") or cannabidiol ("CBD") content;
 - (b) the strain of Cannabis, if applicable;
 - (c) the name of the producer of the Cannabis;
 - (d) the date and location of production of the Cannabis;
 - (e) the quantity of Cannabis in grams;
 - (f) any restrictions on where the Cannabis may be processed, distributed, or sold; and
 - (g) other information as may be required by the Commission.
- 13.6 In addition to Cannabis, a Cannabis Retail Operation may sell Cannabis accessories, products ancillary to the consumption or use of Cannabis, and retail merchandise.
- 13.7 Consumption or use of Cannabis is not permitted in a Cannabis Retail Operation.

13.8 Unless authorize by Council by way of resolution, a Cannabis Retail Operation must not be located within:

- (a) three hundred (300) meters of any other Cannabis Retail Operation;
- (b) three hundred (300) meters of a school, school grounds, or daycare;
- (c) one hundred fifty (150) meters of a residence; or
- (d) one hundred fifty (150) meters of a playground or sports field.

14. STANDARDS AND TESTING

14.1 The Commission will enact governance instruments to establish standards and testing procedures to ensure that all Cannabis cultivated, processed, distributed, and sold within Westbank Lands is consistent and reliable in its quality and is safe for consumption. The Commission will ensure that Cannabis on Westbank Lands will be regulated, at a minimum, to meet the standards and testing procedures promulgated under any of the MMAP, MMPR, ACMPR, or the Federal Act.

14.2 The Commission may authorize and engage approved agents, which may include Federal or Provincial health officials, to assist and advise the Commission in relation to:

- (a) the preparation of appropriate governance instruments to be followed by facilities to be used for the purpose of operating a Cannabis business;
- (b) inspections and certifications of facilities, equipment, and materials used by facilities for the purpose of producing or processing Cannabis;
- (c) testing of Cannabis produced or processed by facilities licensed under this Law;
- (d) the safe storage and handling of Cannabis; and
- (e) the destruction of Cannabis that fails to meet the standards of the Commission.

15. MINORS

15.1 No Minor may enter or attend a Cannabis Retail Operation, and no License holder may allow a Minor to enter or attend a Cannabis Retail Operation.

15.2 A License holder must not employ any individual who is a Minor to perform services in relation to a Cannabis Retail Operation.

15.3 If an individual who appears to be a Minor makes a request to purchase Cannabis from a Cannabis Retail Operation, the License holder or Licence holder's employee must, before granting the request, demand that the individual provide proof of age.

16. RECORD KEEPING

16.1 A License holder must maintain the following records in respect of each of their Cannabis suppliers, as applicable:

- (a) the name of the supplier;
- (b) the date the Cannabis was received from the supplier;
- (c) the date and location of the production of the Cannabis;
- (h) the strain of the Cannabis received; and
- (e) the quantity of Cannabis received.

17. SECURITY

17.1 A License holder must maintain security measures necessary to ensure the security of the Cannabis business and all Cannabis stored therein, including but not limited to locks on all doors, a security system, and visual surveillance data.

17.2 A License holder must notify the Royal Canadian Mounted Police, as well as the Commission, in the event of any theft of Cannabis from the Cannabis business.

18. ADVERTISING

18.1 License holders may advertise Cannabis for sale provided that any advertisement must:

- (a) only be visible in locations where Minors are prohibited from entering or attending;
- (b) not be:
 - (i) false;
 - (ii) misleading; or
 - (iii) deceptive; and

- (c) not contain images, symbols, or information that may be appealing to Minors.

ADMINISTRATION AND ENFORCEMENT

19. WESTBANK FIRST NATION CANNABIS COMMISSION

- 19.1 The Commission is hereby established.
- 19.2 The Commission shall consist of five (5) members, to be appointed by Council.
- 19.3 The Commission, or its designate, is responsible for the administration of this Law.
- 19.4 Without restricting any other power, duty, or function granted by this Law, the Commission may:
 - (a) carry out or direct such inspections as are reasonably required to determine compliance with this Law;
 - (b) with the approval of Council, delegate any of its powers or authorities under this Law to any WFN employee, contractor, or organization as it deems appropriate, provided that the Commission shall at all times remain accountable to ensure that the power and authorities under this Law are carried out properly; and
 - (c) establish policies, procedures, standards, and forms for the purposes of this Law.

20. PROOF OF LICENSE

- 20.1 The onus of proving a Person has a valid and subsisting License is on the Person alleging the existence of the License.

21. OFFENCE AND PENALTY

- 21.1 Every Person who contravenes any provisions of this Law commits an offence punishable upon summary conviction and is liable to a fine not exceeding twenty five thousand dollars (\$25,000.00).
- 21.2 If an offence is a continuing offence, each day that the offence is continued constitutes a separate and distinct offence.

22. FEES AND FORMS

22.1 The Commission must establish, correct, revise, or update the terms of any applicable fee schedules, forms, protocols, or other related documentation that complement and support this Law, and must post notice of such resolution in a public area of the Westbank government administration building and make a copy of such resolution available for viewing free of charge.

23. APPLICATION OF LAW

23.1 Where any federal Act or regulation or provincial Act or regulation or any other Westbank Law may apply to any matter covered by this Law, compliance with this Law does not relieve a Person from also complying with the provisions of the other applicable Act, regulation or law.

23.2 If any section of this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or subsection must be severed from and will not affect the remaining provisions of this Law.

23.3 The headings given to the parts and sections in this Law are for convenience of reference only, do not form part of this Law and must not be used in the interpretation of this Law.

23.4 Unless otherwise noted, any specific statute named in this Law is a reference to an enactment of British Columbia and the regulations thereto, as amended, revised, consolidated or replaced from time to time, and any Law referred to herein is a reference to a Westbank Law, as amended, revised, consolidated or replaced from time to time.

24. IMMUNITY

24.1 No action for damages lies or may be instituted against Council or past Council, employees, servants, or agents of either Westbank or Council:

- (a) for anything said or done, or omitted to be said or done, by that Person in the actual or required performance of the Person's duty, or exercise of their authority; or
- (b) for any alleged neglect or default in the actual or required performance of the Person's duty or exercise of their authority.

24.2 Section 24.1 does not provide a defence if:

- (a) Council, employees, servants, or agents have, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence, or malicious or wilful misconduct; or
- (b) the cause of action is libel or slander.

24.3 None of Westbank, Council or past Council, or employees, servants, or agents of Westbank or Council, is liable for any damages or other loss, including economic loss, sustained by any Person, or to the property of any Person, as a result of neglect or failure, for any reason, to discover or detect any contravention of this Law or any other Westbank Law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other Westbank Law.

24.4 All actions against Westbank for the unlawful doing of anything that:

- (a) is purported to have been done by Westbank under the powers conferred by this Law or any Westbank Law; and
- (b) might have been lawfully done by Westbank if acting in the manner established by law,

must be commenced within six (6) months after the cause of action first arose, or within a further period designated by Council in a particular case, but not afterwards.

24.5 Westbank is in no case liable for damages unless notice in writing setting out the time, place, and manner in which the damage has been sustained, is delivered to Westbank within two (2) months from the date on which the damage was sustained.

24.6 Failure to give the notice under this Law or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the Court of Appeal, believes:

- (a) there was reasonable excuse, including the death of a Person who was injured; and
- (b) Westbank has not been prejudiced in its defence by the failure or insufficiency.

BE IT KNOWN that this law entitled, "Westbank First Nation Cannabis Law 2020" is hereby:

Read a first time by Council of Westbank First Nation at a duly convened meeting held on the ___ day of _____ 2020;

Presented to the Membership at a Special Membership Meeting held on the the ___ of _____ 2020;

Read a second time by Council at a duly convened meeting held on the the ___ day of _____ 2020;

Read a third time and enacted by Council of Westbank First Nation at a duly convened meeting held on the the ____ day of _____ 2020.

Signed by the following Members of Council:

ilmix^wəm Christopher Derickson

səx^wk^winaʔmam Andrea Alexander

səx^wk^winaʔmam Fernanda Alexander

səx^wk^winaʔmam Jordan Coble

səx^wk^winaʔmam Lorrie Hogaboam

DRAFT