

Cannabis Commission Terms of Reference



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2020-##**

ISSUED BY	ȳilmixʷm naƚ səxʷkʷinaʔməm/Council
DEPARTMENT	Cannabis Commission
EFFECTIVE DATE	YYYY-MM-DD
RELATED DOCUMENTS	Self Government Agreement Constitution Cannabis Law
IMPLEMENTATION	Outlining the role and responsibilities of the Cannabis Commission.

1. Purpose

The Cannabis Commission is established to evaluate, administer, and make decisions relating to the Cannabis Law 2020.

2. Composition

- a)** The Commission is appointed by Resolution and must be composed of five (5) Commissioners who are not members of Council, at least one (1) of whom must be an Elder.
- b)** To qualify for appointment, a person must:
 - i) be a Member;
 - ii) be nineteen (19) years of age or older;
 - iii) possess good character, credibility, and reputation;
 - iv) not be a member of Council, except for the non-voting Commissioner appointed by Council in accordance with section 2.e);
 - v) provide a sworn declaration that they have not been convicted of an indictable criminal offence in Canada or a felony in the United States within the past ten (10) years, provided that conviction of an offence relating to the assertion or exercise of Aboriginal Title or Rights must be deemed not to be a conviction for the purposes of this subsection;
 - vi) not have been removed from the office of Commissioner under the provisions of this Agreement within the past five (5) years; and
 - vii) not be in arrears to Westbank with respect to any loans, debts, or other financial obligations owed by the Member to Westbank.
- c)** Prior to making appointments to the Commission, Council must invite applications from Members interested in being appointed to the Commission, which must be provided to the Membership by publication in the Westbank newsletter and by posting notice of the invitation in a public area of the Westbank administration building and other conspicuous places on Westbank Lands.
- d)** Any notice posted under this section must specify:
 - i) the qualifications for appointment to the Commission; and

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- ii) the time within which applications must be submitted to Council.
- e) In the Resolution appointing Commissioners under section 2.a) Council must also appoint one (1) member of Council to act as a non-voting Commissioner, as well as one (1) alternate.

3. Structure

- a) Each Commissioner will hold office for a term of three years (Term), subject to the provision that the term for the member of Council appointed pursuant to section 2. e) must not be longer than their term on Council, and may be re-appointed to office by Resolution.
- b) Each Commissioner, before entering upon their duties, will take and subscribe to the Oath of Office in the form attached to this Agreement as Appendix "A" before either a Justice of the Peace, Notary Public, or duly appointed Commissioner for Taking Oaths.
- c) Commissioners, other than the member of Council, will receive an honorarium for every duly convened meeting attended, in an amount determined by Council by way of Resolution at the commencement of each Term, which cannot be changed during each Term except upon the decision of an Adjudicator.
- d) A Commissioner will continue to hold office for their Term or until the position becomes vacant due to circumstances in which a Commissioner:
 - i) dies;
 - ii) resigns by sending notice in writing to the Chairperson, a copy of which must be provided by the Chairperson to each Commissioner;
 - iii) is convicted of an indictable criminal offence in Canada or a felony in the United States, provided that conviction of an offence relating to the assertion or exercise of aboriginal rights or title must be deemed not to be a conviction for the purposes of this subsection;
 - iv) is no longer a Member;
 - v) fails to attend three (3) consecutive meetings without a valid reason, as determined by the remaining Commissioners;
 - vi) fails or refuses to sign the oath of office within fifteen (15) days of their appointment;
 - vii) in the case of the Commissioners who are members of Council, cease to be a member of Council;
 - viii) in the case of a Commissioner who is not a member of Council, is elected to Council or becomes a Westbank staff member employed in the housing or lands department; or
 - ix) is removed from office in accordance with the provisions of the Law.
- e) The Chairperson must advise Council as soon as reasonably possible upon a vacancy occurring.
- f) Where a vacancy on the Commission occurs, a replacement Commissioner who qualifies under section 2. a) must be appointed by Resolution to fulfil the Term of the original appointment within sixty (60) days of the vacancy.
- g) A vacancy in the Commission will not impair the right of the remaining Commissioners to act, provided a quorum remains.

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- h)** A Commissioner may be removed from office if they:
 - i) engage in dishonourable or questionable conduct which casts doubt on that person's personal or professional integrity or competence, or reflects adversely on the integrity or reputation of the Commission;
 - ii) breach their Oath of Office; or
 - iii) are negligent in their duties and responsibilities to the Commission.
- i)** Proceedings to remove a Commissioner may be commenced by a Commissioner submitting a written petition, signed by that Commissioner, setting out grounds for removal to the Director of Operations.
- j)** Where a Commissioner is under review as a result of a petition, they will be excused from their duties and responsibilities to the Commission pending a determination of the matter.
- k)** Upon receipt of a petition, the Director of Operations must schedule a hearing of the Adjudicator to consider whether the Commissioner should be removed from office. Notice of the time, place, and date of the hearing of the Adjudicator must be provided to the Commissioner whose removal is sought, the Commissioner signing the petition, and the Adjudicator.
- l)** If the Commissioner whose removal is sought or the Commissioner who signed the petition provides the Adjudicator with at least twenty-four (24) hours' written notice of their inability to attend the hearing because of a valid reason set out in the notice, the hearing must be adjourned; failure to attend the hearing without the provision of notice by either the Commissioner whose removal is sought or the Commissioner who signed the petition can result in the hearing taking place in their absence.
- m)** The Adjudicator may make rules for the conduct of hearings, subject to the following requirements:
 - i) The Adjudicator will first hear from the Commissioner who signed the petition for removal. The Commissioner whose removal is sought has the right to question the Commissioner giving evidence,
 - ii) After the Adjudicator has heard evidence from the Commissioner signing the petition seeking removal, the Commissioner whose removal is sought may give evidence in reply. The Commissioner signing their petition for removal has the right to question the member giving evidence in reply,
 - iii) The Adjudicator may question any person giving evidence at the hearing, and
 - iv) The Adjudicator may adjourn any hearing in order to make a decision.
- n)** After consideration of all the evidence and any documents submitted, the Adjudicator must provide a copy of the decision to the Commissioner whose removal is sought and to the Chairperson, and their decision must:
 - i) dismiss the petition; or
 - ii) remove the Commissioner from office and declare a vacancy.
- o)** Upon receipt of the decision, the Chairperson must distribute copies of the decision to the remaining Commissioners.

4. Chairperson

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- a) The Chairperson will be elected for a term of one (1) year by the Commissioners from among themselves.
- b) The Chairperson is eligible for re-election.
- c) The Chairperson must be responsible for organizing, calling, and presiding over all meetings of the Commission as required to carry out the Commission's duties, and must perform such other duties as may be assigned to the Chairperson by the Commission.
- d) In the absence of the Chairperson, the Commission must designate another Commissioner to act as Chairperson.

5. Meetings

- a) When making decisions of a substantive or determinative nature, the Commission must meet on Westbank Lands.
- b) The Chairperson must give notice to Commissioners, either personally, by telephone, facsimile, or e-mail, at least seven (7) business days prior to the date of a meeting, specifying the place, day, and hour of the meeting.
- c) A Commissioner must notify the Chairperson of any anticipated absence and the reasons for such absence. Where notice is given to the Chairperson, the Chairperson must inform the Commission of the absence and the reasons.
- d) A Commissioner may participate in a meeting by means of telephone or other communication facilities which permit all persons in the meeting to hear each other, and in such case must be deemed to be present at the meeting.
- e) Subject to section 5. i), the Commission meetings must be open to Members.
- f) The Commission may permit persons other than Members to attend Commission meetings as observers, and such persons may only address the meeting if their matter is on the agenda or if they receive permission from the Chairperson.
- g) Westbank must appoint a person who is not a Commissioner to act as recording secretary to the Commission, and the recording secretary must:
 - i) take attendance of Commissioners present at meetings;
 - ii) record minutes of meetings;
 - iii) record decisions and votes at meetings; and
 - iv) perform such other duties, consistent with this Law, as may be assigned to the recording secretary by the Commission.
- h) The Chairperson may request that a person, other than a Commissioner, leave a Commission meeting where the Chairperson deems their conduct to be improper.
- i) Commissioners present may, by vote, determine that all or part of a Commission meeting is closed to persons other than Commissioners and any recording secretary, if the subject matter relates to or is one or more of the following:
 - i) if the Commission considers that disclosure could reasonably be expected to harm the conduct of an investigation under or enforcement of law;
 - ii) litigation or potential litigation;



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- iii) the receipt of advice that is subject to solicitor/client privilege, including communications necessary for that purpose;
 - iv) personal information about an identifiable individual where the Commission considers that release of such information would be inappropriate;
 - v) information as prohibited, or information that where presented in a document would be prohibited, from disclosure under applicable law; and
 - vi) consideration of whether a Commission meeting should be closed under this provision.
- j)** If all or part of a meeting is closed, the Commission may allow a representative or employee of Westbank to attend to provide assistance or information as it considers appropriate.
- k)** If all or part of a Commission meeting is closed, the Commission may allow a person other than a representative or employee of Westbank to attend if the Commission considers this necessary and:
- i) the person already has knowledge of the confidential information under discussion;
 - ii) is a lawyer attending to provide legal advice in relation to the matter; or
 - iii) the Commission deems the person's attendance necessary for other reasons.
- l)** The recording secretary to the Commission must provide copies of all approved minutes and records of decisions to Commissioners in a timely manner.
- m)** All approved minutes and records of decisions of the Commission must be retained by the Commission at the Westbank administration building, and except with respect to matters in any closed part of a Commission meeting, copies may be obtained by Members upon payment of a reasonable copying fee.
- n)** The Commission may, subject to applicable WFN law and governance instruments, establish rules for its procedure at meetings. No procedural rule made by the Commission invalidates a prior act of the Commission that would have been valid if that rule had not been made.

6. Decision Making Authority

- a)** Quorum for a meeting of the Commission must be four (4) Commissioners, and includes the Chairperson.
- b)** Where a quorum cannot be established, the matter must be adjourned to the next meeting or such future meeting where a quorum can be established, unless subject to section 6. c).
- c)** If a quorum can never be established because of a Conflict of Interest or a vacancy, quorum must be a majority of Commissioners entitled to participate in the discussion and vote on the question.
- d)** All matters before the Commission for decision must be decided by a majority vote of all eligible Commissioners participating in the vote, the results of which must be recorded in the minutes of the meeting.
- e)** Unless a secret vote is requested and approved by the Commission, all voting must be by a show of hands indicating a "Yes" vote or a "No" vote. No abstentions are permitted on a vote.
- f)** A Commissioner who is aware of a Conflict of Interest or perceived Conflict of Interest must, as soon as possible, disclose the nature and extent of their Conflict of Interest to the Chairperson who must report the Conflict of Interest to the remaining Commissioners.
- g)** Where a Conflict of Interest exists, the Commissioner affected must leave the

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meeting where the matter is being considered and will not be counted in determining quorum, nor participate in discussion nor vote on the matter under consideration.

- h)** Subject to section 6. i), Commissioners must not release information received by them in their work with the Commission or information relating to the deliberations proceedings or other matters of the Commission unless:
 - i) the information is public under Westbank Law or other applicable laws; or
 - ii) the information is information that the Commission, by vote Commissioners at a meeting, decides to release.
- i)** Information relating to deliberations or proceedings of the Commission may be provided to the Adjudicator considering an application for the removal of a Commissioner.
- p)** Appeals of the honorarium paid to Commissioners are subject to the following:
 - i) Proceedings to appeal the honorarium paid to Commissioners must be commenced by a Commissioner submitting a written petition to the Director of Operations, who must notify the Adjudicator that a hearing must be scheduled to consider the appeal.
 - ii) Prior to any hearing to consider changes to the honorarium paid to Commissioners, the Adjudicator must establish rules for its procedure, which must, at a minimum, provide notice to Council and Commissioners of the hearing date, and an opportunity for Council and Commissioners to provide written submissions or to be heard.
 - iii) After consideration of written or oral submissions, the Adjudicator must determine the honorarium to be paid to Commissioners and provide their written decision to Council and Commissioners.
 - iv) The decision of the Adjudicator is final and binding.

7. Reporting

- a)** The Commission must prepare an annual report which must generally describe the activities of Commission.
- b)** The Annual Report must be submitted to Council within sixty (60) days of the end of each calendar year.

8. Definitions

"Commission" means the Cannabis Commission as constituted under this Agreement and the *WFN Cannabis Law 2020*, as amended or replaced from time to time;

"Commissioner" means a member of the Cannabis Commission, appointed pursuant to this Agreement;

"Conflict of Interest" means any situation where a Commissioner or person in their Immediate Family has a personal or business interest in a matter under consideration.

"Immediate Family" means a spouse (including common-law spouse), parent, grandparent, child (including adopted children or those living with an individual as a child), grandchild, or sibling. Immediate Family also includes the spouse (or common-law spouse) of an Immediate Family member;

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“Elder” means a Member who is at least fifty-five (55) years of age.

This Agreement was approved by Resolution of Council # _____ and

signed by the Director of Operations on the _____ day of _____, 2020.

Pat Fosbery, səx^wk^wulm^l k^l yᕐayᕐat/Director of Operations

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Appendix "A"

CANNABIS COMMISSIONER OATH OF OFFICE

I, _____, do hereby accept the office of Commissioner for the Westbank First Nation Cannabis Commission.

I solemnly swear that I will do my utmost to carry out the duties of my office faithfully, impartially and to the best of my ability, keeping in mind that at all times my primary duty is to serve the Membership in the best interests of Westbank First Nation.

I swear not to disclose or cause to be disclosed, during or subsequent to my term of office as Commissioner any matter or information which is confidential under Westbank Law or other applicable law except in accordance with that law.

I have read the *Westbank First Nation Cannabis Law 2020* and Agreement **2020-XX** *Cannabis Commission Terms of Reference*, and swear to comply with all provisions therein.

SWORN (OR AFFIRMED) BEFORE ME)
at _____, on)
the ___ day of _____, 20___)
)
)
)
)

Justice of the Peace, Notary Public, or
Commissioner for taking Oaths in
British Columbia
