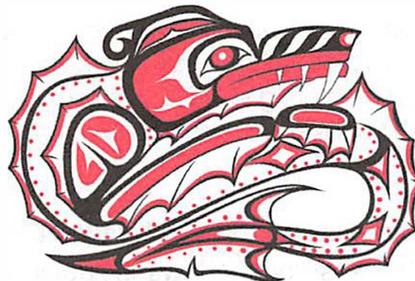


KWAW-KWAW-APILT FIRST NATION

CANNABIS LAW

JANUARY, 2019



SYUWÁ:LELH - Stó:lō Laws

“S’ólh Téméxw te ikw’elo. Xolhmet te mekw’stam it kwelat”

This is Our Land, we have to take care of everything that belongs to us

“Xaxastexw te mekw’stam”

Respect all Things

“Ewe chexw qelqelit te mekw’stam loy qw’ esli hokwex yexw lamexw ku:t”

Don’t waste, ruin or destroy everything; only take what you need

“T’xwelátse”

Do things in a good way; respect each other

WHEREAS:

- A. Kwaw-Kwaw-Apilt First Nation (“Kwaw-Kwaw-Apilt”) has an inherent right to self-government which emanates from our people, culture and land and which is recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- B. As an aspect of our inherent right of self-government, Kwaw-Kwaw-Apilt has the jurisdiction to address issues such as the right to cultivate or sell plants and medicines on our Lands, and this inherent right has not been extinguished;
- C. Kwaw-Kwaw-Apilt has also taken back control over management of our Kwaw-Kwaw-Apilt Lands under the *First Nations Land Management Act*, S.C. 1999, c. 24 by voting on our own *Land Code* and entering into the Individual Agreement on First Nation First Nation Land Management between Kwaw-Kwaw-Apilt and Her Majesty the Queen in Right of Canada;
- D. Under Part 3 of the *Kwaw-Kwaw-Apilt First Nation Land Code*, the Kwaw-Kwaw-Apilt Council is authorized to pass various laws including laws relating to the regulation, control, authorization and prohibition of access of Kwaw-Kwaw-Apilt Lands and public and private nuisance;
- E. Council wishes to implement a law to regulate key aspects of Cannabis cultivation, propagation, use and sale on Kwaw-Kwaw-Apilt Lands to protect the health and safety of Kwaw-Kwaw-Apilt Members;
- F. Council passed an initial Cannabis Law on July 12, 2018 and now wishes to update that law by repealing it and replacing it with this one;
- G. Council has the authority under subsection 3.8 of the *Land Code* to pass laws on an emergency basis if such laws are urgently required to protect Kwaw-Kwaw-Apilt Members or lands but such laws only last for a maximum of 120 days before they must be passed under the regular process; and
- H. Based on recent events, Council believes this Law is urgently required to protect Kwaw Kwaw Apilt Lands or Members within the meaning of section 3.8 of the *Land Code*; and

NOW THEREFORE this *Kwaw-Kwaw-Apilt First Nation Cannabis Law* is hereby enacted at a duly convened Council meeting as a Law of the Kwaw-Kwaw-Apilt First Nation.

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PART 1. INTRODUCTORY PROVISIONS

Short title

1.1 This Law may be cited as the *Kwaw-Kwaw-Apilt Cannabis Law*.

Purpose

1.2 The purpose of this Law is to regulate key aspects of Cannabis cultivation, propagation, use and sale on Kwaw-Kwaw-Apilt Lands to protect the health and safety of Kwaw-Kwaw-Apilt Members.

Repeal and Replacement

1.3 This Law repeals and replaces the Kwaw-Kwaw-Apilt Cannabis Law dated July 12, 2018.

Definitions

1.4 For the purposes of this Law, terms have the same definitions as in the Kwaw-Kwaw-Apilt Land Code, the *Canada Cannabis Act*.

In addition, the following definitions apply:

- (a) "**Business**" means carrying on, or the entity that carries on, a commercial or industrial undertaking of any kind or nature, or the provision of professional,

personal or other services for the purpose of gain or profit and includes the activities set out in PART 5 to PART 9 of this Law;

- (b) **“Cannabis Business Permit”** means a Cannabis Business Permit as provided for in PART 5 of this Law;
- (c) **“Dwelling unit”** means any house, townhome, apartment unit, condominium unit or other similar secure structure or unit thereof that is primarily used as a residence;
- (d) **“Liability”** means the obligation to pay a judgment, settlement, claim, damages, loss, penalty, or fine, or reasonable expenses incurred with respect to a proceeding; and
- (e) **“Proceeding”** means any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

PART 2. PROHIBITIONS AGAINST BUSINESS EXCEPT AS AUTHORIZED UNDER ALL LAWS

- 2.1 No person may carry on cannabis-related business on Kwaw-Kwaw-Apilt Lands unless that person has:
 - (a) applied to the Kwaw-Kwaw-Apilt Lands Office to carry out the business in an area where such business is permitted under this Law, the Kwaw-Kwaw-Apilt Zoning and other laws;
 - (b) applied for and received a valid and subsisting development permit, if necessary, under the Kwaw-Kwaw-Apilt *Subdivision, Development and Servicing Law*;
 - (c) applied for and received a valid and subsisting Cannabis Business Permit for cannabis-related businesses issued by Kwaw-Kwaw-Apilt under this law or another Kwaw-Kwaw-Apilt Law; and
 - (d) if required by Council, applied for and received valid and subsisting authorizations under the Canada *Cannabis Act*, and any other applicable federal legislation, as appropriate.

PART 3. PROHIBITIONS AGAINST UNAUTHORIZED USE OF CANNABIS ON KWAU-KWAU-APILT LANDS

- 3.1 No person may use, consume, smoke or vape cannabis in any area or place:
 - (a) where that person is prohibited from smoking tobacco under provincial law or any Kwaw-Kwaw-Apilt Law; or
 - (b) in social housing, rental housing or other Kwaw-Kwaw-Apilt-owned homes, within the presence of a person younger than nineteen (19) years or age except in areas prescribed by Council.

PART 4. REQUIREMENTS FOR PERSONAL POSSESSION, PRODUCTION AND CONSUMPTION OF CANNABIS ON KWAU-KWAU-APILT LAND

- 4.1 No Person is allowed to grow, cultivate, propagate or produce cannabis permitted in any dwelling units, rental housing, social housing or other homes on Kwaw-Kwaw-Apilt Lands.

- 4.2 No uses of cannabis shall cause odors, smoke, heat, glare or light that is detectable by a reasonable person beyond the property line of the lot upon which the use is being conducted, or in an adjacent dwelling unit or public area.

PART 5. CANNABIS BUSINESS PERMITS REQUIRED FOR CANNABIS-RELATED BUSINESSES

- 5.1 A person must not carry on cannabis-related business on Kwaw-Kwaw-Apilt Lands unless, in addition to any other authorizations or permits required under this or other laws, the person holds valid Cannabis Business Permit issued under the provisions of this Law or the Kwaw-Kwaw-Apilt *Business Permit Law*.
- 5.2 A person applying for the issuance or renewal of a Cannabis Business Permit to carry on a cannabis-related business where cannabis is kept or present on the premises must:
- (a) make application to the Lands Office in the form provided for that purpose;
 - (b) pay to the Kwaw-Kwaw-Apilt Lands Office the applicable permit fee as set out in Schedule 'A' or otherwise prescribed by Council;
 - (c) provide a security plan for the premises that describes adequate security measures to mitigate risk of theft or tampering at the premises;
 - (d) provide proof of a security alarm contract that includes regular monitoring at all times during the period for which the license is being sought;
 - (e) if requested by the Lands Governance Director, provide an odor impact assessment and odor control plan;
 - (f) provide proof of ownership or legal possession of the premises, or a process that is under way; and
 - (g) provide a current police information check for:
 - (i) each on-site manager; and
 - (ii) any other individuals involved in the business if required by Council.
- 5.3 Each Cannabis Business Permit shall include, at a minimum:
- (a) the premises authorized under the permit and the exact area and site and structures in which the business may be carried out;
 - (b) the name or names of the approved business operators, including the name of any incorporated entities and the name of the owner or manager responsible for the operations of the business;
 - (c) the contact information for the owner or manager including 24-hour emergency contact information;
 - (d) the estimated number of plants projected to be cultivated per month or the estimated number of grams of product estimated to be stored and to be sold at the premises per month;
 - (e) the security measures required for the business;
 - (f) the contact information for the third party provider of security alarm and fire alarm services;
 - (g) the signage requirements;
 - (h) the measures required to prevent sales to minors;
 - (i) the insurance requirements;
 - (j) the method by which sales will be tracked and reported to the Kwaw-Kwaw-Apilt Lands Office or Taxation Office on a monthly basis;
 - (k) an acknowledgement that Kwaw-Kwaw-Apilt officials and enforcement officials have a right of entry to monitor and enforce this Law;
 - (l) a release and indemnity to save Kwaw-Kwaw-Apilt and all Kwaw-Kwaw-Apilt

- Councillors, board members, committee members, staff, agents, and contractors harmless from any and all claims, losses, damages, and other liabilities of any kind; and
- (m) any other information or requirements prescribed by regulation.

5.4 The application fees and annual permit fees are set out in the attached Fee Schedule.

PART 6. REQUIREMENTS FOR ALL CANNABIS-RELATED BUSINESSES

- 6.1 A person carrying on a cannabis-related business must not:
- (a) allow a person under the age of nineteen (19) on the premises;
 - (b) advertise or promote the use of a cannabis to a person under the age of nineteen (19);
 - (c) allow a person to smoke, vape, consume or otherwise ingest cannabis or products containing cannabis on the premises; or
 - (d) display any advertising or sign that is visible from outside of the premises except for a maximum of two signs which display no images, other than the business logo, and contain only:
 - (i) alpha-numeric characters;
 - (ii) the business name; and
 - (iii) is in a size as permitted under any Kwaw-Kwaw-Apilt Sign Law or Bylaw or as permitted by the Lands Governance Director.

PART 7. REQUIREMENTS FOR BUSINESSES THAT KEEP CANNABIS ON THE PREMISES

- 7.1 In addition to the requirements of PART 5 and PART 6, a person carrying on a business where cannabis is kept or present on the premises must:
- (a) install high quality video surveillance cameras that monitor all entrances and exits and the interior of the business premises at all times;
 - (b) retain video camera data for at least sixty (60) days after it is gathered;
 - (c) install a security and fire alarm system that is, at all times, monitored;;
 - (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;
 - (e) for businesses involved in growing or production of cannabis, install and maintain an air filtration system that effectively minimizes odour impacts on neighbouring properties;
 - (f) provide contact information to Kwaw-Kwaw-Apilt to ensure 24/7 communication;
 - (g) allow for inspections by the Kwaw-Kwaw-Apilt Lands Department, or any designated Enforcement Official; and
 - (h) meet any other requirements prescribed by Kwaw-Kwaw-Apilt regulation.

PART 8. REQUIREMENTS FOR STOREFRONT CANNABIS RETAILERS

- 8.1 In addition to the requirements set out in PART 5, PART 6 and PART 7, a person carrying on the business of a storefront cannabis retailer or dispensary must:
- (a) only conduct the business on Kwaw-Kwaw-Apilt Lands currently zoned commercial or designated by regulation or Council Resolution;
 - (b) prominently display a sign on the premises indicating that no persons under nineteen (19) years of age are permitted on the premises;
 - (c) ensure that two employees are present on the premises at all times when the

- business is open to the public, including one manager;
- (d) not use the premises to carry on business other than the cannabis-related business and accessory uses;
- (e) ensure that all products are tested before being sold by a licensed laboratory that follows quality assurance testing protocols at least as restrictive as federal law;
- (f) allow for Kwaw-Kwaw-Apilt members to use their Indian Status cards as identification;
- (g) not allow for the sale of more than thirty (30) grams of dried cannabis flower or equivalent to an individual, or otherwise exceed the maximum possession amounts established by federal law;
- (h) not be open for business between the hours of 9:00 p.m. and 7:00 a.m. the next day;
- (i) promptly bring to the attention of the Lands Governance Director or General Manager
 - the name of any new on-site manager,
 - and
- (j) meet any other requirements prescribed by Kwaw-Kwaw-Apilt regulation.

PART 9. REQUIREMENTS FOR CANNABIS PRODUCTION FACILITIES

- 9.1 In addition to the requirements set out in PART 5, PART 6 and PART 7, a person carrying on the business of a cannabis production facility must:
- (a) be located on industrial-zoned lands and in areas designated by regulation or Council Resolution;
 - (b) comply with the *Kwaw-Kwaw-Apilt Subdivision, Development and Servicing Law*;
 - (c) a lot larger than 1 acre;
 - (d) not conduct the business within 500 meters of the property line of any residence, existing and operational daycare, school or future school, park, office or other community facility unless otherwise permitted by a Council Resolution;
 - (e) ensure detailed record-keeping and have records of all production and all procedures available for inspection by Kwaw-Kwaw-Apilt upon forty-eight (48) hours written request;
 - (f) ensure adequate security features, video cameras, intrusion detection systems, etc.;
 - (g) ensure that no minors are permitted on the premises;
 - (h) ensure that no consumption of cannabis takes place on the premises;
 - (i) provide air filtration requirements to control odour and, if required the Kwaw-Kwaw-Apilt Lands Office, provide and odour impact assessment and control plan;
 - (j) ensure an adequate supply of water for cultivation and fire suppression in accordance with a servicing agreement approved by Kwaw-Kwaw-Apilt;
 - (k) not use any growth medium, fertilizer, nutrients, hydroponic chemicals, or other chemicals or potentially hazardous materials unless specifically approved within their permit;
 - (l) provide a waste management plan and ensure chemicals, nutrients, waste soil and other potential contaminants are disposed of in accordance with a waste management plan approved by Kwaw-Kwaw-Apilt; and
 - (m) meet other requirements prescribed by Regulation or set out in their permit.

- 9.2 For greater clarity, Cannabis production facilities may be located indoor or outdoors,

provided that the required security, odour control and all other regulatory matters are addressed.

- 9.3 Copies of any and all federal inspection reports must be provided to the Lands Governance Director.

PART 10. LANDS MANAGER'S AUTHORITY TO REFUSE, REVOKE OR SUSPEND A PERMIT

- 10.1 The Lands Governance Director or his or her delegate may suspend revoke, or refuse to issue or renew a license for a business where cannabis is kept on the premises if:

- (a) the applicant or permittee, or a shareholder, officer, director or on-site manager of the applicant or permittee seriously breaches the permit or the law or 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 license relates;
- (b) was convicted, found guilty of, or liable for any contravention or offence against this Law or against any law or bylaw authorizing the issuance of a business license 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 license or required to be stated in, the application.

- 10.2 A decision of the Lands Governance Director under subsection 10.1 may be appealed to Council by submitting a request in writing to the Lands Governance Director within 30 days of the decision.

PART 11. PENALTIES AND STOP-WORK ORDERS

- 11.1 Any person who violates any provision of this Law is guilty of an offence and liable upon summary conviction to a fine of up to ten thousand (\$10,000) dollars.

- 11.2 In addition to the fine set out in subsection 11.1, any person who carries on a cannabis-related business without a Cannabis Business Permit, is liable to a fine of double the annual Cannabis Business Permit fee set out in Schedule 'A'.

- 11.3 In addition to any other applicable fine, penalty or remedy, Council, the Lands Governance Director, or a designated official or Enforcement Officer may:

- (a) issue a Stop Work Order to order any Person, who has not received full and proper authorization under this Law, to cease carrying out any activity, use or business listed under PART 5 to PART 9 of this Law or any related activity or use; or
- (b) order any structures, works or installations carried out in violation of this Law to be removed within 30 days, failing which Council may order them to be removed at the expense of the CP-holder or the Person who constructed or installed the structures, works or installations without proper authorization.

- 11.4 A Stop Work Order imposed under subsection 11.3 may be registered in court and enforced as a court order and continues in force until the condition that led to it is remedied or until the activity that is the subject of the Stop Work Order receives a permit or authorization under this Law.

PART 12. OFFENCES

- 12.1 A person commits an offence and is subject to the penalties imposed by this Law, the Enforcement and Ticketing Law if that person
- (a) contravenes a provision of this Law,
 - (b) consents to, allows, or permits an act or thing to be done contrary to this Law, or
 - (c) neglects or refrains from doing anything required by a provision of this Law.
- 12.2 Each day that a contravention of a provision of this Law continues is a separate offence.

PART 13. LEGAL

- 13.1 Each section of this Law shall be severable. If any provision of this Law is held to be illegal or invalid by a Court of competent jurisdiction, the provision may be severed and the illegality or invalidity shall not affect the validity of the remainder of the Law.
- 13.2 No action lies and no proceeding may be brought against Kwaw-Kwaw-Apilt, Kwaw-Kwaw-Apilt Council members, board members, committee members, managers, employees, or contractors because of any role carried out or decision or non-decision made under this Law against all claims, losses, damages, lawsuits or personal liability of any kind:
- (a) for any act in relation to this Law;
 - (b) for anything said or done or omitted to be said or done by that person in the performance or intended performance of the person's duty under this Law;
 - (c) for the exercise of the person's authority under this Law, including providing advice, making recommendations, or the failure to provide advice or make recommendations under this Law; or
 - (d) for any alleged neglect or default in the performance or intended performance of the person's duty or the exercise of the person's authority under this Law.
- 13.3 Each applicant, permittee, user, grower, and seller releases and indemnifies all Kwaw-Kwaw-Apilt Council members, board members, committee members, managers, employees, and contractors made party to any proceeding because of any role carried out or decision or non-decision made under this Law against all claims, losses, damages, lawsuits or personal liability of any kind if:
- (a) the individual acted in his or her official capacity;
 - (b) the individual acted in good faith;
 - (c) the individual believed his or her conduct was in the best interests of Kwaw-Kwaw-Apilt; and
 - (d) the individual acted in accordance with the laws, regulations, and policies of Kwaw-Kwaw-Apilt.
- 13.4 This Law is without prejudice and will not abrogate, derogate from, diminish or suspend any of Kwaw-Kwaw-Apilt's aboriginal rights or title.
- 13.5 Where any federal Act or regulation or provincial Act or regulation or any other Kwaw-Kwaw-Apilt Law or Law may apply to any matter covered by this Law, compliance with this Law will not relieve the person from also complying with the provisions of the other applicable Act, regulation, bylaw or law.

13.6 The headings given to the sections and paragraphs in this Law are for convenience of reference only. They do not form part of this Law and will not be used in the interpretation of this Law.

PART 14. REGULATIONS

14.1 Council may make regulations it considers necessary or advisable for purposes of implementing or administering this Law.

14.2 Without prejudice to the generality of subsection 14.1, Council may make regulations:

- (a) for any purpose in relation to which regulations are provided for in this Law,
- (b) prescribing any matter or thing referred to in this Law as prescribed or to be prescribed,
- (c) defining words and expressions that are used but not defined in this Law,
- (d) setting or clarifying permit requirements,
- (e) setting or clarifying requirements for applications,
- (f) approving forms, fees or processes,
- (g) prescribing areas where specified activities can or cannot take place under this Law;
- (h) setting or clarifying penalties, and
- (i) generally for the purpose of giving effect to this Law.

PART 15. COMING INTO FORCE

Date Law Comes into Force

15.1 This Law shall come into force and effect on the date it is passed by Council Resolution.

BE IT KNOWN that this Law entitled the *Kwaw-Kwaw-Apilt Cannabis Law* is hereby enacted by a quorum of Council at a duly convened Council of the Kwaw-Kwaw-Apilt First Nation held on January 30, 2019.

(A quorum is 2)

.....*Betty Henry*.....

(Chief Betty Henry)

.....*Gilbert Joe*.....
(Councillor Gilbert Joe)

.....*Sandra Joe*.....
(Councillor Sandra Joe)

**KWAW-KWAW-APILT
CANNABIS LAW**

**SCHEDULE 'A'
Fee Schedule (January, 2019)**

TYPE OF APPLICATION OR PERMIT	APPLICATION FEE	+ ANNUAL PERMIT FEE
1. Cannabis Business Permit for business with cannabis kept on the premises, including dispensaries	\$5000	\$5,000
2. Cannabis Business Permit for sale of medicinal cannabis, cannabis oil or related products in accordance with federal laws and regulations	\$ 5000	\$5,000
3. Cannabis Business Permit for commercial cannabis production	\$5000	\$5,000