

Atikameksheng Anishnawbek

A by-law to provide for a moratorium on the sale of cannabis on Atikameksheng Reserve Lands

BY-LAW No. 18-01

WHEREAS the Gchi-Naaknigewin (Constitution) is the Supreme Law of the Atikameksheng, and no laws, regulations, resolutions, motions, policies or rules may be made which are inconsistent with the Gchi-Naaknigewin;

WHEREAS Atikameksheng Anishnawbek acts through its elected Gimaa (Chief) and Council in exercising its rights, powers and privileges and in carrying out its duties, functions and obligations as a First Nation, including the development and implementation of laws, regulations and policies that are deemed necessary to ensure the well-being of Atikameksheng Anishnawbek;

WHEREAS the Governments of Canada and Ontario have, effective October 17, 2018, permitted the regulated sale of cannabis;

WHEREAS the sale of cannabis on Atikameksheng Reserve Lands has great beneficial potential, while also presenting challenges in respect of the health of residents on the reserve, the observance of law and order, the prevention of disorderly conduct and nuisances, flows of traffic, the conduct and activities of hawkers, peddlers or others, as well as other persons entering onto Atikameksheng Reserve Lands;

WHEREAS in the circumstances, Atikameksheng Anishnawbek considers necessary to exercise its authority to control the sale of cannabis on Atikameksheng Reserve Lands, as well as matters ancillary thereto and penalties for the violation thereof;

NOW THEREFORE the Chief and Council enact as follows:

1. Short Title

This by-law may be cited as the “Atikameksheng Cannabis Vending By-Law” (the “By-Law”).

2. Interpretation

2.1. Definitions

In this By-Law,

“**Atikameksheng Reserve Lands**” means the portion of the Atikameksheng Anishnawbek territory defined as a “reserve” within the meaning of subsection 2 (1) of the *Indian Act* and set aside for the use and benefit of the Atikameksheng Anishnawbek, and which was formerly known as Whitefish Lake Indian Reserve #6.

“**cannabis**” includes any part of a cannabis plant, including its seeds, the phytocannabinoids produced by or found in such a plant or any substance or mixture of substances containing it, regardless of whether or not the plant part has been processed or how the substance has been obtained, any substance or mixture of substances that contains or has on it any part of such a plant, and any substance that is identical to any phytocannabinoid produced by, or found in, such a plant, regardless of how the substance was obtained, and includes all cannabis derivatives, such as oils, edibles, and extracts.

“**community member**” means the registered members of Atikameksheng Anishnawbek, and where the context requires, its assets, as defined by the *Indian Act*.

“Council” means the elected members of the Atikameksheng Anishnawbek Government, namely the chief and councillors.

“enforcement officer” means a peace officer or an officer of the Atikameksheng Police Service, a member of the Royal Canadian Mounted Police, or any person or persons appointed by Council to administer and enforce the provisions of this By-Law for the purposes of maintaining law and order.

“person” means any natural person who is present on Atikameksheng Reserve Lands, whether or not she or he is a member of the Atikameksheng Anishnawbek, or any legal person, including organizations or business entities established or present on Atikameksheng Reserve Lands.

“sale” includes an offer for sale, an exposition for sale and having in possession for sale, or an intention to offer for sale, and **“sell”** has a corresponding meaning.

2.2. Scope of application

This By-Law shall apply on Atikameksheng Reserve Lands, and to all persons present in Atikameksheng Reserve Lands, whether or not they are a community member or residing on Atikameksheng Reserve Lands, as well as to all activities taking place thereon or being conducted therefrom.

3. General prohibition on the sale of cannabis on Atikameksheng Reserve Lands

- 3.1. No person shall engage in the sale of cannabis in or from Atikameksheng Reserve Lands.
- 3.2. For greater certainty, any permit or licence issued by a regulatory authority and under laws applicable outside Atikameksheng Reserve Lands has no validity within Atikameksheng Reserve Lands.

4. Penalties and offences

- 4.1. Any person who contravenes subsection 3.1 of this By-Law or any prohibition or restriction imposed hereunder is guilty of an offence punishable on summary conviction.
- 4.2. Any person who is guilty of an offence under this By-Law is subject to:
 - (a) A fine not exceeding one-thousand dollars (\$1,000.00);
 - (b) Imprisonment for a term not exceeding thirty (30) days; or
 - (c) Both of the above.
- 4.3. Each day a person is in contravention a provisions of this By-Law represents a separate offence and is subject to the penalties set forth in subsections 4.1 and 4.2 of this By-Law.
- 4.4. A monetary penalty imposed under this section is payable directly to Atikameksheng Anishnawbek.
- 4.5. A monetary penalty that remains unpaid past the date which it is due shall be registered as a debt owed to Atikameksheng Anishnawbek and may be set off against any sums due to the offender by Atikameksheng Anishnawbek.

4.6. In addition to any other remedy, and in addition to any prescribed penalty, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted.

4.7. In addition to any other remedy, and in addition to any prescribed penalty, Council may apply to a court of competent jurisdiction to obtain an order restraining any activity that contravenes this By-Law, whether or not the person has been convicted under this By-Law.

5. Enforcement

5.1. This By-Law is enforceable by an enforcement officer.

6. Search, seizure, and detention

6.1. Where an enforcement officer has reasonable grounds to believe a person subject to this By-Law to be or has been in contravention thereof, she or he may, without warrant or special authorization:

- (a) conduct a reasonable search of the person and any objects in her or his immediate possession;
- (b) detain the person for a period of time sufficient to conduct the search but not exceeding two (2) hours;
- (c) seize any goods or chattels by means or in relation to which there are reasonable grounds to believe that the By-Law was contravened or an offence was committed for a reasonable period of time not exceeding three (3) months following the day of seizure. If proceedings are undertaken during this period in respect of the contravention, the goods and chattels may remain under seizure until the proceedings are finally concluded.

6.2. An enforcement officer may, without warrant or special authorization, conduct a reasonable search of any place of residence, building or premises situated within the Atikameksheng Reserve Lands in which there are reasonable grounds to believe that the By-Law was contravened or an offence was committed.

6.3. An enforcement officer may at all points of entry onto Atikameksheng Reserve Lands conduct reasonable searches of any aircrafts, vehicles, boats, vessels, snowmobiles or other conveyances coming onto Atikameksheng Reserve Lands:

- (a) provided that he or she has reasonable grounds to believe or suspect that an offence under this By-Law is being committed or attempted; and
- (b) after providing the passenger(s) with the opportunity to make a declaration as to whether they have in their possession any cannabis or cannabis derivatives, whether on their person or in their luggage, bags, packages, boxes or other containers being brought to Atikameksheng Reserve Lands.

6.4. All cannabis and cannabis derivatives seized or found on Atikameksheng Reserve Lands shall be seized and destroyed by any enforcement officer duly authorized to this effect. Cannabis is considered to be destroyed when it is altered or denatured to such an extent that its consumption and propagation is rendered impossible or improbable.

7. Coming into force

7.1. The provisions of this By-Law shall come into force and effect on the date of its publication in the *First Nations Gazette* after having been duly executed by a quorum of Council.

THIS BY-LAW IS HEREBY enacted by a quorum of Council at a duly convened

Council meeting of the Atikameksheng Anishnawbek on this 29th day of October, 2018.

Date: 
Chief

Date: 
Councillor

Date: 
Councillor

Date: 
Councillor

Date: 
Councillor

Date: 
Councillor

Date: _____
Councillor

Date: _____
Councillor

I, _____ Chief/Councillor of Atikameksheng Anishnawbek, do hereby certify that a true copy of the foregoing By-Law was published in the *First Nations Gazette* pursuant to section 86(1) of the *Indian Act*.