

SCHEDULE "A" TO LAND CODE RESOLUTION 2021/22-022



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HENVEY INLET FIRST NATION CANNABIS LAND LAW 2021

18 August 2021

HENVEY INLET FIRST NATION CANNABIS LAW 2021

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PREAMBLE

Band Council has consulted Henvey Inlet First Nation members with respect to the legalization by Canada and Ontario of the cultivation, possession and sale of cannabis and related products including medical marijuana products, and has received direction from the members on how to manage the impact of those legislative changes within Henvey Inlet First Nation Lands.

Pursuant to section 7 of the *Henvey Inlet First Nation Land Code*, as amended, Band Council has authority to enact laws regarding the development, conservation, protection, management, use and possession of Henvey Inlet First Nation Land, interests and licenses in relation to Henvey Inlet First Nation Land, and any matter necessary or ancillary to the making of such laws.

Pursuant to the *Framework Agreement on the Management of First Nation Land* and subsection 20(3) of the *First Nations Land Management Act*, S.C. 1999 c. 24, Henvey Inlet First Nation has authority to enact land laws to create offences punishable on summary conviction and to provide for the imposition of fines, imprisonment, restitution, community service and any other means for achieving compliance with such land laws.

PART 1 TITLE, PURPOSES AND INTERPRETATION

SHORT TITLE

1.01 This land law may be cited as the “Henvey Inlet First Nation Cannabis Land Law 2021”.

PURPOSE

1.02 The purpose of this land law is to regulate and to establish certain prohibitions in relation to the possession, use, cultivation, propagation, harvesting, processing, manufacturing, preparing, packaging, sale and distribution of cannabis within Henvey Inlet First Nation lands in order to:

- (a) ensure the orderly development of reserve land;
- (b) protect the health and safety of occupants and users of Henvey Inlet First Nation lands; and
- (c) ensure that Henvey Inlet First Nation benefits from commercial uses of Henvey Inlet First Nation lands.

DEFINITIONS

1.03 In this land law:

- (a) “**applicable laws**” means the laws of Canada or Ontario specified in subsection 3.01(a) and includes any regulations made under such laws;
- (b) “**application**” includes an application for a cannabis land use permit and an application to amend or for a renewal or reinstatement after suspension of a cannabis land use permit;

- (c) "**cannabis**" has the same meaning herein as in the *Cannabis Act*, as amended from time to time;
- (d) "**Cannabis Act**" means the *Cannabis Act*, S.C. 2018 c. 16; "**Cannabis Control Act, 2017**" means the *Cannabis Control Act*, 2017 S.O. 2017 chap 26; "**Cannabis Licence Act, 2018**" means the *Cannabis Licence Act*, 2018 S.O. 2018 chap 12; and "**First Nations Land Management Act**" means the *First Nations Land Management Act*, S.C. 1999 c. 24
- (e) "**cannabis business**" means carrying on, or the entity that carries on, or the provision of professional, personal or other services in support of, the production, cultivation, propagation, harvesting, processing, manufacturing, preparing, packaging, sale or distribution of cannabis or any item containing cannabis;
- (f) "**cannabis land use permit**" means a business permit issued by Henvey Inlet First Nation as provided for in PART 5 of this land law;
- (g) "**cannabis production facility**" means lands or premises used in the production, cultivation, propagation, harvesting, processing, manufacturing, preparing or packaging of cannabis;
- (h) "**cannabis point of sale or distribution**" means lands or premises on which cannabis is sold or distributed, offered for sale or distribution, or possessed for sale or distribution, and, for greater certainty but without limiting generality, includes a cannabis retail store and a medical cannabis dispensary;
- (i) "**controlled area**" includes
 - i) any enclosed public place or workplace, including:
 - 1) any enclosed place to which the members or the public are ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry;
 - 2) any enclosed place used by Henvey Inlet First Nation or any organization, body or entity established by Henvey Inlet First Nation as a work or meeting space, including, without limiting generality, band administrative offices, child and elder care facilities and homes, retirement homes, residential hospices; medical, nursing and emergency response facilities; and
 - 3) any vehicle owned, leased or used by Henvey Inlet First Nation or any organization, body or entity established by Henvey Inlet First Nation;
 - ii) the area within a nine metre radius of any entrance or exit of an enclosed public space or workplace referred to in subsection 1.03(i)i);
 - iii) schools, school grounds, playgrounds, sports and recreation facilities, whether or not enclosed;

- iv) the area within one hundred metres of the boundary of any school, school ground, playground or sports and recreation facility, whether or not enclosed;
- v) any area in which the use of tobacco is prohibited by any law of Canada or Ontario.
- (j) "**Council**" means the duly elected Council of Henvey Inlet First Nation;
- (k) "**enclosed place**" means the inside of any place, building or structure or vehicle or conveyance that is covered by a roof;
- (l) "**HIFN member**" means a person whose name appears on the list of members of Henvey Inlet First Nation;
- (m) "**liability**" means the obligation to pay a judgment, settlement, claim, damages, loss, penalty, or fine, or reasonable expenses incurred with respect to a proceeding;
- (n) "**police record check**" means a vulnerable criminal information report that is a result of a search of the local police records where the subject of the report resides and the national databases maintained by the Canadian Police Information Centre;
- (o) "**proceeding**" means any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal;
- (p) "**unallocated band land**" means land within Henvey Inlet First Nation's reserves which is not subject to a prior allotment, certificate of possession or certificate of entitlement; and
- (q) "**use or consume cannabis**" means to take cannabis into the body by any means, whether for recreational, scientific, medicinal or other purposes.

OTHER DEFINITIONS

1.04 Any word or phrase which is not expressly defined in this land law but which is expressly defined in the *Henvey Inlet First Nation Land Code*, the *Cannabis Act*, the *Cannabis Control Act, 2017* or the *Cannabis Licence Act 2018* shall have the meaning ascribed therein.

PART 2 PROHIBITIONS RELATING TO THE USE AND CONSUMPTION OF CANNABIS ON HENVEY INLET FIRST NATION LANDS

NO USE OR CONSUMPTION IN A CONTROLLED AREA

2.01 No person may use or consume cannabis in a controlled area.

NO USE OR CONSUMPTION IF CAUSES ODORS ETC. IN CONTROLLED AREA

2.02 No person shall use or consume of cannabis on Henvey Inlet First Nations land in a manner which causes odors, smoke, heat, glare or light that is detectable by a reasonable person in a controlled area.

PART 3 PROHIBITIONS RELATING TO CANNABIS BUSINESSES

PROHIBITION AGAINST CANNABIS BUSINESS UNLESS COMPLIANT WITH ALL LAWS

3.01 No person may carry on a cannabis business on Henvey Inlet First Nation Lands unless:

- (a) the person is authorized to carry on that cannabis business under applicable laws of both Canada and Ontario, including laws that would apply to the applicant or the cannabis business if located outside reserve lands in Ontario; and
- (b) the person has applied for and received a valid and in force cannabis land use permit issued by Henvey Inlet First Nation pursuant to this land law.

CAUSATION OF ODORS ETC. IN CONTROLLED AREA

3.02 No person may carry on a cannabis business in a controlled area or that causes odors, smoke, heat, glare or light to be detectable by a reasonable person in a controlled area.

COMPLIANCE WITH PERMIT

3.03 No person shall operate a cannabis business in contravention of any of the terms or conditions contained in any cannabis land use permit issued for the cannabis business, or when the cannabis land use permit is under suspension or revoked.

DISPLAY OF PERMIT

3.04 No person holding a cannabis land use permit issued under this land law shall fail to display the permit in a conspicuous place in or on the premises or location endorsed on the permit.

PRODUCTION OF RECORDS

3.05 No person shall fail to keep and produce for inspection all records required to be kept under the provisions of a cannabis land use permit or this land law.

OBSTRUCTION

3.06 No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this land law, including carrying out any inspection.

PART 4 APPLICATIONS

APPLICATION TO COUNCIL

4.01 Every application for a cannabis land use permit, or for a renewal or reinstatement after suspension of a cannabis land use permit, shall be made to the Council.

REQUIREMENTS

4.02 An application shall be in the form prescribed by resolution of Council from time to time and may not be approved until all of the following have been submitted by the applicant:

- (a) the application fee prescribed in Schedule 'A' of this land law;
- (b) proof satisfactory to the Council that:
 - i) the applicant is an HIFN member or, in the case of a corporate applicant or a partnership, that an HIFN member is the legal and beneficial owner of a majority interest in the corporation or partnership;
 - ii) the applicant has entered into a lease or agreement to lease of a parcel of Henvey Inlet First Nation unallocated band land within which the business will be operated; and
 - iii) the applicant, the leasehold premises and the cannabis business or proposed business is or will be fully licensed under and compliant with this land law and the applicable laws of Canada and Ontario;
- (c) if the applicant is a corporation, a certificate of corporate status and issued by the incorporating government authority dated no later than fifteen (15) days prior to the date of the application, and a sworn incumbency certificate;
- (d) if the applicant is a partnership, details of each partner's interest in the partnership;
- (e) a current police record check for each person named in the application, for each director and officer if the applicant is a corporation, for each partner if the applicant is a partnership, for all on-site managers and, if requested by Council, for any other individuals involved in the cannabis business.
- (f) the estimated number of plants projected to be cultivated per month or the estimated number of grams of product and types of product to be stored and to be sold from the premises per month;
- (g) an odor impact assessment and odor control plan satisfactory to Council;
- (h) a security plan for the premises that describes adequate security measures to mitigate risk of theft or tampering at the premises, including proof of a security alarm contract that includes regular monitoring at all times during the period for which the license is being sought;
- (i) proof of public liability insurance with a minimum per occurrence claim limit of \$5 million, or such other coverage as may be satisfactory to Council;

- (j) in the case of an application for a land use permit involving a cannabis point of sale or distribution, the applicant's proposed measures to prevent sales or distribution to minors;
- (k) a mechanism to provide Henvey Inlet First Nation officials and federal and provincial enforcement officials with a right of entry and inspection without notice, subject to any applicable laws;
- (l) a release and indemnity to save Henvey Inlet First Nation and all Henvey Inlet First Nation 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 documentation or information as may be required in any other part of this land law or any regulation enacted under this land law or by the Council, including affidavits in support of an application for a cannabis land use permit, renewal or reinstatement sworn by the applicant or other verifier.

APPLICATION FEES NON-REFUNDABLE

4.03 The application fees prescribed in Schedule "A" are non-refundable.

NOTIFICATION OF COMPLETE APPLICATION

4.04 Where Council determines that an application satisfies the requirements of section 4.02 of this land law it shall notify the applicant that the application is complete.

TIME LIMIT – COMPLETION OF APPLICATION

4.05 Where Council determines that an application is incomplete, it shall notify the applicant or licensee in writing that the application is incomplete fix a deadline of not less than 30 days for satisfaction of all the requirements in section 4.02.

INVESTIGATIONS AND COMMENTS

4.06 Every applicant, application and cannabis land use permit may be subject to investigations by and comments or recommendations from Henvey Inlet First Nation and other authorities having jurisdiction.

PART 5 DECISION OF APPLICATIONS

POWERS OF THE COUNCIL

5.01 Subject to subsection 5.07, Council shall have all power and authority necessary to decide an application for a cannabis land use permit or to renew, amend revoke or suspend or end the suspension of a cannabis land use permit, including, without limitation, power to make such investigations or enquiries, to examine any records or any person, and to hear such evidence and argument as the Council may deem appropriate.

REVIEW AND DECISION *IN CAMERA*

5.02 Council shall review all applications and motions to suspend, revoke or reinstate a cannabis land use permit *in camera*, provided:

- (a) where Council decides to grant or refuse an application or to suspend, revoke, reinstate or refuse to reinstate a cannabis land use permit, it shall prepare a sealed confidential notice of decision setting out the grounds of its decision which shall be subject to adoption by Council in open session and which, if so adopted, shall be delivered to the applicant or cannabis land use permit holder; and
- (b) except with the prior consent in writing of the applicant or cannabis land use permit holder, the notice of decision and the grounds of a decision shall not be revealed to any person except the applicant and any person charged with the enforcement or implementation of the decision, a member of Council or by court order.

GROUNDINGS FOR REFUSAL, SUSPENSION OR REVOCATION

5.03 Council may refuse an application or suspend or revoke a cannabis land use permit on the grounds that:

- (a) the application is incomplete;
- (b) the applicant has not entered into a lease or agreement to lease of unallocated band land for the purposes of the land use permit;
- (c) the applicant or cannabis business is not compliant with applicable laws, this land law or the terms or conditions of a cannabis land use permit;
- (d) the application does not conform to or represent good planning according to the terms of any land use plan adopted by Henvey Inlet First Nation;
- (e) there are reasonable grounds to believe that false or misleading information or false or falsified documents were submitted in, or in support of, the application;
- (f) there are reasonable grounds to believe the issuance, renewal or amendment of a land use permit is likely to create a risk to public health or public safety, including the risk of cannabis being diverted to an illicit market or activity; or
- (g) the applicant or any person involved in carrying on the business of the applicant has been convicted in the past 10 years of a contravention of the *Cannabis Act*, the *Controlled Drugs and Substances Act*, the *Food and Drugs Act*, the *Cannabis Control Act* or the *Cannabis Licence Act*, or of any regulation made under any of those Acts.

AVOIDANCE CONFLICTS OF INTEREST

5.04 Prior to deciding an application, Council shall make such inquiries as it deems appropriate to determine whether any member of Council has a conflict of interest in respect of the application.

CONFLICT OF INTEREST – PROCEDURE

5.05 A member of Council who has or becomes aware of a conflict of interest in respect of an application before or during the course of the review of an application shall declare the conflict of interest in a meeting of Council with

sufficient particulars for Council to make a determination whether the conflict of interest is material.

MATERIAL CONFLICT OF INTEREST

5.06 Where Council determines by resolution that the declaration of a member of Council discloses a material conflict of interest in respect of an application, that member of Council shall take no part, or further part as the case may be, in the review or decision of the application.

CONFLICT OF INTEREST – APPOINTMENT OF PANEL

5.07 In the event that Council is unable to maintain quorum in respect of an application by reason of a material conflict of interest as provided in subsection 5.06, Council shall by resolution appoint a panel of at least five members of Henvey Inlet First Nation and other qualified individuals to review and decide the application in the place of Council, and the panel so appointed shall have all the powers, authority and duties of Council in respect of the application.

DEEMED NO CONFLICT OF INTEREST ON MATERIALITY AND PANEL APPOINTMENT MOTIONS

5.08 Members of Council shall be deemed not to have a conflict of interest in respect of a motion for a resolution under subsections 5.06 and 5.07.

CONFLICT OF INTEREST – PANEL MEMBERS

5.09 A person who has a conflict of interest in respect of an application may not be appointed to a panel pursuant to subsection 5.07.

DECISION FINAL

5.10 The decision of Council in an application, or of a panel appointed pursuant to subsection 5.07, is final and shall not be subject to appeal or review.

PART 6 REQUIREMENTS FOR ALL CANNABIS BUSINESSES

LEASE OF UNALLOCATED BAND LAND

6.01 Cannabis businesses may be carried on only within unallocated band land leased from Henvey Inlet First Nation for that purpose. For greater certainty, Council shall not issue a cannabis land use permit for lands allotted to or held by any member pursuant to a certificate of possession or certificate of entitlement.

TERMS AND CONDITIONS

6.02 A cannabis land use permit issued by Council may contain such terms and conditions as Council deems advisable.

ANNUAL COMPLIANCE REVIEW AND FEE

6.03 A cannabis land use permit for a term in excess of one year may be subject to an annual compliance review and to an annual compliance review fee specified in Schedule 'A'.

REQUIREMENTS – ALL CANNABIS BUSINESSES

6.04 A person carrying on any cannabis business shall:

- (a) comply with this land law, the terms and conditions of a cannabis land use permit and any applicable laws;
- (b) not allow a person under the age of nineteen (19) on the premises;
- (c) not advertise or promote the use of a cannabis to a person under the age of nineteen (19);
- (d) not allow a person to consume cannabis on the premises;
- (e) install high quality video surveillance cameras that monitor all entrances and exits and the interior of the cannabis business premises at all times;
- (f) 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;
- (g) install and maintain an air filtration system that effectively minimizes odor impacts on other Henvey Inlet First Nation lands;
- (h) provide contact information to Henvey Inlet First Nation to ensure 24 hour per day, 7 days per week voice contact with the person to whom the cannabis land use permit is issued;
- (i) promptly bring to the attention of the Council any change in the information contained in an application or cannabis land use permit.
- (j) allow for inspections by the Henvey Inlet First Nation and any law enforcement official having jurisdiction; and
- (k) provide Henvey Inlet First Nation with any and all federal and provincial permits, inspection reports, notices of infraction, default, offence or proceedings with 48 hours of receipt thereof.

PART 7 REQUIREMENTS FOR CANNABIS POINT OF SALE

POINT OF SALE PERMIT ONLY AVAILABLE FOR LEASED COMMON BAND LANDS

7.01 A cannabis point of sale may be located only on unallocated band land leased from Henvey Inlet First Nation for that purpose, the boundaries of which are not less than 100 meters from the lot line of any occupied residential premises or the boundary of any controlled area.

REQUIREMENTS – CANNABIS RETAIL STORES

7.02 A person carrying on a cannabis business involving a cannabis point of sale shall:

- (a) not allow cannabis or other valuables to remain on the premises when the cannabis business is not open to the public, unless the cannabis, products and other valuables are securely locked in a safe on the premises;

- (b) only conduct the cannabis business on Henvey Inlet First Nation Lands currently zoned commercial or designated by regulation or Council Resolution;
- (c) prominently display a sign on the premises indicating that no persons under nineteen (19) years of age are permitted on the premises;
- (d) ensure that two employees are present on the premises at all times when the cannabis business is open to the public, including one manager,
- (e) not use the premises to carry on any cannabis business other than the cannabis business and accessory uses for which a cannabis land use permit was issued;
- (f) 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;
- (g) accept Indian Status cards as one form of identification;
- (h) 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; and
- (i) be closed and not conduct any business between the hours of 9:00 p.m. and 7:00 a.m. the next day.

PART 8 REQUIREMENTS FOR CANNABIS PRODUCTION FACILITIES

PRODUCTION PERMIT ONLY AVAILABLE FOR LEASED COMMON BAND LANDS

8.01 A cannabis production facility may be located only on unallocated band land leased from Henvey Inlet First Nation for that purpose, the boundaries of which are not less than 100 meters from the lot line of any occupied residential premises or the boundary of any controlled area.

REQUIREMENTS – CANNABIS PRODUCTION FACILITY

8.02 A person carrying on a cannabis business involving a cannabis production facility shall:

- (a) ensure detailed record-keeping and have records of all production and all procedures available for inspection by Henvey Inlet First Nation upon forty-eight (48) hours written request;
- (b) ensure an adequate supply of water for cultivation and fire suppression in accordance with a servicing agreement approved by Henvey Inlet First Nation;
- (c) not use any growth medium, fertilizer, nutrients, hydroponic chemicals, or other chemicals or potentially hazardous materials except as specifically approved by the Henvey Inlet First Nation cannabis land use permit; and

- (d) implement a waste management plan approved by Council that ensures chemicals, nutrients, waste soil and other potential contaminants are disposed of in accordance with a waste management plan approved by Henvey Inlet First Nation.

PART 9 OFFENCES, PENALTIES AND OTHER REMEDIES

OFFENCES

9.01 Any person who contravenes any prohibition in this land law or any term or condition of a cannabis land use permit commits an offence and shall be subject to prosecution by summary conviction in accordance with the summary conviction procedures of Part XXVII of the Criminal Code and, upon conviction, liable to a fine or imprisonment not exceeding six months, or both, in accordance with that Part.

EACH DAY A SEPARATE OFFENCE

9.02 Each day that a contravention of a provision of this land law continues is a separate offence.

FINES TO BE REMITTED TO HENVEY INLET FIRST NATION

9.03 All fines levied in prosecutions pursuant to subsection 9.01 shall become the property of Henvey Inlet First Nation.

STOP WORK AND REMOVAL ORDERS

9.04 Notwithstanding any other proceeding, prosecution, fine, penalty or other remedy, Council may, by Council Resolution:

- (a) issue a stop work order requiring any person who has not received full and proper authorization under this land law, to cease carrying out any activity, use or cannabis business listed under PART 5 to PART 9 of this land law or any related activity or use; or
- (b) order any structures, works or installations carried out in violation of this land law to be removed within 30 days, failing which Council may order them to be removed at the expense of the permit holder, applicant, person who constructed or installed the structures, works or installations without proper authorization or the person in possession of the Henvey Inlet First Nation lands upon which the structures, works or installations are located.

ENFORCEMENT OF STOP WORK AND REMOVAL ORDERS

9.05 A stop work order or removal order imposed under this Part may be registered in the Ontario Superior Court of Justice and enforced as an order of that court.

PART 10 GENERAL**SEVERABILITY**

10.01 If any provision of this land 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.

IMMUNITY

10.02 No criminal or civil proceedings shall lie against any a person authorized to exercise a power or to perform any duty or function pursuant to this land law for anything done or omitted to be done in good faith.

AMENDMENT OR REPEAL

10.03 This land law may be amended or repealed in the manner in which it was made, provided that Schedule "A" may be amended by land law adopted by resolution of Council on notice as provided in section 8.05 of the *Henvey Inlet First Nation Land Code*.

PUBLICATION

10.04 The land law shall be published by:

- (a) posting an official true copy in a location within the administrative offices of Henvey Inlet First Nation, French River Reserve No. 13, accessible to all Members, as soon as practical after enactment and for a period of not less than thirty days thereafter;
- (b) posting an official true copy on a publicly-accessible page of Henvey Inlet First Nation's website and
- (c) publishing a notice of enactment in the *First Nations Gazette* or similar publication.

EFFECTIVE DATE

10.05 This land law shall become effective on the date of enactment.

BE IT KNOWN that this land law entitled the *Henvey Inlet First Nation Cannabis Law 2021* is hereby enacted in an open meeting of the band council convened on 26 October 2021 at which a quorum of Council was present .

HENVEY INLET FIRST NATION CANNABIS LAND LAW 2021

SCHEDULE 'A'

Fee Schedule

TYPE OF CANNABIS LAND USE PERMIT APPLICATION	APPLICATION FEE	ANNUAL REVIEW FEE
Cannabis Retail Store	\$20,000.00	\$5,000.00
Cannabis Production Facility	\$50,000.00	\$5,000.00