

**BY-LAW REGARDING THE PRODUCTION, DISTRIBUTION, SALE, POSSESSION
AND USE OF CANNABIS**

BY-LAW NO. [•]

[Short title: “Listuguj Cannabis By-Law”]

**Date enacted: [•] 2018
Coming into force: [•] 2018**

WHEREAS Canada and Quebec have recently adopted legislation to legalize and regulate access to cannabis for recreational purposes;

WHEREAS the application of such laws on Listuguj Lands without the required adaptations goes against the jurisdictional integrity of Listuguj and the health and well-being of its people;

WHEREAS in absence of necessary harm reduction measures and appropriate restrictions, free and legal access to cannabis risks to adversely affect the health and security of Listuguj membership residing in Listuguj and most notably vulnerable groups such as youth, people with mental health issues, pregnant women, and those with prior history of drug abuse or at risk of addiction;

WHEREAS the Listuguj Mi’gmaq Government desires to protect public health, safety and security, including preventing cannabis from being diverted to an illegal market and illegal cannabis from entering a legal source of supply,

WHEREAS in addition to public health, safety and security, supporting the economic prosperity and well-being of the Mi’gmaq of Listuguj constitute a priority for the Listuguj Mi’gmaq Government;

WHEREAS in the circumstances, the Listuguj Mi’gmaq Government considers necessary to exercise its jurisdiction regarding cannabis production, distribution, sale, possession and use within Listuguj lands, as well as matters ancillary thereto and penalties for the violation thereof;

WHEREAS effectively combating the destructive effects of cannabis use and abuse in Listuguj, while capturing market opportunities created by the legalization of cannabis, requires special measures given our community’s unique location, culture, traditions, character and diverse composition;

WHEREAS the Mi’gmaq of Listuguj, as part of the Mi’gmaq Nation, are and have always been a sovereign people having historically affirmed and exercised their exclusive jurisdiction over their territory;

WHEREAS the Listuguj Mi’gmaq Government has the authority to make such laws based on its inherent right of self-government and self-determination, as recognized and affirmed in the domestic laws of Canada, including the *Constitution Act, 1982*;

WHEREAS paragraphs 81(1) (a), (c), (d), (q) and (r) and subsection 85.1(1) of the *Indian Act* provide further grounds for the Listuguj Mi'gmaq Government to enact by-laws prohibiting the production, distribution, sale, possession and use of intoxicants on Listuguj lands;

WHEREAS the regulation of intoxicating and potentially harmful substances, such as cannabis, falls within the Listuguj Mi'gmaq Government's exercise of its right to internal self-government;

WHEREAS the *United Nations Declaration on the rights of Indigenous Peoples* ("UNDRIP") recognizes the right of the Mi'gmaq of Listuguj, as represented by the Listuguj Mi'gmaq Government, to autonomy and self-government in matters relating to their internal and local affairs in the exercise of their right to self-determination, as well as the right to freely pursue and control their economic development;

AND WHEREAS after a special meeting called by the Council for purposes of considering the contents of this by-law on [] 2018, the majority of Listuguj electors in attendance assented to the present By-Law;

NOW THEREFORE the Chief and Council, in open meeting assembled, enact as follow:

1. Short Title

This by-law may be cited as the "Listuguj Cannabis By-Law" (the "By-Law").

2. Interpretation

2.1 Definitions

In this By-Law,

"cannabis" means (1) any part of a cannabis plant, including the phytocannabinoids produced by, or found in, such a plant, regardless of whether that part has been processed or not, other than a non-viable seed of a cannabis plant, a mature stalk, without any leaf, ower, seed or branch, of such a plant, or a fibre derived from such a stalk, or the root or any part of the root of such a plant; (2) any substance or mixture of substances that contains or has on it any part of such a plant; and (3) any substance that is identical to any phytocannabinoid produced by, or found in, such a plant, regardless of how the substance was obtained;

"community" means the registered members of the Listuguj community, and where the context requires, its assets, as defined by the *Indian Act*;

"Council" means the elected members of the Listuguj Mi'gmaq Government, namely the Chief and councillors;

"Directive" means a directive issued under and for purposes of the application of this By-Law by the Listuguj Cannabis Control Office;

“**distribution**”, in respect to cannabis, means administering, transferring, transporting, sending, delivering, providing or otherwise making available in any manner, whether directly or indirectly, for purposes other than direct consumption or use;

“**dried cannabis**” means any part of a cannabis plant that has been subjected to a drying process, other than seeds;

“**Enforcement Officer**” means an officer of the Listuguj Police Department;

“**fresh cannabis**” means freshly harvested cannabis buds and leaves, other than seeds or plant material that can be used to propagate cannabis;

“**illegal cannabis**” means cannabis that is or was produced, imported, distributed or sold otherwise than in accordance with this By-Law;

“**Listuguj Lands**” means the portion of the Listuguj Mi’gmaq territory of Gespe’gewa’gi 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 Listuguj community, now commonly known as the “Listuguj Indian Reserve No. 1”. For greater certainty, it also includes Indian Lake Road, the section of Highway 132 between Riverside West and Dundee Road, the portion of “Listuguj Indian Reserve No. 1” located at the entrance of the Inter-provincial Bridge and the portion of “Listuguj Indian Reserve No. 1” covering a portion of the rue Principle from the entrance of the Inter-provincial Bridge onto Caplan Road;

“**LMG**” means the Listuguj Mi’gmaq Government;

“**Medical Cannabis**” means cannabis that is prescribed by a health care practitioner authorized to do so under the *Access to Cannabis for Medical Purposes Regulations*, SOR/2016-230, or future regulations replacing it;

“**minor person**” means a person who is less than eighteen (18) years of age;

“**motor vehicle**” means a vehicle that is capable of being propelled or driven otherwise than by muscular power;

“**Office**” means the Listuguj Cannabis Control Office, as established under section 5 of this By-Law;

“**Person**” means any natural or legal person;

“**possession**”, in respect to cannabis, means (i) having personal possession of cannabis or (ii) knowingly having cannabis in the actual possession or custody of another person, or to have it in any place, whether or not that place belongs to or is occupied by the person in possession, for the use or benefit of the same or of another person. Where one of two or more persons, with the knowledge and consent of the rest, has cannabis in her or his custody or possession, it shall be deemed to be in the custody and possession of each and all of them;

“**production**”, in respect to cannabis, means to obtain cannabis, as defined under this By-Law, by any method or process, including manufacturing, processing and synthesis, altering of its chemical and physical properties by any means, or cultivating, propagating or harvesting it or any living thing from which it may be extracted or otherwise obtained;

“**public place**” means any place that is normally open to members of the public or to which the public has access as of right or by invitation, express or implied, including any motor vehicle, temporary facilities and structures located in a public place;

“**Regulation**” means a Regulation enacted under and for purposes of the application of this By-Law by the Listuguj Cannabis Control Office;

“**residence**” means a dwelling unit, house or building in which one resides as their home, with the intent to stay for an undetermined period and with the intent to return to, irrespective of the nature of possessory or occupational rights that one holds therein;

“**sale**”, in respect to cannabis, means any sale or intended sale at retail for purposes of consumption or use;

“**use**”, in respect of cannabis, means to smoke, vape, ingest, absorb or otherwise consume.

2.2 Scope of application

This By-Law shall apply on Listuguj Lands and to all persons present therein.

3. General prohibition on production, distribution, sale and use of cannabis on Listuguj Lands

3.1 Except as permitted under this By-Law or relevant Regulations, no person shall:

- (a) engage in the production, distribution and sale of cannabis in or from Listuguj Lands;
- (b) use cannabis in a public place, or in any other place that is adjacent to a school, public playground or daycare facility during its opening hours;
- (c) be in possession, in a public place, of more than thirty (30) grams of dried cannabis or its equivalent in other forms in the following amounts:
 - 5 grams of fresh cannabis;
 - 15 grams of edible product;
 - 70 grams of liquid product;
 - 0.25 grams of concentrates (solid or liquid);
 - 1 cannabis plant seed;

- (d) cultivate more than four (4) cannabis plants, per residence, or be in possession of the equivalent amount of fresh or dried cannabis harvested from those plants in her or his residence for personal use purposes.
- 3.2 Notwithstanding the foregoing where a person is a patient holding a valid prescription for Medical Cannabis, the terms of the prescription will supersede this By-Law and its Regulations, but exclusively for the purposes of the person's medical treatment.
- 3.3 Notwithstanding any other provision in this By-Law or relevant Regulations, it is strictly prohibited:
- (a) to produce, distribute, sell, use or be in possession of illegal cannabis;
 - (b) to use or be under the influence of cannabis when operating a motor vehicle, boat or aircraft;
 - (c) to sell or otherwise provide cannabis to a minor person;
 - (d) for a minor person to sell, purchase, cultivate or possess cannabis;
 - (e) for a minor person to use cannabis for any purposes other than Medical Cannabis in the form and amount prescribed; and
 - (f) to distribute or sell any cannabis cultivated and harvested pursuant to paragraph 3.1 (d) of this By-Law.

4. Exemption

- 4.1 Notwithstanding anything in this By-Law, the LMG is exempted from the general prohibition of production, distribution and sale of cannabis as provided for in paragraph 3.1 (a) of this By-Law. The LMG may, for the benefit of the community, engage in the production and distribution of cannabis within the Listuguj Lands, insofar as:
- (a) the LMG owns or controls 51% or more of the business;
 - (b) the business operations are deemed to serve the inclusive and sustainable economic growth of the community;
 - (c) necessary measures are taken to ensure that the business operations do not defeat the protective purpose of this By-Law; and,
 - (d) the business operations are conducted in strict compliance with this By-Law and its Regulations.

5. Licencing authority and processes

Cannabis Control Office

- 5.1 Is hereby instituted a regulatory body, to be known as the “Listuguj Cannabis Control Office”, in charge of enforcing and administering this By-Law and enacting Regulations to ensure its application; the whole in accordance with this By-Law.
- 5.2 The Office shall start its work three (3) years following the adoption of this By-Law, or at an earlier date determined by the LMG by way of an Order-in-Council. Until such time, no cannabis production, distribution, sale/dispensary licence shall be issued by the Office and no cannabis-related activity requiring regulation, imposition of conditions or oversight by the Office can be undertaken.

Structure, Meetings and Decision-Making

- 5.3 The Office shall be composed of [•] members to be appointed by Order-in-Council for a term of [•] years, and renewable for a second consecutive term.
- 5.4 To be eligible for appointment as a member of the Office, a person must:
 - (a) be a community member, residing in Listuguj Lands or within a distance of less than 20 km therefrom;
 - (b) be at least [•] years of age;
 - (c) not have any interest, whether directly or indirectly, in a private entity having an actual or potential interest in a matter related to the application of this By-Law;
 - (d) have no criminal conviction for an indictable offence or have received pardon for any such conviction.
- 5.5 The Council shall replace any member of the Office if the member resigns or is deemed unable or unfit to assume its functions by the Office, in accordance with its Directives.
- 5.6 The Office members shall appoint a Chairperson and a Secretary among themselves by majority vote.
- 5.7 Meetings of the Office shall be held with a quorum of not less than [•] Office members and decisions of the Office shall be made by majority vote of at least [•] present or represented members.
- 5.8 The Office shall hold meetings once every [•] months, or at the call of the Chairperson or a majority of its members.
- 5.9 Notice of the Office meetings, the agenda and relevant documentation shall be provided to all Office members no later than [•] days prior to the date of each meeting.

- 5.10 Meetings of the Office shall be open to the public, unless otherwise decided by the Chairperson or a majority of its members, in which case they will be held *in camera*.
- 5.11 The Office has the authority to issue Directives governing its internal operations and functioning, including a Code of Conduct for its members. It shall also implement and maintain such internal systems, networks and databases as it may require to fulfill its mandate.

Mandate

- 5.12 The Office has the authority to:
- (a) issue, suspend and revoke the licences provided in this By-Law and its Regulations;
 - (b) regulate, monitor and inspect all the premises and activities of licence holders to ensure compliance with the relevant licence requirements; and,
 - (c) make any relevant decisions and take any actions deemed necessary to fulfill the purposes of the Regulations enacted under this By-Law.
- 5.13 The Office shall publish and make available for consultation to all community members, on an annual basis, the aggregate revenues earned from and expenses incurred by the LMG from distribution and sale of cannabis.

Licences

- 5.14 The Office is in charge of assessing the applications, and issuing and administering the following categories of licences:
- (a) Production Licences;
 - (b) Distribution Licence;
 - (c) Sale/Dispensary Licence; and,
 - (d) any subcategory of the above licences, as deemed necessary by the Office.
- 5.15 Notwithstanding any other provisions of this By-Law and its Regulations, the Production Licence may be granted exclusively to the LMG Council or an LMG corporation or another business that is owned or controlled for at least 51% by the LMG, in accordance with paragraph 4.1 (a) of this By-Law.
- 5.16 Notwithstanding any other provisions of this By-Law and unless otherwise provided in its Regulations, the Distribution Licence and its subcategories may be granted exclusively to LMG Council or an LMG corporation or another business that is owned or controlled for at least 51% by LMG, in accordance with paragraph 4.1 (a) of this By-Law.

Regulations

- 5.17 In fulfilling its mandate, the Office shall enact Regulations as required to ensure the proper implementation of this By-Law, namely Regulations providing for:
- (a) the eligibility criteria and prior conditions of application for each licence, including security background checks of owners, directors and personnel of licence holders;
 - (b) the application process, form and requirements in respect of each licence;
 - (c) applicable annual fees, term and renewal conditions in respect of each licence;
 - (d) the conditions of operations and restrictions applicable to sale/dispensary licence-holders; such as the location of points of sale, the hours of operation, and the maximum amount of cannabis that can be distributed or sold within a specified period of time to a person;
 - (e) the conditions applicable to advertising and marketing activities and packaging and labeling requirements;
 - (f) quality assurance standards to ensure that all cannabis produced, distributed and sold within Listuguj Lands are consistently and reliably safe and quality-controlled;
 - (g) standards regarding the composition, strength, concentration, potency, purity or quality or any other property of cannabis and cannabis products produced, distributed and sold within Listuguj Lands;
 - (h) the maximum and minimum prices for which cannabis and cannabis products can be sold by a licenced producer, distributor and point of sale;
 - (i) procedures for addressing breach of provisions of this By-Law or its Regulations by licence holders and applicable sanctions, including suspension and revocation of the licence, fines not exceeding the amount of [•] per breach, and ineligibility of the licence holder; and,
 - (j) mandatory measures and systems that producers, distributors and points of sale should put in place to ensure strict compliance with the provisions of section 3 this By-Law;
 - (k) licencing requirements and conditions of online sale of cannabis;
 - (l) the minimum safety and security standards, youth protection measures and reporting obligations for in-residence cultivation of cannabis pursuant to paragraph 3(1) (d) of this By-Law;

- (m) harm reduction mechanisms or services for users and preventative education measures for the youth.

5.18 In order to be enforceable, all Office Regulations shall be annexed to the present By-Law, after having received prior approval of the Council through an Order-in-Council.

Funding and Finances

5.19 For a period of two years as of the date of commencement of the Office's activities, the Council shall provide the Office an annual operational budget to ensure the Office can satisfy its duties and responsibilities under this By-Law. During this period, members of the Office may be remunerated for the time required to provide the services associated with their offices, as determined by Council.

5.20 Licencing fees, fines and other amounts collected by the Office shall be collected by the Office and set aside in order to ensure the Office is financially self-sustaining as of the third year of the date of commencement of its activities.

5.21 As of the third year of the date of commencement of its activities, the Office shall issue Directives regarding its financial management, including the remuneration of its members.

6. Offences and penalties

6.1 Any person who commits an offence under paragraph 3.1 (a) of this By-Law is liable on summary conviction to:

- (a) a fine in the amount of one thousand dollars (\$ 1000.00);
- (b) imprisonment for a term not exceeding thirty (30) days; or,
- (c) both of the above.

6.2 Any person who commits an offence under paragraphs 3.1 (c), 3.1 (d) and subsection 3.3 of this By-Law is liable on summary conviction to:

- (a) a fine in the amount of six hundred dollars (\$ 600.00);
- (b) imprisonment for a term not exceeding ten (10) days; or,
- (c) both of the above.

6.3 Any person who commits an offence under paragraph 3.1 (b) of this By-Law is liable on summary conviction to:

- (a) a fine in the amount of two hundred dollars (\$ 200.00).

- 6.4 Each day a person is in contravention of the provisions of this By-Law represents a separate offence and is subject to the penalties set forth under subsections 6.1, 6.2 and 6.3 of this By-Law.
- 6.5 A fine imposed under this section is payable directly to the LMG within [•] days of the date of issuance of the offence ticket; unless a plea of not guilty is entered by the accused within the allocated time limit.
- 6.6 In addition to any other penalty imposed under this part, the LMG may apply to a court of competent jurisdiction in the province of Quebec to obtain an order prohibiting the continuation or repetition of the offence by the person convicted.

7. Enforcement

- 7.1 This By-Law and its Regulations are enforceable by an Enforcement Officer.
- 7.2 An Enforcement Officer may arrest any person whom she or he finds contravening any provisions of section 3 of this By-Law or relevant Regulations for the strict purposes of ensuring the proper application of this By-Law or the relevant Regulation.
- 7.3 Every person entering into Listuguj Lands by a motor vehicle, boat or aircraft shall, at all relevant times and upon request by an Enforcement Officer, declare whether or not she or he has in her or his possession any cannabis, whether on her or his person or in their possession.
- 7.4 Where an Enforcement Officer has reasonable grounds to believe a person subject to this By-Law to be or have been in contravention thereof, she or he may:
- (a) with warrant, except if otherwise authorized by the law, conduct a reasonable search of the person and any objects in her or his immediate possession;
 - (b) with warrant, except if otherwise authorized by the law, 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 period of time 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 offence, the goods and chattels may remain under seizure until the proceedings are finally concluded; and,
 - (c) take the necessary measures to initiate proceedings against any person having contravened the provisions of this By-Law.
- 7.5 An Enforcement Officer may, with warrant except if otherwise authorized by the law, conduct a reasonable search of any building, premises or place of residence situated within the Listuguj Lands in which there are reasonable grounds to believe

that the By-Law was contravened or an offence under this By-Law is being or was committed.

7.6 At all points of entry onto Listuguj Lands an Enforcement Officer may, with warrant except if otherwise authorized by the law, conduct a reasonable search of any motor vehicle, boat or aircraft coming onto Listuguj Lands:

- (a) provided that she or he has reasonable grounds to believe that an offence under this By-Law is being committed; and,
- (b) after providing the passenger(s) with the opportunity to make a declaration as to whether they have in their possession any cannabis, whether on their person or in their possession.

7.7 All cannabis seized or found on Listuguj Lands shall be destroyed or caused to be destroyed, by an Enforcement Officer duly authorized to this effect, within [•] days of the seizure unless, before that day, the person from whom the cannabis was seized or the person who claims to have a right in it applies to the court to establish their right in the things seized. Cannabis is considered to be destroyed when it is altered or denatured to such an extent that its use and propagation is rendered impossible or improbable.

8. Coming into force

8.1 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:

- (a) assented to by a majority of Listuguj electors voting at a special meeting of the community called by the Council for purposes of approving this By-Law; and,
- (b) duly executed by a quorum of Council.

9. Amendment

9.1 This By-Law may be amended following the same procedure as its enactment.

THIS BY-LAW IS HEREBY enacted by a quorum of Council at a duly convened Council meeting of the LMG on this [•] day of [•], 2018.

Quorum: _____

Chief

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

I, _____ Chief/Councillor of the Listuguj Mi’Gmaq Government, do hereby certify that a true copy of the foregoing By-Law was published in the *First Nations Gazette* pursuant to subsection 86(1) of the *Indian Act*.