

SEMÁ:TH

***Cannabis Control Law***

November 2020

**WHEREAS:**

- A. Semá:th (including “Sumas First Nation”, or “Sumas”) has an inherent right to self-government which emanates from our people, culture and land and which is recognized and affirmed by the *Semá:th Declaration* of 2017;
- B. Semá:th has taken control of Reserve lands and resources pursuant to the *Framework Agreement on First Nation Land Management* and has enacted the *Semá:th Land Code* effective the 11<sup>th</sup> day of November, 2011;
- C. Under section 6 of the *Semá:th Land Code*, Semá:th Council has broad authority to pass laws relating to the regulation, development and protection of Semá:th Lands, including the authorities under subsection 6.3 of the *Semá:th Land Code* to pass laws relating to zoning, land use, permits, fees for permits, the regulation, permitting and control of businesses on Semá:th Lands;
- D. The Government of Canada has legalized the production, transport, processing, sale and consumption of non-medical recreational Cannabis through Bill C-45, the *Cannabis Act*; and
- E. Council and the community support any cannabis businesses on Semá:th lands who are authorized. SFN Chief and Council determined that it is important to minimize the impacts of cannabis businesses on its Membership and ensure Semá:th benefits from the proceeds and sales of cannabis, and effectively regulate personal Cannabis consumption and cannabis related businesses and activities on Semá:th Lands, including the location, distribution, scale and density of cannabis cultivation, processing and retail facilities.
- F. The law was posted for 20 days in October 2020 with no objections from Band membership. Silence on matters acts as an aye rather than nye as per Roberts Rules of Order.

**NOW THEREFORE, THIS SEMÁ:TH CANNABIS CONTROL LAW (“Law”) IS HEREBY ENACTED A LAW OF SEMÁ:TH.**

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### **1. TITLE**

(a) This Law may be cited as the Semá:th *Cannabis Control Law*.

### **2. DEFINITIONS**

2.1 For the purposes of this Law, terms have the same definitions as in the Semá:th Land Code and the Canada Cannabis Act.

(a) In addition, the following definitions apply:

(b) "Business", for the purposes of this Law, means an entity that carries on a commercial or agricultural undertaking of any kind or nature, or the provision of professional, personal or other services for the purpose of exchange, gain or profit.

(c) "Dwelling unit" means any house, apartment unit, condominium unit or other similar secure structure or unit thereof that is primarily used as a residence."

(d) "Permittee" means a person or entity who has received a cannabis business permit under this Law.

(e) The business permit must be present at the business and a copy will be kept at the band office with Capital Works.

### **3. PROHIBITIONS AGAINST BUSINESS EXCEPT AS AUTHORIZED UNDER SEMÁ:TH AND FEDERAL STANDARDS**

3.1 No person, including Semá:th First Nation or Semá:th entities may carry on cannabis-related business on Semá:th Lands unless that person or entity has:

(a) applied for and received a valid and subsisting development permit, if necessary, under the Semá:th Subdivision, Development and Servicing Law;

(b) applied for and received a valid and subsisting Business Permit for cannabis-

- related businesses issued by Semá:th Chief and Council under this Law or another Semá:th Law provided applicant or permittee has paid all fees accordingly, and,
- (c) committed to meet or exceed all Federal standards relating to Cannabis production and retailing, including health, safety and security standards.
- 3.2 No person may carry on any cannabis-related business that involves delivering cannabis or cannabis products to Semá:th Lands, including 'dial-a-dope' type businesses or internet ordering businesses.

#### **4. PROHIBITIONS AGAINST UNAUTHORIZED USE OF CANNABIS ON SEMÁ:TH LANDS**

- 4.1 No person may consume, smoke or vape cannabis:
- (a) if they are not in lawful possession of the cannabis or cannabis product;
  - (b) in any area or place where that person is prohibited from smoking under the *Tobacco and Smoking Reduction Act* or any other Act or the Laws of Semá:th;
  - (c) in an area or structure where public has access as of right or by express or implied invitation;
  - (d) within a hundred (100) metres of a school, playground, daycare, administration building, bighouse, or other building, structure or facility owned by Semá:th;
  - (e) in the presence of or within a hundred (100) metres of anyone under the age of nineteen (19) years;
  - (f) in a private dwelling unit except where they are the owner or interest-holder or have obtained the consent of the occupant;
  - (g) on vacant land unless they have obtained the consent of the owner or lawful occupant; or
  - (h) in any place prohibited by Regulation and in the circumstances prescribed by Regulation, if any.

#### **5. REQUIREMENTS FOR PERSONAL POSSESSION, PRODUCTION AND CONSUMPTION OF CANNABIS ON SEMÁ:TH LANDS**

- 5.1 Subject to subsection 5.2, below, a person may cultivate up to four (4) cannabis plants for non-medical use at his or her dwelling unit in accordance with the requirements of the applicable Federal Standards and provided that the dwelling unit is solely owned by the person and Semá:th does not have any ownership interest or mortgage guarantee in relation to the dwelling unit.
- 5.2 For greater certainty, due to insurance, health, safety and related concerns, no person may grow cannabis of any kind in social housing or rental housing on Semá:th Lands.
- 5.3 No person, other than a person who is authorized to do so under Part 2 of the Access to Cannabis for Medical Purposes Regulation under the Controlled Drugs and Substances Act (Canada), shall use any residential premises for the growing of any cannabis plants, unless the person has registered the premises with

Semá:th as a residential cannabis production site.

- 5.4 The non-commercial growing, cultivation, storage or production of cannabis or cannabis products may only be conducted as a non-primary use in a residential zone, or in the residential portion of a planned development, and may only be conducted by a person residing at the dwelling unit, for such person's own use, or by a primary caregiver on behalf of a patient who resides at the dwelling unit as the primary caregiver.
- 5.5 Despite subsection 5.1, no person may do any of the following in relation to growing, cultivation, storage or production of cannabis except in strict compliance with Federal Standards and a permit from Semá:th which requires safe, secure and environmentally protective storage, tracking, use and disposal:
- (a) use, store, or dispose of any chemicals, contaminants or fertilizers;
  - (b) use, store or dispose of any hydrocarbons; or
  - (c) apply heat, solvents, chemicals or other products or processes to process cannabis or extract or create oils or other cannabis products.
- (d) Unless otherwise specifically authorized in a permit issued by Semá:th under this Law, no uses or activities relating to cannabis shall cause odors, smoke, heat, glare or light that is detectable to a person of normal senses beyond the property line of the property upon which the use is being conducted, or in an adjacent dwelling unit or public area.

## **6. BUSINESS PERMITS REQUIRED FOR CANNABIS-RELATED BUSINESSES**

- 6.1 A person must not carry on cannabis-related business on Semá:th Lands unless, in addition to any other authorizations under this law or permits required under this Law or other Semá:th Laws, the person holds a valid business permit issued under the provisions of this Law or any Business Permit or Business Permit Law enacted pursuant to the Semá:th Land Code.
- 6.2 For the purposes of subsection 6.1, a person who receives a valid and subsisting cannabis business permit under this Law does not require an additional business permit under the Semá:th *Business Permit Law*.
- 6.3 A person applying for the issuance or renewal of a permit to carry on a cannabis related business where cannabis is kept or present on the premises must:
- (a) make application to the SFN Administration on the form provided for that purpose;
  - (b) pay to the Semá:th Lands & Resources Department the applicable permit fee prescribed under Schedule "A";
  - (c) provide a security plan for the premises that describes adequate security measures to mitigate risk of theft or robbery at the premises;
  - (d) provide proof of a security alarm contract that includes regular monitoring at all times during the period for which the permit is being sought;
  - (e) if requested by Capital Works, provide an odor impact assessment and odor

- control plan;
- (f) provide proof of ownership or legal possession of the premises; and
- (g) provide a current police information check for:
  - (i) the applicant;
  - (ii) if the applicant is a corporation, each shareholder, officer and director;  
and
  - (iii) each on-site manager.

6.4 The fees are set out in Schedule "A" including:

- (a) The application fee to be paid at the time of application;
- (b) The annual permit fee to be paid on the date that the permit is issued and on each anniversary of that date; and
- (c) The monthly regulation and monitoring fee to be paid to Semá:th within seven (7) days after of the end of each month, based on the gross monthly sales.

6.5 The fees set out in subsection 6.4 and Schedule "A":

- (a) all fees payable to Semá:th;
- (b) in relation to paragraph 6.4(c), are intended to offset Semá:th's costs in regulating and monitoring the business, and promoting and protecting health and safety in the community; and
- (c) in relation to paragraph 6.4(c) must be placed by Semá:th into a separate or designated account or sub-account and only spent in accordance with a budget approved by Council in consultation with the SFN Administration
- (d) The fee schedule will be posted on the community website.
- (e) Additional fees may be required and Semá:th reserves the right to renegotiate at time of need or infraction.

6.6 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 twenty four (24) hour emergency contact information;
- (d) for growing or cultivation operations, 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) a requirement for all Permittees, shareholders and staff to have no direct, indirect, past or present affiliation or association with any criminal organization of any kind, the sufficiency of evidence of such affiliation or

- association to be determined by the Capital Works in their sole discretion;
- (j) the insurance requirements;
- (k) the method by which sales will be tracked and reported to the Semá:th Administration on a monthly basis;
- (l) confirmation of access for inspections by the Semá:th Administration, or any designated SFN Enforcement Official;
- (m) a release and indemnity by the Permittee of all Semá:th elected officials, board members, committee members, staff and contractors made party to a proceeding concerning a cannabis-related business against any and all claims, damages, losses, liability incurred in a proceeding of the Semá:th individual:
  - (i) acted in his or her official capacity;
  - (ii) acted in good faith;
  - (iii) believed his or her conduct was in the best interests of Semá:th; and
  - (iv) acted in accordance with the laws, regulations, and policies of Semá:th;
  - (v) does NOT violate code of ethics;
- (n) any other information or requirements prescribed by Regulation.

## **7. CAPITAL WORK'S AUTHORITY TO GRANT, REFUSE OR SUSPEND A PERMIT**

7.1 Capital Works Manager or his or her delegate, on the recommendation of Business Development, may grant a cannabis business permit to an applicant who:

- (a) meets all of the requirements set out in this Law; and
- (b) receives authorization through a through a community ratification vote under paragraph 8.1 of this Law pursuant to Article 14 of the Semá:th *Land Code*.

7.2 The Capital Works Manager, his or her designate, or another individual designated by Council may suspend, terminate or refuse to issue or renew a permit for a cannabis business if:

- (a) the applicant or permittee, or a shareholder, officer, director or on-site manager of the applicant or permittee:
  - (i) was convicted anywhere in Canada of an offence involving dishonesty;
  - (ii) was convicted, found guilty of, or liable for any contravention or offence, after legalization of cannabis, relating to the conduct of a business similar to that to which the permit relates;
  - (iii) 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 permit or regulating the conduct of a business; or
  - (iv) was guilty of misrepresentation, nondisclosure or concealment of any material fact, relating to the subject matter of the permit or required to be stated in, the application;
- (b) the issuance, the renewal or the amendment 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;
- (c) 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;

- (d) there is credible information that the applicant is not of good character;
- (e) the Capital Works Manager is of the opinion that it is in the public interest to do so;

- 7.3 In determining whether an applicant is of good character, the Capital Works may consider the following:
- (a) any credible information respecting:
    - (i) the applicant's reputation, past conduct, integrity, financial history, or competence;
    - (ii) any direct, indirect, past or present affiliation or association with any criminal organization of any kind;
    - (iii) the character of the applicant's employees and associates;
  - (b) if the applicant is a corporation, partnership, limited partnership, or joint venture any credible and reliable information respecting the character of any Person who is a shareholder, joint venture, partner, limited partner, member, officer, or director of the applicant;
  - (c) the applicant's criminal record; or
  - (d) any other information the Capital Works Manager reasonably considers relevant.
- 7.4 A decision of the Capital Works Manager under this section may be appealed to Council by submitting a request in writing to the General Manager within 30 days of the decision.

## **8. REQUIREMENTS FOR ALL CANNABIS-RELATED BUSINESSES**

- 8.1 A person applying to carry on a cannabis-related business must:
- (a) pay for a community ratification vote in advance and in accordance with Article 14 of *Land Code* and any applicable regulations, to determine if Semá:th Members support the proposed cannabis-related business in the proposed location;
  - (b) achieve a successful result in the ratification vote of at least fifty percent (50%) plus one (1) of the Members who turn out and cast valid ballots; and
  - (c) meet any other application requirements prescribed by Regulation.
- 8.2 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 (2) signs which display no images and contain only:
    - (i) alpha-numeric characters;
    - (ii) the business name; and
    - (iii) is in a size as permitted under any Semá:th Sign Law or Bylaw or as permitted by the Capital Works.



## **9. REQUIREMENTS FOR BUSINESSES THAT KEEP CANNABIS ON THE PREMISES**

- 9.1 In addition to the requirements of Section 8, 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 ninety (90) days after it is gathered;
  - (c) install a security (high resolution) and fire alarm system that is, at all times, monitored by an authorized third party;
  - (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) install and maintain an air filtration system that effectively minimizes odour impacts on neighbouring properties;
  - (f) provide contact information to Semá:th to ensure 24/7 communication;
  - (g) allow for inspections to investigate and search premises on probable cause for infractions or for health code by the Semá:th Capital Works Department, or any designated SFN Enforcement Official; and
  - (h) meet any other requirements prescribed by regulation.

## **10. REQUIREMENTS FOR STOREFRONT CANNABIS RETAILERS**

- 10.1 In addition to the requirements set out in Sections 8 and 9 of this Law, a person carrying on the business of a storefront cannabis retailer must:
- (a) only conduct the business on Semá:th commercially zoned lands and in areas designated by regulation or Council Resolution;
  - (b) not conduct the business within one hundred (100) metres of the property line of any existing and operational daycare, school or future school, residential zone, park, cemetery, office or other community facility;
  - (c) prominently display a sign on the premises indicating that no persons under nineteen (19) years of age are permitted on the premises;
  - (d) if requested by the Capital Works or required by law, ensure that signs and warnings and materials are provided to promote public health and safety reduce the risks of harmful uses or behaviors relating to cannabis such as driving while impaired;
  - (e) ensure that a minimum of two (2) employees are present on the premises at all times when the business is open to the public, including one manager;
  - (f) not use the premises to carry on business other than the cannabis-related business and accessory uses;
  - (g) not use the premises for online sales or home delivery;
  - (h) ensure that all products are tested before being sold and are certified by a Federal authorized lab that follows quality assurance testing protocols and meet or exceed Federal health standards;
  - (i) 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 Regulations;
  - (j) track all sales of all products and report detailed breakdowns of volume and value of sales of each product type to the Semá:th Administration on a monthly basis;

- (k) ensure that windows on any street frontage of the premises are not blocked by translucent or opaque material, artwork, posters, shelving, display cases or similar elements;
- (l) not be open for business between the hours of 10:00 p.m. and 9:00 a.m. each day of the week;
  - (m) promptly bring to the attention of the Capital Works Manager or General Manager:
    - (i) the name of any new on-site manager, officer, director or shareholder of the permittee;
    - (ii) any criminal charge brought against the permittee or an on-site manager, officer, director or shareholder of the permittee;
- (n) promptly provide to the Capital Works a current police information check for any new on-site manager, officer, director or shareholder of the permittee; and
- (o) meet any other requirements prescribed by Semá:th Regulations.

## **11. REQUIREMENTS FOR CANNABIS PRODUCTION AND PROCESSING FACILITIES**

11.1 In addition to the requirements set out in Sections 8 and 9 of this Law, a person carrying on the business of a cannabis production or processing facility must:

- (a) be located on industrial-zoned lands and in areas designated by Semá:th Regulation or Council Resolution;
- (b) not conduct the business within one hundred (100) metres of the property line of any existing and operational daycare, school or future school, park, office or other community facility;
- (c) provide detailed record-keeping of all cannabis and cannabis products received, produced and sold and provide these records to the Lands Office every month or as requested by SFN Capital Works;
- (d) install security features, video cameras, intrusion detection system, and other measures required by regulation or their permit;
- (e) ensure that there are no minors and no consumption of cannabis or cannabis products on the premises;
- (f) provide an odor control plan and install air filtration to control odour;
- (g) demonstrate to the SFN Capital Works an annual maintenance and documentation of odor control equipment;
- (h) prohibit outdoor storage of production/processing equipment;
- (i) have an agreement or permit in place with Semá:th for water usage;
- (j) have an agreement or permit in place with Semá:th for waste water management which ensures that chemicals, fertilizer and nutrients are not dumped into waste water, storm drainage or the environment;
- (k) not use any chemicals, fertilizers, nutrients, hydrocarbons or other similar materials except in strict compliance with Semá:th laws, Federal Regulations, and management plans included in their permit; and
- (l) use energy efficient processing and alternative energy sources where possible.

11.2 For greater clarity, Cannabis production facilities may be located indoors or outdoors, provided that the required security, odour control and all other regulatory matters are addressed.

11.3 Quarterly copies of any and all inspections reports must be provided to the Capital Works.

## **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, and fees will apply.

## **13. GENERAL AND 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 this Law.

13.2 No action lies and no proceeding may be brought against Semá:th, or elected officials, board members, staff and contractors of Semá:th:

- (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 In addition to subsection 13.2 of this Law, all permittees, owners and operators of cannabis-related businesses on Semá:th Lands, whether they have permits or not, are deemed to release and indemnify all Semá:th elected officials, board members, committee members, staff and contractors made party to a proceeding concerning a cannabis-related business against any and all claims, damages, losses, liability incurred in a proceeding if the Semá:th individual:

- (a) acted in his or her official capacity;
  - (b) acted in good faith;
  - (c) believed his or her conduct was in the best interests of Semá:th; and
  - (d) acted in accordance with the laws, regulations, and policies of Semá:th.
- (e) Does NOT violate Ethics Code.

13.4 "Proceeding" means any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal related to the production, processing, or sale of cannabis.

- 13.5 This Law does not abrogate, derogate from, diminish or suspend any of Semá:th's aboriginal rights or title.
- 13.6 Where any Semá:th 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 Semá:th Regulation, Semá:th Bylaw or other Semá:th Laws.
- 13.7 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.

#### **14. PENALTIES AND STOP-WORK ORDERS**

- 14.1 Any person who violates any provision of this Law, or a permit or order issued under this Law is guilty of an offence and liable:
- (a) to a ticket fine in the amount set out in a Schedule or Regulation to this Law or in the Semá:th *Enforcement and Ticketing Law*; or
  - (b) upon summary conviction to a fine of up to ten thousand (\$10,000) dollars or to a term of imprisonment not exceeding thirty (30) days, or both.
  - (c) Infractions based on environment and/or health and safety may be issued.
- 14.2 In addition to any other applicable fine, penalty or remedy, Council, the Capital Works, or a designated official or Enforcement Officer may:
- (a) suspend a permit for any length of time necessary to investigate or ensure compliance;
  - (b) 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 Sections 3, 6, or 8 to 11 of this Law or any related activity or use; or
  - (c) 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.
- 14.3 A Stop Work Order imposed under subsection 14.1:
- (a) is valid on its face and does not need to be confirmed by a court or registered in any judicial proceeding to be valid and enforceable, but
  - (b) despite paragraph 14.2(a), may, in the sole discretion of Council, 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.

#### **15. REGULATIONS**

- 15.1 Semá:th Council may make regulations it considers necessary or advisable for purposes of implementing or administering this Law.

15.2 Without prejudice to the generality of subsection 15.1 of this Law, Semá:th 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) setting or clarifying penalties, and
- (h) generally for the purpose of giving effect to this Law.

**16.COMING INTO FORCE**

16.1 This Law comes into force on the date it is approved by Council Resolution following compliance with the steps set out in the Land Code.

**BE IT KNOWN** that this Law entitled, the Semá:th *Cannabis Control Law* is hereby:

Enacted by a Council Resolution of Council on the 17 day of NOVEMBER 2020.

  
Councillor Murray Ned

  
Chief Dalton Silver

  
Councillor Chris Silver

  
Councillor Clint Tuttle

**A quorum consists of 3  
Council Members**

**SCHEDULE 'A'**  
**Fee Schedule (November 2020)**

<b>TYPE OF APPLICATION OR PERMIT</b>	<b>APPLICATION FEE + any applicable ratification</b>	<b>+ ANNUAL PERMIT FEE</b>	<b>+ MONTHLY Regulation and Monitoring Fee</b>
			1% of gross monthly sales
2. Cannabis Business Permit for sale of medicinal and recreational cannabis, cannabis oil or related products	\$2500	\$25,000	
3. Cannabis Business Permit for commercial cannabis production	\$2500	\$25,000	