

_____ FIRST NATION*

BUSINESS LICENSING BY-LAW

BY-LAW NO. _____

INDEX	Section
Short Title	s.1
Definitions	s.2
Requirements for Licence	s.3
Licence Application	s.4
Licences	s.5
Fees	s.6
Refund	s.7
Issuance of Licence	s.8
Appeal	s.9
Licence Inspector	s.10
Duties of Licence Inspector	s.11
Revocation or Suspension of Licence	s.12
Conflict of Interest	s.13
Penalty	s.14
Enforcement	s.15

SCHEDULES	Page
1. Business Licence	
2. Fees	
3. Business Licence Application	
4. Notice of Licence Refusal.....	
5. Request for Review Hearing.....	
6. Notice of Review Hearing	
7. Notice of Hearing	

WHEREAS the Council of the _____ First Nation desires to make a by-law for the licensing of businesses, callings, trades and occupations in the Reserve(s);

AND WHEREAS the Council of the _____ First Nation, pursuant to paragraphs 83(1)(a.1), (e), (e.1) and (g) of the *Indian Act*, R.S.C. 1985, c.1-5, may, subject to the approval of

* or Indian Band

the Minister of Indian Affairs and Northern Development, make by-laws for the licensing of businesses, callings, trades and occupations and with respect to any matter arising out of or ancillary to the exercise of powers under this section, including the enforcement of payment of amounts that are payable thereof, and for the imposition and recovery of interest on amounts that are payable thereof;

AND WHEREAS the Council of the _____ First Nation deems that for the orderly conduct and administration of businesses, and for the health, welfare, safety and environment of the inhabitants in the _____ Reserve(s) No. ____ to license businesses, callings, trades and occupations;

NOW THEREFORE the Council of the _____ First Nation, hereby enacts the following by-law.

SHORT TITLE

1. This By-law may be cited as the _____ *Business Licensing By-law*.

INTERPRETATION

2. In this By-law,

“business” means a calling, trade, occupation, employment or profession, vocation, commercial activity, or an enterprise that habitually occupies or engages the regular time, attention, labour and effort, of the licensee or person(s) for purposes of gain, benefit, advantage, livelihood or profit, or, in which the licensee or person(s) show(s) willingness to invest time and capital on future outcome;

“calling” means a business or profession as defined in this By-law;

“Council” means the Chief and Council of the _____ First Nation;

“Councillor” means the Councillor(s) of the _____ First Nation;

“First Nation” means the _____ First Nation;

“licence” means a licence issued under this By-law;

“licensee” means a person to whom a licence is issued under this By-law;

“Licence Inspector” means a person(s) appointed under section 10 of this By-law;

“member” means a member of the _____ First Nation;

“occupation” means a business or profession as defined in this By-law;

“person” includes not only an individual, but also a partnership, syndicate, association, corporation or the agent or trustee of a person;

“profession” means a vocation, occupation or calling requiring special, usually advanced, education and skill, and as defined in this By-law;

“Reserve” means the Reserve(s) set apart for the use and benefit of the _____ First Nation;

“trade” means a business as defined in section 2 of this By-law.

REQUIREMENTS FOR LICENCE

3.(1) Every person conducting or carrying on a business in the Reserve(s) must hold a valid licence issued under this By-law.

(2) Any person carrying on more than one business in the Reserve(s) must obtain a separate business licence for each business, and where a business is conducted in or from more than one premise, the business conducted in or from each premise will be deemed a separate and distinct business and will require a separate licence.

(3) Every licence granted under this By-law is valid and permits the licensee to carry on the business in a lawful manner.

(4) The licensee or person in charge or control of the premises where the business is conducted must at all times keep the licence or licences prominently displayed in an area of the premises to which the public has access or in an area designated by the Licence Inspector. The License may be in the form and content as set out in Schedule 1.

(5) The licensee must notify the Licence Inspector of any change in the mailing or business address, the type of business, the area of the premises, and, any substantial physical alteration to the premises in which the business is conducted, and upon the closing of the business, the licensee will surrender the licence to the Licence Inspector.

LICENCE APPLICATION

4.(1) Every person who wishes to conduct a business in the Reserve must apply in writing in Schedule 3 to the Licence Inspector, and must disclose all information required on this application form.

(2) Every person applying for a licence under this By-law to operate a business that is governed or requires registration by any federal statute, or self-regulating professional body, must supply proof of his or her qualifications and of the qualifications of the employees to carry on such a business, and this must accompany Schedule 3.

(3) Where the applicant is a corporation or a partnership, proof of incorporation or partnership must be provided with the completed Schedule 3.

(4) In the event of a transfer of the business for which a licence has been issued, the Licence Inspector will permit the transfer of the licence from one premise to another provided

- (a) the licensee has completed an application in Schedule 3;
- (b) the licensee has paid the fee under subsection 6(2) of this By-law; and
- (c) the proposed business premises comply with the terms of this By-law.

(5) In the event of a sale of the business for which a licence has been issued, the Licence Inspector will permit an assignment of the licence to the purchaser of the business, provided

- (a) the proposed assignee has completed an application in Schedule 3;
- (b) the proposed assignee has paid the fee under subsection 6(3) of this By-law; and
- (c) the proposed assignee meets the provisions of this By-law to carry on the business for which the licence was issued.

LICENCES

5.(1) A licence is granted for a one (1) year period commencing January 1 and expiring December 31 in each calendar year. Licences must be renewed by completing Schedule 3 by December 31 of each calendar year or the licence will have expired and be suspended. Licences may be renewed, and reinstated from suspension for non-timely renewal in accordance with subsections 6(1) and 6(6) of this By-law.

(2) A licence will specify the time period, type and location of the business the licensee is permitted to conduct.

(3) A licence is valid throughout the Reserve.

(4) A. licence will be issued in in the form of Schedule 1.

FEES

6.(1) The fee payable for a business licence, including licence renewal are as set out in Schedule 2 per calendar year.

(2) The fee payable for filing a Business Licence Application in Schedule 3 for the transfer of a business licence, pursuant to subsection 4(4) of this By-law, is _____ dollars (\$_____).

(3) The fee payable for filing a Business Licence Application in Schedule 3 for the assignment of a business licence, pursuant to subsection 4(5) of this By-law, is _____ dollars (\$_____).

(4) The fee payable for filing a Request for Review Hearing in Schedule 4, pursuant to section 9 of this By-law is _____ dollars (\$_____) plus the applicable annual, renewal, transfer or assignment fee.

(5) The fees prescribed in this By-law will be reduced by one-half where a licence is issued after July 31 in a calendar year.

(6) Where a licensee has not renewed the licence on or before the expiry date as set out in subsection 5(1) of this By-law, the licence will be suspended and the licensee has fifteen (15) days after the date of expiry to renew the licence and have the licence reinstated by completing the application in Schedule 3 and will pay the licence fee set out in subsection (1) and an added fee of _____ dollars (\$_____).

(7) Where a suspended licensee has not renewed the licence within the fifteen (15) days after the expiry date as set out in subsection (6), the suspended licensee has another seventy-five (75) days to renew the licence and have the licence reinstated by completing the application in Schedule 3 and will pay the licence fee set out in subsection (1) and an added fee of _____ dollars (\$_____). The licence will be revoked if not renewed at the end of this time.

REFUND

7. No licence fee paid pursuant to this By-law will be refunded.

ISSUANCE OF LICENCE

8.(1) Upon a business licence applicant meeting the provisions for licence issuance under subsection (2), a business licence will be issued to the applicant.

(2) The Licence Inspector will, upon receiving an application for a business licence, promptly issue, by delivery or mail, a licence to the licensee at the address shown in the licence application provided

(a) the Licence Inspector is satisfied that the applicant's business complies with all provisions in any of the other by-law(s) of the First Nation;

(b) the application complies with this By-law;

(c) the applicant has disclosed all required information in the application form and the Licence Inspector is satisfied under subsections 11(c) and (d) of this By-law;

(d) the applicant has not, within the preceding three (3) years, been convicted of an offence under the *Criminal Code* (Canada), relating to the conduct of this business whether on or off the Reserve, for which the applicant has not been pardoned;

(e) the applicant's business would not be detrimental to the health, welfare, safety and environment of inhabitants on the Reserve; and

(f) the Licence Inspector's investigations do not disclose any reason to believe that the carrying on of the said business may result in a breach of the law, or may be in any way adverse to the public interest; and

(g) the required fee for the licence has been paid.

(3) Every licence granted pursuant to this By-law will be in duplicate; one copy will be issued to the licensee and the other copy retained by the Licence Inspector. The licence so issued will be deemed a personal licence to the licensee.

(4) If the applicant or licensee fails to comply with or the Licence Inspector is not satisfied with information received from the applicant or licensee under subsection (2), the Licence Inspector will forthwith serve the applicant notice in Schedule 4 of the refusal to issue the licence and said notice will be served personally or by registered mail to the applicant at the address shown in the licence application.

APPEAL

9.(1) Within thirty (30) days of service of the notice under subsection 8(4) of this By-law, the applicant or licensee may apply for a review by Council by completing and filing Schedule 5, and paying the fee as referred to in subsection 6(4) of this By-law, and submitting these to the Licence Inspector.

(2) The Licence Inspector, upon receipt of Schedule 5 and the fee referred to in subsection 6(4) of this By-law, will forthwith transmit to Council and applicant

(a) a copy of the original licence application as completed by the applicant and copies of any supporting documentation accompanying the licence application;

(b) a copy of the applicant's completed Schedule 5; and

(c) a copy of the Licence Inspector's refusal and reasons for refusal.

(3) Upon receipt of the material described in subsection (2), Council will determine the time and date of the review hearing, which will be at least fifteen (15) days hence but no more than forty-five (45) days and will advise the Licence Inspector of its decision. The Licence Inspector will forthwith serve notice of the decision in Schedule 6 on the applicant by personal service or by registered mail at the address shown in the licence application. Council will hold the review hearing at the time and date set out in Schedule 6. The applicant shall be given at least seven (7) days notice of the hearing.

(4) The applicant may be represented at the review hearing by counsel and the applicant or counsel may adduce evidence, submit argument in support of the application for licence, answer any objections that may arise, and examine or cross-examine witnesses.

(5) At the review hearing, the Licence Inspector is entitled to submit arguments in reply to evidence and argument presented by or on behalf of the applicant.

(6) At the review hearing, the onus will be upon the applicant to show just cause why the licence applied for should be granted.

(7) Council will give its decision in writing to the Licence Inspector within seven (7) days of the date of the completion of the review hearing.

(8) The Licence Inspector will forthwith notify the applicant of the decision referred to in subsection (7), including notification that the applicant has a further right of appeal to a court of competent jurisdiction, by serving a copy of the decision personally or by registered mail to the applicant at the address shown in the applicant's licence application.

(9) If the applicant agrees at the review hearing to accept conditions upon the licence, Council may render a decision granting the applicant the licence applied for upon such conditions as it considers fair and appropriate and authorized by law.

(10) All review hearings will be held in camera unless the applicant requests that the hearing be open to the public and Council must approve the request by a band council resolution, and the decision resulting from the review hearing will be made public forthwith, and any minutes of the review hearing will be available to the public within fifteen (15) days of the decision.

(11) If Council renders a decision granting the applicant the licence applied for, the licence will be issued upon the applicant complying with this By-law.

LICENCE INSPECTOR

10. Council, by band council resolution,

(a) will appoint a Licence Inspector, and such other officers as may be necessary, who will receive applications, appeals, issue licences and carry out the business licensing administrative functions under this By-law including enforcement;

(b) will provide for reasonable remuneration to be paid to the Licence Inspector and other appointed officers;

(c) will appoint the Licence Inspector for a fixed term of not less than _____() years after which reappointment shall be discussed by both parties; and

(d) may dismiss the Licence Inspector from the appointed position for

(i) failing to carry out duties as described in this By-law,

(ii) having been convicted of an employment related offence under the *Criminal Code* (Canada), or

(iii) contravening the First Nation's conflict of interest guidelines.

DUTIES OF LICENCE INSPECTOR

11. The Licence Inspector will

(a) receive and process all applications, appeals, renewals, transfers and assignments of licences to be issued under this By-law;

(b) maintain a record of all applications and fees for licences and retain on file a copy of all licences issued, together with their particulars;

(c) ascertain, as far as reasonably practicable, that all information furnished by the applicant in connection with an application for a licence is accurate;

(d) make all investigations required by subsection 8(2) of this By-law or by the First Nation, relative to an application;

(e) in response to receipt of a written complaint, or at least once a year, with the consent of the licensee (such consent not to be unreasonably withheld) make inquiries and inspect premises to determine whether every holder of a licence issued under this By-law complies with the licence issued and the by-laws of the Council, and no licensee shall obstruct or hinder the making or completing of the inspection;

(f) report monthly in writing to the Band Administrator, or Band Manager, or the person appointed by Council from time to time to administer the affairs of the Band, stating the number of licences issued, the type of business conducted under each licence, and the fees received since the previous report along with a summary stating the total number of licences issued and the total amount of money received to date for the current year; and

(g) perform such other duties as may be requested by the Band Administrator, or Band Manager, or the person appointed by Council from time to time to administer the affairs of the Band.

REVOCATION OR SUSPENSION OF LICENCE

12.(1) Council will, by band council resolution, and after giving notice in Schedule 7 and holding a hearing, (i) suspend for a period not exceeding ninety (90) days, or (ii) revoke, any licence issued under this By-law, where it has come to Council's attention that the licensee

(a) has failed to comply with this By-law;

(b) is carrying on a business that fails to comply with all provisions in any of the other by-law(s) of the First Nation;

(c) within the preceding three (3) years of licence issuance and since licence issuance, has been convicted of an offence under the *Criminal Code* (Canada), relating to the conduct of this business whether on or off the Reserve, for which the licensee has not been pardoned;

(d) has conducted the business in a manner that is detrimental to the health, welfare, safety and environment of inhabitants in the Reserve;

(e) is convicted of any offence under any statute of the province in respect of the licensed business or with respect to the premises named in the licence; or

(f) is carrying on a business, the purpose of which is to engage in or permit, allow, facilitate, encourage or assist others to engage in any activity that violates the *Criminal Code* (Canada).

(2) Council will give the licensee at least seven (7) days notice of the hearing referred to in subsection (1) and the Licence Inspector will serve Schedule 6 personally or by registered mail to the licensee at the address shown in the licence application, but if a licensee who by reasonable efforts of the Council and Licence Inspector cannot be found and has not come forward then the notice will be considered to be duly served and an *ex parte* decision will be issued against the licensee.

(3) Subsections 9(4), 9(7) and 9(8) of this By-law also apply to the hearing referred to in subsection (1).

(4) The Licence Inspector will post the notice of suspension or revocation of a licence by the Council upon the premises for which the licence was issued and the notice must not be removed until the licence is reinstated or the licensee ceases to occupy the premises, or a new business other than the one carried on by the former licensee is licensed on the premises.

CONFLICT OF INTEREST

13. The Chief and each Councillor must declare any potential conflict of interest, in accordance with the First Nation's conflict of interest guidelines, and withdraw from any hearing, held under sections 9 and 12 of this By-law, where a conflict of interest may arise.

PENALTY

14. Every person who contravenes subsection 3(1) of this By-law is guilty of an offence and on summary conviction is liable to a fine not exceeding one thousand dollars (\$1,000).

ENFORCEMENT

15. The Council may charge a licensee, whether the licence is expired, revoked or suspended, with all reasonable costs that are incurred in the collection of all fees, fines, interest, penalties or other costs imposed by this By-law.

THIS BY-LAW IS HEREBY ENACTED by Council at a duly convened meeting held on the _____ day of _____, 20____.

A quorum of Council consists of _____ (____) members of Council.

Chief [spell out the name please]

Councillor [spell out the name please]

Councillor [spell out the name please]

SCHEDULE 1

(section 5)

BUSINESS LICENCE

_____ is hereby authorized to conduct a business, calling, trade or
(Name of licensee)

occupation in the following _____
(commercial activity)

on the _____ Indian Reserve for the period
commencing _____, 20__, and expiring _____, 20__.
(date) (date)

Name of business

Location of business

Signature of Licence Inspector

Signature of licensee

Date

SCHEDULE 2
(section 6)

FEES

Type of Business: _____ Annual Fee \$ _____

(Note to First Nation: List the type of businesses and their corresponding fee(s))

SCHEDULE 3
(sections 4, 5, 6)

Date: _____

BUSINESS LICENCE APPLICATION

1. Applicant's Name:

2. Applicant's Date of Birth: _____
3. Applicant's Address:

(residence)
4. Name of Company proposed as Licensee:

5. Mailing Address: _____
(partnership/corporation if different)
6. Phone Number: residence: _____
office: _____
7. Fax Number: residence: _____ office: _____
8. Name of business to be licensed:

9. Address of business to be licensed:

10. Name of individual in charge at this location: _____
11. Title of individual in charge: _____
12. Type of business:

13. Have you previously had a business licence from this First Nation? Yes _____ No _____

14. Are you presently registered with the federal government or a self-regulating professional body with respect to the conduct of your business? Yes _____ No _____
(If yes, applicant must provide proof and give details below.)
15. Are you bonded with a bonding agency with respect to the conduct of your business? Yes _____ No _____
(If yes, applicant must provide proof and give details below.)
16. Is the business incorporated? Yes ___ No ___ Federal ___ Provincial _____
(If yes, applicant must provide proof and give details below.)
17. Is the business administered by a partnership? Yes ___ No _____
(If yes, applicant must provide proof and give details below - registration.)
18. Have you, within the previous three (3) years, been convicted of an offence under the *Criminal Code* (Canada) for which you have not been pardoned? Yes _____ No _____

NOTE: Please read section 12 of this By-law, which outlines the conditions whereby your licence could be denied, revoked or suspended.

SCHEDULE 4
(sections 8, 9)

NOTICE OF LICENCE REFUSAL

TO: _____
(name of applicant)

ADDRESS: _____

RE: _____
(location of business)

TAKE NOTICE that pursuant to the _____ *First Nation Business Licensing By-law*
your application to

___ receive, ___ renew, ___ transfer, ___ assign,

a BUSINESS LICENCE is refused.

AND TAKE NOTICE that you have thirty (30) days from the date of this NOTICE within
which you may apply for a review by Council by completing and filing Schedule 5 of the said By-
law and paying the fee pursuant to this By-law with the Licence Inspector.

AND TAKE FURTHER NOTICE that if you file a request for review a hearing will be
conducted for which you will be notified of the time and place to attend.

DATED AT _____ this _____ day of _____, 20__.

Name of Licence Inspector

Signature of Licence Inspector

SCHEDULE 5

(section 9)

REQUEST FOR REVIEW HEARING

TO: Council of the _____ First Nation

c/o _____
(Licence Inspector)

PURSUANT to the _____ *First Nation Business Licensing By-law*, I hereby appeal the decision as outlined on the NOTICE OF LICENCE REFUSAL, dated the _____ day of _____, 20__ and signed by the Licence Inspector to refuse to

___ issue, ___ renew, ___ transfer, ___ assign,

a BUSINESS LICENCE for the following business located at

(description of the business and location)

on the following grounds:

- 1.
- 2.
- 3.
- 4.

DATED AT _____ this _____ day of _____, 20__.

Printed name of appellant

Appellant's signature

Address to which all notices to appellant are to be sent

SCHEDULE 6
(subsection 9(3))

NOTICE OF REVIEW HEARING

TO: _____
(name of applicant)

ADDRESS: _____
(location of business)

PURSUANT to the _____ *First Nation Business Licensing By-law*, Council will hear your Request for Review Hearing dated the _____ day of _____, 20__ relating to the above-noted business.

AND TAKE NOTICE that this Review Hearing will be held at the hour of _____ (a.m./p.m.) on the _____ day of _____, 20__ at the following location:

AND TAKE FURTHER NOTICE that you should bring to the hearing all relevant documents pertaining to this matter.

DATED AT _____ this _____ day of _____, 20__.

Licence Inspector

SCHEDULE 7

(section 12)

NOTICE OF HEARING

TO: _____
(name of licensee)

ADDRESS: _____

RE: ___ Licence Suspension for: _____
(location of business)

___ Licence Revocation for: _____
(location of business)

PURSUANT to the _____ *First Nation Business Licensing By-law*, Council will be holding a hearing relating to the above-noted business regarding:

___ (i) why your business licence should not be suspended for a period not exceeding ninety (90) days; or,

___ (ii) why your business licence should not be revoked.

AND TAKE NOTICE that this hearing will be held at the hour of _____ (a.m./p.m.) on the _____ day of _____, 20__ at the following location:

AND TAKE FURTHER NOTICE that you should bring to the hearing all relevant documents pertaining to this matter.

DATED AT _____ this _____ day of _____, 20__.

Licence Inspector