

BUSINESS LICENSING BY-LAW POLICY

PART I

PREAMBLE

WHEREAS:

- A. Subsection 83(1) of the *Indian Act* recognizes First Nation jurisdiction over the licensing of businesses, callings, trades and occupations;
- B. A Memorandum of Understanding (MOU) between the First Nations Tax Commission (FNTC or Commission) and the Minister of Aboriginal Affairs and Northern Development provides for the FNTC to review and recommend section 83 by-laws for ministerial approval; and
- C. Policies are established by the Commission to further the policy objectives expressed in the MOU and to assist First Nations to achieve economic growth through the generation of stable local revenues.

PART II

PURPOSE

This policy sets out the requirements that must be met in business licensing by-laws enacted under subsection 83(1) of the Act. This policy is used by the Commission in its review and recommendation for approval of First Nations' business licensing by-laws, pursuant to subsection 2.1 of the MOU between the Commission and the Minister of Aboriginal Affairs and Northern Development.

The Commission recognizes that each First Nation's business licensing system operates within the broader context of its fiscal relationships with other governments. This policy is intended to support a more comprehensive First Nation fiscal framework within Canada and the enactment of business licensing by-laws to assist in fiscal and land use planning matters related to business operations under First Nation jurisdiction.

PART III

AUTHORITY AND PUBLICATION

This policy is established pursuant to subsection 1.2 of the MOU between the Commission and the Minister of Aboriginal Affairs and Northern Development.

PART IV

APPLICATION

This policy applies to every business licensing by-law submitted to the Commission for review and recommendation pursuant to the MOU.

PART V

DEFINITIONS

In this Policy:

“Act” means the *Indian Act*, R.S.C. 1985, c. I-5, and the regulations enacted under that Act;

“Appeal Panel” means an appeal body established under a By-law to hear and determine appeals of business licensing applications, suspensions and revocations;

“business” means a calling, trade, occupation, employment or profession, vocation, commercial activity, or an enterprise, which 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;

“By-law” means a business licensing by-law enacted under paragraph 83 of the Act;

“Commission” means the First Nations Tax Commission established under the *First Nations Fiscal Management Act*, S.C. 2005, c. 9;

“conflict of interest” means any circumstance where a person exercises a power or performs a duty or function and at the same time knows or ought to reasonably have known that in the exercise of that power or that duty or function there is an opportunity to benefit that person’s or a related person’s private interest;

“Council” has the meaning given to that term in the Act;

“itinerant vendors” means a person engaged in transient business either in one locality or in travelling from place to place;

“licence inspector” means a person(s) appointed by Council who will receive applications, issue licences, process appeals and carry out the business licensing administrative functions of a By-law;

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

“related person” means a spouse, including a common law spouse, children, parent, brother, sister, father-in-law, mother-in-law, uncle, aunt, grandparent, son-in-law, daughter-in-law, and also includes any relative permanently residing in the person’s household; and

“resolution” means a motion passed and approved by a majority of Council present at a duly convened meeting.

Except as otherwise provided in this policy, words and expressions used in this policy have the same meaning as those used or defined in the Act.

PART VI POLICY

By-law Requirements

1. A By-law must provide for the appointment of a licence inspector(s) through a resolution. The licence inspector’s duties include receiving business licence applications, issuing business licences, processing appeals and performing business licensing administrative functions required under a By-law, including its enforcement.
2. A By-law must set the requirements for obtaining a licence and the conditions for retaining the licence.
3. A By-law must require that every person conducting, or carrying on, a business in the reserve(s) hold a valid licence for each individual business operated.

Business Licensing Application Process

4. A By-law must set out the business licensing application process. This process should require provisions for the submission, receipt and form and content of applications.

Licensing Period

5. The By-law must set a fixed licensing period or term, usually one (1) year, commencing January 1 and expiring December 31 in each calendar year.
6. Notwithstanding section 5, the By-law can provide for the licensing of special events (for example, circuses, concerts and festivals) as well as for the licensing of itinerant vendors.

Fees

7. The By-law must set out the licence fee structure including the setting of fees payable for a business licence application; a business licence; the transfer of a business licence; the filing for a request for a review hearing into the denial, suspension or revocation of a business licence; and the penalties for the renewal of a lapsed or suspended business licence.
8. The initial licence fee structure should be set with consideration of existing fees payable in the reference jurisdiction.
9. Amendments to the initial licence fee structure must be made by the enactment of an amending by-law.

Appeals

10. The By-law must set an appeal process for cases where a business licensing application is refused, suspended or revoked.
11. The initial appeal should be directed to and received by Council and may subsequently be referred to an Appeal Panel for resolution.
12. A further right of appeal to a court of competent jurisdiction should be provided.

Revocation or Suspension of Licence

13. The By-law must set out the process for conducting an appeal hearing by Council or an Appeal Panel.
14. The By-law should set out the criteria supporting a decision to suspend or revoke a business licence.

Conflict of Interest

15. The By-law must require that each person serving on an Appeal Panel must declare any potential conflict of interest, and withdraw from any hearing, where a conflict of interest may arise.

Penalty and Enforcement

16. The By-law must clearly set out any penalties for contraventions to the By-law.

PART VII**COMING INTO FORCE**

This policy is established and in effect as of June 20, 2012.

PART VIII**ENQUIRIES**

All enquiries respecting this policy should be directed to:

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