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CREE NATION OF EASTMAIN

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EASTMAIN BAND BY-LAW NO. 125,

RESPECTING THE SALE, EXCHANGE, POSSESSION AND CONSUMPTION OF ALCOHOLIC BEVERAGES AND THE CONTROL AND PROHIBITION OF CERTAIN RELATED NUISANCES

WHEREAS the Eastmain Band deems it essential to regulate the sale, exchange, possession and consumption of alcoholic beverages and to control certain nuisances related to such activities;

THEREFORE:

PURSUANT to Section 45(1) (a), (b), (c), (d), and (g) of the *Cree-Naskapi (of Québec) Act*, the Eastmain Band, acting through its Council at a meeting held in Eastmain on the 29th day of October, 2009 hereby enacts the following By-Law respecting the sale, exchange, possession, or consumption of alcoholic beverages and the control and prohibition of certain nuisances, replacing any other by-law previously enacted in that respect.

1. Interpretation

In this By-Law, the following words and expressions shall have the meaning described below:

- 1.1 “**Act**”: The *Cree-Naskapi (of Québec) Act*, S.C. 1983-84, c.18.
- 1.2 “**alcohol**”: The product of distillation of any fermented liquid, whatever its origin, rectified once or more often, also synthetic ethyl alcohol and alcohol which is considered non-potable under customary laws.
- 1.3 “**alcoholic beverages**”: The following five varieties of beverages, namely: alcohol, spirits, wine, cider, and beer, as well as any liquids or solids containing ethyl alcohol and capable of being consumed by human beings.
- 1.4 “**Band**”: The Eastmain Band.
- 1.5 “**beer**”: The beverage obtained by the alcoholic fermentation in drinking water of an infusion or decoction of barley malt, hops or any other similar product as well as the beverages referred to in subparagraph 2 of the first paragraph of Section 24.2 or of Section 25 of the *Act respecting the Société des alcools du Québec* (chapter S-13).
- 1.6 “**cider**”: The beverage obtained by the alcoholic fermentation of apple juice.
- 1.7 “**Council of the Eastmain Band**”: The continuing body of Council members of the Band holding office pursuant to Part II of the Act and the Election By-Law of the Band.

- 1.8 **"elector"**: A member of the Band who is eighteen (18) years of age or over and not declared mentally incompetent under the laws of the Province of Québec or a person deemed to be an elector of the Band under Section 18 of the Act for the purposes indicated therein.
- 1.9 **"establishment"**: Permanent premises where a bar, pub, tavern or restaurant sales permit issued under the authority of the provincial *Act Respecting Liquor Permits* (R.S.Q., c. P-9.1) is in use.
- 1.10 **"ethyl alcohol"**: Any material or substance whether in liquid or any other form, containing any proportion by mass or by volume of absolute ethyl alcohol (C:bb.2:nn.H:bb.5:nn.OH).
- 1.11 **"minor"**: A person who is not of the age of majority under the laws of the Province of Québec.
- 1.12 **"to peddle"**: To carry alcohol, spirits, cider, wine or beer on one's person or to transport it with one, or with the aid of another person, with intent to sell it outside any establishment where the sale thereof is allowed.
- 1.13 **"permit"**: A bar, pub, tavern or restaurant sales permit issued under the provincial *Act Respecting Liquor Permits* (R.S.Q., c. P-9.1), as amended from time to time.
- 1.14 **"person"**: A natural person, a corporation or a partnership.
- 1.15 **"public place"**: Any place to which the public has access as of right or by invitation, express or implied.
- 1.16 **"residence"**: The dwelling, including any portion thereof, of a person.
- 1.17 **"to sell"**: With reference to alcoholic beverages:
- (a) To solicit or receive an order for alcoholic beverages;
 - (b) To keep or expose them for sale;
 - (c) To deliver them for value or otherwise than gratuitously;
 - (d) To peddle them;
 - (e) To keep or possess with intent to sell them;
 - (f) Traffic;
 - (g) To traffic in them; and
 - (h) To procure for, or allow to be procured by another person, for any consideration, promised or attained directly or indirectly on any pretext or by any means whatsoever.
- 1.18 **"spirits"**: Alcoholic beverages obtained by the distillation of fermented food substances.
- 1.19 **"Wine"**: The beverage obtained by the alcoholic fermentation of grape juice, reconstituted grape juice or grape mash.

2. General

This By-Law applies to all persons within Category IA Lands of Eastmain.

3. Prohibition on the Sale or Exchange of Alcoholic Beverages

3.1 It is prohibited for any person to sell or exchange alcoholic beverages within the Category IA Lands of Eastmain except in accordance with the terms and conditions of the present By-Law;

3.2 The sale and service of alcoholic beverages shall be permitted in a permanent establishment located within Category IA Lands provided all the following conditions are met:

(a) Anyone who wishes to open a permanent establishment in which the sale and service of alcoholic beverages is permitted shall submit a written application to the Council of the Eastmain Band indicating his intention to operate such an establishment and describing his project; the application shall contain the following items:

- i) the name of the applicant;
- ii) the name and the location of the establishment;
- iii) the description of the establishment and of the activities to be carried on in the establishment;
- iv) the class of permit to be requested by the applicant (bar, pub, tavern or restaurant sales permit);
- v) the type(s) of alcoholic beverages to be served;
- vi) at the request of the Council of the Eastmain Band, any other relevant document or information related to the application, including any document relating to the sources of financing of the activities concerned or of the establishment;

3.3 The Council of the Eastmain Band may refuse to approve and to submit to the electors an application made under section 3.1 of the present By-Law if it considers that one or more of the following situations is found to exist:

- (a) The presence of the establishment in the Community of Eastmain would be contrary to the public interest or may adversely affect public security or disturb public tranquillity;
- (b) The applicant is unable to establish his capacity to carry on with competence and integrity the activities for which he is applying in view of his past behaviour regarding the subject matter of this By-Law;
- (c) The application is made on behalf of another person;
- (d) The establishment does not meet the applicable standards concerning safety, hygiene or sanitation in public buildings or respecting the quality of environment;

(e) The applicant has been convicted of an offence related to the activities to which this By-Law and the *Act Respecting Liquor Permits* (R.S.Q., c. P-9.1) apply, within the five years preceding the application, or has not served the sentence imposed for such offence, unless he has obtained a pardon in relation to the offence.

3.4 Unless inconsistent with the terms of the present Alcohol By-Law, every person who operates an establishment under the present By-Law shall also abide by the applicable provincial laws and regulations respecting the operation of such an establishment, including the *Act Respecting Offences Relating to Alcoholic Beverages* (R.S.Q., c. I-8.1) and the *Act Respecting Liquor Permits* (R.S.Q., c. P-9.1).

3.5 It is prohibited to buy or receive in return for any consideration, financial or other, any alcoholic beverages from a person not authorized to sell them under the present By-Law.

4. Possession or Consumption of Alcoholic Beverages in Public Places

4.1 Except in the cases contemplated by the present By-Law, it is prohibited to sell, serve, possess or consume alcoholic beverages in any public place within the Category IA Lands of the Eastmain Band.

4.2 However, any person may possess such alcoholic beverages in a public place provided it is only for the purpose of transporting them forthwith to his place of residence.

4.3 The possession and consumption of alcoholic beverages shall be permitted in an establishment operated in accordance with sections 3.2, 3.3 and 3.4 of the present By-Law.

4.4 The Council of the Eastmain Band may, by resolution, permit the consumption or possession of alcoholic beverages in public places at such public games, sports, races, athletic contests and other amusements, family and non-profit community celebrations, upon such terms and conditions as it may specify in such resolution.

5. Minors

5.1 No person shall sell, exchange, provide or give to a minor any alcoholic beverages within the Category IA Lands of Eastmain.

5.2 A minor may not be in possession or consume alcoholic beverages in public places within the Category IA Lands of Eastmain.

5.3 For greater certainty, the prohibitions stipulated in paragraphs 5.(1) and (2) shall also apply in the case of public games, sports, races, athletic contests and other amusements and community and family celebrations approved by the Council of the Eastmain Band in accordance with paragraph 4.(3).

6. Exceptions

- 6.1 The provisions of this By-Law relating to the sale, exchange, possession, or consumption of alcoholic beverages shall not apply where the alcoholic beverages are used or intended to be medically used in a case of sickness or accident. However, in any prosecution under this By-Law, the burden of proof that alcoholic beverages were used or were intended to be used in a case of sickness or accident rests upon the accused.
- 6.2 This By-Law shall not prohibit the sale of a product which contains alcohol but of which the principal use is as a cosmetic product, a food product normally destined for human consumption, or a pharmaceutical or medicinal preparation. However, in any prosecution under this By-Law, the burden of proof that alcoholic beverages are principally to be used for such purposes rests upon the accused.

7. Certain Nuisances

- 7.1 No person shall, in a public place, cause a disturbance by being drunk, impeding or molesting other persons or fighting, screaming, shouting, swearing, loud singing or using insulting or obscene language.
- 7.2 The person operating an establishment where the consumption of alcoholic beverages is permitted under the present By-Law shall not:
- (a) Sell, serve or allow to be consumed any alcoholic beverage in his establishment in a manner or quantity contrary to what is authorized by his permit;
 - (b) Sell or serve alcoholic beverages to any person in a state of drunkenness or to any other person knowing that the alcoholic beverage is so bought for a person in a state of drunkenness.
- 7.3 Notwithstanding any other provision of this By-law, it shall be prohibited to purchase, sell, exchange, possess or transport beer in glass bottles within the Eastmain Category 1A Lands. Where and when otherwise permitted by this By-law, beer may only be contained in aluminium cans. After use, such cans shall be deposited in recycling bins or in specially designated containers for the gathering and compressing of aluminium cans.

8. Immunity

No peace officer, nor any persons acting under his instructions, shall incur any civil or penal liability by reasons of any act performed in the official exercise of his powers of enforcement and seizure of prohibited substances under this By-Law.

9. Offences and Penalties

Anyone who contravenes this By-Law is guilty of an offence and is liable on summary conviction to a maximum fine of \$2,000.00 or a maximum term of imprisonment of six (6) months.

10. **Periodic Review**

The Council of the Eastmain Band shall review the provisions of this By-Law from time to time at an ordinary or at a special Band meeting called for this purpose, and shall request, at such meeting, the advice and suggestions of the members of the Band with regard to possible amendments to this By-Law.

11. **Enforcement**

The police authority has jurisdiction to enforce this By-Law.

12. **Previous Alcohol by-laws Replaced**


This By-Law shall, on the date of its coming into force, repeal and replace all previous alcohol by-laws enacted by the Eastmain Band.

13. **Coming Into Force**

This By-Law shall come into force on the day of its approval by the Electors of the Band.

IN WITNESS THEREOF, WE HAVE SIGNED, IN EASTMAIN, QUÉBEC, THIS 29th DAY OF OCTOBER, 2009.




Chairman


Secretary