

**DECISION OF THE CANNABIS LICENSING BOARD (the "Board")**

July 17, 2019

**IN THE MATTER OF AN APPLICATION BY:**

Fire and Flower Inc.

**FOR:**

Sub-class 2 Cannabis Retail Licence, for Fire and Flower at 110, 80 Chilkoot Way in Whitehorse, under the Cannabis Control and Regulation Act, SY 2018, c. 4

**Board**

**David Sloan – Chair  
Mieke Leonard – Vice-Chair  
Shari Borgford – Member  
James Lindsay – Member  
John Farynowski – Member  
Jennifer Roach - Secretary**

**Applicant**

**Fire and Flower Inc.**

**Yukon Liquor Corporation**

**Mark Manolis, Inspector, Yukon Liquor Corporation**

## OVERVIEW

On, April 12, 2019, the President of the Yukon Liquor Corporation received an application (the "Application") from Fire and Flower Inc. (the "Applicant") for a sub-class 2 Cannabis Retail License (the "License"). Pursuant to the Application, the Applicant is requesting the issuance of the License for Fire and Flower, at 110, 80 Chilkoot Way in Whitehorse, Yukon.

The Application was deemed complete by the President on June 3, 2019. Accordingly, the President delivered a copy of the Application to the Cannabis Licensing and Review Board (the "Board") and circulated public notice of the Application in the Whitehorse Star on June 5, 12 and 19. Public notice was also posted on the Yukon Liquor Corporation web page and Yukon Liquor Corporation Facebook page for the duration of the public notice period, and letters were sent to the local municipality, City of Whitehorse, and to local First Nation governments, Kwanlin Dün First Nation and Ta'an Kwäch'än Council.

Members of the public were given the opportunity to object to the Application during the four-week objection period, which ran until 4:30p.m. on July 2, 2019.

No objection was received. As such, the Board reviewed the Application pursuant to section 31 of the *Cannabis Control and Regulation Act SY 2018, c. 4* (the "CCRA").

## ISSUE

Taking into account the Application, the relevant considerations set out in section 2 of the CCRA, the public interest, and the conformity of the Application to requirements set out in the CCRA and accompanying regulations, will the Board:

- (a) grant the licence;
- (b) grant the licence subject to conditions; or
- (c) refuse to grant the licence?

## DECISION

Having considered the Application, and taking into account the relevant considerations enumerated in section 1 of the CCRA, the requirements imposed by the CCRA and accompanying regulations (the "Regulations"), and after determining that a grant of the licence would be in the public interest, the Board has decided to issue a sub-class 2 license without conditions for the period from the date of the issuance of this decision until March 31, 2022 for the premises located at Unit 110- 80 Chilkoot Way, Whitehorse, Yukon.

## LAW

In reaching its decision on the issue, the Board considered the following legislation:

*Cannabis Control and Regulation Act, SY 2018, c.4.*, and in particular sections 1, 2, 16, 17, 21, 25, 26, 27, 28, 30, 31, 53, 55, 57, 79, 80;

*Cannabis Control and Regulation General Regulation, O.I.C. 2018/184.*, and in particular, sections 4, 7, 11, 12, 14;

*Cannabis Licensing Regulation, O.I.C. 2019/42.*, Section 3;

*Cannabis Licensing Regulation*, O.I.C. 2019/43., and in particular sections 2, 3, 4, 5, 6, 7, 8, 10, 16; and

*Cannabis Licensing Regulation*, O.I.C. 2019/45., Section 2.

#### **EVIDENCE BEFORE THE BOARD:**

The Board considered the written Application submitted by the Applicant and the President's analysis report.

#### **ANALYSIS OF LAW AND EVIDENCE:**

Section 31 of the *CCRA* directs the Board as follows:

##### **Decision of the Board no Objection Received**

31(1) If no objection to the granting of the licence has been served under subsections 29(1) and (2), the board must make one of the following decisions, taking into account the application received under paragraph 27(6)(b) and other documents received under subsection 30(1) and the relevant considerations:

- (a) to grant the licence, for the licence period that it determines, that contains no conditions additional to the statutory conditions, if satisfied that
  - (i) the requirements of this Act and the regulations have been complied with,
  - (ii) to grant the licence would be in the public interest, and
  - (iii) it is not necessary for the licence to contain any additional conditions;
- (b) to grant the licence, for the licence period that it determines, on the conditions additional to the statutory conditions that the board determines to be appropriate, if satisfied that
  - (i) the requirements of this Act and the regulations have been complied with,
  - (ii) to grant the licence would be in the public interest, and
  - (iii) it would be beneficial for the licence to contain those additional conditions;
- (c) to refuse to grant the licence, if not satisfied that
  - (i) the requirements of this Act and the regulations have been complied with, or
  - (ii) it would be in the public interest to grant the licence.

The "documents received under subsection 30(1)" include:

##### **Consideration of Application**

30(1) Without delay after the service described in subsection 29(2), the president must give the following documents to the board, and a copy of them to the applicant:

- (a) any comments on the application or the applicant that the president may have, including with respect to the licence period of the licence applied for;
- (b) any objection served on the president within the four weeks referred to in subsection 29(1);
- (c) a report of an inspection or investigation arranged for under subsection 27(7);
- (d) any other relevant information of which the president is aware (Emphasis Added).

The "relevant considerations" referred to in section 33(1) of the *CCRA* are defined in section 2 of the *CCRA*:

“relevant considerations”, in relation to an application for a licence, means the following:

- (a) the number of licences, and of different types of licences, in the area in which the premises where it is proposed that cannabis would be sold are situated,
- (b) the population of the area, including
  - (i) seasonal variations in the population, and
  - (ii) variations in the population both in the immediate area where the premises are situated and more distant areas capable of being served by the premises,
- (c) any economic benefit in the area that could reasonably be expected to flow from the business of the sale of cannabis,
- (d) the expressed views of the population, both in the immediate area surrounding the premises and more distant areas capable of being served by the premises, of the need for, or desirability of, licensed premises in the area, including the need to serve the projected travelling public in the area,
- (e) the amount of the actual or projected capital expenditure made or to be made by the applicant in relation to the premises,
- (f) whether the premises
  - (i) conform to the requirements of all relevant enactments,
  - (ii) are constructed so as to be sanitary and secure, and
  - (iii) are otherwise suitable for the carrying on of the business of the sale of cannabis in a reputable way,
- (g) the extent to which the applicant is financially responsible and is otherwise of good character and a fit person to keep and operate the premises and to be a licensee,
- (h) whether the applicant is the owner of, or the lessee for a term of at least the proposed licence period of the licence of, the premises,
- (i) the compliance history of the applicant in relation to the conditions of a licence, a licence under the Liquor Act, or a licence under an Act regulating cannabis or liquor in another jurisdiction, held by the applicant before or at the time of the application,
- (j) the sufficiency of the arrangements proposed by the applicant for operating and controlling the premises in accordance with the statutory conditions,
- (k) a matter prescribed to be a relevant consideration.

Taken together, these sections of the *CCRA* require the Board to grant or refuse a licence, with or without conditions, based on a review of the documents in its possession, after taking into account the relevant considerations, determining that the requirements of the *CCRA* and the Regulations have been complied with, and deciding whether or not a grant of the licence would be in the public interest.

In accordance with the reasons that follow, and taking into account the relevant considerations prescribed by the *CCRA*, the Board is satisfied that the grant of this license is in the public interest, and that the Applicant has met or exceeded the requirements of the *CCRA* and the Regulations.

***Relevant Considerations***

- (a) the number of licences, and of different types of licences, in the area in which the premises where it is proposed that cannabis would be sold are situated,**

The YCLB acknowledges the existence of active liquor licenses in the area and one cannabis license farther than 100m from the license site.

- (b) the population of the area, including**

**(i) seasonal variations in the population, and**

**(ii) variations in the population both in the immediate area where the premises are situated and more distant areas capable of being served by the premises,**

The Licence Site is located in the downtown area of Whitehorse, Yukon. The Board accepts that the population of Whitehorse is approximately 31,527, and that there are approximately 3,108 residents living in the downtown core. As a popular tourism destination, the Whitehorse population fluctuates considerably year round. Based on a Tourism Yukon assessment of visitor populations in 2012, the Territory receives approximately 317,200 visitors between June 1, and September 1, and 75,700 visitors between October 1, and April 1, of each year. Although not explicitly required as part of this consideration, the Board takes notice of the fact that the intended location of Fire and Flower is not in a residential area. The Licence Site is in proximity to multiple restaurants and cafés, retail stores, and other businesses and offices in the downtown area.

- (c) any economic benefit in the area that could reasonably be expected to flow from the business of the sale of cannabis,**

The Applicant has provided indicia in its Application materials and that the proposed business will confer an economic benefit on the surrounding area.

The Applicant will hire eighteen employees, including a General Manager, Assistant General Manager, Lead Educators, and fifteen 'Cannistas'. The Applicant projects to spend a significant amount in annual salaries for those employees. The Applicant entered a lease agreement for the Licence Site and has projected a significant capital investment for construction and design for the Licence Site.

The Board accepts these submissions as evidence of anticipated economic benefit. The Board also recognizes that local construction, and communication businesses will benefit from initial capital investments made by the Applicant.

- (d) the expressed views of the population, both in the immediate area surrounding the premises and more distant areas capable of being served by the premises, of the need for, or desirability of, licensed premises in the area, including the need to serve the projected travelling public in the area,**

The Board observes that the President circulated public notice of the Application in a manner consistent with the service and notice requirements set out in the *CCRA*. The *CCRA* provides a formal process for receiving the expressed views of the population within the specified time period.

No objections were received in regards to this application.

**(e) the amount of the actual or projected capital expenditure made or to be made by the applicant in relation to the premises,**

The Application references an initial capital expenditure in their application. The Applicant has indicated these funds are required for the renovations, equipment, security, and other costs associated with setting up the premises. The Board has no reason to doubt the authenticity of the figures submitted by the Applicant.

**(f) whether the premises**

- a. conform to the requirements of all relevant enactments,**
- b. are constructed so as to be sanitary and secure, and**
- c. are otherwise suitable for the carrying on of the business of the sale of cannabis in a reputable way,**

The Board understands that the Applicant's Licence Site conforms with City of Whitehorse bylaw restrictions that are currently in effect. The License Site is also in conformity with site requirements set out in the Cannabis Licensing Regulations. The License site is approximately 694 meters from the Individual Learning Centre, 944 meters from Whitehorse Elementary School and 1410 meters from Wood Street School.

The Board is satisfied that the Applicant has made provision for a security system, including video monitoring and alarm components that satisfy the requirements set out in the *CCRA* the Regulations. The Board has reviewed the Applicant's floor plan, display plan, and other materials associated with the proposed layout of the premises, and finds the plan to be in accordance with statutory requirements.

The Board has reviewed the Applicant's operational plan which discussed inventory control and retail operation management, transport of cannabis, security and surveillance, information management, returns, prevention of onsite consumption, and diversion prevention.

As construction of the Licence Site has not been completed, the Board could not verify whether the site was sanitary. However, the detailed and professional nature of Applicant's materials suggest that the Applicant will carry out the business of the sale of cannabis in a reputable way that includes operating a sanitary retail space.

For these reasons and based on the strong understanding of the *CCRA* and Regulations demonstrated by the Applicant, the Board is satisfied that the Applicant has established suitable parameters for the carrying on of the business of the sale of cannabis in a reputable way.

The onus will be on the Applicant to complete the renovations in accordance with the submitted plans and ensure the staff receive the necessary training as required under the *CCRA*.

**(g) the extent to which the applicant is financially responsible and is otherwise of good character and a fit person to keep and operate the premises and to be a licensee,**

The Applicant's materials, supplemented by the President's Relevant Consideration Analysis, provide sufficient material for the Board to conclude that the President and other Directors and Officers of the Applicant corporation are financially responsible and are otherwise of good character and fit persons to keep and operate the premises and be license holders.

In making this determination the Board relies on the fact that Michael Vioncek, Chief Operating Officer, and other Directors and Officers underwent criminal record checks in association with the Application, the results of which confirm no criminal conviction history.

In addition, the Board observes that these individuals have extensive backgrounds in retail industry, law enforcement, as well as considerable combined business, legal and finance experience. The Board also observes that the Applicant corporation operates multiple cannabis retail businesses in at least three other Canadian jurisdictions.

**(h) whether the applicant is the owner of, or the lessee for a term of at least the proposed licence period of the licence of, the premises,**

The Applicant submitted an executed lease agreement for Unit 110- 80 Chilkoot Way as part of the Application, with Mike Vioncek, principal of the Applicant, as signatory. The lease agreement is for a term of five years. The Board understands that the Applicant could be in possession of the License Site at the time of the issuance of this decision pursuant to the lease agreement, and will carry out final renovations before commencing operations on September 1, 2019.

**(i) the compliance history of the applicant in relation to the conditions of a licence, a licence under the Liquor Act, or a licence under an Act regulating cannabis or liquor in another jurisdiction, held by the applicant before or at the time of the application,**

The President also investigated the Applicant's compliance in Alberta, Saskatchewan, and Ontario, where it operates other retail stores, and found no issues with the Applicant's operations in Alberta and Ontario. The President did not receive a compliance history from the Saskatchewan Liquor and Gaming Authority.

**(j) the sufficiency of the arrangements proposed by the applicant for operating and controlling the premises in accordance with the statutory conditions,**

Based on the Application submitted, the Board finds that Applicant has planned for and taken a number of steps to ensure that Fire and Flower is operated in accordance with the statutory conditions.

In particular, the Board observes that the Applicant has developed a detailed policy and procedures manual, and operational plan that address a number of items including:

- preventing sales of cannabis products to minors and intoxicated individuals and providing customer education concerning the legal and illegal consumption of cannabis;
- providing a plan for mandatory service and online training (as provided by Yukon Liquor Corporation) for its staff;
- implementing a compliant point of sale inventory management system;

- installing a surveillance and security system, that will be properly advertised to visitors;
- committing to posting necessary signage at the Licensing site;
- providing a plan detailing third party transportation of cannabis which will only be transported between Yukon Liquor Corporation and the vendor, including transport procedures and record-keeping;
- providing a detailed plan for the return of defective cannabis;
- submitting a floor plan consistent with the dedicated cannabis area required by the Regulations;
- committing to displaying and selling the product in conformity with the CCRA and Regulations;
- committing to diversion prevention, including regular auditing, video surveillance, movement of cannabis within the license site, and plan to impose quick departure post-purchase and;
- setting in place hours of operation that fall within regulatory requirements (seven days per week, from 10:00-22:00 as per the application).

Based on these observations, and the Board's review of the Application, the Board is confident that the Applicant has sufficiently arranged for operation of the business in a manner consistent with statutory requirements.

#### ***Statutory Requirements***

Generally, and based in large part on the considerations in the above portion of this decision, the Board finds the Application to be in conformity with the requirements of the CCRA and the accompanying regulations.

#### ***Public Interest***

The Board is satisfied that on balance, and taking into consideration all of the evidence before it, the public interest will be served by granting the licence to the Applicant.

#### **CONCLUSION**

The Board's review of the Application has resulted in a final decision to grant a sub-class 2 licence without conditions to the Applicant from the date of the issuance of this decision to March 31, 2022 for the premises located at Unit 110- 80 Chilkoot Way, Whitehorse, Yukon.

*Signed on behalf of the Board:*



**David Sloan**

Chair, Cannabis Licencing Board