

**WESTBANK FIRST NATION
SAFE PREMISES LAW No. 2010-03
CONSOLIDATED VERSION**

*Including Amendments approved by Council,
September 12, 2011*

**A Law to regulate, prohibit and impose
requirements respecting health and
safety matters on WFN Lands**

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**WESTBANK FIRST NATION
SAFE PREMISES LAW NO. 2010-03**

WHEREAS the Chief and Council of Westbank First Nation deems it advisable and in the best interests of Westbank First Nation to enact a Law to regulate, prohibit and impose requirements respecting health and safety matters on property;

AND WHEREAS the alteration of plumbing, heating, air conditioning, electrical wiring and equipment, gas piping and fittings, appliances and accessories and the growth of mold and use of toxic chemicals, results in risks to the health and safety of occupiers and neighbours of property;

AND WHEREAS properties used for the cultivation of marijuana plants and the production of amphetamines are particularly susceptible to the above risks to health and safety;

AND WHEREAS inspection and law enforcement with respect to properties used for the cultivation of marijuana plants and the production of amphetamines present unique risks and costs to Westbank First Nation and its staff;

NOW THEREFORE Westbank First Nation Council enacts the following law:

1. TITLE

1.1 This Law may be cited for all purposes as "WFN Safe Premises Law No. 2010-03".

2. DEFINITIONS

2.1 In this Law, unless the context otherwise requires,

"**Building**" means any Structure or construction for any use or occupancy;

"**Building Code**" means the *British Columbia Building Code 2006*, as amended or replaced from time to time;

"**Building Inspector**" means the person appointed as a Building Inspector under the *WFN Building Law No. 2005-14*, as amended or replaced from time to time;

"**Building Law**" means the *WFN Building Law No. 2005-14*, as amended or replaced from time to time;

"**Fire Chief**" means the person appointed as a Fire Chief under the *WFN Fire Protection Law No. 2005-11*, as amended from time to time;

"**Fire Code**" means the *British Columbia Fire Code 2006*, as amended or replaced from time to time;

"**Grow Operation**" means the cultivation of marijuana plants or the production of amphetamines, including dextroamphetamines and methamphetamines;

"**Hazardous Condition**" means a contravention of any requirement of section 3 of this Law;

"Hazardous Conditions Requirement List" means a list of Hazardous Conditions present on a parcel, and any work required to address or remove those Hazardous Conditions, prepared or compiled by the Building Inspector following an inspection or Special Safety Inspection, and which may be in the form of Schedule "B";

"Hazardous Substance" means a substance listed in Schedule "C";

"Health and Life Safety" has the same meaning as in the Building Code; [amended September 12, 2011]

"Inspector" means:

- (a) the Fire Chief, and every person duly appointed to be an officer or employee of a fire and rescue service,
- (b) the Building Inspector,
- (c) a peace officer,
- (d) a WFN Law Enforcement Officer,
- (e) the deputy of a person, officer or employee referred in paragraphs (a) to (e),
- (f) other persons designated by Council by name of office or otherwise to act in the place of the persons, officers or employees referred to in paragraphs (a) to (f);

"Mold" includes any mold or fungus;

"Mold Remediation Guidelines" means s. 9.0 of the Canadian Construction Association's Standard Construction Document CCA 82-2004: *Mold Guidelines for the Canadian Construction Industry*, as amended or replaced from time to time;

"Owner" includes the Allotment Holder, lessee, licensee, tenant, caretaker, user or occupier of a Building or a part of a Building, or the agent of the Owner;

"Qualified Environmental Professional" means an individual certified by the American Board of Industrial Hygiene or the Canadian Board of Registered Occupational Hygienists, or a company that employs a Certified Industrial Hygienist or a Registered Occupational Hygienist; [amended September 12, 2011]

"Registered Owner" means a person who is registered in the WFN Land Title Office as the Allotment Holder of a parcel;

"Residential Premises" means a Building on a parcel that is used or may be used as a residence, including any Buildings that may be accessory to a residential use, including a garage or garden shed;

"Special Safety Inspection" means an inspection coordinated by the Building Inspector for the purpose of determining the presence of any Hazardous Conditions, and may be conducted or coordinated with the RCMP and other authorities;

"Unauthorized Alteration" means any:

- (a) change made to the structural, mechanical or natural gas system of a Building that requires a permit under the *WFN Building Law* for which no permit has been issued, or
- (b) use of the Building that is not in conformity with any zoning or Building Code requirements applicable to that Building

which results in an increased risk to Health or Life Safety. [amended September 12, 2011]

"**Utility**" means a lawful provider of an electrical, water or natural gas service from a distribution system to consumers;

"**Westbank**" or "**WFN**" means the Westbank First Nation as defined in the *Westbank First Nation Constitution*; and

"**WFN Law Enforcement Officer**" means a person appointed by Council from time to time to administer and enforce the provisions of Westbank Laws, and includes any delegate and any peace officer.

- 2.2 Unless otherwise provided in this Law, words, expressions and rules of construction used in this Law have the same meaning as in the *Westbank First Nation Constitution*.

2B. APPLICATION OF FEDERAL LAW

2B.1 The *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, is adopted as WFN Law.

2B.2 The *Marihuana Medical Access Regulations*, SOR/2001-227 are of no force or effect on Westbank Lands.

2B.3 For greater certainty, none of the following, as defined in the *Marihuana Medical Access Regulations*, SOR/2001-227, is valid on Westbank Lands:

- (a) an "authorization to possess";
- (b) a "designated-person production licence";
- (c) a "licence to produce"; or
- (d) a "personal-use production licence".

[amended September 12, 2011]

3. HAZARDOUS CONDITIONS

3.1 No Owner may occupy or permit the occupancy of a Building where a meter installed for the purpose of ascertaining consumption of electricity, water or natural gas from an electrical, water or natural gas distribution system has been disconnected or bypassed, except where such disconnection has been specifically permitted or required by WFN, a Utility, or a government authority.

3.2 No Owner may occupy or permit the occupancy of a Building where exhaust vents for hot water tanks or furnaces exhaust into or within a Building.

3.3 No Owner may occupy or permit the occupancy of a Building where:

- (a) an exit or access to an exit required under the Building Code is blocked or obstructed;
- (b) fire stopping required under the Building Code has been removed; [amended September 12, 2011]

- (c) changes have been made to the electrical system without:
 - (i) a permit, and
 - (ii) approval from the BC Safety Authority; or *[amended September 12, 2011]*
- (d) electrical circuits or connections to an electrical service are not in conformity with the BC Electrical Code or any other applicable law. *[amended September 12, 2011]*

3.4 No Owner may occupy or permit the occupancy of a Residential Premises or a mixed use commercial Building where there is a visible accumulation of Mold on the interior of any window, wall, or other structural component of the Building, or where air samples indicate a concentration of airborne Mold levels in excess of 150 colony forming units per cubic metre of air (CFU/cubic metre).

3.5 No Owner may occupy or permit the occupancy of a Building where there is an Unauthorized Alteration.

4. HEALTH & SAFETY REQUIREMENTS

4.1 If an Unauthorized Alteration exists on a Building with a Grow Operation, no Owner may use or occupy or permit the occupancy of the Building until:

- (a) the Owner has paid the Special Inspection Fees in Schedule "A";
- (b) a Special Safety Inspection of the Building coordinated by the Building Inspector has been carried out;
- (c) the Building Inspector has issued a Hazardous Conditions Requirement List;
- (d) the Owner has obtained all building permits, approvals or authorizations required to carry out any work identified in the Hazardous Conditions Requirement List;
- (e) the Owner has carried out or caused to be carried out all the work stated in the Hazardous Conditions Requirement List;
- (f) the Building Inspector has inspected the Building and determined that the work required in the Hazardous Conditions Requirement List has been completed in accordance with all requirements of this Law, the Building Law, the Building Code, the Fire Code and all other applicable enactments and that no Hazardous Condition remains in the Building; and
- (g) the Building Inspector has removed any notices under Part 6 and issued a new occupancy permit for the Building pursuant to the Building Law.

4.2 Where a Building Inspector has reasonable grounds to believe that a Hazardous Condition exists on a parcel which affects the structural integrity of a Building on the parcel, the Building Inspector may include in the Hazardous Conditions Requirement List a requirement that the Owner must obtain a report from a qualified professional engineer certifying that the Building is safe for occupancy and complies with the Building Code;

- 4.3 Where a Building Inspector has reasonable grounds to believe that a Hazardous Condition involving a Hazardous Substance or mold exists in a Building, the Building Inspector may include the following requirements in a Hazardous Conditions Requirement List:
- (a) the owner must retain a qualified Environmental Professional to carry out an assessment of all hazardous conditions in the building including but not limited to the presence of mold, asbestos, lead, PCBs and mercury and provide a remediation action plan in response to those hazardous conditions. The action plan must be prepared before any articles or materials have been removed from the property and no actions may be taken which might prevent a comprehensive assessment of potential hazards in the property;
 - (b) the Owner must retain a qualified contractor to carry out all remedial measures identified in the remediation action plan;
 - (c) the Owner must retain a Qualified Environmental Professional to verify that all remedial measures identified in the remediation action plan have been completed and the property is safe to re-occupy;
 - (d) the Owner must provide a certificate report in the form prescribed in Schedule "C" from a Qualified Environmental Professional certifying that the building has been remediated in accordance with the Remediation Action Plan. *[amended September 12, 2011]*

5. POWERS OF BUILDING INSPECTOR, FIRE CHIEF AND INSPECTORS

- 5.1 An Inspector may enter onto real property in order to:
- (a) inspect and determine whether there is compliance with this Law;
 - (b) carry out a Special Safety Inspection; or
 - (c) take action authorized under Section 7 of this Law.
- 5.2 If the Building Inspector or Fire Chief has reasonable grounds to believe that all or part of a Building contains an Unauthorized Alteration, the Building Inspector may post a "Do Not Occupy" notice in the form established by the Building Inspector in a conspicuous place at the entrances of the parcel or a Building on the parcel and deliver to the Owner of the parcel a notice that the Building is unsafe and that no person may enter or occupy the Building.
- 5.3 Council may pass a resolution to register or remove a notice on the title of a property that a Building regulation has been contravened.
- 5.4 A person must not:
- (a) interfere with or obstruct the Building Inspector or the Fire Chief from posting a notice under this Part;
 - (b) remove, alter, cover or mutilate a notice posted under this Part; or

(c) occupy a Building or premises until the Building Inspector has removed the notice posted under this Part, except with the prior written permission of the Building Inspector.

5.5 Neither the removal of a notice posted under this Law, nor the issuance of a Building permit under this Law, nor the acceptance or review of plans, drawings or specifications or supporting documents, or any inspections made by or on behalf of WFN, will in any way relieve the Owner from full and sole responsibility to perform work required or contemplated under this Law or the Building Code and all other applicable enactments, nor do they constitute in any way a representation, warranty, assurance or statement that the Building Code, this Law, or any other applicable codes, standards or enactments have been complied with.

5.6 It is the full and sole responsibility of the Owner to carry out any work required pursuant to this Law in compliance with this Law and all other applicable codes, standards and enactments, including the Building Code.

5.7 When a Qualified Environmental Professional or engineer provides certification or other documentation to WFN under this Law that the work required by or contemplated by this Law substantially conforms to the requirements of this Law, the health and safety requirements of the Building Code, or any other health and safety requirements established by applicable enactments, WFN may rely solely on the documentation as evidence of conformity with these requirements and not on its receipt of plans, monitoring of the work, acknowledgement of completion, or removal of a notice.

6. DUTY OF REGISTERED OWNER

6.1 Every Registered Owner of a parcel that contains a Residential Premises that is subject to a tenancy agreement and who is aware of or has attended the Residential Premises at a time when there is a contravention of this Law must:

- (a) within 24 hours of the discovery of the contravention, deliver written notice to the Building Inspector of the particulars of the contravention; and
- (b) take such action as may be necessary to bring the premises into compliance with this Law.

6.2 Where an Owner inspects and reports a contravention under section 6.1 of this Law of which no Inspector was aware, the Special Inspection Fee arising in respect of the contravention may be waived in respect of that Building.

7. DISCONTINUANCE OF SERVICE

7.1 A person must not use water from WFN's water distribution system in a Grow Operation.

7.2 WFN may discontinue providing water service to a parcel if the water is being used for or in relation to a Grow Operation on the parcel subject to the requirements that WFN shall:

- (a) give the Owner 7 days written notice of an opportunity to make written representations to Council with respect to the proposed discontinuance of the water service; and
- (b) if the Owner makes representations to Council, the Council shall consider those representations, and give the Owner an additional 7 days written notice of the date of any discontinuance of the water service if it decides to proceed with the discontinuance of the service.

7.3 Despite section 7.2, where the Building Inspector reasonably considers that there is a risk of backflow or contamination to WFN's water distribution system from a parcel used as a Grow Operation, and there is no apparent mechanism to prevent backflow into WFN's water distribution system from the parcel, then:

- (a) the Building Inspector may discontinue the provision of water to the parcel within 2 hours of posting a notice on the front door of any Building on the parcel advising that WFN is shutting off the water supply to the parcel until such time as a mechanism to prevent backflow is installed, inspected and approved by WFN; and
- (b) the Building Inspector must reconnect a water supply to a parcel that was disconnected under this section, upon being satisfied that there is a mechanism in place to prevent the backflow of water from the parcel into WFN's water distribution system; and
- (c) the Owner may seek a reconsideration of the Building Inspector's decision at the next regular meeting of Council.

8. OFFENCE AND PENALTY

- 8.1 Every person who contravenes any provisions of this Law commits an offence punishable upon summary conviction and is liable to a fine not exceeding \$10,000.00.
- 8.2 If an offence is a continuing offence, each day that the offence is continued constitutes a separate and distinct offence.

9. FEES AND FORMS

- 9.1 Council may, by Resolution at a duly convened meeting, establish, correct, revise or update the terms of any applicable fee schedules, forms, protocols or other related documentation which complement and support this Law, and must post notice of same in a public area of the WFN administration Building and make a copy of same available for viewing free of charge at the administrative offices of Westbank and available for distribution at a nominal charge.

10. APPLICATION OF LAW

- 10.1 Where any federal Act or regulation or provincial Act or regulation or any other Westbank Law may apply to any matter covered by this Law, compliance with this Law must not relieve the person from also complying with the provisions of the

other applicable Act, regulation or law.

- 10.2 If any section of this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or subsection must be severed from and not affect the remaining provisions of this Law.
- 10.3 The headings given to the sections and paragraphs in this Law are for convenience of reference only, and do not form part of this Law and must not be used in the interpretation of this Law.
- 10.4 Unless otherwise noted, any specific statute named in this Law is a reference to an enactment of British Columbia and the regulations thereto, as amended, revised, consolidated or replaced from time to time, and any Law referred to herein is a reference to a law of Westbank, as amended, revised, consolidated or replaced from time to time.

11. IMMUNITY

- 11.1 No action for damages lies or may be instituted against present or past Council; or members, employees, servants or agents of either Westbank or Council:
- (a) 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 or the exercise of the person's authority; or
 - (b) 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
- 11.2 Section 13.1 does not provide a defence if:
- (a) Council, members, employees, servants or agents have, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or
 - (b) the cause of action is libel or slander.
- 11.3 Westbank, present or past Council, or members, employees, servants or agents of any of Westbank or Council is not liable for any damages or other loss, including economic loss, sustained by any person, or to the property of any person, as a result of neglect or failure, for any reason, to discover or detect any contravention of this Law or any other Westbank Law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other Westbank Law.
- 11.4 All actions against Westbank for the unlawful doing of anything that:
- (a) is purported to have been done by Westbank under the powers conferred by this Law or any Westbank Law; and
 - (b) might have been lawfully done by Westbank if acting in the manner established by law

- 11.5 must be commenced within six (6) months after the cause of action first arose, or within a further period designated by Council in a particular case, but not afterwards.
- 11.6 Westbank is in no case liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained, is delivered to Westbank, within two (2) months from the date on which the damage was sustained. In case of the death of a person injured, the failure to give notice required by this section is not a bar to the maintenance of the action. Failure to give the notice or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the Court of Appeal, believes:
- (a) there was reasonable excuse; and
 - (b) Westbank has not been prejudiced in its defence by the failure or insufficiency.

BE IT KNOWN that this law entitled, "WFN Safe Premises Law, No. 2010-03" is hereby:

Read a first time by council of Westbank First Nation at a duly convened meeting held on the 31st day of May, 2010;

Presented to the Membership at a Special Membership Meeting held on the 19th day of July, 2010;

Read a second time by council at a duly convened meeting held on the 26th day of July, 2010;

Read a third time and enacted by council of Westbank First Nation at a duly convened meeting held on the 26th day of July, 2010;

Signed by the following Members of Council:

Chief Robert Louie

Councillor Mike De Guevara

Councillor Brian Eli

Councillor Loretta Swite

Councillor Larry Derrickson

SCHEDULE "A"
Fees

Special Inspection Fee \$2,500.00 per inspection.

SCHEDULE "B"
Hazardous Conditions Requirements List

Re: Address of the Subject Property (the "Property")

Pursuant to the WFN Controlled Substance Law no. 2010-01, a Special Safety Inspection has been carried out on the above Property and the Property has been posted with a Notice that it may not be occupied due to Hazardous Conditions and Unauthorized Alterations on the Property.

No person is permitted to occupy the Property until this Notice has been removed. If you wish to reoccupy the Property, you are required to perform the following works, and provide the following certifications, as indicated:

- Provide evidence from the following Utility providers that the Property has been properly connected to the following utilities:
 - Gas
 - Water
 - Electricity
- Vent all furnace/hot water tank/gas appliances in accordance with the Building Code
- Provide/Restore all egress points as required under the Building Code
- Provide/Restore all items as required as required under the BC Building Code and identified by the Building Inspector
- Bring all electrical panels and circuits up to standards as required by the BC Safety Authority
- Provide a report from a qualified professional engineer certifying that the Building is safe for occupancy and complies with the Building Code
- Remove and dispose of all carpets and curtains
- Have the furnace, all air ducts, main distribution ducts, venting, and filtering cleaned by a Qualified Environmental Professional or by a duct cleaning company
- Have all walls, floors and ceilings in the Building replaced or cleaned and disinfected by a Qualified Environmental Professional
- Have Mold removed in compliance with the Law, and in accordance with the *Mold Remediation Guidelines*
- Provide a certificate report in the form prescribed by the Building Inspector, from a Qualified Environmental Professional, certifying that the property has been remediated in accordance with the *Mold Remediation Guidelines* and meets the standards of this Law for the removal of substantially all Molds and/or Hazardous Substances

You are required to obtain Building permits from WFN prior to performing any of the above works that may require a permit under WFN's Building Law.

Until the above requirements above have been completed, and the Building Inspector has

re- inspected the Property and removed the Notice, the Law prohibits occupancy of the Property by any person.

We enclose a copy of the Law for your reference. If you have any questions concerning the regulations in the Law, please call WFN's Building Inspection Department at (250) 769-7999. *[amended September 12, 2011]*

SCHEDULE "C"
Hazardous Substances List

Hazardous Substance	Maximum Stored in Container designed for storage of that substance	Maximum ppm in air
Acetic Acid	0.5 Litres	10 ppm
Acetone	1.0 Litres	250 ppm
Ammonia Solution (>50% ammonia)	0.0 Litres	25 ppm
Ammonia Solution (35%-50%)	0.125 Litres	25 ppm
Ammonia Solution (10%-35%)	5.0 Litres	25 ppm
Ammonia, Anhydrous	0.0 Litres	25 ppm
Carbon Monoxide	0.0 Litres	25 ppm
Chloroform	5.0 Litres	2 ppm
Ethanol	1.0 Litres	1000 ppm
Ethyl Ether	0.0 Litres	400 ppm
Hexane	1.0 Litres	20 ppm
Hydrochloric Acid	1.0 Litres	2 ppm
Iodine Azid (Dry)	0.0 Litres/Kilograms	0 ppm
Iodine Monochloride	1.0 Kilograms	0.1 ppm
Iodine Pentafluoride	0.0 Kilograms	0.1 ppm
Isopropyl Alcohol	1.0 Litres	220 ppm
Methanol	1.0 Litres	200 ppm
Methylamine, Anhydrous	0.125 Litres	5 ppm
Methylamine, Aqueous Solution	1.0 Litres	5 ppm
Methylamine Dinitramine	0.0 Litres	0 ppm
Methylamine Perchlorate (dry)	0.0 Litres/Kilograms	0 ppm
Methyl Ethyl Ketone	1.0 Litres	50 ppm
Nitroethane	5.0 Litres	100 ppm

Phosphine	0.0 Litres	0.3 ppm
Propane	1.0 Litres	1000 ppm
Thionyl Chloride	0.0 Litres	1 ppm
Toluene	1.0 Litres	20 ppm
Xylene	1.0 Litres	100 ppm

SCHEDULE "D"
Do Not Occupy
NOTICE

DO NOT OCCUPY

Westbank First Nation Safe Premises Law 2010-03
Section 5.2

TAKE NOTICE THAT this Building is unsafe and no person may enter or occupy the Building under the authority of the Westbank First Nation ("WFN") Building Inspector or his designate in accordance with the ***WFN Safe Premises Law 2010-03***. No person including the registered owner(s) may enter or occupy these premises without approval of the WFN Building Inspector or his designate.

This Notice must not be removed, altered, covered, or mutilated.

Any inquiries should be directed to the WFN Building Inspector at Suite 201-315 Highway 97 South, Kelowna BC V1Z 3J2 or Phone 250-769-2431.

[amended September 12, 2011]