

**WESTBANK FIRST NATION
SAFE PREMISES LAW 2019**

WHEREAS:

- A. Westbank First Nation honours its connection to the land, and recognizes its responsibility to protect the land and her resources for future generations.
- B. Westbank First Nation has jurisdiction in relation to public order, peace, safety, or danger to public health on Westbank Lands;
- C. The Council of Westbank First Nation deems it advisable and in the best interests of Westbank to enact a Law to regulate, prohibit and impose requirements respecting public health and safety matters on Westbank Lands;
- D. The alteration of heating, ventilation, air conditioning, electrical wiring and equipment, plumbing, gas piping and fittings, appliances and accessories and the use of toxic chemicals and the growth of mould results in risks to the health and safety of occupiers and neighbours within Westbank Lands;
- E. Premises used for the cultivation of cannabis plants and the production of amphetamines are particularly susceptible to health and safety risks; and
- F. Inspection and law enforcement with respect to Premises used for the cultivation of cannabis plants and the production of amphetamines present unique risks and costs to Westbank and its staff.

NOW THEREFORE the Council of Westbank First Nation repeals the Safe Premises Law No. 2010-03 and replaces it with the following:

1. TITLE

- 1.1 This Law may be cited as the "*WFN Safe Premises Law 2019*".

2. DEFINITIONS

- 2.1 In this Law, unless the context otherwise requires:

"British Columbia Electrical Code" means the *Electrical Safety Regulation, 100/2004* made pursuant to the *Standards Act* [SBC 2003] c.39 as amended or replaced from time to time;

"Building" means any structure or construction for any use or occupancy;

"Building Code" means the *British Columbia Building Code 2018*, 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;

“Director” means the Director of Development Services, or designate;

“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 2018*, as amended or replaced from time to time;

“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 Premises, 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 Safety” has the same meaning as is found in the Building Code;

“Inspector” means:

- (a) the Fire Chief, and every Person duly appointed to be an officer or employee of a fire and rescue service,
- (b) a Peace Officer,
- (c) a WFN Law Enforcement Officer,
- (d) the deputy of a Person, officer or employee referred in paragraphs (a) to (c), and
- (e) 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 (d);

“Mould” includes any mould or fungus;

“Mould Remediation Guidelines” means Section 9.0 of the Canadian Construction Association’s Standard Construction Document CCA 82-2004: *Mould 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, and includes the agent of the Owner;

"Peace Officer" means a member of the Royal Canadian Mounted Police or successor police service;

"Person" means an individual, a corporation, partnership, limited liability company, association, or other legal entity or organization;

"Premises" means a definable tract of Westbank Lands, having fixed boundaries and a verifiable abstract registered in the Westbank First Nation Self Governing First Nation Land Registry, and all fixtures attached thereto;

"Production Operation" means the unregulated cultivation of cannabis plants in excess of lawfully permitted personal amounts, or the production of amphetamines, including dextroamphetamines and methamphetamines;

"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;

"Registered Owner" means a Person who is registered in the Westbank First Nation Self Governing First Nation Land Registry as the Allotment Holder of Westbank Lands;

"Residential Premises" means a Building that is used, or may be used, as a residence, and any Buildings that may be accessory to a residential use, including without limitation, 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 a Peace Officer and other authorities;

"Technical Safety Authority" means the independent, self-funded organization mandated to oversee the safe installation and operation of technical systems and equipment.

"Unauthorized Alteration" means any:

- (a) change made to the structural, mechanical, electrical, 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 a Building that is not in conformity with one or more zoning or Building Code requirements applicable to that Building,

which results in an increased risk to Health and Safety.

"Utility" means a lawful provider of an electrical, water, or natural gas service from

a distribution system;

“**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*.

3. HAZARDOUS CONDITIONS

3.1 No Owner may occupy or permit the occupation of a Building where one or more of the following apply:

- (a) 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 Westbank, another government authority, or a Utility;
- (b) exhaust vents for hot water tanks or furnaces exhaust into or within a Building;
- (c) an exit or access to an exit required under the Building Code is blocked or obstructed;
- (d) fire stopping required under the Building Code has been removed;
- (e) changes have been made to the electrical system without:
 - (i) a permit, and
 - (ii) approval from the Technical Safety Authority;
- (f) electrical circuits or connections to an electrical service are not in conformity with the British Columbia Electrical Code or any other applicable law;
- (g) there is a visible accumulation of Mould on the interior of any window frame, wall, or other structural component of the Building, or where air samples indicate a concentration of airborne Mould levels in excess of one hundred fifty (150) colony forming units per cubic metre of air (CFU/cubic metre); or
- (h) there is an Unauthorized Alteration.

4. HEALTH & SAFETY REQUIREMENTS

4.1 An Owner is prohibited from using or occupying a Building with an Unauthorized Alteration until:

- (a) the Owner has paid the Special Inspection Fees outlined in Schedule "A";
- (b) a Special Safety Inspection of the Building coordinated by the Building Inspector has been completed;
- (c) the Owner has obtained all building permits, approvals, or authorizations required to carry out any work identified in the Hazardous Conditions Requirement List;
- (d) the Owner has carried out or caused to be carried out all the work stated in the Hazardous Conditions Requirement List;
- (e) 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
- (f) the Building Inspector has removed any notices under Part 5 of this Law and issued a new occupancy permit for the Building pursuant to the Building Law.

4.2 Where the Building Inspector has reasonable grounds to believe that a Hazardous Condition existing on a Premises which affects the structural integrity of a Building on that Premises, the Building Inspector may include in the Hazardous Conditions Requirement List a requirement that the Owner 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 the Building Inspector has reasonable grounds to believe that a Hazardous Condition involving a Hazardous Substance or Mould exists on a Premises, the Building Inspector may require the Owner to comply with the following requirements in a Hazardous Conditions Requirement List:

- (a) retain a Qualified Environmental Professional to carry out an assessment of all Hazardous Conditions on the Premises, including but not limited to, the presence of Mould, asbestos, lead, polychlorinated biphenyls (PCBs), and mercury, and provide a remediation action plan in response to those Hazardous Conditions. The remediation action plan must be prepared before any articles or materials have been removed from the Premises, and an Owner must not take any action which might prevent a comprehensive assessment of potential hazards in the Premises;
- (b) retain a qualified contractor to carry out all remedial measures identified in the remediation action plan;
- (c) retain a Qualified Environmental Professional to verify that all remedial measures identified in the remediation action plan have been completed and the Premises is safe to re-occupy;

- (d) provide a certificate report from a Qualified Environmental Professional, in the form prescribed by the Building Inspector, certifying that the Premises has been remediated in accordance with the remediation action plan.

5. POWERS OF BUILDING INSPECTOR, FIRE CHIEF, AND INSPECTORS

5.1 A Building Inspector or Inspector may enter onto any Premises in order to:

- (a) inspect and determine whether the Premises complies with this Law;
- (b) carry out a Special Safety Inspection; or
- (c) take action authorized under Part 7 of this Law.

5.2 If a Building Inspector or Inspector has reasonable grounds to believe that all or part of a Premises 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 Premises, or a Building on the Premises, and deliver to the Owner of the Premises a notice that the Premises are unsafe and that no Person may enter or occupy the Premises.

5.3 Council may pass a resolution to register or remove a notice on a Premises' abstract where the Premises is in contravention of the Building Code or Building Law, or any regulation thereunder.

5.4 A Person must not:

- (a) interfere with or obstruct the Building Inspector or the Fire Chief from posting a notice under Section 5.2;
- (b) remove, alter, cover, or mutilate a notice posted under Section 5.2; or
- (c) occupy a Premises or a Building on the Premises until the Building Inspector has removed the notice posted under Section 5.2; 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 the Building Law, nor the acceptance or review of plans, drawings or specifications or supporting documents, or any inspections made by or on behalf of Westbank, will in any way relieve an Owner from full and sole responsibility to perform work required or contemplated under this Law, or the Building Code, and any other applicable laws, codes, standards, or enactments, nor will it constitute in any way a representation, warranty, assurance or statement that the Building Code, this Law, or any other applicable laws, codes, standards, or enactments have been complied with.

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

5.7 When a Qualified Environmental Professional or engineer provides certification or

other documentation to Westbank 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, Westbank may rely solely on the documentation as evidence of conformity with these requirements to the exclusion of 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 Premises 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 twenty four (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 Residential Premises into compliance with this Law.
- 6.2 Where an Owner inspects and reports a contravention under Section 6.1 of which no Building Inspector was aware, the Special Inspection Fee arising in respect of the contravention may be waived in respect of that Premises, at the sole discretion of the Building Inspector.

7. DISCONTINUANCE OF SERVICE

- 7.1 A Person must not:
- (a) use water from Westbank's water distribution system in a Production Operation;
 - (b) discharge water from a Production Operation into Westbank's wastewater system; or
 - (c) discharge water from a Production Operation onto Westbank Lands.
- 7.2 Westbank may discontinue providing water service to a Premises if the water is being used for or in relation to a Production Operation on the Premises, provided that:
- (a) Westbank shall give the Owner notice of a seven (7) day period within which the Owner may make written representations to the Director, with respect to the proposed discontinuation of the water service; and
 - (b) if the Owner makes representations to the Director, the Director shall consider those representations, and give the Owner an additional seven (7) day period before discontinuing the water service if the Director determines to discontinue water service to the Owner's Premises.
- 7.3 Notwithstanding Section 7.2, where the Building Inspector reasonably considers that

there is a risk of backflow or contamination to Westbank's water distribution system from a Premises used as a Production Operation, and there is no apparent mechanism to prevent backflow into Westbank's water distribution system from the Premises, then:

- (a) the Building Inspector may discontinue the provision of water to the Premises immediately after posting a notice on the front door of any Building on the Premises advising that WFN is discontinuing the water supply to the Premises until such time as a mechanism to prevent backflow is installed, inspected, and approved by Westbank; and
- (b) the Building Inspector must reconnect a water supply to the Premises that was the subject of a disconnection under this section, upon being satisfied that there is a mechanism in place to prevent the backflow of water from the Premises into Westbank's water distribution system; and
- (c) an Owner may seek a reconsideration of the Building Inspector's decision by submitting a request for review to the Director, who will then make a determination whether to reconnect the Premises to Westbank's water distribution system.

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 ten thousand dollars (\$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 such resolution in a public area of the Westbank administration building and make a copy of such resolution available for viewing free of 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 does not relieve a 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 will not affect the remaining provisions of this Law.

- 10.3 The headings given to the parts and sections in this Law are for convenience of reference only, 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 Westbank Law, as amended, revised, consolidated or replaced from time to time.

11. IMMUNITY

- 11.1 No action for damages lies or may be instituted against Council or past Council, the Building Inspector, Inspectors, 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 actual or required performance of the person's duty, or exercise of their authority; or
 - (b) for any alleged neglect or default in the actual or required performance of the person's duty or exercise of their authority.
- 11.2 Section 11.1 does not provide a defence if:
- (a) Council, the Building Inspector, Inspectors, 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 None of Westbank, Council or past Council, or members, employees, servants, or agents 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,

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.

11.5 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 an action.

11.6 Failure to give the notice under Section 11.5 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, "Westbank First Nation Safe Premises Law 2019" is hereby:

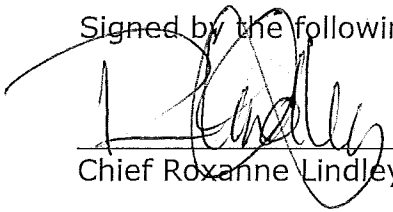
Read a first time by council of Westbank First Nation at a duly convened meeting held on the 4th of June 2019;


Presented to the Membership at a Special Membership Meeting held on the the 6th day of June 2019;

Read a second time by council at a duly convened meeting held on the 2nd day of July 2019;

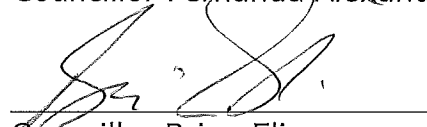
Read a third time and enacted by council of Westbank First Nation at a duly convened meeting held on the 2nd day of July 2019.


Signed by the following Members of Council:


Chief Roxanne Lindley


Councillor Fernanda Alexander


Councillor Christopher Derickson


Councillor Brian Eli


Councillor Thomas Konek

SCHEDULE "A"
Fees

Special Inspection Fee \$2,500.00 per inspection.

SCHEDULE "B"
Hazardous Conditions Requirements List

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

Pursuant to the *WFN Safe Premises Law 2019* (the "Law"), a Special Safety Inspection has been carried out on the Premises and a Notice has been posted at the Property confirming that it may not be occupied due to Hazardous Conditions or Unauthorized Alterations on the Premises.

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

- Provide evidence from the following Utility providers that the Premises 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 required under the Building Code as identified by the Building Inspector;
- Bring all electrical panels and circuits up to standards as required by the Technical 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 mould removed in compliance with the Law and any applicable 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 Law and any applicable guidelines, and meets the standards of this Law for the removal of substantially all moulds and/or Hazardous Substances.

Pursuant to the *WFN Building Law*, all Persons must obtain Building permits from WFN prior to performing any of the above works that may require a permit.

Until the above requirements above have been completed, and the Building Inspector has re- inspected the Premises and removed the Notice, the Law prohibits occupancy of the Premises by any Person.

We enclose a copy of the Law for reference purposes. Questions and concerns regarding the regulations in the Law, should be addressed to WFN's Building Inspection Department

at (250) 769-4999.

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 Azide (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 2019
Section 5.2*

TAKE NOTICE THAT these Premises are unsafe and no Person may enter or occupy these Premises under the authority of the Westbank First Nation ("WFN") Building Inspector or designate in accordance with the ***WFN Safe Premises Law 2019***. No Person including the registered owner(s) may enter or occupy these Premises without approval of the WFN Building Inspector or 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.