



A Bylaw to regulate and impose requirements respecting the remediation of property damaged through the production, trade, or use of controlled substances within the
Tk'emlúps te Secwépeḿc

Bylaw Number 2015-02
Approved by Chief and Council the 17th day of February, 2015

Tk'emlúps te Secwépemc
Bylaw No. 2015-02
A bylaw providing for the governing
controlled substance property

WHEREAS section 35 of the Constitution Act, 1982 recognizes and affirms the existing aboriginal self-government and treaty rights of the aboriginal peoples of Canada;

AND WHEREAS the Council of the Tk'emlúps te Secwépemc desires to make a Bylaw governing controlled substance property within the Tk'emlúps te Secwépemc;

AND WHEREAS the Council of the Tk'emlúps te Secwépemc is empowered to make such Bylaw pursuant to paragraphs 81 (1) (a), (c), (d), (h) and (r) of the *Indian Act*;

NOW THEREFORE the Council of the Tk'emlúps te Secwépemc hereby makes the following Bylaw.

1. SHORT TITLE

This Bylaw may be cited as the Tk'emlúps te Secwépemc Controlled Substance Property Bylaw No. 2015-02.

2. DEFINITIONS

"Amphetamines" includes dextroamphetamines and methamphetamines.

"Alteration" means any change made to the structural, mechanical or electrical components of a building without having first obtained a building permit.

"Band" means the Tk'emlúps te Secwépemc, or any successor to such band pursuant to a Federal statute or otherwise.

"Building Code" means the *British Columbia Building Code 2012*, as amended or replaced from time to time.

"Building Inspector" means a qualified professional that holds a valid license issued in accordance to the *Business Practices and Consumer Protection Act*.

"Clandestine Drug Lab" means the manufacture of amphetamines, ecstasy, LSD (Lysergic acid diethylamide), GHB (gamma hydroxybutyrate), crack cocaine marijuana oil or its derivatives.

"Controlled Substance" means a Controlled Substance as defined and described in Schedule I, II, III, IV, V or VI of the Controlled Drugs and Substances Act, R.S.C. 1996, C.19 as amended, but does not include the trade or manufacture of a Controlled Substance that is permitted under the Act.

"Council" means the Council of the Tk'emlúps te Secwépemc, as defined in the Indian Act, or any successor to such council of the Band pursuant to a federal Statute or otherwise.

"Fire Chief" means the person appointed as a Fire Chief under the Kamloops Indian Band Fire Prevention Bylaw 1987-1, as amended from time to time.

"Fire Code" means the *British Columbia Fire Code 2012*, 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 Bylaw.

"Officer" means any Police, Royal Canadian Mounted Police, Peace Officer, Bylaw Enforcement Officer, TteS Environmental Specialist, Fire Chief or any other person charged with the duty to preserve and maintain the public peace and any person appointed by Council for the purposes of maintaining law and order on the Reserve.

"Occupant" means:

- (1) A person residing on the property,
- (2) A person entitled to possession of the property if there is no person residing on the property, and
- (3) A person who is the leaseholder of the property.

"Owner" means a person who has any right, title, estate or interest in property, other than that of an occupant, and shall include the agent of any such person.

"Person" includes natural persons of either sex, associations, corporations, political bodies, partnerships, whether acting by themselves or by a servant, agent or employee, and the heirs, executors, administrators, successors and assigns or other legal representative of such persons.

"Plan Checker" means a person appointed from time to time by the Council to administer the provisions of this Bylaw and shall include any acting or assistant Plan Checker.

"Property" means all real property, including, but not limited to, manufacture home pad, front yards, side yards, backyards, driveways, walkways and sidewalks and shall include any structure or fence located on such real property.

"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.

"Reserve" means lands which have been set aside by Her Majesty for the use and benefit of the Tk'emlúps te Secwépemc and/or lands in relation to which the Band has the jurisdiction to pass Bylaws.

"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.

3. PROHIBITIONS

(1) A person, other than:

(a) a utility;

(b) or a person to whom a disconnection or bypass permit required by the Band has been issued;

must not disconnect, tamper with or bypass a meter installed for the purpose of ascertaining consumption of electricity, water or natural gas from an electrical, water or natural gas distribution system.

(2) A person must not alter a structure or building in a way that facilitates the manufacture or growth of a controlled substance or for the purpose of establishing or operating a grow operation or clandestine drug lab.

(3) A person must not divert or install exhaust vents for hot water tanks or furnaces to exhaust into or within a building except by way of an exhaust vent constructed or installed in compliance with applicable Band enactments.

(4) A person must not store or use dangerous goods in a building in quantities greater than permitted under the *Fire Code*.

(5) A person must not:

(a) construct or install any obstruction of an exit or an access to an exit required under the *Building Code* or other enactment;
or

- (b) remove fire stopping provided or required under an enactment, to contain the spread of fire within a building.
- (6) A person must not cause or allow a building to become subject to the growth of mold or fungus arising from or in relation to a grow operation, medical marijuana grow operation or clandestine drug lab in the building.
- (7) A person must not cause, allow or permit:
 - (a) a nuisance as a result of his or her use of occupancy of a parcel; or
 - (b) water, rubbish or unsightly matter to collect or accumulate in, on, under or around a parcel owned, used or occupied by the person.
- (8) A person must not cause, allow or permit in a building the manufacture, growing, storage, transfer or disposal of a substance that emits odors, fumes or particulate matter that disturbs the enjoyment, health, comfort or convenience of individuals.
- (9) A person must not:
 - (a) interfere with or obstruct an Officer from posting a "Do Not Occupy" notice referred to in section 6.1; or
 - (b) remove, alter, cover or mutilate a "Do Not Occupy" notice posted under section 6.1;

except with the prior written permission of the Officer, as applicable.

- (10) If as a result of the use or suspected use of a parcel for a grow operation or clandestine drug lab or as a controlled substance property:
 - (a) the supply of electricity, water or natural gas to the parcel has been disconnected by the Band, a utility, any other lawful authority, or any person;
 - (b) alterations or repairs have been made to structural, electrical, water or natural gas systems, equipment, appliances or other accessories of any kind on the parcel; or
 - (c) hazardous condition exists on the parcel, then a person must not reconnect the supply of electricity, water or natural gas and, a person must not use or occupy the parcel or permit the parcel to be used or occupied, until the person has complied with section 7.

4. RESPONSIBILITY OF OWNER

- (1) Every Owner of a parcel that contains a Residential Premises and who is aware of or has attended the Residential Premises at a time when there is a contravention of this Bylaw must:
 - (a) within 24 hours of the discovery of the contravention, deliver written notice to the Plan Checker of the particulars of the contravention; and
 - (b) take such action as may be necessary to bring the premises into compliance with this Bylaw.
- (2) It is the full and sole responsibility of the Owner to carry out any work required pursuant to this Bylaw in compliance with this Bylaw and all other applicable codes, standards and enactments, including the Building Code.

5. RIGHT OF INSPECTION

- (1) An Officer has the right to enter upon any Property in accordance with the provisions of this Bylaw for the purposes of inspecting the Property and determining whether all regulations, prohibitions and requirements under this Bylaw are being met.
- (2) No person shall, unless authorized by an Officer, alter, deface, cover, remove or in any way tamper with any notice posted upon or affixed to a building or Property pursuant to this Bylaw.
- (3) No person shall obstruct the entry on Property of an Inspector or other authorized official of the Band in the administration of this Bylaw.

6. NOTICE OF NO OCCUPANCY

- (1) Where an Officer finds that a hazardous condition or other thing or condition that is not in compliance with this Bylaw exists on a property, the Officer may post a notice of no occupancy, in the form of Schedule A, for that property. The Officer must provide written notice of a No occupancy including particulars of the hazardous condition or other thing or condition that exists on the property and is not in compliance with this Bylaw, by posting a notice to that effect on the property and mailing a copy of the notice to the owner's address as shown in the Band's property tax records.
- (2) An owner or occupant of property may not use any water supplied to that property from the Band water system for the production of a controlled substance.

- (3) An owner or occupant of property that is connected to the water service operated by the Band must comply with all applicable Band requirements as a condition of their use of the water service.
- (4) The Band may disconnect the supply of water to a property upon posting a no occupancy notice under this Bylaw, or upon an Officer finding that the property is or has been used as a controlled substance property.
- (5) The owner or occupant of property for which a no occupancy notice has been posted may request reconsideration by Council of the decision to post a no occupancy under section 6.1, by delivering a written request for reconsideration to the Planning and Engineering Department within fourteen (14) days of the mailing of the notice pursuant to Section 6.1. The request must set out the owner's reasons for the request for reconsideration. The Council will provide written reasons for its decision on the request for reconsideration and that decision will be final.
- (6) The owner or occupant of property who has received notice of disconnection of the supply water to that property under section 6.4 of this Bylaw may request reconsideration of that decision by Council by delivering a written request for reconsideration to the Planning and Engineering Department within 14 days of the mailing of the notice under section 6.4. The request must set out the owner's or occupant's reasons for the request for reconsideration. Council will provide written reasons for its decision in the request for reconsideration, and that decision will be final.

7. REMEDIAL MEASURE

- (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) a safety Inspection of the Building coordinated with the Plan Checker has been carried out;
 - (b) the Plan Checker has issued a hazardous conditions requirement list in the form of Schedule B;
 - (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) a 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 Bylaw, the Building Bylaw, the Building Code, the Fire Code and all other applicable enactments and that no hazardous condition remains in the building; and
 - (f) the Plan Checker has removed any notices under Section 6 and issued a new occupancy permit for the building pursuant to the Building Bylaw.
- (2) Where an Officer 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 Plan Checker 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.
- (3) Where an Officer has reasonable grounds to believe that a hazardous condition involving a hazardous substance or mold exists in a Building, the Plan Checker 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.

8. NON-COMPLIANCE

- (1) If an owner fails to:
 - (a) Deliver to the Plan Checker a report as required in Section 7 above;
 - (b) Complete, or cause to be completed, all elements of the course of action recommended by the certified professional to eliminate such hazardous situation as has been described in such report; or
 - (c) Deliver to the Plan Checker a Letter of Certification in the form of Schedule "C", duly executed by the certified professional responsible for the preparation of the report in respect of the property, as referred to in Section 7 above;

The Band, or its employees or other persons, at a reasonable time and in a reasonable manner, may enter the property and effect compliance with the requirements of Section 7 above at the expense of the owner who has failed to comply.

- (2) Every person causing, permitting, or allowing property to become or remain a place for the trade, business, or manufacture of a controlled substance shall, upon receipt of invoice, pay the service costs incurred by or on behalf of the Royal Canadian Mounted Police in the disassembly, removal, transportation, storage, and disposal of equipment, substance, materials, and other paraphernalia associated with such trade, business, or manufacture.
- (3) In the event that a person fails to pay the costs of compliance under Section 8.(1) or a person fails to pay the costs due and payable under Section 8.(2), before the 31st day of December in the year that compliance was effected, the costs or extraordinary costs, as the case may be, shall be added to and form part of the taxes on the property as taxes in arrears.

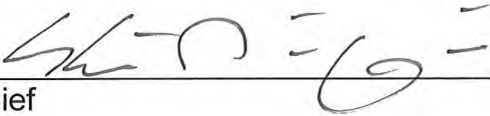
9. OFFENCES AND PENALTIES

- (1) A person who violates any of the provisions of this Bylaw commits an offence and is liable on summary conviction to a fine not exceeding One Thousand Dollars (\$1000) or to imprisonment for a term not exceeding Thirty (30) days, or to both.
- (2) Where an offence is a continuing offence, each day that the offence is continued shall constitute a separate and distinct offence.
- (3) If any section, subsection, clause, or phrase of this Bylaw is for any reason held to be invalid by the decision of the Court of competent

jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder.

The Tk'emlúps te Secwépemc Controlled Substance Property Bylaw No. 2015-02 is hereby passed at a duly convened meeting of the Council of the Tk'emlúps te Secwépemc the 17th day of February, 2015.

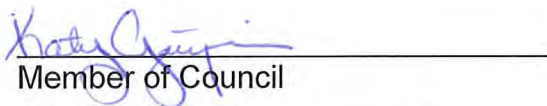
Voting in favour of this Bylaw are the following members of the Council:



Chief



Member of Council



Member of Council



Member of Council



Member of Council

Member of Council



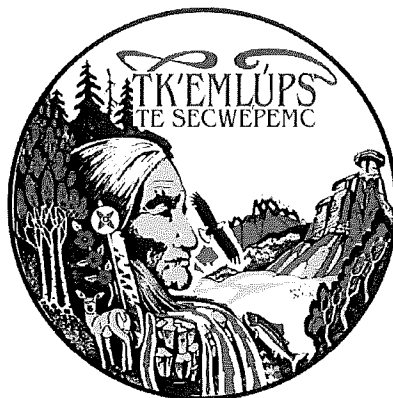
Member of Council



Member of Council

Being the majority of those members of the Council of the Tk'emlúps te Secwépemc present. There are eight (8) Council members and a quorum of Council is five (5) members.

Number of members of the Council present at the meeting: 7.



SCHEDULE "A"

NOTICE OF NO OCCUPANCY

[Date]

TAKE NOTICE THAT THIS PROPERTY, LEGALLY DESCRIBED AS:

[Insert Legal Description]

has been used as a Controlled Substance Property as defined in the Tk'emlúps te Secwépemc Controlled Substance Property Bylaw No.2014-01.

Pursuant to Section 7 of the Tk'emlúps te Secwépemc Controlled Substance Property Bylaw No. 2015-02, no person may occupy or otherwise use this Property until the following remediation work is completed and passes an Inspection:

[Insert Hazardous Conditions and Remediation Work Required].

The above referenced remediation work must be completed no later than [date].

IT IS AN OFFENCE TO REMOVE OR DEFACE THIS NOTICE

Any inquiries regarding this Notice should be directed to the Planning and Engineering Department.

[Insert Inspector Name], Inspector
Tk'emlúps te Secwépemc

SCHEDULE "B"

Hazardous Conditions Requirements List

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

Pursuant to the Tk'emlúps te Secwépemc Controlled Substance Property Bylaw No. 2015-02, 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 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 Bylaw, and in accordance with the Mold Remediation Guidelines
- Provide a certificate report in the form prescribed by the Plan Checker, 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 prior to performing any of the above works that may require a permit under Tk'emlúps te Secwépemc Building Bylaw.

Until the above requirements above have been completed, and a Building Inspector has re- inspected the Property and removed the Notice, the Bylaw prohibits occupancy of the Property by any person.

We enclose a copy of the Bylaw for your reference.

If you have any questions concerning the regulations in the Law, please call Tk'emlúps te Secwépemc Planning and Engineering Department at (250) 828-9700

Schedule C

Certification Form

TO: Planning and Engineering Department, Tk'emlúps te Secwépemc

FROM: (insert name of Certified Professional)

RE: Property located at (insert address)

This is to certify that in accordance with Section 7 of the Tk'emlúps te Secwépemc Controlled Substance Property Bylaw No.2015-02, in force from time to time, the property identified in this certification contains no real or potential risk to the health or safety of persons or property arising or resulting from the use of the property for the trade or manufacture of a controlled substance or for the ingestion, use, sharing, sale, trade, or barter of a controlled substance therein or thereon.

The undersigned Certified Professional may be contacted at: (insert business telephone number).

CERTIFIED AS OF _____(insert date)

Name