

Village of Pemberton

Bylaw No. 546, 2005

A bylaw to Regulate, Prohibit or Impose Requirements Respecting
Nuisances, Noxious or Offensive Trades, and Health and Safety Risks

The Council of the Village of Pemberton enacts as follows:

1. This bylaw may be cited as **“Grow Operation, Nuisance, Noxious or Offensive Trades, Health and Safety Bylaw 2005, No. 546”**.

INTERPRETATION

2. In this bylaw

“Alteration” means any change made to the structural, mechanical or electrical components of Residential Premises for the purposes of a Grow Operation;

“Amphetamines” include dextroamphetamines and methamphetamines;

“Building” means any Structure or construction for any use or occupancy;

“Building Inspector” means the building inspector for the Village, and every building inspector appointed by the Village to inspect buildings or structures in respect of, Building, plumbing, gas or electrical standards;

“Controlled Substance” means a “controlled substance” as defined and described in Schedules I, II and III of the *Controlled Drugs and Substances Act*, 1996 c. 19, as may be amended from time to time, but does not include the trade or manufacture of a controlled substance that is permitted under that Act;

“Controlled Substance Property” means

- (a) a property contaminated by chemical or biological materials used in or produced by the trade or manufacture of a Controlled Substance; or
- (b) a property modified to trade or manufacture a Controlled Substance; or
- (c) a property which has been used for the ingestion, use, sharing, sale, trade or barter of a Controlled Substance therein or thereon; and,
- (d) which no longer meets the applicable standards under the *British Columbia Building Code*, *British Columbia Fire Code*, *Health Act* or other applicable regulations including any bylaw requirements of the Village of Pemberton.

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INTERPRETATION - continued

“Dangerous Goods” means those products or substances regulated by the *Transportation of Dangerous Goods Act* and its Regulations, both as amended from time to time;

“Fire Chief” means the person who is appointed to be head of Village of Pemberton Fire Department and every person designated by Council by name of office or otherwise to act in the place of the Fire Chief;

“Flammable and Combustible Liquid” for the purposes of this bylaw are as classified under the *Fire Code (British Columbia)*;

“Grow Operation” means the cultivation of marijuana plants or mushrooms or the production of Amphetamines, or the production of other controlled substances;

“Hazardous Conditions” means:

- (a) any real or potential risk of fire; or
- (b) any real or potential risk to the health or safety of Persons or Property; or
- (c) any unapproved Building modifications made to the Property; or
- (d) repairs needed to the Property;

arising or resulting from the use or contamination of a Property as a Controlled Substance Property;

“Inspector” means

- (a) the Fire Chief, and every person appointed by Council or the Fire Chief, as applicable;
- (b) the Building Inspector for the Village, and every Building Inspector appointed by the Village to inspect Buildings or Structures in respect of Building, plumbing, gas or electrical standards;
- (c) a peace officer, including a member of the Royal Canadian Mounted Police;
- (d) the Chief Administrative Officer of the Village;
- (e) bylaw enforcement officers and bylaw inspections officers;
- (f) the deputy of a person, officer or employee referred in paragraphs (a) to (d);
- (g) 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);
- (h) a Health Inspector appointed by the Vancouver Coastal Health Authority;

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INTERPRETATION - continued

“Occupier” means a person occupying a property within the Village and includes the registered owner of the property where the owner is the person occupying or it the property is unoccupied;

“owner” includes the registered owner and the lessee of residential premises;

“Parcel” includes land and any improvement comprised in a parcel;

“Pesticides” means a substance or mixture, including a chemical, used to destroy, prevent, repel or mitigate fungi or animal pests or microorganisms such as bacteria or viruses, and includes herbicides, fungicides, other substances used to control pests, plant regulators, defoliants or desiccants;

“Professional Cleaner” means an individual or corporation experienced and qualified in removing contaminants from Residential Premises and includes the Owner;

“Re-occupancy Permit” means permission or authorization in writing by the Building Inspector to re-occupy any Building or part thereof in respect of which the Building Inspector has issued an order to cease occupancy because of a hazardous condition;

“Residential Premises” means any Building or part of a Building which may lawfully be occupied as a dwelling unit by one or more persons;

“Service Costs” means all direct and indirect costs incurred by the Village associated with the inspection and removal of the illegal activities, materials associated with illegal activities, and by-products resulting from illegal activities at a Controlled Substance Property and includes:

- (a) salaries and overhead cost of personnel, including members of the RCMP and Fire Department;
- (b) costs incurred for the dismantling, disassembly, removal, clean up, transportation, storage, and disposal of equipment, substances, materials and other paraphernalia associated with such use, trade, business or manufacture;
- (c) costs incurred from the replacement of consumables used, or the replacement of equipment following exposure to contaminants;
- (d) costs incurred as a result of the analysis of the materials found at the property and the health and safety conditions at the property;

“Special Safety Inspection” means an inspection coordinated with other such departments, jurisdictions, and contractors as is necessary to review hazardous conditions that may exist and to issue such orders as are applicable pursuant to the *British Columbia Building Code*, *British Columbia Fire Code*, *Health Act* and other such regulations and bylaws within the Village;

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INTERPRETATION - continued

“Structure” means an erection, repair, alteration, addition, demolition, excavation or other construction which supports a use or occupancy; and,

“Tenancy Agreement” means an agreement, whether written or oral, express or implied, having a predetermined expiry date or not, between a landlord and tenant respecting possession of premises, including Residential Premises;

“Village” means the Village of Pemberton.

BUILDING AND SAFETY STANDARDS

3. No person may disconnect from an electrical or water distribution system, a meter installed for the purpose of ascertaining consumption of electricity or water if the disconnection is for the purpose of preventing the electrical or water supplier from ascertaining consumption.

4. If, as a result of the use of a property as a Controlled Substance Property

- 1) the supply of electricity, water or natural gas to a property has been disconnected by the Village or any other lawful authority;
- 2) unauthorized alterations or repairs have been made to structural, electrical, water or gas systems, equipment, appliances or other accessories of any kind; or
- 3) a hazardous condition exists on the property;

then the supply of electricity, water or natural gas must not be permanently reconnected and the property must not be occupied or used until

- 4) the owner or occupant has applied to a Building Inspector for a special safety inspection pursuant to this section;
- 5) the property has been inspected by the Building Inspector and all other lawful authorities having jurisdiction over the supply of electricity, water or natural gas, for compliance with all health and safety requirements of the Village’s bylaws and any provincial statute or regulation relating to building, electrical, water, health, gas, or fire safety as amended from time to time;
- 6) the owner or occupant has obtained all permits, approvals or authorizations required to carry out the work necessary to bring the property into compliance with the Village’s bylaws and all provincial statutes and regulations;
- 7) all of the work referred to in this section has been completed and inspected by the Building Inspector and all other lawful authorities having jurisdiction and the Property is in compliance with the Village’s bylaws and all applicable provincial statutes and regulations, as amended from time to time; and

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- 8) the owner or occupant has paid all fees imposed by Schedule “A” of this Bylaw and other relevant Village Bylaws in relation to the inspection of the property and the issuance of permits, and the Building Inspector has issued a Re-Occupancy Permit for the property.
5. No person may divert or install exhaust vents of hot water tanks or furnaces to exhaust into or within the Building instead of by way of an exhaust vent constructed or installed in compliance with applicable enactments and no person may alter a structure or building for the purpose of establishing or operating a Grow Operation.
6. No person may store or use Dangerous Goods in a Residential Building or a Residential Accessory Building in quantities greater than permitted under the *Fire Code (British Columbia)* as amended from time to time.
7. No person may construct or install in a Building or Structure, a trap or other device which could have the effect of causing death or bodily harm to a person entering the Building or Structure, including an Inspector under this bylaw.
8. No person may construct or install any obstruction of an exit or an access to an exit required under the *Building Code (British Columbia)* or other enactment, as amended from time to time, or remove fire stopping that is provided or required under an enactment to contain the spread of fire within a Building.
9. The Building Inspector may post a notice containing the words “Unsafe – Do not enter or occupy” in a conspicuous place at the entrances of a Controlled Substance Property.
10. No person may:
 - 1) interfere with or obstruct an Inspector from posting a notice referred to in Section 9 or
 - 2) remove, alter, cover, or mutilate a notice posted under Section 9,
 - 3) except with the permission of an Inspector.

HEALTH

11. No person may cause or allow a Building to become subject to the growth, on any portion of the Building, of mould or fungus arising from or in relation to the cultivation of marijuana plants or the production of Amphetamines in the Building.

NUISANCE

12. No person may cause or permit
 - 1) a nuisance as a result of the use or occupancy of a parcel;
 - 2) water, rubbish or unsightly matter to collect or accumulate in, on, under or around a Parcel owned, used or occupied by the person, where “unsightly” has the meaning given by the Unsightly Premises Bylaw, in force from time to time, as amended or replaced.

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NOXIOUS OR OFFENSIVE TRADE

- 13.** No person may cause or permit a noxious or offensive trade in premises including the production, storage, transfer or disposal of substances that emit offensive odours, fumes or particulate matter.

FIRE PROTECTION

- 14.** The Fire Chief may
- 1) enter on real property and inspect premises for conditions that may cause a fire, increase the danger of a fire or increase the danger to persons or property from a fire;
 - 2) take measures to prevent and suppress fires, including the demolition of Buildings and other Structures to prevent the spreading of fires;
 - 3) order an owner or occupier of real property to undertake any actions directed by the Fire Chief or other person authorized by the Fire Chief for the purpose of removing or reducing any thing or condition that person considers is a fire hazard or increases the danger of fire; and,
 - 4) exercise some or all of the powers of the Fire Commissioner under Section 25 of the *Fire Services Act*, and for these purposes that section applies.
- 15.** Every Owner or occupier of real property must undertake any action directed by the Fire Chief or other person authorized by Council to act in the place of the Fire Chief for the purpose of removing or reducing any thing or condition that the Fire Chief or the other authorized person considers is a fire hazard or increases the danger of fire.

DUTY OF OWNER

- 16.** The Owner or Occupier of real property will not refuse entry to an Inspector who attends the real property at any reasonable time to determine whether there is compliance with this bylaw.

TENANCIES

- 17.** Every Owner of Residential Premises or other premises that are subject to a Tenancy Agreement
- 1) must inspect the premises at least once every three months to ascertain whether this bylaw has been contravened, and
 - 2) who has knowledge of a contravention of this bylaw, in relation to the Residential Premises or other premises, must
 - a) within 24 hours of the discovery of the contravention, deliver written notice to the Village of the particulars of the contravention, and

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- b) subject to the *Residential Tenancy Act*, within two months of the delivery of the notice, take such action as may be necessary to bring the premises into compliance with this Bylaw.

REMEDICATION REQUIREMENTS

18. If Residential Premises have been used for a Grow Operation, the Owner of the Residential Premises must, within 30 days after the Grow Operation has been removed, subject to the *Residential Tenancy Act*:

- 1) either remove and dispose of all carpets and curtains in the Residential Premises, or have all carpets and curtains in the Residential Premises cleaned by a Professional Cleaner;
- 2) if the Residential Premises are heated by forced air heating, have all air ducts cleaned by a Professional Cleaner or by a duct cleaning company; and,
- 3) have all walls and ceilings in the Residential Premises cleaned and disinfected by a Professional Cleaner;

and the Village may deliver to the Owner and occupier of the Residential Premises a letter in the form of Schedule D.

INSPECTION AND CERTIFICATION REQUIREMENT

19. After a Professional Cleaner has been engaged by the Owner and has completed the requirements of Section 18, an individual or corporation certified by the Canadian Registration Board of Occupational Hygienists or the American Board of Industrial Hygiene must inspect the Residential Premises and provide written certification in the form of Schedule C to the Building Inspector that the requirements of Section 18 have been satisfied and that the Residential Premises are substantially free of any Pesticides or fertilizers and any toxic chemicals, moulds or fungi, prior to the occupancy or re-occupancy of the building.

OCCUPANCY

20. After a Grow Operation has been removed from Residential Premises and until the remedial measures prescribed by Section 18 of this bylaw have been completed and written certification has been provided to the Building Inspector as required by Section 19, the Residential Premises must not be occupied by any person.

21. Before Residential Premises are re-occupied after removal of a Grow Operation, the Owner must notify the prospective occupants in writing that a Grow Operation has been removed and that the requirements of this bylaw have been met.

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ALTERATIONS

- 22.** If there has been an Alteration to the Residential Premises, the Residential Premises must not be re-occupied after the removal of a Grow Operation until
- 1) a Building permit has been obtained for any existing Alteration and proposed Alteration work which requires a permit under the Village’s Building Regulation Bylaw, in force from time to time;
 - 2) the Residential Premises comply with the health and safety requirements of the *Building Code (British Columbia)*, the *Electrical Code (British Columbia)*, this bylaw and all other health and safety requirements established by law;
 - 3) the Building Inspector has confirmed that a satisfactory occupancy inspection of the Residential Premises by the Village’s Building Department has been completed; and,
 - 4) the Owner has paid to the Village, all Service Costs and other fees due and owing under this or any other Village Bylaw.

FEE

- 23.** The following fees apply under this bylaw:
- 1) each time an Inspector enters on a Parcel to carry out an inspection in the exercise of authority by the Village to regulate, prohibit or impose requirements under this bylaw or another enactment, the Owner must pay the Village the administration and inspection fee stipulated in Schedule A;
 - 2) an administration and inspection fee stipulated in Schedule A must be paid to the Village before confirmation is provided under Section 22(3).
 - 3) for a special safety inspection, paid prior to inspection, the Owner or occupier must pay the Village the fee stipulated in Schedule A;
 - 4) for each inspection prior to issuance of a Re-occupancy Permit, the Owner or occupier must pay the Village the Re-occupancy Permit fee stipulated in Schedule A;
 - 5) to obtain a Re-occupancy Permit, the Owner must pay the Village the fee stipulated in Schedule A;
 - 6) every Owner whose real property is used as a Controlled Substance Property must pay the Village all Service Costs incurred by or on behalf of the Village

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NOTICES AND INSPECTIONS

- 24.** Subject to the *Community Charter*, an Inspector may enter on real property for the following purposes:
- 1) to inspect and determine whether all regulations, prohibitions and requirements under this bylaw or other enactments are being met in relation to any manner for which the Council, a municipal officer or employee or a person authorized by the Council has exercised authority under this or another act to regulate, prohibit or impose requirements;
 - 2) to take action authorized under Sections 29 and 30 of this bylaw;
 - 3) to inspect or to disconnect or remove a water service under Sections 3 or 32 of this bylaw.
- 25.** The Building Inspector or a person acting under the direction of the Building Inspector may post a notice in the form of Schedule B on any Residential Premises which have been used for a Grow Operation, advising of the regulations in this bylaw.
- 26.** No person may interfere with an inspection or proposed inspection under Section 24 of this bylaw and no person shall remove or deface any notice posted under Section 25 of this bylaw.

OFFENCE AND PENALTY

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

DEFAULT

- 29.** If an Owner or occupier of real property fails to comply with a requirement of the Village under this bylaw or another enactment, the Village, within the time specified in the order or notice may enter the real property and take such action as may be required to correct the default, including to remediate the real property or bring it up to a standard specified in an enactment, at the expense of the Owner or occupier who has failed to comply, and may recover the costs incurred as debt.
- 30.** If the Owner or occupier has failed to pay the Village’s costs of acting in default under Section 29 before the 31st day of December in the year that the correction of the default was effected, the costs will be added to and form part of the taxes payable on the property as taxes in arrears.

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REMEDIAL ACTION

31. Division 12 of Part 3 of the *Community Charter* applies.

DISCONTINUANCE OF SERVICE

32. The Village may discontinue providing water service to real property if the water is being used for or in relation to a Grow Operation on the real property, subject to the requirements that the Village must

- 1) give the Owner and occupier of the real property 7 days’ written notice of an opportunity to make representations to Council with respect to the proposed discontinuance of the water service, and
- 2) after the persons affected have had an opportunity to make representations to Council, the Village must give the Owner and occupier 7 days’ written notice of any proposed discontinuance of the water service.

SEVERABILITY

33. If any provision of this bylaw is held to be invalid, it shall be severed and the remainder of the bylaw shall remain in effect.

READ FOR A FIRST TIME this 1st Day of February, 2005.

READ FOR A SECOND TIME this 1st Day of February, 2005.

READ FOR A THIRD TIME this 1st Day of February, 2005.

NOTICE given under Section 59 of the *Community Charter* on the 3rd day of February, and the 10th day of February, 2005.

OPPORTUNITY for representations to Council provided under Section 59 of the *Community Charter* up to the 15th day of February, 2005.

RECONSIDERED AND FINALLY PASSED AND ADOPTED this 15th Day of February, 2005.

Mayor
(Elinor Warner)

Interim Corporate Officer
(Robert D. Wilson)

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SCHEDULE “A”

FEES

1. The following fees apply under this Bylaw:
 - (1) each time the Village enters on a Parcel to inspect, in the exercise of the Village’s authority to regulate, prohibit or impose requirements under this Bylaw or another enactment, the Owner must pay the Village an administration and inspection fee of:
 - a) \$200.00;
 - b) an additional \$200.00 for a subsequent inspection undertaken if the Owner or occupier has failed to undertake action ordered by the Fire Chief, the Village or a person authorized under the Bylaw to order the action;
 - (2) before confirmation is provided under Section 22(3) the Owner must pay to the Village:
 - a) \$150.00 for an occupancy inspection;
 - b) \$2,500.00 for an inspection with an architect or professional engineer to certify that the subject Building may be occupied under applicable enactments, if the Owner has not first engaged their own architect for that purpose.
 - (3) for a special safety inspection paid prior to inspection \$ 400.00
 - (4) for each inspection prior to issuance of a Re-occupancy Permit \$ 200.00
 - (5) to obtain Re-occupancy Permit \$ 250.00

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SCHEDULE “B”

NOTICE

TAKE NOTICE THAT these Residential Premises have been used as a marijuana grow operation [or an amphetamine production operation].

Pursuant to Village of Pemberton “Grow Operation, Nuisance, Noxious or Offensive Trades, Health and Safety Bylaw 2005, No. 546”, no person may occupy these premises until cleaning and remediation have been completed in accordance with that Bylaw and the Inspector has confirmed that a satisfactory occupancy inspection has been completed.

It is an offence to remove or deface this notice.

Any inquiries should be directed to the Chief Administrative Officer at 604-894-6135.

Inspector
Village of Pemberton

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SCHEDULE “C”

CERTIFICATION FORM

TO: **The Village of Pemberton**
FROM: **[insert name of inspector]**
RE: **Residential Premises located at [insert address]**

This is to certify that in accordance with Section 18 and 19 of “Grow Operation, Nuisance, Noxious or Offensive Trades, Health and Safety Bylaw 2005, No. 546”, the professional identified in this certification:

- 1) meets the certification requirements for an inspector under Section 19 of the Bylaw; and
- 2) has completed an inspection of the Residential Premises on _____; and
- 3) the Residential Premises are free of any Pesticides, fertilizers and toxic chemicals, moulds or fungi normally associated with and found in a Grow Operation and that the Premises are fit for human use and occupancy.

The undersigned professional may be contacted at: [insert business telephone number].

CERTIFIED AS OF _____[insert date]

[insert name of Professional Cleaner]

Authorized Representative

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SCHEDULE “D”

LETTER TO PROPERTY OWNER

Re: “Grow Operation, Nuisance, Noxious or Offensive Trades, Health and Safety Bylaw 2005, No. 546”

This letter is to notify you that the Village of Pemberton’s **“Grow Operation, Nuisance, Noxious or Offensive Trades, Health and Safety Bylaw 2005, No. 546”**, in force from time to time, establishes regulations concerning the cleaning and remediation of Residential Premises that have been used for marijuana grow operations or amphetamine production.

The Village has been advised by the Royal Canadian Mounted Police that the Residential Premises at [insert address] were in use as Controlled Substance Property, the apparatus of which has been removed by the police.

The Bylaw requires that within 30 days, all carpets and curtains in the premises must be removed or cleaned, any forced air heating ducts in the premises must be cleaned, and all walls and ceilings must be cleaned and disinfected. That work must be carried out by a Professional Cleaner with experience in removing contaminants from Residential Premises. The Professional Cleaner must hold a licence to carry on business in the Village of Pemberton.

After the cleaning is completed, a qualified professional must certify that the premises are free from Pesticides, fertilizer, toxic moulds, chemicals and fungus.

Until the cleaning and certification have been completed, Section 20 of the Bylaw prohibits occupancy by any person. Before occupancy, you are required to notify prospective occupants that the requirements of the Bylaw have been satisfied.

We enclose a copy of the Bylaw for your reference. If you have any questions concerning the regulations in the Bylaw, please call Chief Administrative Officer at 604-894-6135.