

SEMA:TH

Business Permit Law

February, 2020

WHEREAS:

- A. Semá:th (Sumas First Nation, or Sumas) has an inherent right to self-government which emanates from our people, culture and land and which is recognized and affirmed by the *Semá:th Declaration* of 2017;
- B. Semá:th has taken control of Reserve lands and resources pursuant to the *Framework Agreement on First Nation Land Management* and has enacted the *Semá:th Land Code* effective the 11th day of November, 2011;
- C. Under section 6 of the *Semá:th Land Code*, Semá:th Council has broad authority to pass laws relating to the regulation, development and protection of Semá:th Lands, including the authorities under subsection 6.3 to pass laws relating to zoning, land use, permits, fees for permits, the regulation, licensing and control of businesses on Semá:th Lands; and
- D. Council believes it is in the best interests of Semá:th to pass a law to monitor and regulate businesses on Semá:th Lands;

NOW THEREFORE, THIS SEMA:TH BUSINESS PERMIT LAW IS HEREBY ENACTED A LAW OF SEMA:TH.

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PART 1. NAME

1.1 This Law may be cited as the *Semá:th Business Permit Law*.

PART 2. PURPOSE

2.1 The purpose of this Law is to record and regulate businesses on Semá:th Lands.

PART 3. WHERE THIS LAW APPLIES

3.1 The provisions of this Law apply to the whole area of the Reserve and Semá:th Lands as defined in the *Semá:th Land Code*.

PART 4. DEFINITIONS

4.1 For the purposes of this Law, terms have the same definitions as in the Land Code unless otherwise specified.

4.2 For the purposes of this Law, the following definitions apply:

"Business" means carrying on, or the entity that carries on, a commercial or industrial undertaking of any kind or nature, or the provision of professional, personal or other services for the purpose of gain or profit and includes the activities set out in subsection 5.3;

"Business Permit" means a Permit to carry on Business within or on Semá:th Lands issued under Part 8 of this Law;

"Daycare" means a day care or child care service or facility, not including a school, where a person, in exchange for payment of some form, offers or provides care for at least three children who are not related to the care giver by blood or marriage;

"Enforcement Officer" means any person or persons appointed by Council, from time to time, to administer and enforce the provisions of Semá:th Laws enacted by Council, and includes any delegate, the RCMP and any peace officer;

"Inspector" means the person from time to time duly appointed by Council to act as Inspector, or his designate, and includes the Lands Manager and any Peace Officer or Enforcement Officer;

"Non-resident Business" means a Business, which is carried on in or on Semá:th Lands than a Resident Business, by a Person who does not have a Premises on Semá:th Lands;

"Operator" means the owner or proprietor of a Business;

"Person" includes an individual, a partnership, a corporation, a trust, an unincorporated association or other entity or agency or political subdivision thereof, and their heirs, executors, administrators and other legal representatives;

"Premises" means a store, office, shop, building, home, warehouse, factory, structure, enclosure, temporary or permanent fruit or vegetable stand, yard or other definite area occupied or capable of being occupied by a Person for the purpose of a Business and includes any area situated within any of the foregoing where a separate class or type of Business is carried on, by a separate operator; and

"Sema:th" or "SFN" means the Semá:th First Nation including the Sumas Indian Band.

PART 5. GENERAL PROVISIONS

- 5.1 The headings of parts and sections in this Law have been inserted as a matter of convenience and for reference only and in no way define or limit any of its provisions.
- 5.2 In the event that all or any part of any section or sections of this Law are found by a court of competent jurisdiction to be invalid, such sections shall be severable, and the remaining portions or sections shall remain in full force and effect.
- 5.3 For the purpose of this Law, any Person who:
- (a) advertises or indicates by any means as being open for Business of any kind,
 - (b) deals in, or buys, sells, barter, rents, or displays any commodity or service or offers by advertisement or otherwise, on behalf of himself or others; to buy, sell, barter or rent any commodity or service,
 - (c) engages in soliciting or promotion of any commodity or service,
 - (d) renders or offers to render professional, personal, contractual, or other service to any person for the purpose of gain or profit,
 - (e) rents out more than two residential suites or units in any one parcel or complex, or
 - (f) engages in repairing, restoration or servicing of automobiles, appliances or other commodities not owned or registered in the name of that person or firm, within, or on Semá:th Lands
- shall be deemed to be carrying on a Business.
- 5.4 Paragraph 5.3(b) does not apply to a Semá:th Member who is carrying out trade or barter under an aboriginal right as set out in section 35 of the Canadian Constitution.
- 5.5 For the purpose of this Law, where a Business is carried on in or from more than one home, structure or parcel of land on or within Semá:th Lands, the Business carried on in or from each Premises shall be deemed to be a separate Business.

PART 6. PROHIBITIONS

- 6.1 Except as set out in this Law and subject to Part 7 [*Exemptions*], no Person shall, within or on Semá:th Lands, carry on Business unless the Person holds a valid and subsisting Business Permit for the carrying on of the Business issued by Sema:th.
- 6.2 No Person shall carry on Business at a Premises other than at the Premises specified for that Business in a valid and subsisting Business Permit.
- 6.3 Unless otherwise authorized under a Law, no Person shall in any manner, carry on Business or solicit for charity, or any other purpose, on any road or highway that is wholly or partially on or within Semá:th lands.
- 6.4 The following Businesses are prohibited on or within Semá:th Lands:
- (a) Prostitution, escort businesses or bawdy houses;
 - (b) Any business, industrial, or commercial business or activity that may cause harm to the environment or human health unless they have a permit from Semá:th that contains measures to mitigate impacts on the environment and human health;
 - (c) The propagation, compounding or production of any controlled substance as defined in the *Controlled Drugs and Substances Act*, RSC 1996, c.19; and
 - (d) The sale of any controlled substance as defined in the *Controlled Drugs and Substances Act*, RSC 1996, c.19, except for the legal sale of cannabis or legal sales by a licensed pharmacist.

PART 7. EXEMPTIONS

- 7.1 The exemptions set out in this Part are subject to any Laws passed under the *Semá:th Land Code* in relation to:

- (a) the removal and punishment of persons trespassing on Lands or frequenting Lands for prohibited purposes,
 - (b) prevention of nuisance, or
 - (c) protection of the community.
- 7.2 Despite subsections 5.3 and 6.1 no Business Permit is required for any of the following, provided they comply with the Semá:th Housing Policy and meet any applicable health, safety and environmental laws, regulations or standards:
- (a) the Business of renting apartment suites or units where not more than two (2) suites or units are made available for rent,
 - (b) the door-to-door sale of newspapers published in Canada,
 - (c) public schools,
 - (d) the teaching of music, handicrafts or art as a home occupation where such teaching involves not more than one class of five (5) students at one time,
 - (e) garage sales or yard sales held by Semá:th Members or occupants of Semá:th Lands where there are fewer than four (4) days per year of sales,
 - (f) subject to meeting health requirements set out in applicable laws, small-scale sales of cooked foods or baked goods cooked in the home of a Member or occupant of Semá:th Lands,
 - (g) subject to meeting health requirements set out in applicable laws and subject to any regulation of access to Semá:th Lands set out in Semá:th laws, delivery of food including pizza and fast foods,
 - (h) non-commercial, periodic fund-raising events by Semá:th Members or organizations or occupants of Semá:th Lands,
 - (i) creation and sale of carvings, crafts, and other art work and crafts by Members,
 - (j) the provision or delivery of services by a licensed professional including a doctor, lawyer, accountant, consultant, dentist, nurse, ophthalmologist, optometrist, registered massage therapist, physiotherapist or similar professional,
 - (k) courier or postal services, or
 - (l) small-scale home-based activities by Semá:th Members or occupants of Semá:th Lands including, but not limited to, Avon, Herbalife, Tupperware, and locally made crafts.

PART 8. APPLICATIONS AND BUSINESS PERMITS

Applications

- 8.1 Every Person applying for a Business Permit for the first time to carry on a new or existing Business shall make an initial application to the Semá:th Lands Office.

Non-Resident Business Permit; Business Permits from Other Jurisdictions

- 8.2 A Business Permit is required for Non-resident Businesses, including any Person carrying on Business for any purpose within or on Semá:th Lands that is not being carried out from or within a Premises.
- (a) A Person with a Business Permit from another government or jurisdiction, may apply to Semá:th Lands to have that other permit recognized and the Semá:th Lands Director or Lands Manager, acting reasonably but in their sole discretion, may accept or reject the permit and may waive the requirement for a Semá:th Business Permit on an interim basis, either with or without conditions.

Applications

- 8.3 Each initial application shall be in the form specified by Council or the Lands Manager and shall include, at a minimum:
- (a) the name, address, phone number, incorporation number (if applicable), nature and location of the Business;
 - (b) the name, address, and phone number of the operator or owner of the Business;
 - (c) the address and the legal description of the Premises, if any, from which the Business operates;
 - (d) an acknowledgement that the Business Permit does not provide

- authorizations for land use or other matters and that other permits or authorizations may be required;
- (e) an acknowledgement that the holder of the Business Permit must allow access by Semá:th designated officials to monitor compliance with the conditions set out in the Business Permit;
 - (f) a signed release and waiver releasing and indemnifying Semá:th against any and all claims in relation to the Business or Premises for which the Business Permit is being sought; and
 - (g) if the Business is being carried out under lease or agreement with a CP-holder, a signed release and waiver releasing both Semá:th and the CP-holder against any and all claims in relation to the Business or Premises for which the Business Permit is being sought.
- 8.4 The application form shall be signed by the Person who is the owner of the Business, or by their duly authorized agent.

Start Date and Term of Business Permits

- 8.5 Unless otherwise stated on the Business Permit, annual Business Permits shall be granted to commence on the 1st day of January and terminate on the 31st day of December in each year.
- 8.6 Except as provided for below, no Business Permit shall be granted for a period spanning more than one licensing period as herein set out.

Annual Renewals

- 8.7 Once a Person has received a Business Permit that Person may apply to renew their Business Permit each year by submitting an application to renew in the prescribed form and by paying the annual fee on or before January 2nd of that year.

Fees

- 8.8 Each application or renewal for a Business Permit shall be accompanied by the prescribed fee.
- 8.9 The fee for each Business Permit shall be reduced by ten dollars (\$10.00) if payment is received by Semá:th or postmarked on or before the 15th day of December of the year preceding the commencement of the Permit period, but if the 15th day of December falls on other than a normal working day, the next working day shall be the final day of discount.
- 8.10 A Person ceasing to carry on Business before June 30 shall be entitled to a refund of one half the annual fee but no other refunds shall apply.
- 8.11 Council may waive fees in specific circumstances or approve a policy in relation to waiver of fees.

Requirement to Post or Carry

- 8.12 Any Person to whom a Business Permit is issued, shall post such Permit and keep it posted in a conspicuous place on the Premises for which it is issued.
- 8.13 Any Person who receives a Business Permit for a Non-resident Business shall carry the Permit on their person at all times while carrying on Business within or on Semá:th Lands.

Granting Permits

- 8.14 Council, or by delegation from Council, the Lands Manager or Lands Governance Director, may grant a Business Permit where they are satisfied that the applicant therefore has complied with all applicable laws and requirements.

Pre-Conditions

- 8.15 No Business Permit shall be granted for Businesses requiring other

authorizations until the applicant has demonstrated that the applicable preconditions have been met including the following:

- (a) compliance with all applicable environmental laws;
- (b) for any Premises, confirmation from the Semá:th Lands Department that the proposed use of the land or Premises complies with the Semá:th *Development Law* and any other applicable land use or zoning laws;
- (c) for any Premises, proof of compliance with all applicable fire safety regulations;
- (d) for an automobile dealership, proof of licensing under the provincial *Motor Dealers Act*;
- (e) for a Daycare, proof of licensing under the provincial *Child Care Licensing Regulation*;
- (f) for the construction or alteration of a restaurant or Food Premises as defined in the provincial *Food Premises Regulation* or its successor, proof of approval by a Health Official under the provincial *Health Act*;
- (g) for the preparation, distribution, and selling of foods (e.g. restaurants, grocery stores, hot dog stands, etc.) other than pre-packaged or pre-bottled foodstuffs, proof of a Food Service Permit under provincial *Food Premises Regulation*;
- (h) for tattoo parlors, piercing or body modification services, and hair dressing and manicure services, proof of approval by a Health Official under the provincial *Health Act*; and
- (i) for gaming facilities, proof of licensing under a Law, or a First Nation law or applicable federal or provincial law.

Access for Inspection and Enforcement

8.16 Any Enforcement Officer shall have access to Premises or vehicles for inspections and enforcement in relation to this Law.

8.17 Every Business Permit shall be deemed to grant access by the Lands Manager or Inspector to the Business or Premises for inspections and enforcement in relation to this Law.

Council may Refuse

8.18 Despite anything in this Law:

- (a) Council may, after reviewing recommendations from the Lands Manager or the Lands Advisory Committee accompanied by a briefing note or background material, refuse in any particular case to grant the request of an applicant for a Permit, but the granting or renewal of a Business Permit shall not be unreasonably refused and any refusal shall include written reasons;
- (b) Council may revoke a Business Permit for reasonable cause after giving notice to the Permittee and after giving the Permittee an opportunity to be heard;
- (c) The notice and opportunity referred to in subsection (b) is not required in the event of an emergency or in respect of a Permittee who by reasonable efforts cannot be found; and
- (d) Any Person who has applied for but failed to be granted a Permit may appeal to Council and on such appeal the provisions of subsection (a) shall apply.

Business Purchases and Transfers of Permits

8.19 Any Person who purchases a Business or the controlling interest in a Business of any other Person permitted under this Law and who desires to continue this Business shall make application to the Lands Manager for a transfer of the Permit within sixty (60) days of the purchase.

- (a) A Business Permit not transferred in accordance with the provisions of this Law is invalid; and
- (b) A Business Permit may be transferred upon the approval of the Lands Manager.

8.20 No Person to whom a Business Permit has been granted under the provisions of this Law shall change the location of the Premises in which they carry on Business without first applying to the Lands Manager in writing to have the Permit transferred to the new Premises.

8.21 A Business Permit may be transferred by a Person who makes application in the form established by the Lands Manager and who subsequently receives approval in writing from the Lands Manager.

8.22 Any Person who applies for an annual Business Permit after the commencement of the Permit period shall pay the prescribed fee.

Seasonal or Temporary Permit

8.23 A seasonal Business Permit may be issued to a Person who intends to carry on Business on a temporary or seasonal basis.

No Liability for Sema:th

8.24 Neither the granting or refusal of a Business Permit:

- (a) Is evidence that a Business, Premises or any associated approvals are valid or legal; or
- (b) Creates any liability on behalf of Semá:th, Semá:th Chief or Council, or Semá:th staff, committees or contractors.

PART 9. OFFENCES, PENALTIES AND ENFORCEMENT

Penalties

9.1 A Person who contravenes this Law or an order made by a Court pursuant to this Law is guilty of an offense and:

- (a) is liable on summary conviction to a fine of not more than \$10,000 for each offense; and
- (b) is liable to pay fines in any tickets imposed by an Enforcement Officer.

9.2 The fine for a ticket under this Law is:

- (a) as prescribed by resolution or regulation; and
- (b) initially, \$150 for the first offense, and \$200 for the second offense and each time or day that the offense is committed is a new offense.

9.3 A fine payable under paragraph 9.1 shall be remitted to the Semá:th by the Court, after reasonable Court costs have been deducted.

9.4 A ticket fine payable under paragraph 9.2 shall be remitted directly to the Sema:th.

Offenses

9.5 It is an offense to:

- (a) provide any false or misleading information in order to obtain a Business Permit;
- (b) apply for a Business Permit for a Business which requires other permits or licenses as a pre-condition under section 8.15 without first applying for and receiving the requisite permits or licenses;
- (c) obstruct, interfere with, or deny access to an Inspector, Enforcement Officer, or other individual who is designated to enforce this Law;
- (d) carry on Business without a valid and subsisting Business Permit;
- (e) carry on Business, perform a service, or display, offer for sale, deliver for sale, or sell or distribute to a person actually or apparently under the age of sixteen years anything that may be harmful or dangerous to the health or safety of a person actually or apparently under the age of sixteen years;
- (f) carry on a Business that is prohibited under this Law; or
- (g) carry on a Business at a different Premises than the Premises specified in the Business Permit.

Suspensions

- 9.6 In addition to any other remedies or penalties under this Law, the Lands Manager or a person designated by Council by resolution, may suspend any Business Permit in writing for all or part of the year or for a period of up to three years, if its holder:
- (a) is convicted of an indictable offense;
 - (b) is convicted of an offense under any Law or federal or provincial law relating to the Business for which they are permitted or with respect to the Premises named in the Business Permit;
 - (c) has ceased to meet the lawful requirements to carry on the Business for which they are permitted or relating to the Premises named in the Business Permit;
 - (d) has failed to renew their Business Permit within Sixty (60) days of the expiry date;
 - (e) has, in the opinion of the Lands Manager or a person designated by Council resolution, acting reasonably:
 - (i) engaged in such gross misconduct relating to the Business or to the Premises named in the Business Permit as to warrant the suspension of the Permit; or
 - (ii) conducted Business, performed a service, or displayed, offered for sale, or sold or distributed to a person actually or apparently under the age of sixteen years anything that may be harmful or dangerous to the health or safety of a person actually or apparently under the age of sixteen years; or
 - (iii) Carried on any Business without a permit.
- 9.7 Any Person whose Business Permit has been suspended in accordance with this Law may appeal to Council and upon such appeal the Council may confirm or may set aside such suspension on such terms as it sees fit.

Enforcement and Cease and Desist Orders

- 9.8 In addition to any other applicable penalties under this Law, any violation or offense committed under this Law shall make the Business Permit invalid.
- 9.9 In addition to any other applicable fine, penalty or remedy, Council, the Lands Manager, or a Enforcement Officer has the authority to:
- (a) issue a Cease and Desist Order to order any Person who requires a Business Permit under this Law but who has not received a Business Permit to cease carrying out Business and any related activity or use until such time as that Person applies for and receives a Business Permit;
 - (b) in addition to (a), where a Business is being carried out without a Business Permit:
 - (i) order that a Premises, or a portion of a Premises, be closed, shut down, sealed off, or otherwise made unavailable for Business use until such time as there is a Business Permit in place for that Premises; or
 - (ii) order any vehicle entering the Reserve in potential contravention of this Law to either turn around or comply with this Law before entering onto Semá:th Lands;
 - (c) issue tickets under this Law or any Semá:th enforcement or ticketing law to any person who has contravened this Law and any such ticket is separate from and in addition to any other fees or penalties set out in this Law; and/or
 - (d) suggest or require any Person to take part in Qwi:qwelstom or a restorative justice process.
- 9.10 An order imposed under subsection 9.9:
- (a) may be registered in Court and enforced as a court order; and
 - (b) continues in force until the condition that led to it is remedied or until the activity that is the subject of the order receives a Business Permit under this Law.

PART 10. GENERAL AND LEGAL

Severability

10.1 If a Court of competent jurisdiction holds any portion of this Law invalid, such invalidity shall not affect the remaining portions of the Law.

Regulations

10.2 Council may make regulations or pass Council Resolutions as follows:

- (a) prescribing the form and content of permits to be issued under this Law;
- (b) prescribing fees and penalties;
- (c) designating inspectors or enforcement officers; or
- (d) setting in place any other matter required to implement this Law.

PART 11. COMING INTO FORCE

Date Law Comes into Force

11.1 This Law shall come into force and effect on the date it is passed by Council Resolution.

BE IT KNOWN that this Law entitled the *Semá:th Business Permit Law* is hereby enacted by a quorum of Council at a duly convened Council of the Semá:th First Nation held on the _____ day of _____, 2020.

A quorum is 3