

DISTRICT OF WEST KELOWNA

BYLAW NO. 0167

A BYLAW TO PREVENT INFESTATION OF NOXIOUS INSECTS

WHEREAS the Council of the District of West Kelowna may by bylaw, regulate, prohibit, and impose requirements in relation to the protection and enhancement of the well-being of its community in relation to the matters referred to in Section 64 [nuisances, disturbances and other objectionable situations] of the *Community Charter*;

THEREFORE BE IT RESOLVED that the Council of the District of West Kelowna in open meeting assembled, hereby enacts as follows:

1. Title

1.1 This Bylaw may be cited as the "DISTRICT OF WEST KELOWNA NOXIOUS INSECT CONTROL BYLAW NO. 0167, 2013."

2. Applicability

2.1 This Bylaw applies to all real property within the District.

2.2 Nothing in this Bylaw shall preclude anyone from complying with the provisions of any other local, provincial, or federal regulations or enactment.

3. Interpretation

3.1 In the event that any section of this Bylaw is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or sub-section shall be severed from and not affect the remaining provisions of this Bylaw.

3.2 The headings given to the sections and paragraphs in this Bylaw are for convenience of reference only. They do not form part of this Bylaw and will not be used in the interpretation of this Bylaw.

3.3 Any enactment referred to herein 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 bylaw referred to herein is a reference to an enactment of the Council, as amended, consolidated, or replaced from time to time.

4. Definitions

"Agent" means a person, firm or corporation representing the owner of real property within the District.

"Bylaw Enforcement Officer" means the officers or employees appointed by Council as such.

"Control the Infestation" means procedures which are recognized by the Ministry of Agriculture, and the tree fruit, forestry or horticultural industries as responsible methods of controlling specific pests such as application of an appropriate chemical or biological

spray, direct removal of the noxious or destructive insects or pests, removal of host species or removal of host habitat.

“Council” means the Council of the District of West Kelowna.

“District” means the District of West Kelowna, or the land within the boundaries of the District of West Kelowna.

“Infested/Infestation” means the presence of populations of noxious or destructive insects or pests in trees, bushes, plants or associated fruit that have caused or are likely to cause significant damage to the trees, bushes, plants or associated fruit.

“Noxious or destructive insects or pests” means:

- Codling moth – *Cydia pomonella* (L.)
- Western cherry fruit fly – *Rhagoletis indifferens* Curran
- Black cherry fruit fly – *Rhagoletis fausta* (O.S.)
- San Jose scale – *Quadraspidiotus perniciosus* (Comst.)
- European fruit scale – *Quadraspidiotus ostreaeformis* (Curt.)
- Pear psylla – *Cacopsylla pyricola* Foerst
- Fruittree leafroller – *Archips argyrospila* (Wlk.)
- European leafroller – *Archips rosana* (L.)
- Oliquebanded leafroller – *Choristoneura rosaceana* (Harr.)
- Threelined leafroller – *Pandemis limitata* (Rob.)
- Apple-and-thorn skeletonizer – *Choreutis pariana* (Cl.)
- Apple mealybug – *Phenacoccus aceris* (Sign.)
- Apple ermine moth – *Yponomeuta malinella* Zell.
- Gypsy moth – *Lymantria dispar* (L.)
- Apple maggot – *Rhagoletis pomonella* (Walsh)
- Oriental fruit moth – *Grapholita molesta* (Bst.)
- Cherry bark tortrix – *Enarmonia formosana* (Scop.)
- Cherry ermine moth – *Yponomeuta padellus* (L.)
- Spotted Wing Drosophila (*Drosophila suzukii*)

“Occupier” shall have the meaning given to it in the *Community Charter*.

“Owner” shall have the meaning given to it in the *Community Charter*.

“Real Property” shall have the meaning given to it in the *Community Charter*.

5. Duty of Care

- 5.1 This Bylaw does not create a duty of care in respect of the District, its Council, employees or authorized agents concerning any matter governed by the provisions of this Bylaw including the enforcement or failure to enforce this Bylaw.

6. Cause of Action

- 6.1 Neither a failure to administer or enforce nor incomplete or inadequate administration or enforcement of the provisions of this Bylaw, nor any error, omission or other neglect in relation to any matter governed by this Bylaw shall give rise to a cause of action in favour of any person.

7. Owner's Responsibility

7.1 It shall be the full responsibility of the owner or his agent or the occupier of any real property located within the District to take all actions necessary to comply with the provisions of this Bylaw.

8. Prevention of Infestation

8.1 Owners or occupiers of real property located within the District shall take all action necessary to prevent the real property from becoming infested.

9. Control of Infestation

9.1 Owners or occupiers of real property located within the District that has become infested shall take all action necessary to control the infestation.

10. Order to Control Infestation

10.1 Where a Bylaw Enforcement Officer has received a complaint that real property is infested and the infestation is confirmed by investigation, the Bylaw Enforcement Officer may issue an Order to the owner or occupier of the real property requiring the owner or occupier to take all action necessary to control the infestation within 72 hours from the date of service of the Order.

11. Direct Enforcement in Default

11.1 Where, after the expiry of 72 hours from the date of delivery of an Order given pursuant to this Bylaw, an owner or occupier has not controlled the infestation, it shall be lawful for the District, by its employees or other authorized representatives, to enter the real property and take all action necessary to control the infestation.

12. Inspection

12.1 The Bylaw Enforcement Officer may enter any real property located within the District at any reasonable time, concerning any matter under this Bylaw, and may perform such reasonable tests, analyses or other things as may be necessary to determine if an infestation exists.

13. Service of Order

13.1 An Order made pursuant to Section 10.1 of this Bylaw shall be deemed to be validly served by:

- a. personal delivery to the owner of the real property or the agent of the owner or the occupier; or
- b. being mailed by regular mail, addressed to the owner of the real property or the agent or the occupier and posting the Order in a reasonably visible location on the real property.

14. Owner Responsible for Costs

14.1 All costs incurred by the District to control the infestation of real property shall be charged to the owner of the real property and if unpaid on the 31st day of December of any year, shall be added to and form part of the taxes payable in respect of such property as taxes in arrears.

15. Obstruction

15.1 No person shall obstruct a Bylaw Enforcement Officer acting pursuant to this Bylaw.

16. Offences and Penalties

Any person who violates or causes or allows to be caused a violation of a requirement of this Bylaw shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding Two Thousand Dollars (\$2,000.00).

17. Effective Date

This Bylaw comes into full force and effect as of January 1, 2014.

READ A FIRST AND SECOND TIME THIS 26TH DAY OF NOVEMBER, 2013
READ A THIRD TIME, AS AMENDED, THIS 26TH DAY OF NOVEMBER, 2013
ADOPTED THIS 10TH DAY OF DECEMBER, 2013

'DOUG FINDLATER'

M A Y O R

'TRACEY BATTEN'

CITY CLERK