

CITY OF WEST KELOWNA

BYLAW NO. 0236, 2017

A Bylaw to Regulate, Prohibit and Impose Requirements Respecting Health and Safety on Property

WHEREAS sections 8(1)(g), (h), (i) and (l) of the *Community Charter*, SBC 2003, c. 26 provide that Council may, by bylaw, regulate, prohibit and impose requirements in relation to the health, safety or protection of persons or property in relation to matters referred to in section 63 [*protection of persons and property*]; 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*]; public health; and buildings and other structures, respectively;

AND WHEREAS the Council of the City of West Kelowna wishes to enact a bylaw to regulate, prohibit and impose requirements respecting health and safety matters on property;

AND WHEREAS structural alterations and the alteration of plumbing, heating, air conditioning, electrical wiring and equipment, gas piping and fittings, appliances and accessories, and the growth of mould and use or presence of toxic chemicals in buildings results in risks to the health and safety of occupiers, neighbours, emergency responders and inspectors;

AND WHEREAS properties used for the production of Controlled Substances are particularly susceptible to the above risks to health and safety;

AND WHEREAS inspection and bylaw enforcement with respect to properties used for the production of Controlled Substances present unique risks and costs to the City of West Kelowna and its staff or agents;

NOW THEREFORE, the Council of the City of West Kelowna enacts in open meeting as follows:

Part 1: Citation

- 1.1 This Bylaw may be cited as the "City of West Kelowna Safe Premises Bylaw No. 0236, 2017".

Part 2: Severability

- 2.1 If any section, subsection, sentence, clause or phrase of this Bylaw is for any reason held to be invalid by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Bylaw.

Part 3: Definitions

- 3.1 In this Bylaw:

“Authorized Grow Operation” means a Parcel used for the cultivation, growth, storage or production of cannabis with authority of a valid permit issued by the federal or provincial government agency having jurisdiction over the cultivation, growth, storage or production of cannabis;

“Building” means any structure or portion of a structure used or intended for supporting or sheltering any use or occupancy and, in the case of a Building with multiple units or occupancies, means any portion of a Building held or used as a separate unit;

“Building Bylaw” means the City of West Kelowna Building Bylaw;

“Building Code” means the British Columbia Building Code;

“Building Inspector” means the Building Services Manager appointed by the Chief Administrative Officer, and every inspector or safety officer appointed by the Chief Administrative Officer, Province or Technical Safety BC to inspect buildings or structures, in relation to building, plumbing, gas or electrical standards or other components;

“Bylaw Enforcement Officer” means the person duly appointed by the City as a Bylaw Enforcement Officer;

“Chief Administrative Officer” means the person duly appointed by the City as the Chief Administrative Officer;

“City” means the City of West Kelowna;

“Controlled Substance” means a “controlled substance” as defined and described in Schedules I, II, III, IV or V of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, as amended from time to time;

“Council” means the Council of the City;

“Electrical Code” means the British Columbia Electrical Code;

“Fire Chief” means the person who is appointed by the Chief Administrative Officer to be the head of the City’s fire and rescue services and includes that person’s delegate;

“Fire Code” means the British Columbia Fire Code;

“General Manager of Development Services” means the person appointed by the Chief Administrative Officer as the City’s General Manager of Development Services and includes that person’s delegate;

“General Manager of Engineering and Public Works” means the person duly appointed by the Chief Administrative Officer as the City’s General Manager of Engineering and Public Works and includes that person’s delegate;

“Hazardous Condition” means:

- (a) any real or potential risk of fire;

- (b) any real or potential risk to the health or safety of persons or property;
- (c) any Unauthorized Alteration; or
- (d) repairs needed to a Building in accordance with the Building Code or Fire Code;

“Hazardous Condition Requirement List” means a list of Hazardous Conditions present on a Parcel, and any work required to address or remove those Hazardous Conditions, as prepared or compiled by the Building Inspector following an inspection or Special Safety Inspection, and which may be in the form of Schedule “A”;

“Hazardous Substance” means a substance in a concentration in excess of that listed in WorkSafe BC’s Table of Exposure Limits for Chemical and Biological Substances, as amended from time to time;

“Inspector” means:

- (a) the Fire Chief;
- (b) the Building Inspector;
- (c) a peace officer;
- (d) the General Manager of Development Services;
- (e) the General Manager of Engineering and Public Works;
- (f) a Bylaw Enforcement Officer; or
- (g) the deputy of any person, officer or employee referred to in paragraphs (a) to (f);

“Mould Remediation Guidelines” means s.9.0 of the Canadian Construction Association’s Standard Construction Document CCA 82-2004: *Mould Guidelines for the Canadian Construction Industry*;

“Occupier” means a person occupying a property within the City and includes the registered Owner of the property where the Owner is the person occupying or where the property is unoccupied;

“Owner” includes the registered owner in fee simple of real property and those persons defined as “owner” in the *Community Charter*;

“Parcel” includes land and any improvements located thereon;

“Qualified Contractor” means an individual or a corporation certified by the Institute of Inspection Cleaning and Restoration Certification or other qualified professionals as approved by the City;

“Qualified Environmental Professional” means an individual or corporation certified by the Canadian Board of Registered Occupational Hygienists or the American Board of Industrial Hygiene or other qualified professionals as approved by the City;

“Remediation Action Plan” means the plan prepared by the Qualified Environmental Professional under Part 6.3 of this Bylaw;

“Special Safety Inspection” means an inspection coordinated by the Inspector with any municipal departments, provincial or federal authorities, and independent professionals or contractors as may be necessary for the purpose of determining the presence of any Hazardous Conditions on a Parcel;

“Unauthorized Alteration” means any change made to the structural, gas, plumbing, ventilation, mechanical, electrical, or other components of a Building that requires a permit, but for which no permit has been issued pursuant to the Building Bylaw or another enactment;

“Unauthorized Drug Production Facility” means a Parcel used for the cultivation, growth, storage or production of a Controlled Substance without authority of a valid permit issued by the federal or provincial government agency having jurisdiction over the Controlled Substance(s) being cultivated, grown, stored or produced;

“Utility” means a lawful provider of an electrical, water or natural gas service from a distribution system to consumers.

- 3.2 All references to a bylaw or enactment in this Bylaw refer to that bylaw or enactment as it is in force from time to time.

Part 4: General Prohibitions

4.1 No person may:

- (a) disconnect or bypass a meter installed for the purpose of measuring consumption of electricity, water or natural gas from an electrical, water or natural gas distribution system, except where such disconnection or bypass has been specifically permitted or required by the City, the applicable Utility, or a government authority;
- (b) divert or install exhaust vents from clothes dryers, hot water tanks, furnaces, or fireplaces so that they exhaust into or within a Building;
- (c) construct or install any obstruction of an exit or access to an exit required under the Building Code;
- (d) alter an electrical system without a permit and approval from the British Columbia Safety Authority;
- (e) install electrical circuits or connections to an electrical service that are contrary to the Electrical Code or another enactment;

- (f) bring in or allow a Hazardous Substance to accumulate on any Parcel or in any Building;
- (g) undertake an Unauthorized Alteration to a Building;
- (h) use water from the City's water distribution system in an Unauthorized Drug Production Facility;
- (i) cause or allow a Building to become subject to a visible accumulation of mould on the interior of any window, interior wall or other structural component of the Building, or such that air samples indicate a concentration of airborne mould levels in excess of the standard set by the Mould Remediation Guidelines or any other applicable health and safety legislation or regulation;
- (j) interfere with or obstruct the Building Inspector, the Fire Chief, or the General Manager of Engineering and Public Works from posting a notice referred to in Part 6.4 or Part 7;
- (k) remove, alter, cover or mutilate a notice posted under Part 6.4 or Part 7; or
- (l) use or occupy a Parcel until the Building Inspector or Fire Chief has removed the notice posted under Part 6.4.

Part 5: Powers of Inspectors, Fire Chief and Building Inspector

- 5.1 Subject to the provisions of the Community Charter, an Inspector may enter onto a Parcel, including the interior of a Building, in order to:
- (a) inspect and determine whether all regulations, prohibitions and requirements under this Bylaw are being met;
 - (b) coordinate and carry out a Special Safety Inspection under Part 6 of this Bylaw;
 - (c) inspect, disconnect or remove a water service connection pursuant to Part 7 of this Bylaw; or
 - (d) take action authorized under Part 12 of this Bylaw.

Part 6: Special Safety Inspections

- 6.1 Where:
- (a) an Inspector has reasonable grounds to believe that a Hazardous Condition exists on a Parcel, or
 - (b) a Parcel was used for the purpose of carrying on an Unauthorized Drug Production Facility, or
 - (c) a Parcel that was used for the purpose of carrying on an Authorized Grow Operation ceases to be used for that purpose,

the Inspector may require the Owner to undertake a Special Safety Inspection.

- 6.2 Where a Building Inspector 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 Inspector may include in the Hazardous Condition 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.
- 6.3 Where the Inspector has reasonable grounds to believe that a Hazardous Condition existing on a Parcel results from a Hazardous Substance or mould, the Inspector may include in the Hazardous Condition Requirement List any or all of the following requirements:
- (a) that the Owner must retain a Qualified Environmental Professional to carry out an assessment of all Hazardous Conditions on the Parcel, including but not limited to the presence of Hazardous Substances and mould, 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 Parcel and no actions may be taken which might prevent a comprehensive assessment of potential Hazardous Conditions on the Parcel;
 - (b) that the Owner must retain a Qualified Contractor to carry out all remedial measures identified in the Remediation Action Plan;
 - (c) that 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 Parcel is safe to re-occupy; and
 - (d) that the Owner must provide a certificate in the form prescribed in Schedule "B" from a Qualified Environmental Professional certifying that the Parcel has been remediated in accordance with the Remediation Action Plan and that the Parcel meets the requirements of this Bylaw and is safe to re-occupy.
- 6.4 If the Building Inspector or Fire Chief has reasonable grounds to believe that a Hazardous Condition exists on a Parcel, the Building Inspector or Fire Chief may post a notice in the form of Schedule "C" to this Bylaw in a conspicuous place at the entrances to that Parcel, and deliver to the Owner a notice that the Parcel is unsafe and that no person shall enter or occupy the Parcel.

Part 7: Discontinuation of Water Service

- 7.1 The City may discontinue providing water service to a Parcel if such water is being used for or in relation to an Unauthorized Drug Production Facility, provided that:
- (a) the City gives the Owner and Occupier of the Parcel 7 days written notice of an opportunity to make written representations to Council with respect to the proposed discontinuance of water service; and

- (b) after the persons affected have had an opportunity to make representations to Council, the City must give the Owner and Occupier of the Parcel an additional 7 days written notice of the discontinuance of the water service.

7.2 Despite anything in this Bylaw, where the General Manager of Engineering and Public Works reasonably considers that there is a risk of backflow or contamination to the City's water distribution system from a Parcel, and there is no apparent mechanism to prevent that backflow or contamination, then:

- (a) the City may discontinue the provision of water to the Parcel immediately upon posting a notice on the front door of any Building on the Parcel that the City is disconnecting the water supply to the Parcel, until such time as a mechanism to prevent backflow and contamination is installed, inspected by a certified backflow tester, and approved by the City; and
- (b) the Owner may make representations to Council in connection with the discontinuance of the provision of water hereunder at the next regularly scheduled meeting of Council.

Part 8: Requirements for Re-Occupancy

8.1 Where the Inspector has required the Owner to undertake a Special Safety Inspection under Part 6.1, no person may enter or occupy the Parcel subject to such inspection requirement until:

- (a) a Special Safety Inspection of the Parcel has been conducted and the Building Inspector has issued a Hazardous Condition Requirement List;
- (b) the Owner has obtained all permits, approvals or authorizations required to carry out any work identified in the Hazardous Condition Requirement List;
- (c) the Owner has carried out or caused to be carried out all work identified in the Hazardous Condition Requirement List;
- (d) the Building Inspector has inspected the Parcel and determined that the work required in the Hazardous Condition 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 apparent Hazardous Condition remains in, on or at the Parcel;
- (e) the Inspector has removed any notices under Part 6.4 of this Bylaw and, where necessary, has issued a new occupancy permit for the Building pursuant to the Building Bylaw; and
- (f) the Owner has paid all fees imposed by District of West Kelowna Fees and Charges Bylaw 2009 No. 0028, or other bylaw or authority as required.

Part 9: Owner Obligations Respecting Tenancies

- 9.1 Every Owner of a Parcel or Building that has been rented or leased to or is occupied by a third party and who becomes aware of a contravention of this Bylaw upon that Parcel or in that Building must:
- (a) within 24 hours of the discovery of this contravention, deliver written notice to the Building Inspector of the particulars of the contravention; and
 - (b) within 60 days of the delivery of the notice, take such action as may be necessary to bring the Parcel or Building into compliance with this Bylaw.

Part 10: Owner's Responsibility

- 10.1 No action of the City, including without limitation:
- (a) the removal of a notice posted under this Bylaw;
 - (b) the issuance of an approval under this Bylaw;
 - (c) the acceptance or review of plans, drawings or specifications or supporting documents submitted under this Bylaw; or
 - (d) any inspections made by or on behalf of the City,
- will in any way relieve the Owner from full and complete responsibility to perform work required or contemplated under this Bylaw or the Building Code and all other applicable enactments, nor do they constitute in any way a representation, warranty, assurance or statement that the Building Code, this Bylaw, or any other applicable codes, standards or enactments have been complied with.
- 10.2 It is the full and complete 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.
- 10.3 When a Qualified Environmental Professional, engineer, or architect provides certification or other documentation to the City under this Bylaw that work required by or contemplated by this Bylaw substantially conforms to the requirements of this Bylaw, the health and safety requirements of the Building Code, Electrical Code, Fire Code, or any other health and safety requirements established by applicable enactments, the City may rely completely on this documentation as evidence of conformity with those requirements.

Part 11: Offence and Penalty

- 11.1 Any person who:
- (a) contravenes or violates any provision of this Bylaw;
 - (b) allows any act or thing to be done in contravention or violation of this Bylaw;

- (c) fails or neglects to do anything required to be done by this Bylaw; or
- (d) makes any false or misleading statement,

commits an offence, and where the offence is a continuing one, each day the offence is continued constitutes a separate offence.

11.2 Upon being convicted of an offence under this Bylaw, a person shall be liable to pay a fine of not less than \$5,000 and not more than \$10,000.

Part 12: Failure to Comply

12.1 If an Owner or Occupier of a Parcel fails to comply with a requirement of the City under this Bylaw or another safety enactment, the City may, within the time specified in the order or notice, enter on the Parcel and take such action as may be required to correct the default, including to remediate the Parcel or to have the Parcel attain a standard specified in any safety enactment, at the expense of the Owner or Occupier who has failed to comply, and may recover the costs incurred as a debt.

12.2 If the Owner has failed to pay the cost to the City incurred under Part 12.1 before the 31st day of December in the year that the corrective action was taken, the service costs must be added to and form part of the taxes payable on the property as taxes in arrears.

Part 13: Schedules

13.1 The following schedules are included in and form part of this Bylaw;

Schedule "A" – Hazardous Condition Requirement List

Schedule "B" – Certification Form

Schedule "C" – Do Not Enter or Occupy Notice

Schedule "D" – Water Shut-Off Notice

Part 14: Repeal

14.1 "District of West Kelowna Safe Premises Bylaw No. 0073 is hereby repealed".

READ A FIRST, SECOND AND THIRD TIME THIS 19TH DAY OF SEPTEMBER, 2017
THIRD READING RESCINDED THIS 10TH DAY OF OCTOBER, 2017
READ A THIRD TIME AS AMENDED THIS 10TH DAY OF OCTOBER, 2017
ADOPTED THIS 24TH DAY OF OCTOBER, 2017

MAYOR

CITY CLERK



SCHEDULE "A" Hazardous Condition Requirement List

Re: _____ (the "Property")

Pursuant to the City of West Kelowna Safe Premises Bylaw No. 0236, 2017 (the "Bylaw") a Special Safety Inspection has been carried out on the above Property, and the Property has been posted with a Notice that it may not be entered or occupied due to hazardous conditions and/or unauthorized alterations on the Property.

No person is permitted to enter or 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; and
 - Electricity;
- Vent all furnace/hot water tank/gas appliances in accordance with the applicable code;
- Provide/Restore all items 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 British Columbia Safety Authority;
- Provide a report from a qualified professional engineer certifying that the building is safe for occupancy and complies with the Building Code;
- Provide a certificate report in the form prescribed in Schedule "B" of the Bylaw, from a Qualified Environmental Professional, certifying that the Property has been remediated; and
- You are required to obtain an approval from the City prior to performing any of the above works that may require a permit under the City's Bylaws.

Until the above requirements above have been completed, and the 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 Bylaw, please call the City's Building and Regulatory Services Department at (778) 797-8820.

SCHEDULE "B"
Certification Form

TO: The City of West Kelowna

FROM: _____

[insert name and address of qualified environmental professional]

RE: Premises located at: _____
[insert address]

This is to certify that in accordance with the "City of West Kelowna Safe Premises Bylaw No. 0236, 2017" the professional identified in this certification:

- (1) Is a Qualified Environmental Professional under the Safe Premises Bylaw, with the following degrees, qualifications, and professional affiliations:

- (2) Has completed an inspection of the premises on _____ [insert date]; and

- (3) The premises have been remediated in accordance with the Remediation Action Plan prepared for these premises by _____ on _____, and all hazardous substances and moulds, are now within safe levels for occupancy, and are in accordance with the "City of West Kelowna Safe Premises Bylaw No. 0236, 2017".

The undersigned professional may be contacted at: _____
[insert business telephone number and email]

CERTIFIED AS OF _____
[insert date]

[Signature of Qualified Environmental Professional]



SCHEDULE "C"

CITY OF WEST KELOWNA
Building Department
2760 Cameron Road, West Kelowna, B.C
V1Z 2T6
Phone: (778) 797-8820

CITY OF WEST KELOWNA
Fire Rescue
2708 Ollala Road, West Kelowna, B.C
V1Z 2T6
Phone: (778) 797-3220

DO NOT ENTER
OR
OCCUPY

Property Location: _____

TAKE NOTICE THAT these premises have been found to contain unauthorized alterations and/or are in a hazardous condition.

Pursuant to City of West Kelowna's Safe Premises Bylaw No. 0236, no person may enter or occupy these premises until cleaning, remediation and/or repairs have been completed in compliance with that Bylaw and the Building 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 Building Inspector at (778) 797-8820 or Fire Chief at (778) 797-3320.

Date

Building Inspector and/or Fire Chief



“SCHEDULE “D”

CITY OF WEST KELOWNA
Engineering and Public Works Department
2760 Cameron Road, West Kelowna, B.C V1Z 2T6
Phone: (778) 797-8820

WATER SERVICE SHUT OFF NOTICE

Property Location: _____

TAKE NOTICE THAT these premises have been reasonably considered to have a risk of backflow or contamination to the City’s water distribution system from an Unauthorized Drug Production facility. Pursuant to City of West Kelowna’s Safe Premises Bylaw No. 0236, the City has discontinued the provision of water to this parcel. No person may occupy these premises until cleaning, remediation and/or repairs have been completed in compliance with that Bylaw and the Building 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 General Manager of Engineering and Public Works at 778-797-2244.

Date

GM of Engineering and Public Works

