

THE CORPORATION OF THE CITY OF ENDERBY

BYLAW NO. 1401, 2007

A bylaw to Regulate and Impose Requirements Respecting the Remediation of Real Property and Premises Damaged Through the Production, Trade, or Use of Controlled Substances.

WHEREAS the *Community Charter*, S.B.C. 2003, Chap. 26, as amended, authorizes Council, by bylaw, to regulate trade and business activity, the construction and occupation of buildings, and the prohibition and abatement of nuisances, and to effect compliance with the bylaw and recover the expense of effecting compliance from any person who has failed to comply with the bylaw.

NOW THEREFORE the Council of the City of Enderby, in open meeting assembled, enacts as follows:

1. This bylaw may be cited as "Property Remediation Bylaw No. 1401, 2007".

PART I - INTERPRETATION

2. In this bylaw:

"Certified Professional" means a person who is a member, in good standing, of the Association of Professional Engineers and Geoscientists of the Province of British Columbia and who is qualified in the area of environmental sciences.

"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 the Act or otherwise lawfully permitted under the current Business Licence Bylaw.

"Controlled Substance Property" means a property which is used for:

- (a) the cultivation, harvesting, trade or manufacture of a controlled substance; or
- (b) the ingestion, use, sharing, sale, trade, or barter of a controlled substance therein or thereon.

"Hazardous Situation" includes any real or potential risk to the health or safety of persons or property arising or resulting from the use of a 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.

"Inspector" means the Building Inspector, Public Works Superintendent, the Fire Inspector, the Bylaw Enforcement Officer, a member of the Royal Canadian Mounted Police, or the deputy or designate of such a person.

"Occupant" includes:

- (a) a person residing on or in the property;
- (b) the person entitled to the possession of property if there is no person residing on or in the property; and
- (c) a leaseholder,

and shall include the agent of any such person.

"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" means, in addition to its ordinary meaning, a partnership, association, company, society, and body corporate.

"Property" means all real property, including, but not limited to real property used or intended to be used for residential and/or commercial uses, front yards, side yards, backyards, driveways, walkways, and sidewalks and shall include any building, structure, vehicle, chattel, or fence located on such real property.

PART II - PROHIBITIONS

3. Controlled Substance Property Prohibited:

The use of any property as a controlled substance property is hereby deemed to constitute the carrying on of a noxious or offensive trade, business or manufacture, and no person, owner, or occupant of property shall cause, permit, or allow any property to become or remain a place for the trade, business, or manufacture of a controlled substance.

4. Unsightly Premises Prohibited:

No person, owner, or occupant shall cause, permit, or allow water, rubbish or noxious, offensive or unsightly matter to collect or accumulate around any property in connection with the manufacture, ingestion, use, sharing, sale, trade, or barter of a controlled substance.

PART III - REMEDIATION REQUIREMENTS

5. Alteration, Repair, and Reconnection of Electrical, Water, or Gas Supply:

If, as a result of the unlawful use of a property for the trade, manufacture, ingestion, use, sharing, sale, or barter of a controlled substance:

- (a) the supply of electricity, water or natural gas to a property has been disconnected by the City or any other lawful authority;
- (b) unauthorized alterations or repairs have been made to electrical, water or gas systems, equipment, appliances or other accessories of any kind; or
- (c) a hazardous situation exists on the property; the supply of electricity, water or natural gas shall not be reconnected and the property shall not be occupied until:
 - i) the owner or occupant has applied to the City of Enderby for a special safety inspection pursuant to this section and has paid the fee hereby imposed for such special safety inspection as specified in Schedule "A" of this bylaw;
 - ii) the property has been inspected by the person designated by the City of Enderby for compliance with all health and safety requirements of the City's bylaws;
 - iii) the property has been inspected by all other lawful authorities having jurisdiction over the supply of electricity, water, and natural gas, for compliance with all health and safety requirements of the City's bylaws

and any provincial statute or regulation relating to building, electrical, water, gas, or fire safety;

- iv) the owner or occupant has obtained all permits, approvals, or authorizations required to carry out the work necessary to bring the property in to compliance with the City's bylaws and all Provincial statutes and regulations referred to in subsections (ii) and (iii);
- v) all of the work referred to in subsection (4) has been completed, inspected, and approved by the person designated by the City of Enderby and all other lawful authorities having jurisdiction and the property is in compliance with the City's bylaws and all Provincial statutes and regulations referred to in subsections (ii) and (iii); and
- vi) the owner or occupant has paid all fees imposed by this bylaw and other relevant City bylaws in relation to the inspection of property and the issuance of permits, and the person designated by the City of Enderby has issued an Occupancy Certificate for the property.

6. Remediation of Properties:

If a property has been used as a controlled substance property, the owner of the property must, within 30 days of the earliest of either the delivery to the owner, or the posting upon the property, of a written notice in the form of Schedule "B", deliver to the City of Enderby a written report prepared and duly executed by a certified professional which describes:

- a) the full scope of any hazardous situation which has been identified by the certified professional in respect of the property following an inspection of the property; and
- b) all elements of the course of action recommended by the certified professional to eliminate such hazardous situation.

7. Within 60 days of the delivery to the City of Enderby of the report of the certified professional as described in Section 6 above, the owner of such property must:

- a) 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; and
- b) deliver to the City of Enderby 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.

8. If a property has been used as a controlled substance property and a written notice in the form of Schedule "B" has been delivered to the owner of the property, or posted on the property, the property must not be occupied by any person or used for any commercial purpose until 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 6 above, has been delivered to the City.

9. Non-Compliance:

If an owner fails to:

- a) deliver to the City of Enderby a report as required in Section 6 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 City of Enderby 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 6 above, the City, 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 Sections 6 and 7 above at the expense of the owner who has failed to comply.

10. Extraordinary Costs:

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.

11. Costs Added to Taxes:

In the event that a person fails to pay the costs of compliance under Section 9, or a person fails to pay the costs due and payable under Section 10, 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.

PART IV - OFFENCES AND PENALTIES

- 12. No person may interfere with an inspection or proposed inspection under Section 5 of this bylaw and no person shall remove, alter, or deface any notice posted under Section 6 of this bylaw.
- 13. Every person who violates any provision of this bylaw, or who suffers or permits any act or thing to be done in contravention or violation of, or neglects to do or refrains from doing anything required to be done pursuant to any provision of this bylaw, commits an offence punishable on summary conviction and shall be liable to a fine not exceeding the sum of \$5,000.00.
- 14. Where an offence is a continuing offence, each day that the offence is continued shall constitute a separate and distinct offence.
- 15. 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 effect the validity of the remainder.
- 16. Prosecution of a person pursuant to Section 13 of this bylaw does not exempt or relieve the person from any other duty or obligation under this bylaw.

READ A FIRST TIME this 16th day of July, 2007.
READ A SECOND TIME this 16th day of July, 2007.
READ A THIRD TIME this 16th day of July, 2007.

ADOPTED this 13th day of August, 2007.

MAYOR

ADMINISTRATOR

SCHEDULE "A"

FEES

1. The following fees apply under this bylaw:

- a) for initial Special Safety Inspection
\$500.00
- b) for each subsequent inspection prior to issuance of a
Re-occupancy Certification
\$250.00

for clarification, these fees are exclusive of all additional fees which may be charged by the lawful authorities having jurisdiction over the supply of electricity, water, and natural gas and any other service providers in respect to inspections for compliance with health and safety requirements which such authorities conduct.

SCHEDULE "B"

HEALTH AND SAFETY NOTICE

TAKE NOTICE THAT this property has been used in respect of the manufacture, ingestion, use, sharing, sale, trade, or barter of a controlled substance.

Pursuant to City of Enderby "Property Remediation Bylaw Number 1401, 2007", no person may occupy these premises nor use these premises for any commercial use until cleaning and remediation have been completed and certified in accordance with that bylaw and the person designated by the City of Enderby 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 City of Enderby.

Person Designated By The
City of Enderby

SCHEDULE "C"

CERTIFICATION FORM

TO: City of Enderby

FROM: *(insert name of Certified Professional)*

RE: Property located at *(insert address)*

This is to certify that in accordance with Section 6 of "Property Remediation Bylaw No. 1401, 2007", 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

SCHEDULE "D"

LETTER TO PROPERTY OWNER

Re: "Property Remediation Bylaw Number 1401, 2007"

Issued in respect of: *(civic address and legal description of property)*

This letter is to notify you that the City of Enderby "Property Remediation Bylaw No. 1401, 2007", in force from time to time, establishes regulations concerning the cleaning and remediation of Residential Dwellings that have been used in respect of the manufacture, ingestion, use, sharing, sale, trade, or barter of a controlled substance.

The City has been advised by the Royal Canadian Mounted Police (RCMP) that the residential dwelling located at *(insert address)* were in use as a *(Marijuana "grow" operation or Amphetamine production operation)* which has been removed by the RCMP.

The bylaw requires that within 30 days, the owner of the property deliver to the City of Enderby, a report, prepared and duly executed by a professional engineer with experience and qualifications in the area of environmental engineering (the "certified professional") which describes:

1. the full scope of any 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 in or on the property; and
2. all elements of the course of action recommended by the certified professional to eliminate such real or potential risks.

Within 60 days of the delivery of such a report to the City of Enderby, all elements of the course of action recommended by the certified professional to eliminate such real or potential risks must be carried out and the owner must deliver to the City of Enderby, a Letter of Certification, certifying that such work has been completed to the satisfaction of the certified professional.

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 of Enderby.

Person Designated By The
City of Enderby