

THE CORPORATION OF THE CITY OF ENDERBY

BYLAW NO. 1644, 2017

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 sections 8(1)(g), (h) and (l) of the *Community Charter* 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, the protection and enhancement of the well-being of its community in relation to the matters referred to in section 64; and buildings and other structures under section 54;

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 pose unique costs for the City of Enderby;

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

1. Citation

1.1. This Bylaw may be cited as City of Enderby Safe Premises Bylaw No. 1644, 2017.

2. Definitions

2.1. In this Bylaw:

“Authorized Operation” means a Parcel used for the cultivation, growth, storage or production of cannabis or other Controlled Substance with an authorization or valid permit issued by the government authority having jurisdiction;

“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 or occupancy;

“Building Bylaw” means the City of Enderby Building Bylaw No. 1582, 2015;

“Building Code” means the *British Columbia Building Code*;

“Building Official” means any person appointed by the City to inspect buildings or structures, or any component thereof;

“Bylaw Enforcement Officer” means any person appointed by the City to enforce its bylaws;

“Chief Administrative Officer” means the person appointed by Council pursuant to section 147 of the *Community Charter*;

“City” means the Corporation of the City of Enderby;

“City Utilities” means the water, sanitary sewer, and storm sewer infrastructure, appurtenances, and services that are owned, operated, or both, by the City;

“Controlled Substance” has the same meaning as defined in the *Controlled Drugs and Substances Act*;

“Controlled Substance Property” means a Parcel which is used for the cultivation, harvesting, trade, or manufacture of a Controlled Substance, or the ingestion, use, sharing, sale, trade, or barter of a Controlled Substance, including an Unauthorized Drug Production Facility but excluding an Authorized Operation;

“Council” means the Council of the City;

“Electrical Code” means the *British Columbia Electrical Code*;

“Fire Official” means the person who is appointed by the Council as the Chief of the City's fire and rescue services and includes that person's deputy and any appointed fire inspector or fire investigator;

“Fire Code” means the *British Columbia Fire Code*;

“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 real or potential risk to a Utility servicing a Parcel or Building;
- d) the real or suspected presence of a Hazardous Substance;
- e) any Unauthorized Alteration;
- f) repairs needed to a Building in accordance with the Building Code or Fire Code; or
- g) any other Prohibition listed under section 3 of this Bylaw;

“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 an Inspector following a Special Safety Inspection;

“Hazardous Substance” means a Controlled Substance or a substance in a concentration in excess of that listed in WorkSafeBC's *Table of Exposure Limits for Chemical and Biological Substances*;

“Inspector” means:

- a) a Fire Official;
- b) a Building Official;
- c) a peace officer;
- d) a Bylaw Enforcement Officer;
- e) the Chief Administrative Officer;
- f) the Corporate Officer; or
- g) the deputy of any person, officer or employee who is an Inspector;

“Mould Remediation Guidelines” means section 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 professional as approved by the City;

“Remediation Action Plan” means the plan prepared by the Qualified Environmental Professional in response to known or suspected Hazardous Conditions;

“Special Safety Inspection” means an inspection coordinated by the Inspector with any of its departments, provincial or federal authorities, Utilities, and independent professionals or contractors as may be necessary for the purpose of determining the presence on a Parcel of any Hazardous Condition or a Prohibition under section 3 of this Bylaw;

“Unauthorized Alteration” means any change made to the structure or component parts of a Building that requires a permit or contravenes the Building Code or Fire Code, including removal of fire stopping, but for which no permit has been issued or is otherwise not permissible 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 a Controlled Substance being cultivated, grown, stored or produced;

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

2.2. 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.

3. Prohibitions

3.1. The use of any Parcel as a Controlled Substance Property is deemed to constitute the carrying on of a noxious or offensive trade, business or manufacture, and no Owner shall cause, permit, or allow any Parcel to become or remain a Controlled Substance Property.

3.2. No Owner may occupy or permit the occupancy of a Parcel where:

- a) a meter installed for the purpose of measuring consumption of electricity, water or natural gas from an electrical, water or natural gas distribution system has been disconnected or bypassed, except where such disconnection or bypass has been specifically permitted by the authority having jurisdiction or Utility;
- b) exhaust vents from clothes dryers, hot water tanks, furnaces, or fireplaces have been installed or diverted so that they exhaust into or within a Building;
- c) an exit or access to an exit required under the Building Code or Fire Code has been obstructed;
- d) an electrical system has been altered without a permit or other approval from the authority having jurisdiction, or electrical circuits or connections to an electrical service have been installed that are contrary to the Electrical Code or another enactment;
- e) a Hazardous Substance has been brought in or allowed to accumulate on any Parcel or in any Building;
- f) an Unauthorized Alteration to a Building has occurred;

- g) one or more City Utilities have been discontinued, in accordance with this Bylaw, due to a real or potential risk from a Controlled Substance or other Hazardous Condition;
- h) an 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, is found in a Building on the Parcel;
- i) a notice posted under this Bylaw has been removed, altered, covered or mutilated;
- j) a notice made under this Bylaw prohibiting occupancy or use has been posted by an Inspector.

4. Powers of Inspectors

4.1. 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) require an Owner to provide information from qualified professionals to determine if a Special Safety Inspection may be required;
- c) if an Inspector has reasonable grounds to believe that a Hazardous Condition exists on a Parcel, post a notice in a conspicuous place at the entrances to that Parcel and deliver the same to the Owner that the Parcel is unsafe and that no person shall enter or occupy the Parcel;
- d) recommend to Council that a note against land title be registered if the Inspector is a Building Official and believes that a building regulation has been contravened, in accordance with section 57 of the *Community Charter* and the Building Bylaw.
- e) require a Special Safety Inspection of an Owner for a Parcel or Building;
- f) coordinate the qualified professionals and authorities having jurisdiction who may conduct a Special Safety Inspection for an Owner;
- g) approve a Hazardous Condition Requirement List that results from a Special Safety Inspection;
- h) approve re-occupancy following completion of a Remedial Action Plan and any other requirements made under this Bylaw;
- i) take authorized action in response to a failure to comply with this Bylaw.

4.2. No person may interfere with or obstruct an Inspector or agents working with or on behalf of the Inspector during the course of lawfully discharging their responsibilities under this Bylaw.

5. Special Safety Inspections

5.1. Where:

- a) an Inspector has reasonable grounds to believe that a Parcel or Building is a Controlled Substance Property; or
- b) an Inspector has reasonable grounds to believe that a Hazardous Condition exists on a Parcel or in a Building; or
- c) a Parcel or Building was used as an Unauthorized Drug Production Facility; or
- d) a Parcel that was used for the purpose of carrying on an Authorized Operation ceases to be used for that purpose,

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

5.2. 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, a Building Inspector may include in the Hazardous Condition Requirement List that the Owner must obtain a sealed report from a qualified professional engineer certifying that the Building is safe for occupancy and complies with the Building Code.

5.3. Where an Inspector has reasonable grounds to believe that a Hazardous Condition existing on a Parcel results from a Hazardous Substance, mould, or other matter related to a Hazardous Condition, 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, including but not limited to the presence of Hazardous Substances and mould, and the Qualified Environmental Professional must 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 measures identified in the Remediation Action Plan;
- c) that the Owner must retain a Qualified Environmental Professional to verify that all measures identified in the Remediation Action Plan have been completed and the Parcel or Building is safe to re-occupy; and

- d) that the Owner must provide a certificate in a form prescribed by the City 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. Requirements for Re-Occupancy

6.1. Where an Inspector has required the Owner to undertake a Special Safety Inspection, no person except an Inspector, an authorized agent acting on behalf of the City, or a qualified professional or qualified contractor implementing a Special Safety Inspection or Remedial Action Plan may enter or occupy the Parcel until all of the following conditions have been met:

- a) a Special Safety Inspection of the Parcel has been conducted and a Hazardous Condition Requirement List has been issued;
- b) the Owner has obtained all permits, approvals or authorizations required to carry out any work identified in the Remediation Action Plan;
- c) the Owner has carried out or caused to be carried out all work identified in the Remediation Action Plan;
- d) an Inspector has inspected the Parcel and determined that the work required in the Hazardous Condition Requirement List has been completed in accordance with the Remediation Action Plan and all requirements of this Bylaw and other applicable enactments, and that no Hazardous Condition remains in, on, or at the Parcel;
- e) an Inspector has removed all notices posted pursuant to this Bylaw;
- f) the Owner provides proof that all Utilities previously connected to the Parcel or Building have been properly connected;
- g) when necessary, a Building Official has issued a new occupancy permit pursuant to the Building Bylaw; and
- h) the Owner has paid all fees and fines imposed by City that are associated with the parcel and this Bylaw.

7. Discontinuation of City Utilities

7.1. The City may discontinue providing City Utilities to a Parcel if such City Utilities are 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 City Utilities; 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 City Utilities.

7.2. Despite anything in this Bylaw, where an Inspector reasonably considers that there is a risk of backflow or contamination to the water Utility from a Controlled Substance Property or Authorized Operation, 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 at the next regularly scheduled meeting of Council.

7.3. Despite anything in this Bylaw, where an Inspector reasonably considers that there is a risk of prohibited or deleterious substances or prohibited materials entering the City's storm sewer or sanitary sewer Utility from a Controlled Substance Property or Authorized Operation, and there is no way to stop the discharge of the prohibited substances or prohibited materials, then:

- a) the City may discontinue the provision of sanitary sewer and storm sewer services to the Parcel immediately upon posting a notice on the front door of any Building on the Parcel that the City is disconnecting the service connections to the Parcel, until such time as the discharge has been verified as having stopped without risk of resumption; and
- b) the Owner may make representations to Council in connection with the discontinuance of the provision of sanitary sewer and storm sewer services at the next regularly scheduled meeting of Council.

8. Owner Obligations Respecting Tenancies

8.1. Every Owner of a Parcel or Building that has been rented, leased or is otherwise occupied by a third party and who becomes aware of its use as a Controlled Substance Property must:

- a) within 24 hours of the discovery of this use, deliver written notice to an 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.

8.2. An Owner who is compliant with this section shall not be subject to an offence or penalty under this Bylaw, but is still responsible for the Special Safety Inspection and associated fee. However, at the City's discretion, a compliant Owner may propose coordinating the Special Safety Inspection directly, including

presentation of a Remedial Action Plan for approval by an Inspector, in which case only the direct costs of the City supplying its resources shall be billed to the Owner.

9. Owner's Responsibility

9.1. 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.

9.2. 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.

9.3. When a Qualified Environmental Professional or other qualified professional 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 and any other enactment, the City may rely completely on this documentation as evidence of conformity with those requirements.

10. Offence and Penalty

10.1. Any person who contravenes or violates any provision of this Bylaw, allows any act or thing to be done in contravention or violation of this Bylaw, fails or neglects to do anything required to be done by this Bylaw or 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 shall, 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.

10.2. This Bylaw may also and additionally be enforced by the City of Enderby Municipal Ticketing Information (MTI) System Bylaw No. 1518, 2013 and the City of Enderby Bylaw Notice Enforcement Bylaw No. 1581, 2015.

11. Failure to Comply

11.1. If an Owner or Occupier of a Parcel fails to comply with a requirement made under this Bylaw, 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 investigate a real or potential Hazardous Condition, to remediate the Parcel, or to have the Parcel attain a standard specified in any enactment, at the expense of the Owner or Occupier who has failed to comply, and may recover the costs incurred as a debt.

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

12. Severability

12.1. 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.

13. Repeal

13.1. The City of Enderby Property Remediation Bylaw No. 1401, 2007 is hereby repealed.

READ A FIRST TIME this 6th day of November, 2017.

READ A SECOND TIME this 6th day of November, 2017.

READ A THIRD TIME this 6th day of November, 2017.

ADOPTED this 20th day of November, 2017.

MAYOR

ADMINISTRATOR