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THE CORPORATION OF THE CITY OF PENTICTON

CONTROLLED SUBSTANCES PROPERTY REMEDIATION BYLAW 2004-71

Amended by Bylaw No. 2016-39 (July 18, 2016)

Controlled Substances Property Remediation

THE CORPORATION OF THE CITY OF PENTICTON
BYLAW NO. 2004-71A BYLAW TO REGULATE AND IMPOSE REQUIREMENTS RESPECTING THE
REMEDICATION 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 Municipal Council of the City of Penticton, in open meeting assembled, enacts as follows:

1. This bylaw may be cited as "City of Penticton Controlled Substances Property Remediation Bylaw no. 2004-71".

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.

"City" means The Corporation of the City of Penticton.

"Controlled Substance" includes 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 Business Licence and Regulation Bylaw.

"Controlled Substance Property" includes a Property which is used for:

- (a) the 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" includes the Manager of Regulatory Services of the City, the Director of Development and Engineering Services of the City, the Fire Chief of the City, a member of the Royal Canadian Mounted Police of the City, 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 Inspector 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 Inspector 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 Inspector 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);
- 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 Inspector has issued an Occupancy Certificate for the Property; and
- vii) the Owner or Occupant has paid all outstanding amounts owing to the City for the cost of supply and service due to any diversion of electric and water services imposed by this bylaw and other relevant City bylaws.

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 Inspector 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 Inspector 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 Inspector 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 or used for any commercial purpose by any Person 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 Inspector 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 Inspector 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:

a) Fire Services

If the Fire Chief or a person acting under the authority of the Fire Chief exercises his or her authority under this Bylaw or the Fire and Life Safety Bylaw No. 2004-57 in relation to a Controlled Substance Property, the City may bill and recover the costs from either or both the owner and occupier of the Controlled Substance Property in accordance with Schedule 'A'.

b) Building Services

If a Building inspector or a person acting under the authority of the Building Inspector exercises his or her authority under this Bylaw or City of Penticton Building Bylaw No. 94-45 in relation to a Controlled Substance Property, the City may bill and recover the costs from either or both the owner and occupier of the Controlled Substance Property in accordance with Schedule 'A'.

c) Police Services

The City may bill and recover the costs from either or both the owner and occupier of the Controlled Substance Property in accordance with Schedule 'A' if the RCMP carry out any of the following activities at a Controlled Substance Property:

- i. inspection;
- ii. investigation;
- iii. dismantling, disassembly, removal, clean up, transportation, storage and disposal of equipment, substances, materials and other paraphernalia associated with the use of the property as a Controlled Substance Property;
- iv. replacement of consumables used or replacement of equipment following exposure to contaminants used at a Controlled Substance Property;
- v. evidence collection and analysis;
- vi. securing the property; or
- vii. attending to keep the peace.

d) Third Party Expenses

In the event that the City retains a third party such as a hazardous materials or building demolition company to carry out work at a Controlled Substance Property, to dispose of materials or to use additional equipment or supplies at a Controlled Substance Property, cost will be recovered as outlined in Schedule 'A'.

(Bylaw No. 2016-39)

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 affect 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 20th day of September, 2004

READ A SECOND time this 4th day of October, 2004.

READ A THIRD time this 4th day of, October, 2004.

NOTICE given under Section 59 of the *Community Charter*
on this 20th day of September, 2004.

OPPORTUNITY for representations to Council provided under Section
59 of the *Community Charter* up to the 4th day of October, 2004.

SECOND READING RESCINDED this 20th day of March, 2006.

THIRD READING RESCINDED this 20th day of March, 2006.

READ A SECOND time as amended this 20th day of March, 2006.
READ A THIRD time as amended this 20th day of March, 2006.

RECONSIDERED AND FINALLY PASSED AND ADOPTED
this 3rd day of April, 2006.

Gerald J. Kimberley, Mayor

Cathy Ingram, City Clerk

Certified a true copy of Bylaw
No. 2004-71 as adopted

Cathy Ingram, City Clerk

SCHEDULE "A"**FEES**

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.

The following fees apply under this bylaw:

For initial Special Safety Inspection	\$500.00
For each subsequent inspection prior to issuance of a re-occupancy certification	\$250.00
Fire Department Apparatus	Rates as outlined by the Office of the Fire Commissioner inter agency reimbursement rates, as it changes from time to time.
Fire Department Staff	Actual Cost, including back filling of staffing to meet minimum manning for the City as per the current IAFF1399 Collective Agreement.
Exempt Staff	Actual Cost
Third Party Charges (Hazmat, Facilities, Nutrition, Demolition, etc.)	Actual Cost
Consumables (Firefighting foam, hose, protective clothing, etc.)	Actual Cost
RCMP member wages	Actual Cost
Administration and overhead costs	18%

(Bylaw No. 2016-39)

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 Penticton "Controlled Substances Property Remediation Bylaw no. 2004-71", no Person may occupy or use these premises for any use until cleaning and remediation have been completed and certified in accordance with that bylaw and the 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 Inspector.

Inspector
City of Penticton

SCHEDULE "C"

CERTIFICATION FORM

TO: Inspector, City of Penticton

FROM: *(insert name of Certified Professional)*

RE: Property located at *(insert address)*

This is to certify that in accordance with Section 6 of "Controlled Substances Property Remediation Bylaw no. 2004-71", 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: "Controlled Substances Property Remediation Bylaw no. 2004-71"

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

This letter is to notify you that the City of Penticton's "Controlled Substances Property Remediation Bylaw no. 2004-71", 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's Inspector 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's Inspector, 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's Inspector 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's Building Inspection Division.

Inspector
City of Penticton