

CITY OF KELOWNA

BYLAW NO. 10064

Safe Premises Bylaw

A Bylaw to regulate, prohibit or impose requirements respecting health and safety on property.

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

AND WHEREAS 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 of toxic chemicals, results in risks to the health and safety of occupiers and neighbours of property;

AND WHEREAS properties used for the cultivation of marijuana plants and the production of amphetamines are particularly susceptible to the above risks to health and safety;

AND WHEREAS inspection and bylaw enforcement with respect to properties used for the cultivation of marijuana plants and the production of amphetamines present unique risks and costs to the City and its staff;

NOW THEREFORE, the Council of the City of Kelowna enacts as follows:

Part 1 Citation

1.1 This Bylaw may be cited as “Safe Premises Bylaw No. 10064”.

Part 2 Severability

2.1 If a court finds a portion of this Bylaw invalid, that portion will be severed and the remainder of the Bylaw will remain in effect.

Part 3 Definitions

3.1 In this Bylaw,

“**amphetamines**” include dextroamphetamines and methamphetamines;

“**building**” as defined in City of Kelowna Zoning Bylaw No. 8000, as amended and in the case of a building with multiple legal parcels, means any portion of a building held as a separate legal parcel, but may also include additional legal parcels in the same building that may reasonably be expected to be affected by a **hazardous condition** in another part of the building;

“**Building Bylaw**” means the City of Kelowna Building Bylaw, 1993, No. 7245;

“**Building Code**” means the British Columbia Building Code, 2006;

“**Building Inspector**” means the chief building official for the **City**, and every building inspector, gas inspector and plumbing inspector appointed by the **City** to inspect **buildings** or structures, including plumbing or gas components;

“**City**” means the Corporation of the City of Kelowna;

“**dangerous goods**” means those products or substances regulated by the *Transportation of Dangerous Goods Act* and its Regulations;

“**Fire Chief**” means the person who is appointed to be head of the **City’s** fire and rescue services and every person designated by Council by name of office or otherwise to act in the place of the Fire Chief;

“**grow operation**” means the cultivation of marijuana plants or production of **amphetamines** on a parcel;

“**hazardous condition**” means a contravention of any regulation in Part 4 of this Bylaw;

“**hazardous conditions requirement list**” means a list of **hazardous conditions** present on a parcel, and any work required to address or remove those **hazardous conditions**, prepared or compiled by the **Building Inspector** following an inspection or **special safety inspection**, and which may be in the form of Schedule “B”;

“**hazardous substance**” means a substance listed in Schedule “E”;

“**inspector**” means:

- (a) the **Fire Chief**, and every person appointed by Council or the **Fire Chief**, as applicable, to be an officer or employee of the **City’s** fire and rescue service,
- (b) the **Building Inspector**,
- (c) a peace officer,
- (d) the Director of Works and Utilities,
- (e) a bylaw enforcement officer,
- (f) the deputy of a person, officer or employee referred in paragraphs (a) to (e),

- (g) other persons designated by Council by name of office or otherwise to act in the place of the persons, officers or employees referred to in paragraphs (a) to (f);

“**mould**” includes any mould or fungi, including any genus listed in Schedule “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*;

“**owner**” includes, in addition to the definition in the *Community Charter*, the lessee, licensee, tenant, caretaker, user or occupier of a **building** or a part of a **building**, or the agent of the owner;

“**qualified environmental professional**” means a person qualified with a degree in a field related to health, biology, or environmental science, and registered as a professional in that field, and experienced and qualified in removing contaminants from **buildings**,

“**registered owner**” means a person who is registered in the Land Title Office as the title holder of a parcel;

“**residential premises**” means a **building** on a parcel that is used or may be used as a residence, including any **buildings** that may be accessory to a residential use, including a garage or garden shed;

“**special safety inspection**” means an inspection coordinated by the **Building Inspector** for the purpose of determining the presence of any **hazardous conditions**, and may be conducted or coordinated with the RCMP and other authorities;

“**unauthorized alteration**” means any change made to the structural, mechanical, or natural gas system of a **building** that requires a permit, but for which no permit has been issued pursuant to the **Building Bylaw**, and which results in an increased risk to health or safety on a parcel;

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

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

Part 4 Hazardous Conditions

- 4.1 No **owner** may occupy or permit the occupancy of a **building** where a meter installed for the purpose of ascertaining 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 has been specifically permitted or required by the **City**, a **utility**, or a government authority.

- 4.2 No **owner** may occupy or permit the occupancy of a **building** where exhaust vents for hot water tanks or furnaces exhaust into or within a **building**.
- 4.3 No **owner** may occupy or permit the occupancy of a **residential premises** or a mixed use commercial **building** where a **hazardous substance** is present inside a **building** in an amount that exceeds the limits set out for that **hazardous substance** in Schedule “E” of this Bylaw.
- 4.4 No **owner** may occupy or permit the occupancy of a **building** where:
- (a) an exit or access to an exit required under the **Building Code** is blocked or obstructed;
 - (b) fire stopping provided or required under the **Building Code** has been removed; or
 - (c) the number of electrical circuits or connections to an electrical service exceeds the amount permitted under the *Electrical Code* or another enactment.
- 4.5 No **owner** may occupy or permit the occupancy of a **residential premises** or a mixed use commercial **building** where there is a visible accumulation of **mould** on the interior of any window, wall, or other structural component of the **building**, or where air samples indicate a concentration of airborne **mould** levels in excess of 150 colony forming units per cubic metre of air (CFU/cubic metre).
- 4.6 No **owner** may occupy or permit the occupancy of a **building** where there is an **unauthorized alteration**.

Part 5 Health & Safety Requirements

- 5.1 If an **unauthorized alteration** exists on a **building** with a **grow operation**, no **owner** may use or occupy or permit the occupancy of the **building** until:
- (a) the **owner** has paid the Special Inspection Fee in Schedule “A”;
 - (b) a **special safety inspection** of the **building** coordinated by the **Building Inspector** has been carried out;
 - (c) the **Building Inspector** has issued a **hazardous conditions requirement list**;
 - (d) the **owner** has obtained all **building** permits, approvals or authorizations required to carry out any work identified in the **hazardous conditions requirement list**;
 - (e) the **owner** has carried out or caused to be carried out all the work stated in the **hazardous conditions requirement list**;

- (f) the **Building Inspector** has inspected the **building** and determined that the work required in the **hazardous conditions 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 **hazardous condition** remains in the **building**; and
 - (g) the **Building Inspector** has removed any notices under Part 6 and issued a new occupancy permit for the **building** pursuant to the **Building Bylaw**.
- 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 on the parcel, the **Building Inspector** may include in the **hazardous conditions 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**;
- 5.4 Where a **Building Inspector** has reasonable grounds to believe that a **hazardous condition** involving a **hazardous substance or mould** is found in a **building**, the **Building Inspector** may include in the **hazardous conditions requirement list** any or all of the following requirements:
- (a) the **owner** must remove and dispose of all carpets and curtains in a **building**;
 - (b) if a **building** is heated by forced air heating, the **owner** must have the furnace, all air ducts, main distribution ducts, venting, and filtering cleaned by a **qualified environmental professional** or by a duct cleaning company;
 - (c) the **owner** must have all walls, floors and ceilings in the **building** replaced or cleaned and disinfected by a **qualified environmental professional**;
 - (d) the **owner** must have the **mould** removed in compliance with this Bylaw, and in accordance with the *Mould Remediation Guidelines*;
 - (e) the **owner** must provide a certificate report in the form prescribed in Schedule “C”, from a **qualified environmental professional** certifying that the **building** has been remediated in accordance with the *Mould Remediation Guidelines*, and that the levels of **moulds** and **hazardous substances** are at safe levels for occupancy and meet the requirements of this Bylaw.

Part 6 Powers of Building Inspector, Fire Chief and Inspectors

- 6.1 Subject to s. 16 of the *Community Charter*, an **inspector** may enter on real property to:

- (a) inspect and determine whether there is compliance with regulations under this Bylaw;
- (b) carry out a **special safety inspection**; or
- (c) take action authorized under Part 8 of this Bylaw.

6.2 If the **Building Inspector** or **Fire Chief** has reasonable grounds to believe that all or part of a **building** contains an **unauthorized alteration**, the **Building Inspector** may post a notice in the form of Schedule “D” in a conspicuous place at the entrances of the parcel or a **building** on the parcel and deliver to the **owner** of the parcel a notice that the **building** is unsafe and that no person may enter or occupy the **building**.

6.3 A person must not:

- (a) interfere with or obstruct the **Building Inspector** or the **Fire Chief** from posting a notice under this Part;
- (b) remove, alter, cover or mutilate a notice posted under this Part; or
- (c) occupy a **building** or premises until the **Building Inspector** has removed the notice posted under this Part, except with the prior written , engineer, or architect provides certification or other documentation to the permission of the **Building Inspector**.

6.4 Neither the removal of a notice posted under this Bylaw, nor the issuance of a **building** permit under this Bylaw, nor the acceptance or review of plans, drawings or specifications or supporting documents, or any inspections made by or on behalf of the **City**, will in any way relieve the **owner** from full and sole 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.

6.5 It is the full and sole 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**.

6.6 When a **qualified environmental professional**City under this Bylaw that the 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**, BC Electrical Code, or any other health and safety requirements established by applicable enactments, the **City** may rely solely on the documentation as evidence of conformity with these requirements and not on its receipt of plans, monitoring of the work, acknowledgement of completion, or removal of a notice.

Part 7 Duty of Registered Owner

- 7.1 Every **registered owner** of a parcel that contains a **residential premises** that is subject to a tenancy agreement and who is aware of or has attended the **residential premises** at a time when there is a contravention of this Bylaw must:
- (a) within 24 hours of the discovery of the contravention, deliver written notice to the **Building Inspector** of the particulars of the contravention; and
 - (b) take such action as may be necessary to bring the premises into compliance with this Bylaw.
- 7.2 Where an **owner** inspects and reports a contravention under section 7.1 of this Bylaw that the **City** or its **inspectors** were unaware of, the Special Inspection Fee arising in respect of the contravention may be waived in respect of that **building**.

Part 8 Discontinuance of Service

- 8.1 A person must not use water from the **City's** water distribution system in a **grow operation**.
- 8.2 The **City** may discontinue providing water service to a parcel if the water is being used for or in relation to a **grow operation** on the parcel subject to the requirements that the **City** shall:
- (a) give the **owner** 7 days written notice of an opportunity to make written representations to Council with respect to the proposed discontinuance of the water service; and
 - (b) if the **owner** makes representations to Council, the Council shall consider those representations, and give the **owner** an additional 7 days written notice of the date of any discontinuance of the water service if it decides to proceed with the discontinuance of the service.
- 8.3 Despite s. 8.2, where the Building Inspector reasonably considers that there is a risk of backflow or contamination to the **City's** water distribution system from a parcel used as a **grow operation**, and there is no apparent mechanism to prevent backflow into the **City's** water distribution system from the parcel, then:
- (a) the **Building Inspector** may discontinue the provision of water to the parcel within 2 hours of posting a notice on the front door of any **building** on the parcel advising that the **City** is shutting off the water supply to the parcel until such time as a mechanism to prevent backflow is installed, inspected and approved by the **City**; and

- (b) The **Building Inspector** must reconnect a water supply to a parcel that was disconnected under this section, upon being satisfied that there is a mechanism in place to prevent the backflow of water from the parcel into the **City's** water distribution system; and
- (c) The **owner** may seek a reconsideration of the **Building Inspector's** decision at the next regular meeting of Council.

Part 9 Offence and Penalty

- 9.1 Every person who contravenes any provisions of this Bylaw commits an offence punishable upon summary conviction and is liable to a fine not less than \$5,000 and not exceeding \$10,000.
- 9.2 If an offence is a continuing offence, each day that the offence is continued constitutes a separate and distinct offence.

Part 10 Schedules

Schedule "A" - Fees

Schedule "B" - Hazardous Conditions List

Schedule "C" - Certification Form

Schedule "D" - Notice

Schedule "E" - Hazardous Substances

Schedule "F" - Classes of Mould

Part 11 Repeal

City of Kelowna Nuisance Controlled Substance Bylaw No. 9510 and all amendments thereto, are hereby repealed.

Read a first, second and third time by the Municipal Council this 2nd day of November, 2009.

Deposited with the Minister of Health this

First, second and third readings rescinded by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

SCHEDULE “A”

Fees

1. Special Inspection Fee: \$2,500.

SCHEDULE “B”

Hazardous Conditions Requirements List

Re: _____[Property Address] (the “Property”)

Pursuant to the City of Kelowna’s “Safe Premises Bylaw No. 10064” 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 occupied due to **hazardous conditions** and **unauthorized alterations** on the Property.

No person is permitted to 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
 - Electricity
- Vent all furnace/hot water tank/gas appliances in accordance with the **Building Code**
- Provide/Restore all egress points as required under the **Building Code**
- Provide/Restore all fire stopping materials as required under the **Building Code**
- Bring all electrical panels and circuits up to standards in **Building Code**
- Provide a report from a qualified professional engineer certifying that the **building** is safe for occupancy and complies with the **Building Code**
- Remove and dispose of all carpets and curtains
- Have the furnace, all air ducts, main distribution ducts, venting, and filtering cleaned by a **qualified environmental professional** or by a duct cleaning company
- Have all walls, floors and ceilings in the **building** replaced or cleaned and disinfected by a **qualified environmental professional**
- Have **mould** removed in compliance with the Bylaw, and in accordance with the *Mould Remediation Guidelines*
- Provide a certificate report in the form prescribed in Schedule C of the Bylaw, from a **qualified environmental professional**, certifying that the property has been remediated in accordance with the *Mould Remediation Guidelines* and meets the standards of this Bylaw for the removal of substantially all moulds and/or hazardous substances

You are required to obtain **building** permits from the **City** prior to performing any of the above works that may require a permit under the **City's Building Bylaw**.

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 Inspection Department** at (250) 469-8960.

SCHEDULE “C”

Certification Form

| | | |
|--|---|---|
| TO: | The City of Kelowna | |
| FROM: | [insert name of qualified environmental professional] | |
| RE: | residential premises located at [insert address] | |
| This is to certify that in accordance with "Safe Premises Bylaw No. 10064", 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: [insert degrees, qualifications, certifications and professional affiliations] _____; and |
| | (2) | Has completed an inspection of the residential premises on _____[Date]; and |
| | (3) | The residential premises have been remediated in accordance with the <i>Mould Remediation Guidelines</i> and all hazardous substances, moulds or fungi, are now within safe levels for occupancy, and are in accordance with the "Safe Premises Bylaw No. 10064". |
| The undersigned professional may be contacted at: [insert business telephone number]. | | |
| | | |
| CERTIFIED AS OF _____[insert date] | | |
| | | |
| [Insert signature of qualified environmental professional] | | |
| _____ | | |
| | | |

SCHEDULE “D”

Notice

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

Pursuant to City of Kelowna’s “Safe Premises Bylaw No. 10064”, no person may occupy these premises until cleaning and/or repairs have been completed in accordance 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 (250) 469-8960.

Building Inspector
City of Kelowna

SCHEDULE “E”

Hazardous Substances

| Hazardous Substance | Maximum Stored in Container designed for storage of that substance | Maximum ppm in air |
|---------------------------------|--|--------------------|
| Acetic Acid | 0.5 Litres | 10 ppm |
| Acetone | 1.0 Litres | 250 ppm |
| Ammonia Solution (>50% ammonia) | 0.0 Litres | 25 ppm |
| Ammonia Solution (35%-50%) | 0.125 Litres | 25 ppm |
| Ammonia Solution (10%-35%) | 5.0 Litres | 25 ppm |
| Ammonia, Anhydrous | 0.0 Litres | 25 ppm |
| Carbon Monoxide | 0.0 Litres | 25 ppm |
| Chloroform | 5.0 Litres | 2 ppm |
| Ethanol | 1.0 Litres | 1000 ppm |
| Ethyl Ether | 0.0 Litres | 400 ppm |
| Hexane | 1.0 Litres | 20 ppm |
| Hydrochloric Acid | 1.0 Litres | 2 ppm |
| Iodine Azid (Dry) | 0.0 Litres/Kilograms | 0 ppm |
| Iodine Monochloride | 1.0 Kilograms | 0.1 ppm |
| Iodine Pentafluoride | 0.0 Kilograms | 0.1 ppm |
| Isopropyl Alcohol | 1.0 Litres | 220 ppm |
| Methanol | 1.0 Litres | 200 ppm |
| Methylamine, Anhydrous | 0.125 Litres | 5 ppm |
| Methylamine, Aqueous Solution | 1.0 Litres | 5 ppm |
| Methylamine Dinitramine | 0.0 Litres | 0 ppm |
| Methylamine Perchlorate (dry) | 0.0 Litres/Kilograms | 0 ppm |
| Methyl Ethyl Ketone | 1.0 Litres | 50 ppm |
| Nitroethane | 5.0 Litres | 100 ppm |
| Phosphine | 0.0 Litres | 0.3 ppm |
| Propane | 1.0 Litres | 1000 ppm |
| Thionyl Chloride | 0.0 Litres | 1 ppm |
| Toluene | 1.0 Litres | 20 ppm |
| Xylene | 1.0 Litres | 100 ppm |

SCHEDULE “F”

Classes of Mould and Fungi

Absidia sp.
Acremonium sr. (*Cephalosporium* sp.)
Acrodontium salmoneum
Alternaria sp.
Ascomycete
Aspergillus sp.
Aspergillus candidus
Aspergillus flavipes
Aspergillus flavus
Aspergillus fumigatus
Aspergillus glaucus
Aspergillus niger
Aspergillus ochraceus
Aspergillus oryzae
Aspergillus penicilloides
Aspergillus restrictus
Aspergillus sydowi
Aspergillus versicolor
Aureobasidium pullulans
Basidiomycetes
Bipolaris sr.
Bipolaris australiensis
Bipolaris hawaiiensis
Bipolaris spicifera
Blastomyces sp.
Botrytis sp.
Chaetomium sp.
Chaetomium atrobrunneum
Chaetomium globosum
Chaetomium strumarium
Chrysosporium spp.
Cladophialophora spp.
Indoor Cladosporium sp.
Cladosporium cladosporioides
Cladosporium herbarum
Cladosporium macrocarpum
Cladosporium sphaerospermum
Conidobolus sp.
Cunninghamella sp.
Curvularia sp.
Emericella nidulans
Emericella quadrilineata
Emericella rugulosa
Epidermophyton sp.
Fusarium solani
Fusarium sp.
Geotrichum sp.
Gliocladium sr
Helminthosporium sp.
Humicola sp.
Hyaline Mycelia
Myxomycetes
Nigrospora sr
Paecilomyces sp.
Papulospora sr.
Penicillium sp.
Phoma sr.
Rhizomucor sr
Rhizopus sp.
Rhodotorula sp.
Saccaromyces sp.
Scopulariopsis sp.
Serpula lacrymans
Sporobolomyces sr.
Sporothrix sp.
Sporotrichum sr.
Stachybotrys sr.
Stemphylium sp.
Synccephalastrum sp.
Trichoderma sp.
Trichothecium sp.
Tritirachium sr.
Ulocladium sr