



The Corporation of the District of North Cowichan

Nuisance (Controlled Substance) Bylaw, 2006

Bylaw 3246

[Consolidated and printed by authority of the Corporate Officer under section 139 of the Community Charter. Current to January 18, 2017. Last amended December 7, 2016. Amendments: 3470, 3548, 3567; 3624.]

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WHEREAS the Council of The Corporation of the District of North Cowichan wishes to enact a bylaw to regulate, prohibit and impose requirements respecting nuisances, noxious or offensive trades, and health and safety matters;

AND WHEREAS the alteration of plumbing, heating, air conditioning, electrical wiring and equipment, gas piping and fittings, appliances and accessories in or on controlled substance properties creates danger to occupiers and neighbours of controlled substance properties and risks to the health and safety of the occupiers and neighbours;

AND WHEREAS controlled substance properties that contravene applicable standards under the Building Code, British Columbia Fire Code, *Health Act*, *Safety Standards Act* or other applicable enactments, including North Cowichan bylaw requirements create risks to the health and safety of occupiers, and reduce the value of neighboring properties;

AND WHEREAS the Council has consulted with the Medical Health Officer, deposited this Bylaw with the Minister of Health, and given notice pursuant to section 59 of the *Community Charter*;

NOW THEREFORE the Council of The Corporation of the District of North Cowichan enacts as follows:

Interpretation

1 In this Bylaw:

“amphetamines” include dextroamphetamines and methamphetamines;

“alteration” means a change made to structural, mechanical or electrical components of a building that has not been made with a permit under the authority of North Cowichan’s “Building Bylaw 2003”;

“building” means a structure or construction for a use or occupancy;

“Building Code” means the British Columbia Building Code 1998;

“Building Inspector” means the Manager of Building and Compliance for North Cowichan, and other Building Inspectors so appointed by the Chief Administrative Officer;

“controlled substances” means a “controlled substance” as defined or described in Schedules I, II and III of the *Controlled Drugs and Substances Act*, but does not include a controlled substance permitted under that *Act*;

“controlled substance property” means

- (a) a parcel contaminated by or that contains trace amounts of chemical or biological materials used in or produced by the trade or manufacture of a controlled substance,
- (b) a building modified to trade or manufacture a controlled substance, or
- (c) a property which has or is being used for the ingestion, use, sharing, sale, trade or barter of a controlled substance, which no longer meets the applicable standard under the Building Code, British Columbia Electrical Code, British Columbia Fire Code, *Health Act* or other applicable acts, regulations and bylaws.

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

“Fire Chief” means a person whom Council appoints as Fire Chief for each fire hall in North Cowichan and every person designated by Council by name of office or otherwise to act in the place of the Fire Chief;

“flammable and combustible liquid” means a substance classified under the British Columbia Fire Code;

“grow operation” means the cultivation of marijuana plants or mushrooms that are controlled substances or the production of amphetamines;

“hazardous conditions” means

- (a) a real or potential risk of fire,
- (b) a real or potential risk to the health or safety of persons or property,
- (c) unapproved building, plumbing or electrical modifications,
- (d) an installation, contrary to the BC Electrical Code, of unapproved lighting devices, including, but not limited to, fluorescent lamps, metal halide bulbs and high pressure sodium lamps, or
- (e) repairs needed to the property, arising or resulting from the use or contamination of a property as a controlled substance property;

“Inspector” means

- (a) a North Cowichan firefighter,
- (b) a Building Inspector,
- (c) a member of the Royal Canadian Mounted Police,
- (d) the Director of Engineering and Operations,
- (e) the Bylaw Compliance Officer,
- (f) a health, gas, or electrical inspector,
- (g) the deputy of a person, officer and employee referred in paragraphs (a) to (e), or
- (h) other persons designated by Council by name of office or otherwise to act in the place of a person, officer or employee referred to in paragraphs (a) to (f);

“owner” includes the lessee, licensee, tenant, caretaker, user or other occupier of a building or part of a building, or agent of the owner;

“parcel” includes any improvement on a parcel;

“pesticide” means a substance or mixture, including a chemical, used to destroy, prevent, repel or mitigate fungi or animal pests or microorganisms such as bacteria or viruses, and includes herbicides, fungicides, or other substances used to control pests, and plant regulators, defoliants or desiccants;

“professional cleaner” means an individual or corporation experienced and qualified in removing contaminants from buildings, including pesticides, fertilizers or chemicals used to manufacture amphetamines or to grow controlled substances, moulds or fungi;

“re-occupancy permit” means written authorization from the Building Inspector to re-occupy a building or part of a building following an order to cease occupancy because of a hazardous condition;

“special safety inspection” means an inspection coordinated with other such departments, jurisdictions, and contractors as is necessary to ascertain hazardous conditions or to issue orders for violations of the Building Code, British Columbia Electrical Code, British Columbia Fire Code, *Health Act*, this or another bylaw, or other enactments;

“tenancy agreement” means an agreement, whether written or oral, express or implied, having a predetermined expiry date or not, between a landlord and tenant respecting possession of premises. [BL3548; BL3567]

Building and safety standards

- 2** No person may do the following:
- (a) disconnect a meter from an electrical, natural gas or water distribution system, unless lawfully authorized;
 - (b) divert an electrical or water distribution system such that consumption is not registered by a meter;
 - (c) divert or install exhaust vents for hot water tanks or furnaces that exhaust into or within a building contrary to the Building Code;
 - (d) install within a building unauthorized lighting devices, including, but not limited to, fluorescent lamps, metal halide bulbs and high pressure sodium lamps, contrary to the British Columbia Electrical Code;
 - (e) store or use dangerous goods in a building in quantities greater than permitted under the British Columbia Fire Code;
 - (f) construct or install any obstruction of an exit or an access to an exit required under the Building Code or other enactment, or remove fire stopping that is provided or required under an enactment to contain the spread of fire within a building;
 - (g) alter a structure or building in a way that facilitates the manufacture or growth of a controlled substance, or for the purpose of establishing or operating a grow-operation;
 - (h) cause or allow a building to be used to produce, store, or house amphetamines;
 - (i) exhaust noxious, offensive or hazardous vapors to the outside of a building.

Health

- 3** No person may cause or allow a building or parcel that has been used to cultivate marijuana, grow mushrooms or produce amphetamines to become subject to the
- (a) growth of mould or fungus, or
 - (b) accumulation of pesticides, or chemicals.

Noxious or offensive trade

- 4** No person may cause or allow a noxious or offensive trade in a building including the production, storage, transfer or disposal of substances that emit offensive odours, fumes or particulate matter.

Fire protection

- 5** (1) The Local Assistant to the Fire Commissioner or the Fire Chief may do the following:
- (a) enter real property and inspect premises for conditions that may cause a fire, increase the danger of a fire or increase the danger to persons or property from a fire;
 - (b) take measures to prevent and suppress fires, including the demolition of buildings and other structures to prevent the spreading of fires;
 - (c) order an owner or occupier of real property to remove or reduce a thing or condition that person considers a fire hazard or increases the danger of fire;
 - (d) exercise some or all of the powers of the Fire Commissioner under section 25 of the *Fire Services Act*;
 - (e) order every occupier of a controlled substance property to vacate the property until the removal of the "Unsafe - Do Not Enter or Occupy" notice posted by an Inspector under section 12 (3).
- (2) Every owner or occupier of real property must comply with any action directed by the Fire Chief or other authorized person, for the purpose of removing or reducing a fire hazard.

Landlord duties

- 6** Every owner or agent of a building or part of a building subject to a tenancy agreement must
- (a) inspect the premises at least once every 2 months to ensure compliance with this Bylaw, and
 - (b) where discovery of a contravention of this Bylaw is made
 - (i) deliver written notice to the Manager of Building Compliance of the particulars of the contravention, within 48 hours of discovering the contravention, and
 - (ii) subject to the *Residential Tenancy Act*, take such action as may be necessary to bring the premises into compliance with this bylaw, within 60 days of the delivery of the notice.

Discontinuation of service

- 7** (1) North Cowichan may discontinue providing water service to real property if the water is being used for, or in relation to, a grow operation.
- (2) Water service must not be disconnected under the previous subsection until North Cowichan has given the owner and occupier 7 days' written notice of an opportunity to make representations to the Council regarding the proposed discontinuance, and after Council has considered any such representations, has given the owner and occupier 7 days' written notice that the water service will be disconnected.

Remediation requirements

- 8** (1) If a building has been used for a grow operation, the owner of the building must, within 30 days after the grow operation has been removed, subject to the *Residential Tenancy Act*,
- (a) either remove and dispose of all carpets and curtains in the building, or have all carpets and curtains in the building cleaned by a professional cleaner,
 - (b) have all walls and ceilings in the building cleaned and disinfected by a professional cleaner,
 - (c) have all countertops and cabinets cleaned and disinfected by a professional cleaner, and
 - (d) have all forced air ducts and electric heaters cleaned by a professional duct cleaning company or a professional cleaner.
- (2) If, as a result of using a building or parcel as a grow operation,
- (a) the supply of electricity, water or natural gas has been disconnected by North Cowichan or any other lawful authority,
 - (b) unauthorized alterations or repairs have been made to structural, electrical, water or gas systems, equipment, appliances or other accessories of any kind, or
 - (c) a hazardous condition exists, then
- the supply of electricity, water or natural gas must not be permanently reconnected and the building or parcel must not be entered, except by authorized personnel, occupied or used until
- (d) the owner or occupant has applied to a Building Inspector for a special safety inspection,
 - (e) a special safety inspection of the building or parcel has been carried out to ensure compliance with all health and safety requirements of North Cowichan's bylaws and applicable provincial enactments,
 - (f) the owner or occupant has obtained all necessary permits, approvals, inspections, or authorizations required to carry out remedial work,
 - (g) all work necessary to bring the property or building into compliance is completed to the satisfaction of a Building Inspector and all other lawful authorities,
 - (h) the owner or occupant has paid all fees and service costs imposed under section 11 of this Bylaw and other relevant North Cowichan bylaws,
 - (i) the Building Inspector has issued a re-occupancy permit for the property, and
 - (j) the Building Inspector has removed the "Unsafe - Do Not Enter or Occupy" order posted under section 12 of this Bylaw.
- (3) North Cowichan may deliver to the owner and occupier of the building a letter generally in the form of Schedule "A".

Inspection and certification requirements

- 9** (1) After a professional cleaner has completed the requirements of section 8 (1), an individual or corporation certified by the Canadian Registration Board of Occupational Hygienists, or the American Board of Industrial Hygiene must inspect the building and provide written certification in the form of Schedule "B" to the Manager of Building and Compliance that the requirements of section 8 (1) have been satisfied and that the building is substantially free from pesticides, fertilizers, and any toxic chemicals, moulds and fungi. [BL3567]
- (2) Certification, in the form of Schedule "B", must be submitted to the Manager of Building and Compliance within 60 days of the date of a special safety inspection in which the existence of a grow operation is confirmed by the Inspector. [BL3567]

Occupancy

- 10** (1) After a grow operation has been removed, and until the remedial measures under section 8 have been completed and written certification provided to the Manager of Building and Compliance under the previous section, the building must not be occupied by any person. [BL3567]
- (2) Before the building is re-occupied after removal of a grow operation, the owner must notify prospective occupants, in writing, that a grow operation has been removed and that the requirements of this bylaw have been met.

Fees

- 11** (1) Every owner or occupant of a property which is used as a controlled substance property must pay North Cowichan all service costs incurred on behalf of North Cowichan including:
- (a) salaries and related personnel cost;
 - (b) costs to dismantle, remove, clean up, transport, store and dispose of the equipment, substances, materials and associated paraphernalia;
 - (c) costs to replace consumables used or replace equipment exposed to contaminants;
 - (d) costs incurred as a result of the analysis of the materials found at the property and the health and safety conditions at the property;
 - (e) costs incurred for the services of an independent contractor or agent;
 - (f) costs incurred by the Royal Canadian Mounted Police for investigation and inspection of the property, securing the property, accompanying inspectors on or into the property, or otherwise attending at the property;
 - (g) costs incurred for fire and rescue service to inspect the property, or to respond to a fire caused by an alteration made in relation to a grow operation, or the manufacture or growth of a controlled substance;

- (h) costs incurred by North Cowichan to clean, maintain or repair its sanitary or storm sewers, water mains, roadways, sidewalks or other Municipal property in relation to impacts of a growth operation.
- (2) If the owner inspects and reports a contravention under section 6 of this Bylaw, the owner shall not be liable for service costs under the previous section arising from this incident, unless the owner discovers the contravention after the Royal Canadian Mounted Police discovers the contravention.
- (3) Each time an Inspector carries out an inspection in the exercise of North Cowichan's authority to regulate, prohibit or impose requirements under this Bylaw, the owner must pay North Cowichan the fee prescribed in the Fees Bylaw. [BL3470]
- (4) An additional fee as prescribed in the Fees Bylaw must be paid to North Cowichan by the owner or occupant failing to take an action ordered under this Bylaw. [BL3470]

Notices and inspections

- 12**
- (1) Subject to the *Community Charter*, an Inspector may enter a property for any of the following purposes:
 - (a) to inspect and determine if regulations, prohibitions and requirements under this Bylaw or another enactment are being met;
 - (b) to take actions authorized under section 14 of this Bylaw or section 17 of the *Community Charter*;
 - (c) to inspect, disconnect, or remove a water service under this Bylaw;
 - (d) to carry out a special safety inspection where an Inspector considers that a hazardous condition may exist.
 - (2) No person may interfere with or obstruct the entry of an Inspector.
 - (3) An Inspector may post a notice containing the words "Unsafe - Do Not Enter or Occupy" in a conspicuous place at the entrances of a controlled substance property.
 - (4) No person may interfere with or obstruct an Inspector from posting a notice referred to in subsection 12 (3), or remove, alter, cover, mutilate or deface any notice posted except with permission from the Inspector.
 - (5) Neither the issuance of a building permit nor the removal of a "Unsafe - Do Not Enter" notice, nor the acceptance or review of plans, drawings or specifications or supporting documents nor any inspections made by or on behalf of North Cowichan 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) When a professional engineer, architect or other person provides certification or other documentation to show that the work required by this Bylaw substantially conforms to the requirements of this Bylaw and that the building complies with the health and safety requirements of the Building Code, BC Electrical Code, this Bylaw and all other health and safety requirements established by applicable enactments, North Cowichan will rely solely on the documentation as evidence of conformity with these requirements.

Standard of Proof

- 12.1** (1) Findings of fact for the purpose of determining whether all regulations, prohibitions or requirements under this Bylaw are applicable or are being met must be made on the balance of probabilities.
- (2) A grow operation may be found to have existed on a parcel and a property deemed to be a controlled substance property for the purposes of this Bylaw even if
- (a) no person has been charged with an offence relating to the grow operation, or
 - (b) a person charged with an offence relating to the grow operation was
 - (i) acquitted of all charges in proceedings before a criminal court, or
 - (ii) the charges were withdrawn, stayed, or otherwise do not proceed. [BL3624]

Offence and penalty

- 13** (1) Every person who contravenes a provision of this Bylaw commits an offence punishable upon summary conviction and is liable to a fine not exceeding \$10 000.
- (2) If an offence is a continuing offence, each day that the offence continues constitutes a separate and distinct offence.

Default

- 14** (1) If an owner or occupier of real property fails to comply with a requirement under this Bylaw or another enactment, North Cowichan may, following notice in writing, enter the real property and take such action as may be required to correct the default, and may recover the costs incurred as debt against the owner or occupier.
- (2) If the owner of property fails to pay the costs referred to in section 14 (1) before the 31st day of December in the year costs were incurred, the costs may be added to and form part of the taxes on the property as taxes in arrears.

Severability

- 15** If any provision of this Bylaw is found invalid by a court, the provision must be severed so the remainder of the Bylaw is left in effect.

Effective date

- 16** This Bylaw takes effect January 1, 2007.

Schedules

17 The following Schedules are attached to, and form part of, this Bylaw:

- (a) Schedule "A" - Letter to Property Owner;
- (b) Schedule "B" - Certification Form.

Read a first and second time on July 19, 2006.
Read a third time (as amended) on November 15, 2006.
Adopted on February 21, 2007.

SCHEDULE A

LETTER TO PROPERTY OWNER

Re: Properties involving Controlled Substances Bylaw No. 3246

This letter is to notify you that the North Cowichan "Nuisance (Controlled Substance) Bylaw", 2006" establishes regulations concerning the cleaning and remediation of buildings that have been used for marijuana grow operations, mushroom grow operations or amphetamine production.

The Royal Canadian Mounted Police has advised North Cowichan that the building at _____ was in use as marijuana grow operation [or mushroom grow operation or amphetamine production].

The Bylaw requires that within 30 days after a grow operation has been removed, all carpets and curtains in the premises must be removed or cleaned, and any forced air heating ducts in the premises cleaned and disinfected. That work must be carried out by a professional cleaner with experience in removing contaminants from buildings. The professional cleaner must hold a licence to carry on business in North Cowichan.

After the cleaning is completed, a qualified professional must certify that the parcel is free from pesticides, fertilizers, toxic moulds, chemicals and fungi.

Until the cleaning and certification have been completed, section 10 of the Bylaw prohibits occupancy by any person. Before occupancy, you must notify prospective occupants that the requirements of the Bylaw have been satisfied.

We enclose a copy of the Bylaw for your reference. If you have any questions concerning the regulations in the Bylaw, please call (250) 746-3100.

SCHEDULE B
CERTIFICATION FORM

TO: The District of North Cowichan

FROM: _____
[insert name of professional cleaner]

RE: Property at

[insert address]

This is to certify that in accordance with section 9 of the Nuisance (Controlled Substance) Bylaw, 2006 No. 3246, the professional identified in this certification

- (a) meets the requirements for a professional inspector under section 9 of the bylaw;
- (b) has completed an inspection of the building and parcel on _____;
and
- (c) the building and parcel is substantially free of any pesticides, fertilizers and toxic chemicals, moulds or fungi.

CERTIFIED AS OF _____ [insert date]

Signature of Professional Inspector

Name

Address

Telephone Number