

Village of Warfield  
Controlled Substance Property  
Bylaw, 2006, No. 684

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# Village of Warfield

## Controlled Substance Property Bylaw, 2006, No. 684

A Bylaw to regulate, prohibit or impose requirements  
respecting controlled substance properties.

WHEREAS Council of the Village of Warfield wishes to enact a bylaw to regulate, prohibit and impose requirements respecting controlled substance properties;

AND WHEREAS the alteration of structures, 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, *Safety Standards Act*, *Health Act* or other applicable enactments, including bylaw requirements of the Village, create risks to the health and safety of occupiers and neighbours, are offensive and a nuisance, and reduce the value of neighbouring properties;

Under its statutory powers, including Sections 8(3)(g), (h) and (l) of the *Community Charter*, S.B.C. 2003, c. 26, the Council of the Village of Warfield enacts as follows:

### **Part 1 Citation**

- 1.1 This Bylaw may be cited as "Controlled Substance Property Bylaw, 2006, No. 684".

### **Part 2 Severability**

- 2.1 If a portion of this bylaw is found invalid by a court, it will be severed and the remainder of the bylaw will remain in effect.

### Part 3 Definitions and Interpretation

#### Definitions

3.1 In this bylaw:

"amphetamines" include dextroamphetamines and methamphetamines;

"alteration" means any change made to the structural, mechanical or electrical components of a building without having first obtained a building permit under the authority of the Village's building regulation bylaw;

"building" means any structure or construction for any use or occupancy;

"Building Code" means the British Columbia Building Code as adopted by the Minister responsible under the *Community Charter*;

"Building Inspector" means the chief building official for the Village, and every inspector appointed by the Village to inspect buildings or structures in respect of building, plumbing, gas, or electrical standards;

"clandestine drug lab" means the manufacture of amphetamines, ecstasy, LSD (lysergic acid diethylamide), GHB (gamma hydroxybutyrate), crack cocaine, marijuana oil or its derivatives;

"controlled substance" means a "controlled substance" as defined or described in Schedules I, II or III of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, but does not include a controlled substance permitted under that act;

"controlled substance property" means

- (a) a parcel contaminated by or containing trace amounts of chemical or biological materials used in or produced by the trade or manufacture of a controlled substance,
- (b) a building or structure altered to manufacture, grow, store, sell, trade or barter a controlled substance, or
- (c) a parcel which has been or is being used for the manufacture, growing, storage, sale, trade or barter of a controlled substance,

and which does not meet applicable standards under the Building Code, British Columbia Fire Code, *Safety Standards Act*, *Health Act* or other applicable enactments including any bylaw requirements of the Village;

"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 Warfield Co #2 Fire Department and every person designated by Council to act in the place of the Fire Chief;

"flammable and combustible liquid" for the purposes of this Bylaw is as classified under the British Columbia Fire Code;

"grow operation" means the cultivation of marijuana plants or psilocybin mushrooms;

"hazardous condition" means

- (a) any real or potential risk of fire, noxious fumes or gasses, or explosion,
- (b) any real or potential risk to the health or safety of persons or property, including mould or fungus,
- (c) any unapproved or unauthorized building alteration, or
- (d) any contravention of the Building Code, British Columbia Fire Code, *Safety Standards Act*, *Health Act* or bylaws of the Village;

"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 Village's fire and rescue service,
- (b) the Building Inspector,
- (c) a peace officer, including a member of the Trail and Greater District RCMP Detachment,
- (d) The Chief Administrative Officer of the Village of Warfield and the bylaw enforcement officer,
- (e) a safety officer under the *Safety Standards Act*,
- (f) a health inspector appointed by the local health authority,
- (g) the deputy of a person, officer or employee referred in paragraphs (a) to (f), and
- (h) other persons designated by Council by name or office or otherwise to act in the place of the persons, officers or employees referred to in paragraphs (a) to (g);

"owner" includes the registered owner, and the lessee, licensee, tenant, and the caretaker, user or other occupier of a building or a part of a building, or the agent of the owner;

"parcel" means any lot, block or other area in which land is held or into which it is subdivided;

"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, plant regulators, defoliants or desiccants;

"professional cleaner" means an individual or corporation experienced and qualified in removing from buildings moulds, fungi, contaminants, including pesticides, fertilizers or chemicals used to manufacture or grow controlled substances, if the removal is required under sections 5.2 and 5.3;

"qualified professional" means an individual or corporation who

- (a) is a certified industrial hygienist (CIH), a registered occupational hygienist (ROH), a registered professional biologist (R.P.Bio.), or a Ph.D. mycologist, and
- (b) carries environmental liability insurance in the minimum amount of \$1,000,000.00;

"residential premises" means any building or part of a building which may be occupied as a dwelling unit by one or more persons;

"service costs" means all direct and indirect costs incurred by the Village in relation to the inspection and removal of illegal activities, individuals associated with illegal activities, materials associated with illegal activities and by-products resulting from illegal activities at a controlled substance property, including a parcel used as a grow operation or a clandestine drug lab, and includes:

- (a) administration and overhead associated with the inspection and removal,
- (b) costs incurred for the dismantling, disassembly, removal, clean up, transportation, storage, and disposal of equipment, substances, materials or other paraphernalia associated with the use, trade, business or manufacture,
- (c) costs incurred to replace consumables used, or to replace equipment following exposure to contaminants,

- (d) costs incurred for the analysis of the materials found at the property and the health or safety conditions at the property,
- (e) costs incurred in respect of the property under a contract for services for an independent contractor or agent, including without limitation, a professional engineer, a consultant, a person retained to carry out construction or demolition, a health professional, an electrical inspector, or a hazardous materials professional,
- (f) costs incurred by the RCMP for the forensic investigation and inspection of the property, securing of the property, accompanying inspectors on or in the property, or otherwise lawfully attending at the property,
- (g) costs incurred by the Village's fire and rescue service to inspect the property, take any action under section 5.2, or respond to a fire caused by
  - (i) an alteration made in relation to a grow operation or clandestine drug lab, or
  - (ii) the manufacture or growth of a controlled substance,
- (h) costs incurred by the Village for cleaning, maintaining or repairing the Village's sanitary or storm sewers, water mains, roadways, sidewalks or other Village property in relation to impacts of a grow operation or clandestine drug lab, and
- (i) legal fees on a solicitor and own client basis;

"special safety inspection" means an inspection coordinated with other such departments, jurisdictions, and contractors as is necessary to ascertain hazardous conditions or contraventions that may exist under the Building Code, the British Columbia Fire Code, *Safety Standards Act*, *Health Act*, bylaws of the Village or other applicable enactments;

"structure" means an alteration, erection, addition, demolition, excavation or other construction;

"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, including residential premises;

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

**Interpretation**

- 3.2 In this bylaw, every reference to an enactment is a reference to the enactment and also to any regulation made under that enactment, all as may be amended, re-enacted or replaced from time to time.

**Standard of Proof**

- 3.3 Findings of fact for the purpose of determining whether all regulations, prohibitions or requirements under this bylaw are applicable or are being met are to be made on the balance of probabilities.
- 3.4 A marijuana grow operation or clandestine drug lab 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 marijuana grow operation or clandestine drug lab; or
  - (b) a person charged with an offence relating to the marijuana grow operation or clandestine drug lab was acquitted of all charges in proceedings before a criminal court or the charges are withdrawn or stayed or otherwise do not proceed.

**Part 4 Building, Safety, Health, Nuisance and Noxious or Offensive Business Regulations**

**Prohibitions**

- 4.1 A person, other than:
- (a) a utility; or
  - (b) a person to whom a disconnection or bypass permit required by the Village has been issued,
- must not disconnect, tamper with or bypass a meter installed for the purpose of ascertaining consumption of electricity, water or natural gas from an electrical, water or natural gas distribution system.
- 4.2 A person must not 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 or clandestine drug lab.

- 4.3 A person must not divert or install exhaust vents for hot water tanks or furnaces to exhaust into or within a building except by way of an exhaust vent constructed or installed in compliance with applicable provincial and Village enactments.
- 4.4 A person must not store or use dangerous goods in a building in quantities greater than permitted under the British Columbia Fire Code.
- 4.5 A person must not:
- (a) construct or install any obstruction of an exit or an access to an exit required under the Building Code or other enactment; or
  - (b) remove fire stopping provided or required under an enactment, to contain the spread of fire within a building.
- 4.6 A person must not cause or allow a building to become subject to the growth of mould or fungus arising from or in relation to a grow operation or clandestine drug lab in the building.
- 4.7 A person must not cause, allow or permit:
- (a) a nuisance as a result of his or her use of occupancy of a parcel; or
  - (b) water, rubbish or unsightly matter to collect or accumulate in, on, under or around a parcel owned, used or occupied by the person.
- 4.8 A person must not cause, allow or permit in a building the manufacture, growing, storage, transfer or disposal of a substance that emits odours, fumes or particulate matter that disturbs the enjoyment, health, comfort or convenience of individuals.
- 4.9 A person must not:
- (a) interfere with or obstruct the Building Inspector or the Fire Chief from posting a "Do Not Occupy" notice referred to in section 7.1; or
  - (b) remove, alter, cover or mutilate a "Do Not Occupy" notice posted under section 7.1,

except with the prior written permission of the Building Inspector or Fire Chief, as applicable.

**Reconnection of Services**

- 4.10 If as a result of the use or suspected use of a parcel for a grow operation or clandestine drug lab or as a controlled substance property:
- (a) the supply of electricity, water or natural gas to the parcel has been disconnected by the Village, a utility, any other lawful authority, or any person;
  - (b) alterations or repairs have been made to structural, electrical, water or natural gas systems, equipment, appliances or other accessories of any kind on the parcel; or
  - (c) a hazardous condition exists on the parcel,

then a person must not reconnect the supply of electricity, water or natural gas and, subject to the *Residential Tenancy Act*, a person must not use or occupy the parcel or permit the parcel to be used or occupied, until the person has complied with section 4.11.

**Remedial Measures**

- 4.11 Without limiting section 4.10, a person must not use or occupy a parcel described in section 4.10, or permit the parcel to be used or occupied, until in respect of the parcel:
- (a) a special safety inspection of the parcel has been carried out under section 7.2,
  - (b) the owner has:
    - (i) obtained all permits, approvals or authorizations required to carry out, and
    - (ii) has carried out or caused to be carried out, the work necessary to bring the parcel into compliance with this bylaw and other applicable bylaws and applicable provincial enactments;
  - (c) remedial measures prescribed by section 5.2 of this bylaw have been completed and written certification has been provided to the Chief Administrative Officer under section 5.3;

- (d) if required under an enactment, including the Village's building bylaw, the owner has retained a professional engineer holding a valid licence under the *Engineers and Geoscientists Act* and the professional engineer has certified in writing that the building safety requirements required under applicable enactments have been complied with;
- (e) the owner has paid all service fees and other fees imposed under this bylaw and other relevant Village bylaws in relation to the inspection of the parcel and the issuance of permits; and
- (f) the Building Inspector or Fire Chief has removed the "Do Not Occupy" notice pursuant to section 7.7.

## **Part 5 Responsibilities of Owners**

### **Inspection of Rental Properties**

- 5.1 Every person who is the registered owner of a parcel that contains a building, a structure or other premise that is subject to a tenancy agreement:
- (a) must inspect the premises, building or structure at least once during every period of three consecutive calendar months to ascertain whether this bylaw has been contravened; and
  - (b) who has inspected the premises at a time when there is a contravention of this bylaw in relation to the premises, building or structure, must
    - (i) within 24 hours of the discovery of the contravention, deliver written notice to the Chief Administrative Officer of the particulars of the contravention, and
    - (ii) subject to the *Residential Tenancy Act*, within two months of the delivery of the notice, take such action as may be necessary to bring the premises into compliance with this bylaw so that the Building Inspector or Fire Chief may remove the "Do Not Occupy" notice posted under section 7.1.

## Remediation

- 5.2 If a building on a parcel has been used for a grow operation or clandestine drug lab, the owner of the parcel must, within fourteen (14) days after delivery by the Village of a letter under section 7.2(b), subject to the *Residential Tenancy Act*:
- (a) remove and dispose of all carpets and curtains in the building;
  - (b) if the building is heated by forced air heating, have the furnace, all air ducts, main distribution ducts, venting, and filtering cleaned by a professional cleaner or by a duct cleaning company; and
  - (c) have all walls, floors, insulation, moisture barrier and ceilings in the building replaced or cleaned and disinfected by a professional cleaner.
- 5.3 After a professional cleaner has been engaged by the owner and has completed the requirements of section 5.2, a qualified professional must inspect the building and provide written certification in the form prescribed by the Chief Administrative Officer that the requirements of section 5.2 have been satisfied and the building is substantially free of any pesticides, fertilizers, toxic chemical contamination, moulds or fungi, prior to the occupancy or re-occupancy of the building.
- 5.4 Any remediation required to be done on a parcel pursuant to section 4.10 and section 5.2 of this bylaw must be completed within 60 days of the date a "Do Not Occupy" notice is posted under section 7.1, provided, however, that where the Chief Administrative Officer is satisfied that the owner is diligently proceeding with the required work, the Chief Administrative Officer may grant an extension of time that is, in his or her opinion acting reasonably, sufficient to complete the remediation work required.
- 5.5 Neither the removal of a "Do Not Occupy" notice posted under section 7.1 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 Village, 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 codes, standards and enactments.
- 5.6 It is the full and sole responsibility of the owner (and where the owner is acting through a representative, the representative) to carry out the work in respect of which a permit was issued or which is required prior to removal of a "Do Not Occupy" notice posted under section 7.1 in compliance with this bylaw and all other applicable codes, standards and enactments, including the Building Code.

**Fire Hazards**

- 5.7 Every owner or occupier of a parcel must undertake any action directed by the Fire Chief for the purpose of removing or reducing any thing or condition that the Fire Chief or any other authorized person considers is a fire hazard or increases the danger of fire.

**Occupancy Not Permitted**

- 5.8 After a grow operation or clandestine drug lab is removed from a parcel, and until the remedial measures prescribed by section 4.10 and section 5.2 of this bylaw are completed and the written certifications are provided to the Chief Administrative Officer as required by section 4.11 and section 5.3, the parcel shall not be occupied by any person and it shall be an offence for any person to allow, suffer or permit any occupancy of the parcel until its occupancy is permitted by this bylaw.

**Notice to Prospective Occupants**

- 5.9 Before a parcel is re-occupied after removal of a grow operation or clandestine drug lab, the owner must notify any prospective occupants from that time forward in writing that a grow operation or clandestine lab was removed and that the requirements of this bylaw were met.

**Part 6 Village Reliance**

- 6.1 Neither the issuance of a building permit nor the removal of a "Do Not Occupy" notice posted under section 7.1 under this bylaw nor the acceptance or review of plans, drawings or specifications or supporting documents nor any inspections made by or on behalf of the Village 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.
- 6.2 When a qualified professional, professional engineer, architect or other person provides certification or other documentation to the Village under this bylaw that the work required by or contemplated 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, British Columbia Electrical Code, this bylaw and all other health and safety requirements established by applicable enactments, the Village will 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 "Do Not Occupy" notice posted under section 7.1.

**Part 7 Powers of Building Inspector, Fire Chief and Inspectors**

**Posting and Delivery of Notices**

7.1 If:

- (a) the Building Inspector or Fire Chief has reason to believe that all or part of a parcel is a controlled substance property;
- (b) the Fire Chief has ordered every occupier of a controlled substance property to vacate;
- (c) Council has ordered every occupier of the controlled substance property to vacate under the *Community Charter*; or
- (d) an owner has delivered a written notice to the Chief Administrative Officer under section 5.1,

the Building Inspector or Fire Chief may post a notice in the form prescribed for that purpose from time to time in a conspicuous place at the entrances of the parcel and deliver to the owner of the parcel a notice that the parcel is unsafe and that no person may enter or occupy the parcel.

7.2 The Chief Administrative Officer may:

- (a) coordinate a special safety inspection of the controlled substance property; and
- (b) deliver to the owner of the parcel a form of notice advising of the requirements of this bylaw.

**Inspection Powers**

7.3 Subject to the *Community Charter*, an inspector may enter a parcel to:

- (a) inspect and determine whether all regulations, prohibitions or requirements under this bylaw or other enactments are being met in relation to any manner for which the Council, a municipal officer or employee or a person authorized by the Council has exercised authority under this or another act to regulate, prohibit or impose requirements;
- (b) to carry out a special safety inspection under section 7.2;
- (c) take action authorized under section 9.1 of this bylaw; or
- (d) inspect, disconnect or remove a service under sections 10.1, 10.2 and 10.3 of this bylaw.

- 7.4 Subject to the *Community Charter*, an inspector may attend at the parcel from time to time during the course of work required by or contemplated under this bylaw to ascertain that the work required of the owner is taking place and to monitor the progress of the work done by the owner.

### **Receive Documents**

- 7.5 The Chief Administrative Officer may:
- (a) acknowledge receipt of evidence from the owner of completion of work referred to in section 4.11, 5.2 and 5.3; and
  - (b) receive the written certification, documents and fees referred to in section 4.11 and 5.3.

### **Fire Chief Powers**

- 7.6 The Fire Chief may:
- (a) enter on a parcel 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 the starting and spread of fires and to suppress fires, including the demolition of buildings and other structures to prevent the spreading of fires;
  - (c) order the owner of the parcel to undertake any actions directed by the Fire Chief for the purpose of removing or reducing any thing or condition that person considers is a fire hazard or increases the danger of fire;
  - (d) order every occupier of a controlled substance property to vacate the property until the "Do Not Occupy" notice posted under section 7.1 has been removed by the Building Inspector or Fire Chief under this bylaw; and
  - (e) without limiting paragraphs (a) to (d), exercise the powers of the Fire Commissioner under section 25 of the *Fire Services Act*, and for these purposes that section applies.

**Removal of "Do Not Occupy" Notice**

- 7.7 When an owner has complied with the requirements listed in section 4.11, the Building Inspector or Fire Chief must remove the "Do Not Occupy" notice posted under section 7.1.

**Part 8 Fees and Service Costs**

**Fees**

- 8.1 The following fees apply under this bylaw:
- (a) each time one or more inspectors enters on a parcel to carry out an inspection in the exercise of the Village's authority to regulate, prohibit or impose requirements under this bylaw or another enactment, or to attend at the parcel under sections 7.2, 7.3 or 7.4, the owner must pay the Village the administration and inspection fees stipulated in Schedule A;
  - (b) for a special safety inspection, the owner or occupier must prior to inspection pay the Village the fee stipulated in Schedule A.

**Service Costs**

- 8.2 In addition to the fees described in section 8.1, every owner whose parcel is used as a controlled substance property must pay to the Village all service costs incurred by or on behalf of the Village in respect of the parcel.
- 8.3 Despite section 8.2, if any owner inspects and reports a contravention under section 5.1(b)(i) of this bylaw, service costs arising in respect of the contravention are not payable in respect of that incident, unless the owner discovers the contravention only after a peace officer attends the parcel and discovers the contravention.

**Part 9 Default**

- 9.1 If an owner of a parcel fails to comply with a requirement of the Village under this bylaw or another enactment, the Village, by its officers, employees or agents within the time specified in an order or notice, may enter on the parcel and take such action as may be required to correct the default, including to remediate the parcel or bring it up to a standard specified in an enactment, at the expense of the owner or occupier who has failed to comply, and may recover the costs incurred as debt.

9.2 If the owner or occupier has failed to pay the Village’s costs of acting in default under section 9.1, or failed to pay any other fee imposed for work or services provided to land or improvements, before the 31<sup>st</sup> day of December in the year that the correction of the default was effected or the fee imposed, the costs will be added to and form part of the taxable payable on the property as taxes in arrears.

**Part 10 Discontinuance of Service**

10.1 The Village may discontinue providing water service to a parcel if the water is being used for or in relation to a grow operation or clandestine drug lab on the parcel.

10.2 The Village may discontinue electrical service to a parcel if an inspector determines that the electrical system has been compromised, a complete inspection of the electrical system has been denied or the owner or occupier has not responded to notice of an electrical inspection.

10.3 The Village may discontinue natural gas service to a parcel if the heating system has been altered or if natural gas is used for the production of electricity for a grow operation or clandestine drug lab.

**Part 11 Offence and Penalty**

11.1 Every person who contravenes any provision of this bylaw commits an offence punishable upon summary conviction and is liable to a fine not exceeding \$10,000.00.

11.2 If an offence is a continuing offence, each day that the offence is continued constitutes a separate and distinct offence.

**Part 12 Repeal**

12.1 The Village of Warfield Bylaw No.659 cited as “Warfield Controlled Substance Property Bylaw, 2005” and all amendments thereto, are hereby repealed.

|                                  |  |
|----------------------------------|--|
| READ A FIRST TIME                | this 9 <sup>th</sup> day of August, 2006     |
| READ A SECOND TIME               | this 9 <sup>th</sup> day of August, 2006     |
| READ A THIRD TIME                | this 9 <sup>th</sup> day of August, 2006     |
| NOTICE OF INTENTION TO ADOPT     | this 18 <sup>th</sup> day of August, 2006    |
| RECONSIDERED and FINALLY ADOPTED | this 13 <sup>th</sup> day of September, 2006 |

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Corporate Administrator

Certified a true copy of Bylaw #684, as adopted.

\_\_\_\_\_  
Corporate Administrator

# SCHEDULE A

## Fees and Service Costs

### Fees

The following fees apply under this bylaw:

|   |            |
|---|------------|
| 1. Special safety inspection, including initial property research, the posting of a notice of inspection and the initial inspection   | \$2,000.00 |
| 2. After the initial inspection, each additional inspection, per inspection   | \$500.00   |
| 3. For a subsequent inspection if the owner or occupier has failed to undertake an action by the Fire Chief, the Council or a person authorized under the bylaw to order the action | \$500.00   |
| 4. Shutting off a water service   | \$100.00   |
| 5. Re-connecting a water service  | \$100.00   |
| 6. Re-inspecting and re-sealing a water service after alteration or tampering   | \$500.00   |
| 7. All applicable permit fees payable under applicable Village bylaws.  |            |

### Service Costs

The following service costs apply under this bylaw:

|  |                            |
|--|----------------------------|
| 1. Item (a) in the definition of service costs – administration and overhead | \$300.00                   |
| 2. Items (b) through (i) in the definition of service costs                  | Actual cost to the Village |