

District of West Vancouver



Controlled Substance Nuisance Bylaw No. 4417, 2005

Effective Date – April 18, 2005

District of West Vancouver

**Controlled Substance Nuisance
Bylaw No. 4417, 2005**

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Controlled Substance Nuisance Bylaw No. 4417, 2005

A Bylaw to regulate, prohibit or impose requirements respecting nuisances, noxious or offensive trades, and health and safety.

WHEREAS the Council of The Corporation of the District of West Vancouver deems it expedient to enact a bylaw to regulate, prohibit or 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* or other applicable enactments, including bylaw requirements of the District, create risks to the health and safety of occupiers, and reduce the value of neighbouring properties;

NOW THEREFORE, the Council of the District of West Vancouver enacts as follows:

Part 1 Citation

- 1.1 This Bylaw may be cited as Controlled Substance Nuisance Bylaw No. 4417, 2005.

Part 2 Severability

- 2.1 If a portion of this bylaw is held invalid, it shall be severed and the remainder of the bylaw shall remain in effect.

Part 3 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 that has not been made with a building permit under the authority of the District’s building regulation bylaw;

“**Building**” means any Structure or construction for any use or occupancy;

“**Building Code**” means the British Columbia Building Code 1998 as adopted by the Minister responsible under the *Community Charter*, as amended or reenacted from time to time;

“**Building Inspector**” means the Manager of Permits & Inspections for the District, and every building inspector appointed by the District to inspect buildings or structures in respect of Building, plumbing, gas, or electrical standards;

“**Controlled Substance**” means a “controlled substance” as defined and described in Schedules I, II or III of the *Controlled Drugs and Substances Act, 1996 c. 19*, as amended from time to time, 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 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 therein or thereon,

which does not meet applicable standards under the Building Code, British Columbia Fire Code, *Health Act* or other applicable enactments including any bylaw requirements of the District, as amended from time to time;

“**Dangerous Goods**” means those products or substances regulated by the *Transportation of Dangerous Goods Act* and its Regulations, both as amended from time to time;

“Fire Chief” means the person who is appointed to be head of West Vancouver 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;

“Flammable and Combustible Liquid” for the purposes of this Bylaw is as classified under the Fire Code (British Columbia) as amended from time to time;

“Grow Operation” means the cultivation of marijuana plants or mushrooms that are Controlled Substances or the production of Amphetamines;

“Hazardous Condition” means:

- (a) any real or potential risk of fire;
- (b) any real or potential risk to the health and safety of persons or property;
- (c) any unapproved or unauthorized Building Alteration; or
- (d) any contraventions of the Building Code, British Columbia Fire Code, or *Health Act* all as amended from time to time, or bylaws of the District,

on a Controlled Substance Property;

“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 West Vancouver Fire and Rescue Services;
- (b) the Building Inspector;
- (c) a peace officer, including a member of the West Vancouver Police Department;
- (d) the Director of Engineering and Transportation;
- (e) District Bylaw Enforcement/Compliance Officers;
- (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).

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

“Parcel” includes any improvement on the 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, defoliant or desiccants;

“Professional Cleaner” means an individual or corporation experienced and qualified in removing contaminants, including Pesticides, fertilizers, chemicals used to manufacture Amphetamines or grow Controlled Substances, moulds or fungi from Buildings, as required under sections 6.3 and 6.4;

“Residential Premises” means any Building or part of a Building which may be occupied lawfully as a dwelling unit by one or more persons;

“Service Fees” means fees in respect of all direct and indirect costs incurred by the District associated with the inspection, investigation or removal of the illegal activities, materials associated with illegal activities, and by-products resulting from illegal activities at a Controlled Substance Property and includes:

- (a) administration and overhead associated with the inspection and removal;
- (b) costs incurred for the lawful dismantling, disassembly, removal, clean up, transportation, storage, and disposal of equipment, substances, materials and other paraphernalia associated with such use, trade, business or manufacture;
- (c) costs incurred from the replacement of consumables used, or the replacement of equipment following exposure to contaminants;
- (d) costs incurred for the analysis of the materials found at the property and the health and safety conditions at the property;
- (e) costs incurred by the West Vancouver Police Department 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;
- (f) costs incurred by West Vancouver Fire and Rescue Services to inspect the property, take any action under section 5.2, or respond

to a fire caused by an Alteration or the manufacture or growth of a Controlled Substance.

“Special Safety Inspection” means an inspection coordinated with other such departments, jurisdictions, and contractors as is necessary to ascertain Hazardous Conditions or enactment contraventions that may exist under the Building Code, British Columbia Fire Code, *Health Act*, bylaws of the District and other enactments;

“Structure” means an 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.

Part 4 Building, Health, Safety, Nuisance and Noxious Trade Regulations

- 4.1 A person, other than a Utility, must not disconnect 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 If as a result of the use of a Parcel as a Controlled Substance Property:
- (a) the supply of electricity, water or natural gas to the Parcel has been disconnected by the District, 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, until paragraphs (a) to (f) of section 4.3 have been complied with.

- 4.3 Without limiting section 4.2, a person must not use or occupy a Parcel described in section 4.2 until:
- (a) a Special Safety Inspection of the Parcel coordinated by the Building Inspector has been carried out under section 5.6.
 - (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, as amended from time to time;
 - (c) remedial measures prescribed by section 6.3 of this bylaw have been completed and written certification has been provided to the Building Inspector under section 6.4;
 - (d) in respect of the Parcel 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 enactments referred to in paragraph (b) have been complied with;
 - (e) the Owner has paid all Service Fees and other fees imposed under this Bylaw and other relevant District Bylaws in relation to the inspection of the property and the issuance of permits, and
 - (f) the Building Inspector has removed the “Do not occupy” order posted under section 5.1.
- 4.4 A person must not Alter a Structure or Building in a way that facilitates the manufacture or growth of a Controlled Substances for the purpose of establishing or operating a Grow Operation.
- 4.5 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 District enactments.
- 4.6 A person must not store or use Dangerous Goods in a Building in quantities greater than permitted under the *British Columbia Fire Code* as amended from time to time.

- 4.7 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, as amended from time to time; or
 - (b) remove fire stopping provided or required under an enactment, as amended from time to time, to contain the spread of fire within a Building.
- 4.8 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 in the Building.
- 4.9 A person must not cause, allow or permit:
- (a) a nuisance as a result of his or her use of occupancy of a Parcel;
 - (b) water, rubbish or unsightly matter to collect or accumulate in, on, under or around a Parcel owned, used or occupied by him or her.
- 4.10 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, comfort or convenience of individuals.
- 4.11 A person must not:
- (a) interfere with or obstruct a Building Inspector or the Fire Chief from posting a notice referred to in section 5.1; or
 - (b) remove, alter, cover or mutilate a notice posted under section 5.1,
- except with the prior written permission of the Building Inspector or Fire Chief, as applicable.

Part 5 Powers of Building Inspector, Fire Chief and Inspectors

- 5.1 If:
- (a) the Building Inspector or Fire Chief has reason to believe that all or part of a Parcel is a Controlled Substance Property, including by being so informed by a peace officer, including a member of the

West Vancouver Police Department or the Royal Canadian Mounted Police;

- (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 Building Inspector under section 6.1;

the Building Inspector or Fire Chief may post a notice in the form of Schedule D 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 shall enter or occupy the Parcel.

5.2 The Fire Chief may:

- (a) enter on 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 the Owner of real property 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 by the Fire Chief under section 5.1 has been removed by the Building Inspector under this Bylaw;
- (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.

5.3 Subject to the *Community Charter*, an Inspector may enter on real property to:

- (a) inspect and determine whether all regulations, prohibitions and 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) take action authorized under sections 9.1 and 9.2 of this Bylaw; or
 - (c) inspect or to disconnect or remove a water service under section 10.1 of this Bylaw.
- 5.4 Subject to section 7.2, the Building Inspector or 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 work done by the Owner.
- 5.5 The Building Inspector may:
- (a) acknowledge receipt of evidence from the Owner of completion of work referred to in section 4.3, 6.3 and 6.4;
 - (b) on behalf of the District receive the written certification, documents and fees referred to in section 4.3 and 6.4.
- 5.6 If a Parcel has been posted with a notice under section 5.1, the Building Inspector may coordinate a Special Safety Inspection of the Controlled Substance Property.
- 5.7 When an Owner has complied with the requirements listed in paragraphs (a) to (f) of section 4.3, the Building Inspector must remove the "Do no occupy" notice posted under section 5.1.

Part 6 Duty of Owner

- 6.1 Every registered owner of a Building or Structure 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 Building Inspector 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.
- 6.2 Every Owner or occupier of real property must undertake any action directed by the Fire Chief or other person authorized by Council to act in the place of the Fire Chief for the purpose of removing or reducing any thing or condition that the Fire Chief or the other authorized person considers is a fire hazard or increases the danger of fire.
- 6.3 If a Building has been used for a Grow Operation, the Owner of the Building must, within thirty (30) days after the Grow Operation has been removed, 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 and ceilings in the Building cleaned and disinfected by a Professional Cleaner, or replaced if necessary,and the District may deliver to the Owner and occupier of the Building a letter in the form of Schedule B.
- 6.4 After a Professional Cleaner has been engaged by the Owner and has completed requirements of section 6.3 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 C to the Building Inspector that the requirements of section 6.3 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, and United States standard S-500 as amended from time to time applies to mould removal.
- 6.5 Before a Building is re-occupied after removal of a Grow Operation, the Owner must notify the prospective occupants in writing that a Grow Operation has been removed and that the requirements of this Bylaw have been met.
- 6.6 Neither the removal of a “Do not occupy” order posted under section 5.1 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 District, 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 codes, standards and applicable enactments as amended from time to time.

- 6.7 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” order posted under section 5.1 in compliance with this Bylaw and all other applicable codes, standards and enactments, including the Building Code, as amended from time to time.

Part 7 District Reliance

- 7.1 Neither the issuance of a Building permit or a removal of a “Do not occupy” order posted under section 5.1 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 District 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.
- 7.2 When a professional engineer, architect or other person provides certification or other documentation to the District 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, BC Electrical Code, this Bylaw and all other health and safety requirements established by applicable enactments as amended from time to time and as applicable, the District 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 under section 5.7.

Part 8 Fees

- 8.1 The following fees apply under this bylaw:
- (a) each time an Inspector enters on a Parcel to carry out an inspection in the exercise of authority by the District to regulate, prohibit or impose requirements under this bylaw or another enactment, or to attend at the parcel under section 5.4 or 5.6, the Owner must pay the District the administration and inspection fee stipulated in Schedule A;
 - (b) for a Special Safety Inspection, the Owner or occupier must prior to inspection pay the District the fee stipulated in Schedule A.

- 8.2 Every Owner whose real property is used as a Controlled Substance Property must pay the District all Service Fees incurred by or on behalf of the District in respect of the property.
- 8.3 Despite section 8.2, if any Owner inspects and reports a contravention under section 6.1(b)(i) of this Bylaw, Service Fees arising in respect of the contravention are waived in respect of that incident.

Part 9 Default

- 9.1 If an Owner of a Parcel fails to comply with a requirement of the District under this bylaw or another enactment, the District, by its officers, employees or agents within the time specified in the 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 has failed to pay the District's costs of acting in default under section 9.1 before the 31st day of December in the year that the correction of the default was effected, the costs must 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 District 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 District must:
- (a) give the Owner of the real property 7 days' written notice of an opportunity to make representations to Council with respect to the proposed discontinuance of the water service, and
 - (b) after the persons affected have had an opportunity to make representations to Council, the District must give the Owner 7 days written notice of any proposed discontinuance of the water service.

Amended by
Regulatory
Bylaw
Enforcement
and Penalty
Bylaw No.
4521, 2007

Part 11 Offence and Penalty

- 11.1 Every person who violates a provision of this bylaw, or who consents, allows or permits an act or thing to be done in violation of a provision of this bylaw, or who neglects or refrains from doing anything required by a provision of this bylaw, is guilty of an offence and is liable, upon summary conviction, to a fine not exceeding \$10,000 and not less than \$2,500.
- 11.2 Each day that a violation continues or exists under this bylaw is a separate offence.

Schedules

Schedule A - Fees

Schedule B - Letter to Property Owner

Schedule C - Certification Form

Schedule D - Notice

READ A FIRST TIME on April 04, 2005

READ A SECOND TIME on April 04, 2005

READ A THIRD TIME on April 04, 2005

DEPOSITED with the Minister of Health on April 14, 2005.

ADOPTED by the Council on April 18, 2005

Mayor

Municipal Clerk

Schedule A - Fees

1. Each time the District enters on a Parcel to inspect, in the exercise of the District's authority to regulate, prohibit or impose requirements under this Bylaw or another enactment or to attend at the Parcel under section 5.4, the Owner must pay the District a fee of:

- (a) \$500.00;
- (b) an additional \$1,000.00 for a subsequent inspection undertaken if the Owner or occupier has failed to undertake action ordered by the Fire Chief, the Council or a person authorized under the bylaw to order the action;
- (c) \$500.00 for a Special Safety Inspection with Inspectors paid prior to the Special Safety Inspection.

Service Fees include:

- (a) (\$85.00 per hour for fire per person and per apparatus),
- (b) (\$89.00 per hour for police per person),
- (c) (\$50.00 per hour for staff time for other Service Fee work described in definition of "Service Fee");
- (d) an additional administration and overhead fee of 8% of items 1(a) to (d) and 2(a) to (c).

Schedule B – Letter to Property Owner

Re: Controlled Substance Nuisance
Bylaw No. 4417, 2005

This letter is to notify you that the District of West Vancouver's "Controlled Substance Nuisance Bylaw No. 4417, 2005" establishes regulations concerning the cleaning and remediation of Residential Premises that have been used for marijuana grow operations or amphetamine production.

The District has been advised by the West Vancouver Police Department that the Residential Premises at {insert address} were in use as a marijuana grow operation {or amphetamine production operations} which has been removed by the police.

The bylaw requires that within 30 days, all carpets and curtains in the premises must be removed or cleaned, any forced air heating ducts in the premises must be cleaned, and all walls and ceilings must be cleaned and disinfected. That work must be carried out by a Professional Cleaner with experience in removing contaminants from Residential Premises. The Professional Cleaner must hold a licence to carry on business in West Vancouver.

After the cleaning is completed, a qualified professional must certify that the premises are free from Pesticides, fertilizer, toxic moulds, chemicals and fungus, and United States Standard S-500 applies to removal of mould.

Until the cleaning and certification have been completed, section 15 of the Bylaw prohibits occupancy by any person. Before occupancy, you are required to 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 the District's Bylaw Enforcement Department at 604 925-7153.

Schedule C - Certification Form

TO:	The District of West Vancouver
FROM:	[insert name of professional cleaner{]}
RE:	Residential Premises located at [insert address]
This is to certify that in accordance with "Controlled Substance Nuisance Bylaw No. 4417, 2005, the professional identified in this certification:	
(1)	Meets the certification requirements for an inspector under section 6.3 of the Bylaw; and
(2)	Has completed an inspection of the Residential Premises on _____; and
(3)	The Residential Premises are substantially free of any pesticides, fertilizers and toxic chemicals, moulds or fungi, in accordance with United States Standard S-520.
The undersigned professional may be contacted at :[insert business telephone number].	
CERTIFIED AS OF _____[insert date]	
[Insert Name of Professional Cleaner]	

Authorized Representative	

Schedule D – Notice

TAKE NOTICE THAT these premises have been used as a Controlled Substance operation.

Pursuant to District of West Vancouver “Controlled Substance Nuisance Bylaw No. 4417, 2005”, no person may occupy these premises until cleaning and remediation 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 [insert name and telephone number of appropriate district official.]

[insert title]
District of West Vancouver