

SUMMARY:

The Noxious Insect Control Bylaw identifies which insects are considered to be noxious or destructive and requires people to prevent their property from becoming infested with any of the identified insects. Should an Inspector determine that a property has become infested and the property owner or occupier does not take action to remove the infestation within 72 hours after being ordered to do so, the City may have the work done and the costs may be charged against the property taxes.

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CITY OF KELOWNA
BYLAW NO. 8564
REVISED: June 19th, 2000

Noxious Insect Control

A bylaw pursuant to Section 725 of the *Municipal Act* to require owners or occupiers of real property or their agents to prevent infestation of noxious or destructive insects and pests and to clear the property of such insects and pests.

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. TITLE

1.1 This Bylaw may be cited as "Noxious Insect Control Bylaw No. 8564".

2. APPLICABILITY

2.1 This Bylaw applies to all **real property** within the **City**.

2.2 Nothing in this Bylaw shall preclude anyone from complying with the provisions of any other local, provincial, or federal regulations or enactment.

3. INTERPRETATION

3.1 In the event that any section of this Bylaw is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or sub-section shall be severed from and not affect the remaining provisions of this Bylaw.

3.2 The headings given to the sections and paragraphs in this Bylaw are for convenience of reference only. They do not form part of this Bylaw and will not be used in the interpretation of this Bylaw.

3.3 Any enactment referred to herein is a reference to an enactment of British Columbia, and the regulations thereto, as amended, revised, consolidated or replaced from time to time, and any bylaw referred to herein is a reference to an enactment of the **Council**, as amended, revised, consolidated, or replaced from time to time.

4. DEFINITIONS

4.1 In this Bylaw, unless the context otherwise requires:

"**Agent**" means a person, firm or corporation representing the **owner of real property within the City**;

"**Bylaw Enforcement Officer**" means the officers or employees appointed by **Council** as such;

"**City**" means the **Municipal Council** of the City of Kelowna, or the land within the boundaries of the City of Kelowna;

"Control the Infestation" means procedures which are recognized by the *Ministry of Agriculture*, and the tree fruit, forestry or horticultural industries as responsible methods of controlling specific pests such as application of an appropriate chemical or biological spray, direct removal of the **noxious or destructive insects or pests**, removal of host species or removal of host habitat;

"Council" means the Municipal Council of the City;

"Infested/Infestation" means the presence of populations of **noxious or destructive insects or pests** in trees, bushes, plants or associated fruit that have caused or are likely to cause significant damage to the trees, bushes, plants or associated fruit;

"Inspector" means the Inspector appointed by the **Regional District** and authorized by the **Regional District**, at any time or from time to time, on behalf of the **City**, to enforce and carry out the provisions of this bylaw, and who has been appointed by the **Council** as a **Bylaw Enforcement Officer**;

"Noxious or destructive insects or pests" means:

- Codling moth - *Cydia pomonella* (L.)
- Western cherry fruit fly - *Rhagoletis indifferens* Curran
- Black cherry fruit fly - *Rhagoletis fausta* (O.S.)
- San Jose scale - *Quadraspidiotus perniciosus* (Comst.)
- European fruit scale - *Quadraspidiotus ostreaeformis* (Curt.)
- Pear psylla - *Cacopsylla pyricola* Foerst
- Fruittree leafroller - *Archips argyrospila* (Wlk.)
- European leafroller - *Archips rosana* (L.)
- Oliquebanded leafroller - *Choristoneura rosaceana* (Harr.)
- Threelined leafroller - *Pandemis limitata* (Rob.)
- Apple-and-thorn skeletonizer - *Choreutis pariana* (Cl.)
- Apple mealybug - *Phenacoccus aceris* (Sign.)
- Apple ermine moth - *Yponomeuta malinella* Zell.
- Gypsy moth - *Lymantria dispar* (L.)
- Apple maggot - *Rhagoletis pomonella* (Walsh)
- Oriental fruit moth - *Grapholita molesta* (Bst.)
- Cherry bark tortrix - *Enarmonia formosana* (Scop.)
- Cherry ermine moth - *Yponomeuta padellus* (L.);

"Occupier" shall have the meaning given to it in the *Municipal Act*;

"Owner" shall have the meaning given to it in the *Municipal Act*;

"Real Property" shall have the meaning given to it in the *Municipal Act*;

"Regional District" means the Regional District of Central Okanagan.

5. DUTY OF CARE

- 5.1 This Bylaw does not create a duty of care in respect of the **City**, its **Council**, employees or authorized agents, or the **Regional District**, its **Board**, **Inspectors**, employees or authorized agents, concerning any matter governed by the provisions of this Bylaw including the enforcement or failure to enforce this Bylaw.

6. CAUSE OF ACTION

- 6.1 Neither a failure to administer or enforce nor incomplete or inadequate administration or enforcement of the provisions of this Bylaw, nor any error, omission or other neglect in relation to any matter governed by this Bylaw shall give rise to a cause of action in favour of any person.

7. OWNER'S RESPONSIBILITY

7.1 It shall be the full responsibility of the **owner** or his **agent** or the **occupier** of any **real property** located within the **City** to take all actions necessary to comply with the provisions of this Bylaw.

8. PREVENTION OF INFESTATION

8.1 **Owners** or **occupiers** of **real property** located within the **City** shall take all action necessary to prevent the **real property** from becoming **infested**.

9. CONTROL OF INFESTATION

9.1 **Owners** or **occupier** of **real property** located within the **City** that has become **infested** shall take all action necessary to **control the infestation**.

10. ORDER TO CONTROL INFESTATION

10.1 Where an **Inspector** or **Bylaw Enforcement Officer** has received a complaint that **real property** is **infested** and the **infestation** is verified and confirmed by investigation, the **Inspector** or **Bylaw Enforcement Officer** may issue an order to the **owner** or **occupier** of the **real property** requiring the **owner** or **occupier** to take all action necessary to **control the infestation** within 72 hours from the date of service of the order.

11. DIRECT ENFORCEMENT IN DEFAULT

11.1 Where, after the expiry of 72 hours from the date of delivery of an order given pursuant to this Bylaw, an **owner** or **occupier** has not **controlled the infestation**, it shall be lawful for the **City**, or the **Regional District**, on behalf of the **City**, by its employees or other authorized representatives to enter the **real property** and take all action necessary to **control the infestation**.

12. INSPECTION

12.1 The **Inspector** or **Bylaw Enforcement Officer** may enter any **real property** located within the **City** at any reasonable time concerning any matter under this Bylaw and may perform such reasonable tests, analyses or other things as may be necessary to determine if an **infestation** exists.

13. SERVICE OF ORDER

13.1 An order made pursuant to Section 10.1 of this Bylaw shall be deemed to be validly served by:

- a. personal delivery to the **owner** of the **real property** or the **agent** of the **owner** or the **occupier**; or
- b. being mailed by regular mail addressed to the **owner** of the **real property** or the **agent** or the **occupier** and posting the order in a reasonably visible location on the **real property**.

14. OWNER RESPONSIBLE FOR COSTS

14.1 All costs incurred by the **Regional District**, on behalf of the **City**, or by the **City**, to **control the infestation** of **real property** shall be charged to the **owner** of the **real property** and if unpaid on the 31st day of December of any year, shall be added to and form part of the taxes payable in respect of such property as taxes in arrears.

15. OBSTRUCTION

15.1 No person shall obstruct an Inspector or Bylaw Enforcement Officer acting pursuant to this Bylaw.

16. CONSULTATION

16.1 The Inspector and Bylaw Enforcement Officer are authorized to consult with owners or occupiers of real property within the City concerning complaints about insects or pests that are not currently included in the definition of noxious or destructive insects or pests.

17. REPEAL

17.1 The "City of Kelowna Noxious Insect Control Bylaw No. 4258-77" and all amendments thereto are hereby repealed.

18. OFFENCE

18.1 Any person who violates or causes or allows to be caused a violation of a requirement of this Bylaw shall be guilty of an offence and shall be liable, upon conviction, to the penalties provided under the provisions of the *Offence Act*.

19. EFFECTIVE DATE

19.1 This Bylaw comes into full force and effect as of the date of adoption.

Read a first, second and third time by the Municipal Council this 12th day of June, 2000.

Adopted by the Municipal Council of the City of Kelowna this 19th day of June, 2000.

"Walter Gray"

Mayor

"D.L. Shipclark"

City Clerk