



STAFF REPORT ACTION REQUIRED

Marijuana Grow Operations – Enforcement Cost Recovery By-law

Date:	August 24, 2007
To:	Licensing & Standards Committee
From:	City Solicitor
Wards:	All
Reference Number:	

SUMMARY

This report has been prepared as directed by city council to report on a form of draft by-law for the recovery of enforcement costs specifically incurred by City agencies and divisions in respect of properties which have been identified as having contained a marijuana grow operation.

This report recommends that Council adopt two draft by-laws. The first recommended by-law establishes new offences in respect of causing, allowing or permitting a property to be used for the purposes of a marijuana grow operation. The second by-law amends Municipal Code Chapter 441, Fees, to add a schedule of enforcement charges for the purpose of recovering costs incurred by City agencies and divisions in respect of enforcement activities undertaken as a result of the premises having contained a marijuana grow operation.

This report has been prepared in consultation with staff of the City Manager's Office, Toronto Police Service, Fire Services, Toronto Public Health, Toronto Building and Municipal Licensing & Standards, and those agencies and divisions are in agreement with the recommendations below.

RECOMMENDATIONS

The City Solicitor recommends that:

- (1) City Council enact by-laws in substantially the form attached as Attachments 1 and 2 to this report so as to establish a new Municipal Code Chapter 565, Marijuana Grow Operations, and amend Chapter 441, Fees, to include a schedule of charges in respect of enforcement costs, subject to such further stylistic or technical changes as may be required by the City Solicitor.
- (2) City Council direct that the City Solicitor apply to the Ministry of the Attorney-General for Ontario to obtain the maximum set fine available (i.e. \$500) in respect of violations of the new Municipal Code Chapter.
- (3) The appropriate City officials be authorized to take whatever action may be required in order to implement the recommendations in this report.

FINANCIAL IMPACT

It is expected that the cost recovery measures outlined in this report will have a positive financial impact on the agencies and divisions involved to the extent that enforcement charges are successfully collected.

DECISION HISTORY

At its meeting of June 26, 27 and 28, 2006, City Council adopted the recommendation that the City Solicitor be requested to review and identify the enforcement costs specifically incurred in respect of marijuana growhouses and report back on a form of draft by-law for the recovery of such costs. The intent of this exercise was to attempt to recover enforcement costs (e.g. investigation and inspection, laying of charges, court appearances, clerical costs, etc.) associated with the enforcement of various provincial statutes (i.e. Building Code Act, 1992, Fire Protection and Prevention Act, 1997, Health Protection and Promotion Act or the City of Toronto Act, 2006) or municipal by-laws in respect of premises which have been used for these illegal activities, potentially resulting in the creation of safety and health hazards contrary to this legislation or City by-laws.

ISSUE BACKGROUND

For a number of years, City staff have been involved in responding to municipal issues raised by premises which have been illegally converted for use as marijuana grow operations. This illegal conversion (usually of residential premises) may result in issues of municipal concern such as electrical hazards, water and mould damage, structural issues and related neighbourhood crime issues.

Since the date of my last report (April 19, 2006), the new *City of Toronto Act, 2006* (the “*Act*”), has come into force. Section 388.1 of the new *Act* provides that when the City has been notified by a police service that premises contain a marijuana grow operation, the City is required to undertake an inspection of the premises within a reasonable period of time according to the powers which the City has at law and take appropriate action to render the building safe and otherwise protect the public. The City is therefore required to take action and incur costs as a result of these illegal activities in order to address any violations of municipal regulations.

COMMENTS

As directed by Council, I have undertaken a process of consultation with the affected City divisions and agencies (i.e. Toronto Police Service, Toronto Fire Services, Public Health, Municipal Licensing & Standards and Toronto Building) to identify the types of activities which those agencies and divisions may undertake as a result of the City being notified by a police service that premises have been used for the purposes of a marijuana grow operation.

Attached as Attachment 1 to this report is a form of draft by-law to establish a new Municipal Code Chapter 565, Marijuana Grow Operations, which includes the following:

1. A prohibition on causing, permitting or allowing a property to be used as a marijuana grow operation.
2. A prohibition on allowing an unsafe or nuisance condition to exist as a result of the property having been used as a marijuana grow operation.
3. A requirement that an owner or occupant of property immediately remove any alteration (e.g., electrical jury-rigging) and repair any damage to the property (e.g. mould or water damage) and remove any hazardous materials or supplies present as a result of the illicit use. The by-law would require that the by-law requirements be complied with prior to further human occupation (i.e., as a dwelling or workplace) of the premises.
4. Providing for inspections for the purposes of enforcing the Code Chapter.
5. Providing for the City to do remedial work when necessary in order to remedy a violation of the Code Chapter, and recover the costs by placing them on the tax roll and collecting them in the same manner as taxes.
6. Providing for the recovery of applicable enforcement charges in respect of costs incurred by the City for activities taken in relation to the property.
7. Providing for escalating maximum fines greater than the limit of \$5,000 established under the *Provincial Offences Act* in the case of second (i.e. up to \$25,000) or third and subsequent (i.e. up to \$100,000) offences.

Staff report for action on recovery of marijuana grow operation enforcement costs.

Included as Attachment 2 to this report is a form of draft by-law to amend Code Chapter 441, Fees, to include a list of applicable charges in respect of services or activities undertaken by City agencies and divisions. A review of Attachment 2 shows that the agencies involved include the Toronto Police Service, Toronto Fire Services, Municipal Licensing & Standards, Toronto Building, Toronto Public Health and Legal Services. The activities for which costs are being recovered include investigation, inspection, review and preparation of reports, enforcement, clerical and administrative work, court/tribunal attendance and legal work (e.g. preparation and registration of orders) undertaken as a result of the premises being used as a marijuana grow operation.

Staff will continue to review the activities and processes required to address the concerns raised by marijuana grow operations and may bring forward further recommendations as appropriate.

CONTACT

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SIGNATURE

Anna Kinastowski
City Solicitor

ATTACHMENTS

Attachment 1 - Draft By-law – To adopt a new Municipal Code Chapter 565, Marijuana Grow Operations.

Attachment 2 - Draft By-law - To amend Municipal Code Chapter 441, Fees, to include charges for enforcement activities in respect of marijuana grow operations.

ATTACHMENT 1

Authority: Licensing & Standards Committee Report No. (), adopted by Council at
its meeting of , 2007
Adopted by Council: , 2007

CITY OF TORONTO

Bill No.

BY-LAW No.

To adopt a new Municipal Code Chapter 565, Marijuana Grow Operations.

WHEREAS the *City of Toronto Act, 2006* (the “*Act*”) provides that, where a police force has notified the City that premises contained a marijuana grow operation, the City of Toronto shall ensure that an inspection of the lands and building is conducted within a reasonable period of time after the notification and that appropriate actions are taken for the protection of the health and safety of the public; and

WHEREAS the *Act* provides that Council may pass by-laws in respect of the health, safety and well-being, and protection of persons and property; and

WHEREAS the *Act* further provides that Council may pass by-laws to establish a system of escalating fines and impose fees and charges for services or activities done by the City or its local boards, including the recovery of costs for administration and enforcement;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. The Municipal Code of the City of Toronto is amended by adding the new municipal code chapter attached as Schedule “A” to this by-law.

ENACTED AND PASSED this day of , A.D. 2007.

Mayor

City Clerk

SCHEDULE “A”

Chapter 565

MARIJUANA GROW OPERATIONS

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Article I

Interpretation

§ 565-1. Definitions.

ASSESSMENT ROLL — The provincial tax assessment roll under the *Assessment Act*.¹

CONTRACTOR – A person retained by the City or a local board of the City to provide goods or services required for the purposes of inspection, investigation, administration and clerical activities undertaken in the enforcement of this chapter, or any other Act, regulation or by-law as a result of a property having contained a marijuana grow operation.

ENFORCEMENT CHARGES – Charges for the recovery of costs, including labour and material costs or amounts paid to a contractor, for inspection, investigation, administration and clerical activities done by or on behalf of the City or a local board of the City, including the Toronto Police Services Board, as set out in Chapter 441, Fees and Charges, but shall not include remedial costs otherwise recoverable by the City under section 386 of the *City of Toronto Act, 2006*.²

INSPECTOR – Any person undertaking an inspection required for the purposes of the enforcement of this chapter, and shall include a by-law enforcement officer, or officer,

¹ See R.S.O. 1990, c. A.31.

² See S.O. 2006, c. 11.

employee or agent of the City or a local board of the City, or any member of the Toronto Police Service.

MARIJUANA GROW OPERATION – Any property or portion of a property which the Toronto Police Service, the Ontario Provincial Police or the Royal Canadian Mounted Police has identified in writing to the City as having contained a marijuana grow operation.

OCCUPANT — Any person or persons over the age of 18 years in possession of a property.

OWNER — Includes:

- A. The person for the time being managing or receiving the rent of a property, whether on the person’s own account or as agent or trustee of any other person, or who would receive the rent if the property were let;
- B. A lessee or occupant of a property who, under the terms of a lease, is required to repair and maintain the property in accordance with the standards for the maintenance and occupancy of property; and
- C. Any person who takes possession of a property under a charge or mortgage registered on title to the property.

PROPERTY — A building or structure or part of a building or structure, and includes the lands and premises appurtenant to a building or structure and all mobile homes, mobile buildings, mobile structures, outbuildings, fences and erections on the property, and includes vacant property.

Article II

Prohibition

§ 565-2. Prohibition on Marijuana Grow Operations

- A. No person, owner or occupant shall cause, permit or allow a marijuana grow operation on or in a property within the City of Toronto.
- B. No owner or occupant shall cause, permit or allow an unsafe, dangerous, offensive or unwholesome condition to exist on or in a property as the result of a marijuana grow operation.
- C. No owner or occupant shall cause, permit or allow water, rubbish, or noxious, offensive or unwholesome odours, liquids or materials to collect or accumulate in or around a property as a result of a marijuana grow operation.

Staff report for action on recovery of marijuana grow operation enforcement costs.

- D. Every owner or occupant of a property that contained a marijuana grow operation shall immediately:
- (1) Remove all equipment or materials used in the marijuana grow operation;
 - (2) Remove and restore any alteration to the property made as a result of the marijuana grow operation;
 - (3) Repair any damage to the property caused by the marijuana grow operation, including, but not limited to, mould or water damage; and
 - (4) Obtain and comply with all inspections, orders, permits and approvals required for the lawful use of the property.
- E. No person shall allow a property or any portion of a property to be used as a dwelling or for any other purpose which requires occupation of the property by persons unless it has been remediated, restored or repaired as required under §565-2D.

Article III

Inspection and Notice

§ 565-3. Inspections.

- A. Subject to compliance with section 377 of the *City of Toronto Act, 2006*, an inspector may enter in or upon the property of any person at any reasonable time for the purposes of inspecting the property and determining whether this chapter or an order issued under this chapter are being complied with, and may for that purpose:
- (1) require the production for inspection of documents or things relevant to the inspection;
 - (2) inspect and remove documents and things relevant to the inspection for the purpose of making copies or extracts;
 - (3) require information from any person concerning a matter related to the inspection; and
 - (4) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.

- B. Where an inspector determines that a property is in contravention of this chapter, he or she may by way of written order served upon the owner and/or occupant, declare the property to be in contravention of the provisions of this chapter and require the owner or occupant to undertake such work as may be required to correct the contravention.
- C. An order made under this chapter may be served personally or by registered mail to the last known address of the person to whom it is issued and service by registered mail shall be deemed to have taken effect 5 business days after the date of mailing.
- D. Where service cannot be given as required under §565-3C, sufficient service shall be deemed to have been given if an inspector places a placard containing the order in a conspicuous place on the property where the contravention occurred.
- E. No person shall deface, cover up or remove a placard placed under §565-3D.
- F. An inspector may, where an inspector has been prevented or is likely to be prevented from exercising his or her powers under §565-3A, undertake an inspection pursuant to an order issued under section 378 of the *City of Toronto Act, 2006*.

§ 565-4. Non-compliance and cost recovery.

- A. If an owner or occupant fails to comply with a written order of an inspector, the City may, at all reasonable times, enter on the property and effect compliance at the expense of the owner or occupant who has failed to comply, and may recover the costs of doing so from the responsible person by action or by adding them to the tax roll and collecting them in the same manner as property taxes.
- B. The inspector shall deliver to the owner or occupant, written notice of the costs to the last known address of the occupant or the registered address of the owner, as identified on the assessment roll.
- C. In the event that the person who has failed to comply does not pay the costs under §565-4B within ninety (90) days of the date of the written notice of the costs under §565-4B, the costs shall be a lien against the property and shall be added to the tax roll and collected in the same manner as property taxes.
- D. Where the City is advised that a property contains or contained a marijuana grow operation, any enforcement charges incurred as a result in respect of the property shall be at the expense of any owner and occupant of the property and the City may, in the event that the charges are not paid within ninety (90) days of the date of written notice of such charges to the owner and occupant, add the enforcement

charges to the tax roll for properties where all of the owners are responsible for the payment of the enforcement charges and collect them in the same manner as property taxes.

Article IV

Penalty

§ 565-5. Offence and Fines.

Every person who contravenes the provisions of this chapter, including the failure to comply with an order issued under this chapter or section 366 of the *City of Toronto Act, 2006*, and every director or officer of a corporation who knowingly concurs in a contravention of the provisions of this chapter by the corporation, is guilty of an offence and is liable to a fine of not more than:

- A. \$5,000 for a first offence;
- B. \$25,000 for a second offence; or
- C. \$100,000 for a third or subsequent offence.

ATTACHMENT 2

Authority: Licensing & Standards Committee Report No. (), adopted by Council at its meeting of , 2007
 Adopted by Council: , 2007

CITY OF TORONTO

Bill No.

BY-LAW No.

To amend Municipal Code Chapter 441, Fees, to include fees for enforcement activities in respect of marijuana grow operations.

WHEREAS the *City of Toronto Act, 2006* (the “*Act*”) provides that, where a police force has notified the City that premises contained a marijuana grow operation, the City of Toronto shall ensure that an inspection of the lands and building is conducted within a reasonable period of time after the notification and that appropriate actions are taken for the protection of the health and safety of the public; and

WHEREAS the *Act* provides that Council may pass by-laws in respect of the health, safety and well-being, and protection of persons and property; and

WHEREAS the *Act* further provides that Council may pass by-laws to impose fees and charges for services or activities done by the City or its local boards, including the recovery of costs for administration and enforcement;

The Council of the City of Toronto HEREBY ENACTS as follows:

- Chapter 441, Fees, of the Municipal Code of the City of Toronto is amended by adding the following to Appendix “B” (“Fire And Police Inspection And Permit Fees”) to the chapter:

APPENDIX B • SCHEDULE 1, FIRE SERVICES					
	I	II	III	IV	V
	Category	Activity	Fee Basis	Fee	Annual Adjustment
1.	Marijuana Grow Operation Enforcement	Inspection Service – Inspector (1st Class)	Per Property	\$350.00	Yes
2.	Marijuana Grow Operation Enforcement	Inspection Service – Captain	Per Property	\$450.00	Yes

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3.	Marijuana Grow Operation Enforcement	Court/Tribunal Attendance Fee	Per Property	\$600.00	Yes
APPENDIX B • SCHEDULE 2, POLICE SERVICES					
	I	II	III	IV	V
	Category	Activity	Fee Basis	Fee	Annual Adjustment
1.	Marijuana Grow Operation Enforcement	Administration/Report ing Fee	Per Property	\$100.00	Yes
2.	Marijuana Grow Operation Enforcement	Special Equipment Fee	Per Property	\$325.00	Yes
3.	Marijuana Grow Operation Enforcement	Property Investigation Charge	Per Property	\$840.00	Yes
4.	Marijuana Grow Operation Enforcement	Court Attendance Fee	Per Property	\$500.00	Yes

2. Chapter 441, Fees, of the Municipal Code of the City of Toronto is amended by adding the following to Appendix “C” (“All Other Fees”) to the chapter:

APPENDIX C • SCHEDULE 9, BUILDING					
	I	II	III	IV	V
	Category	Activity	Fee Basis	Fee	Annual Adjustment
1.	Marijuana Grow Operation Enforcement	Inspection/Administra tion Fee	Per Property	\$600.00	Yes
2.	Marijuana Grow Operation Enforcement	Court/Tribunal Attendance Fee	Per Property	\$600.00	Yes
APPENDIX C • SCHEDULE 11, PUBLIC HEALTH					
1.	Marijuana Grow Operation Enforcement	Inspection and Enforcement Fee	Per Property	\$500.00	Yes
2.	Marijuana Grow Operation Enforcement	Assessment Report/ Remediation Plan Review Fee	Per Property	\$500.00	Yes

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3	Marijuana Grow Operation Enforcement	Administration/Clerical/ Fee	Per Property	\$250.00	Yes
4	Marijuana Grow Operation Enforcement	Court/Tribunal Attendance Fee	Per Property	\$500.00	Yes

APPENDIX C • SCHEDULE 13, LEGAL

	I	II	III	IV	V
	Category	Activity	Fee Basis	Fee	Annual Adjustment
1.	Marijuana Grow Operation Enforcement	Preparation & Registration of Order	Per Order	\$400.00 + disbursements	Yes
2.	Marijuana Grow Operation Enforcement	Preparation & Discharge of Order	Per Discharge	\$250.00 + disbursements	Yes
3.	Marijuana Grow Operation Enforcement	Title Investigation	Per Title Investigation	\$100.00 + disbursements	Yes
4.	Marijuana Grow Operation Enforcement	Solicitor Services	Per Hour	\$150.00 + disbursements	Yes

APPENDIX C • SCHEDULE 15, MUNICIPAL LICENSING & STANDARDS

	I	II	III	IV	V
	Category	Activity	Fee Basis	Fee	Annual Adjustment
1.	Marijuana Grow Operation Enforcement	Clerical/ Administration Fee	Per Property	\$200.00	Yes
2.	Marijuana Grow Operation Enforcement	Inspection Fee	Per Property	\$400.00	Yes
3.	Marijuana Grow Operation Enforcement	Court/Tribunal Attendance Fee	Per Property	\$500.00	Yes

ENACTED AND PASSED this day of , A.D. 2007.

Mayor

City Clerk

Staff report for action on recovery of marijuana grow operation enforcement costs.