

CORPORATE REPORT

NO: *R 175*

COUNCIL DATE: *July 26, 2010*

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **July 26, 2010**

FROM: **Chief Garis**

FILE: **3900-20**

SUBJECT: **Amendments to the Controlled Substance Property Bylaw, 2006, No. 15820 –
Building Remediation**

RECOMMENDATION

The Fire Services Department recommends that Council:

1. Approve in principle changes to the Controlled Substance Property Bylaw, 2006, No. 15820 as documented in Appendix "A" that will act to establish a more structured, accountable process for remediation of buildings that have been used for a marijuana grow operation or as an illegal drug production lab; and
2. Instruct staff to prepare and bring forward the necessary amendment by-law for the required readings.

INTENT

This report provides information on the remediation process currently prescribed in the Controlled Substance Property Bylaw and seeks to obtain Council approval for amendments to the Bylaw to improve the remediation process and related outcomes.

BACKGROUND

There are currently no provincial standards for inspection and remediation of houses that have been found to contain a marijuana "grow op" or a clandestine drug production lab.

The City of Surrey has been a leader in developing and implementing alternative solutions to address public safety risks associated with marijuana grow operations and illicit drug labs. The Electrical Fire Safety Inspection (EFSI) Program has focused efforts on actions within the City's authority including:

- Identification of potential problem buildings from a public safety perspective;
- Inspection processes to establish that remediation may be necessary;
- Where remediation is considered necessary, issuing a "no occupancy" order;
- Issuing invoices for inspection costs and taking enforcement action where necessary to recover costs;

- Requiring remediation of the building to make it safe for occupancy and requiring sign off by a certified professional that the building is safe for occupancy; and
- Issuing an occupancy permit for the building after remediation is complete and sign off is received.

The remediation of a building that has been used as a grow op or drug lab is arguably the most important step in the process.

A gap in the remediation process was identified in 2009 by Surrey Fire Services and Dr. Darryl Plecas of the University of the Fraser Valley. While interviewing representatives of the restoration/environmental consulting industry as part of the development of a research paper, it was discovered that the remediation processes for residences that had contained a grow operation varied across the lower mainland and remain a focus of concern for citizens and the Fraser Valley Real Estate Board. It was determined that the remediation process is commonly expedited by the property owner to ensure the least amount of disruption and to minimize cost. The current remediation process as contained within the City's Controlled Substance Property Bylaw does not require the involvement of a certified professional to oversee the remediation work but rather only requires a re-inspection and certification by a certified professional before the occupancy permit are restored.

DISCUSSION

Due to the reluctance of the Provincial Government to develop standards for dealing with properties that have contained grow ops or illicit drug labs, cities have been forced to develop their own independent processes to deal with the inspection and remediation of such properties. Experts in the restoration/environmental consulting industry report that the remediation process for grow operations across the Lower Mainland are loose and inconsistent.

The Province of Alberta has experienced a similar problem regarding the remediation of such properties. The Alberta Real Estate Association (AREA) is actively lobbying the Alberta Provincial Government for consistent standards to assess and remediate drug houses with the intent of protecting future property owners from structural and health problems.

One of the key differences in Alberta is that Alberta Health Services issue Unfit for Human Habitation Orders, Orders to Repair and register Notices of Health Hazard on the title to the land. In B.C., the local governments must issue Do Not Occupy Orders and Orders to Repair.

In February 2010, Surrey Fire Service hosted a workshop to discuss the remediation of drug houses. Ideas and suggestions were documented from stakeholders representing environmental consulting companies, the Fraser Valley Real Estate Board and other local governments. A consensus was reached and a process was developed, with the intent of revising the Surrey Controlled Substance Property Bylaw. Appendix "A" attached to this report includes a complete synopsis of the issues and recommendations.

The following process is considered appropriate in relation to the remediation of properties that have been subject to illegal drug operations:

- A Do Not Occupy Order is issued and posted on the building;
- The City provides the property owner with information about the remediation process;

- The property owner hires an building environment consultant and a restoration contractor;
- The building environment consultant investigates and assesses the site, prepares the scope of work for the restoration contractor, coordinates hiring of registered professionals when required and monitors the remediation work;
- The restoration contractor, obtains permits by submission of documents prepared by registered professionals as required, hires trades, ensures all work is completed;
- The building environment consultant signs off on the project and issues a Certificate of Entry;
- The property owner is then clear to complete any finishing work;
- The city receives the final approvals from the building environment consultant and the City removes the Do Not Occupy Order; and
- A record of the remediation is included in the City building records.

The proposed changes to the remediation requirements of the Controlled Substance Property Bylaw as documented in Appendix "A" to this report will if adopted act to make the above process a requirement in the City and will provide for the safety of the public in relation to the occupancy of buildings that have been used as "grow ops" or illegal drug labs.

Legal Services has reviewed this report and has no concerns.

CONCLUSION

Based on the above discussion it is recommended that Council:

- Approve in principle changes to the Controlled Substance Property Bylaw, 2006, No. 15820 as documented in Appendix "A" that will act to establish a more structured, accountable process for remediation of buildings that have been used for a marijuana grow operation or as an illegal drug production lab; and
- Instruct staff to prepare and bring forward the necessary amendment by-law for the required readings.



Len Garis
Fire Chief

Appendix "A": Issues and Recommendations from Surrey Fire Services Workshop on Building Remediation Related to Illicit Drug Operations

IMPROVING THE REMEDIATION PROCESS FOR MARIJUANA GROW OPERATIONS

A discussion paper by:

LEN GARIS

FIRE CHIEF

CITY OF SURREY

&

**ADJUNCT PROFESSOR IN THE SCHOOL OF CRIMINOLOGY AND CRIMINAL JUSTICE AT
THE UNIVERSITY OF THE FRASER VALLEY.**

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OVERVIEW

The City of Surrey, B.C. began public safety inspections of suspected grow operations in 2005, when it piloted its Electrical and Fire Safety Inspection (EFSI) program. The intent of the program is to identify and require the remediation of the many safety hazards that are typically found in grow operations (such as fire, electrocution, unsafe structural alterations and health risks such as mould) and are not being addressed through the traditional criminal prosecution approach.

Eight communities in the Lower Mainland now conduct safety inspections, providing fewer opportunities for marijuana production in the region. While many have adopted similar inspection procedures, the procedures governing the remediation of the properties differ in many cases. This has produced varying results, confusion and inefficiencies, and essentially, no consistency.

PROBLEM

British Columbia's marijuana industry continues to thrive, despite a greater coordinated response at the provincial and municipal level and enhanced policing resources. Although the City of Surrey and other like models have enjoyed considerable success, one apparent weakness of this model is its strictly local focus.

While an ongoing climate of high reward and low penalties continues to draw criminals into this lucrative illegal industry, differing municipal responses have created a regulatory patchwork that results in inconsistent enforcement and displacement of grow operation activity from active to passive municipalities. These inconsistencies include the documentation and records of the existence of prior grow operations, and the subsequent remediation processes.

Most of the marijuana is produced in residential grow operations that bring a variety of serious safety threats into our neighbourhoods. Some statistics¹:

- An average of one in 22 grow operations catch fire - 24 times more frequently than a typical home.
- Tripping, shock and fire hazards are prevalent due to illegal and unsafe electrical work.
- Fires at grow operations have a higher risk of growing out of control because the sites are not constantly monitored, and the growers are less likely to call authorities.
- Unsafe and illegal structural alterations create building instability and fire hazards.
- Mould and fungus are rampant due to high humidity and use of plastic to seal the areas.
- Children are found at an average of 20% of all grow operations.
- Spillover violence into surrounding neighborhoods is common, including "grow rips," home invasions, burglaries, assaults and murders. Grow operations are often booby-trapped.

Since 2005, an increasing number of Lower Mainland cities have introduced municipal inspection programs intended to address these safety threats and require the remediation of the drug houses. After the inspection identifies any electrical, fire, health or other safety risks, the next step could include an electrical repair order being issued, electricity and/or water service being disconnected, or the occupancy permit being revoked (based on the practices of the city and the condition of the building).

Cost-recovery bylaws place the financial responsibility for the cleanup in the hands of the property owners. As noted in the introduction, the remediation process can vary from city to city, but generally includes re-inspection by a certified professional before services and/or the occupancy permit are restored.

The gap in the process: remediation

Public safety inspections of drug houses are still a relatively new concept for B.C. and the Lower Mainland. The longest-running programs exist in Surrey and Abbotsford, and most other cities adopted their programs after 2006. Participating cities have generally focused their efforts on the actions they are responsible for – the identification of drug houses, the inspection process, the city's response (e.g. coordinating the disconnection of services and/or revoking the occupancy permit), issuing fees and enforcing any other cost-recovery mechanisms, and eventually (if warranted) restoring the occupancy permit.

To protect their taxpayers, cities have placed full financial responsibility for remediation on the property owners.

But at the same time, a lack of clear remediation processes has tacitly handed over responsibility for the cleanup – arguably the most important step in the process – to the property owner, whose primary focus is not necessarily public safety.

The key issue here is the lack of provincial standards for inspection and remediation of former drug houses from a public safety and health standpoint (a provincial remediation process only exists for environmental contamination from former drug production sites). As a result, cities have been forced to develop their own independent processes to deal with and document residential grow operations.

The problem was illustrated in 2009, when Surrey Fire Chief Len Garis and Dr. Darryl Plecas of the University of the Fraser Valley spoke to representatives of the restoration/environmental consulting industry as part of their work on a research paper. What they learned from these field experts was that the remediation process for grow operations across the Lower Mainland is loose: processes are not consistent, and results are varied. These revelations were the impetus for this paper.

SOLUTION

The optimal solution is a provincial standard to govern the remediation of grow operations, but lobbying for such a standard has been unsuccessful to date. The next alternative is development of a remediation process that cities may adopt by bylaw – much like they have adopted controlled substance bylaws to govern the safety inspection process.

The City of Surrey is spearheading the discussion with the intent of revising its bylaw to reflect consultation with its stakeholders, including other cities, the remediation industry and the real estate industry. The bylaw will reference recommended practices from the Lower Mainland and other areas, such as Alberta.

The Approach in Alberta

Alberta has experienced a similar problem regarding the remediation of former drug operations. The Alberta Real Estate Association (AREA) is actively lobbying the provincial

government for consistent standards for assessing and remediating drug houses to protect future property owners from structural and health problems.

AREA submitted a discussion paper to government in October 2009 called *Recommendations for the Assessment and Remediation of Properties Used as Illegal Drug Operations*. AREA hired an architectural firm and environmental consulting firm to author the report.

The report describes the problem and methodology, proposes an organizational framework and roles and responsibilities, and outlines a detailed process and procedures for the proper remediation of drug houses. It also includes recommendations for education, communication, organization and reporting.

One of the key differences in Alberta is that the assessment and remediation of drug operations is controlled by Alberta Health Services. The health authorities step in to issue Unfit for Human Habitation Orders and Orders to Repair, and register Notices of Health Hazard on the land title while sites are being remediated. In B.C., the local governments issue Do Not Occupy orders and Orders to Repair.

Alberta also uses regional Police Green Teams to take down drug houses; while again, in B.C. this process is both city and Police-led.

Despite these differences, much can be learned and applied from this detailed report.

Background

Surrey Fire Service hosted a workshop on Feb. 26, 2010 to discuss the issue and brainstorm for the development of possible changes to bylaws that would address the concerns about the remediation process. The 22 participants included representatives from two cities, eight restoration and environmental consulting companies, and the Fraser Valley Real Estate Board.

The City's Chief Training Officer facilitated the afternoon session, which included storyboarding of the problem, brainstorming of solutions and development of a sample process supported by all in attendance.

Issues identified by participants included:

- Qualifications: laypeople have difficulty determining which firm has the appropriate certification.
 - The IICRC (Institute of Inspection Cleaning and Restoration Certification) standard for remediation/restoration has been adopted by the insurance industry and is widely held as the standard in the remediation/restoration industry. The IICRC courses use ANSI (American National Standards) materials.
 - A person can take a three-day course and apply to be an IICRC-qualified water damage restoration technician (one of 22 certifications, and one of the shortest courses).
 - Only one person on a team requires the IICRC certification.

- Retaining the designation requires payment of an annual fee, earning Continuing Education Credits and abiding by the IICRC Code of Ethics.
 - The industry appears to be largely self-regulating, with internal quality insurance as the primary monitoring/verification tool. Customers can make complaints to the IICRC but it was not known how this would affect the certification.
 - Either CIH (Certified Industrial Hygienist) or ROH (Registered Occupational Hygienist) certification applies in the environmental consulting industry.
 - There are a limited number of CIH or ROHs working in the private sector in B.C.
 - ROHTs (Registered Occupational Hygiene Technologists) may perform similar fieldwork but cannot be held accountable in the same way as a CIH/ROH.
 - In the case of a lawsuit, it may be difficult to hold CIHs/ROHs not practicing in B.C. accountable for their work.
- Roles: Information provided by cities to property owners is not clear regarding the process and roles of environmental consultants and restoration companies.
- Inconsistent and inefficient processes: As mentioned above, cities developed their processes independently so they tend to vary from city to city. Some of these processes can be lengthy. Remediation industry representatives noted they would also like to see a consistent, effective process so that these jobs are done correctly.
- Scope of work: Recommendations for scope of work made by the environmental consultants are often brief with few details because they are based only on the initial assessment. However, damage is often hidden under carpets and in walls, and is not detected during the initial assessment. Discussion:
 - In most of the cities, the process does not require the consultant to review the scope of work if further damage is found, so in some cases the full extent of the damage is not addressed.
 - It was noted that Abbotsford does require a minimum of two site visits by an environmental consultant, and that the City of Surrey was on the right track by specifying in its bylaw what work must be conducted, such as removing carpets.
 - Restoration contractors have the expertise and qualifications to write the scope of work, but are not able to take responsibility for the building's safety.
 - A detailed scope of work is important not only to ensure proper remediation of the property, but for the property owner to show prospective buyers what work was completed.
- Inconsistent remediation work: Most bylaws don't require property owners to hire certified restoration companies, so some owners do the work themselves or hire uncertified contractors perhaps to reduce costs. This can result in shoddy workmanship and cover-up of damage that is discovered later.
 - This is a particular concern for future property owners, who believe (often incorrectly) that a house that has completed a city-led process has been remediated to a safe standard.

- **Project oversight:** The bylaws require sign-off by a CIH, but generally don't assign the CIH (or any party) to monitor the process from cradle to grave. Concerns were raised about the lack of independent oversight of the process, for both verification purposes and also to remove the perception of anyone benefiting from the proposed scope of work. Discussion:
 - The environmental consultant and remediation contractor should be independent of each other, but do need to be able to work together.
 - It would be impossible to estimate the cost for a CIH to monitor a process from beginning to end because there are so many variables. As well, the cost could be significant.
 - What we learned from the leaky condo crisis is that sign-off by a professional will only occur if it is mandated.
 - It was noted that if bylaws required a CIH to sign off on the entire process, this would inspire more confidence in future buyers and possibly even increase the home's value.

- **Occupancy permits:** It was noted that the CIH/ROH returns to the site for the final inspection when the walls are open for the building/electrical inspection, and they sign off on the Do Not Occupy order being lifted. However, the house is not in a livable state at that point. Issuing of a different type of order was discussed.

Recommendations

The following is the recommended remediation process for consideration in B.C. municipalities that may be adopted by bylaw, with the aim of ensuring that all former drug houses are fully remediated and made safe for future occupants.

The recommended process includes results from the workshop dovetailed with stakeholder input and relevant recommendations from the Alberta Real Estate Association report.

Roles and Responsibilities:

Property Owner: Payment and Hiring

- Property owners pay the full cost of the remediation works, permits and fees.
- Property owners hire an approved environmental consultant and restoration contractor to carry out the remediation process.
- The property owner must obtain a site profile from the B.C. Ministry of the Environment to ensure environmental hazards have been ruled out.

Environmental Consultant: Oversight and Assessment

- Every process is led by a B.C.-based environmental consulting firm that carries either CIH or ROH certification (or equivalent environmental consulting certification accredited by the Council of Engineering and Scientific Specialty Boards) and is hired by the property owner.
 - The consulting firm must carry environmental errors and omissions consulting liability insurance with at least \$1 million coverage, and add the municipality as the "named insured" on that policy. A copy of the policy must be provided to the municipality.

- Someone within the firm acts as the project manager. The project manager does not necessarily need to be the CIH/ROH (or equivalent), although the individual conducting the sign-offs must carry the certification.
- The environmental consultant is responsible for investigation, assessment, remediation and verification. This includes:
 - A minimum of three site visits – initial assessment, during remediation and at the end of the project.
 - Prepare the scope of work on the project.
 - Approval and coordination in the hiring of any registered professionals to deal with required works associated with structural, plumbing, electrical, or soil contamination
 - Monitoring of the remediation works, including ensuring those entering the property are using adequate personal protective gear, and the proper management of hazardous materials.
 - Final verification and sign-off by a CIH/ROH at the end of the project (including issuing of a Certificate of Entry) – may be required for the city to remove the Do Not Occupy order.

Restoration Contractor: Site Remediation

- A restoration contractor that specializes in environmental building remediation must be hired by the property owner to conduct the remediation works.
 - The contractor must specialize in environmental building remediation and must carry Environmental Pollution Liability insurance with at least \$2 million coverage, and add the municipality as the “named insured” on that policy. A copy of the policy must be provided to the municipality.
- The contractor is responsible for reporting to the consultant any additional damage discovered during the stripping and material removal process.
- The contractor will conduct the remediation works per the consultant’s approval, including:
 - demolition and removing hazardous materials
 - removing contents for cleaning and/or disposal
 - completing repairs (and cleaning) to heating, ventilation and air conditioning systems (including cleaning of interior duct surfaces)
 - repairing the building envelope
 - cleaning building surfaces
- The contractor is responsible for hiring specialized contractors as well as assisting the consultant in obtaining electrical, building (structural) and plumbing professionals when required.
- The contractor coordinates with the city for necessary permits
 - Includes ensuring that all electrical service conductors and raceways are exposed from the street to the main panels for the city electrical inspection.
- The contractor signs off on all remediation works.

Municipal government: inspections and orders

- The city issues and posts a Do Not Occupy order on the building after the public safety inspection team identifies hazards, and later removes the order after the site is successful remediated.
- The city provides the property owner with an information package including:
 - Relevant city bylaws.
 - An outline of the process from start to finish, including steps required to restore the occupancy and any costs to be paid to the city.
 - Information about what will happen if the site is not remediated.
 - The roles and responsibilities of all parties involved.
 - A list of certified environmental contractors and restoration contractors in the area.
 - Information on how to obtain a site profile from the B.C. Ministry of the Environment.
- The city issues permits to the restoration contractor to conduct the works as required.
- The city processes the documents submitted for permits, receives inspection reports and letters of assurance from registered professionals based on permits taken out by the restoration contractor.
- Upon receiving final approval from the environmental consultant, the city removes the Do Not Occupy order.
- The city adds any documentation associated with the remediation to the permanent building records.

Process Overview:

- A Do Not Occupy order is issued and posted on the building.
- City provides property owner with information about remediation process.
- Property owner hires environmental consultant and restoration contractor
- Environmental consultant investigates and assesses the site, prepares the scope of work for restoration contractor, coordinates hiring of registered professionals when required, and monitors remediation.
- Restoration contractor, obtains permits by submission of documents prepared by registered professionals as required, hires trades, ensures all work is completed and then signs off.
- Environmental consultant signs off on the project and issues a Certificate for Entry.
- Property owner completes finishing work.
- City receives the final approvals from the environmental consultant of a successful final inspection and the City removes the Do Not Occupy order.
- A record of the remediation is included in the building records.

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