

NO: **R150**

COUNCIL DATE: **July 22, 2013**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **July 17, 2013**

FROM: **City Solicitor and
General Manager, Planning & Development**

FILE: **3900-20-17410/#2**

SUBJECT: **Amendments to City By-laws to Regulate the Growing of Medical Marijuana**

RECOMMENDATION

The Legal Services Division and the Planning and Development Department recommend that Council:

1. Receive this report as information;
2. Approve amendments to Surrey Zoning By-law, 1993, No. 12000, as amended (the "Zoning By-law") as documented in Appendix "B" attached to this report, which if adopted will ensure that medical marijuana grow operations that are licenced under the new Marihuana for Medical Purposes Regulations, SOR/2013-119, as amended (the "MMPR") will be regulated under the Zoning By-law;
3. Approve amendments to the Delegation By-law, 2006, No. 15913 (the "Delegation By-law") as documented in Appendix "C" to this report, which if adopted will allow staff to withhold building permits and business licences, respectively, under section 929 of the *Local Government Act* for the purposes as described in this report; and
4. Instruct the City Clerk to bring forward the necessary amendment by-laws for the required readings and to set a date for the related Public Hearing.

INTENT

The purpose of this report is to obtain approval to amend the Zoning By-law to ensure that cultivating medical marijuana under the authority of the MMPR is a use regulated by the Zoning By-law.

BACKGROUND

On July 8, 2013, at its Regular Council – Public Hearing meeting, Surrey City Council approved the recommendations in Corporate Report No. R132 and subsequently adopted Resolution R13-1378 which (under the authority of section 929 of the *Local Government Act*) directed staff to study and bring forward for Council's consideration amendments to the Zoning By-law in relation to the new MMPR. These amendments are to modify the Zoning By-law's current definition of "Medical Marijuana" to account for the transitional period (ending on March 31, 2014) during which time the Marijuana Medical Access Regulations, SOR/2001-227, as amended (the "MMAR"), and the MMPR will both be in effect.

DISCUSSION

Following consideration of Corporate Report No. R014 (copy attached as Appendix "A" to this report) at its January 28, 2013 Regular Council – Public Hearing meeting, Council approved amendments to the Zoning By-law to restrict the growing of medical marijuana to a single zone, that being the Community Commercial 8B (C-8B) Zone.

The current definition of "Medical Marijuana" in the Zoning By-law states that it means:

"marijuana that may be administered to treat or alleviate a qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition under the Marijuana Medical Access Regulations, SOR/2001-227, as amended"

As described in Corporate Report No. R132, the MMPR (unlike the MMAR) does not provide a list of symptoms or medical conditions that entitle patients to treatment with medical marijuana. It is thus clear that the present definition of "Medical Marijuana" in the Zoning By-law is, at best, an awkward fit with the MMPR.

Proposed Amendments to Surrey Zoning By-law No. 12000

To pre-empt the establishment of commercial medical marijuana production facilities in Surrey, the Zoning By-law should be amended as documented in Appendix "B" attached to this report.

Proposed Amendments to Delegation By-law, 2006, No. 15913

Section 929 of the *Local Government Act* provides that a local government may direct that a building permit be withheld if, within 30 days of receiving the building permit application, it passes a resolution identifying what it considers to be a conflict between the application's proposed development and, changes already being prepared for, among other things, the Zoning By-law.

To address the potential of a building permit application being received immediately prior to Council's August recess, in relation to which Council could not issue a section 929 resolution within the prescribed time, it is recommended that Council delegate its powers under sections 929(1) and 929(5) of the *Local Government Act*, which relate to withholding building permits and business licences, respectively, to the General Manager, Planning &

Development and the Manager, By-law Enforcement & Licensing Services. If such authority is used by either of these individuals, a memorandum explaining the circumstances would be forwarded to City Council immediately.

The proposed amendments to the Delegation By-law, 2006, No. 15913 are documented in Appendix "C" attached to this report.

CONCLUSION

Based on the above discussion, it is recommended that Council:

- Approve amendments to Surrey Zoning By-law, 1993, No. 12000, as amended as documented in Appendix "B" attached to this report, which if adopted will ensure that medical marijuana grow operations that are licenced under the new Marihuana for Medical Purposes Regulations, SOR/2013-119, as amended will be regulated under the Zoning By-law;
- Approve amendments to the Delegation By-law, 2006, No. 15913 as documented in Appendix "C" to this report, which if adopted will allow staff to withhold building permits and business licences, respectively, under section 929 of the *Local Government Act* for the purposes as described in this report; and
- Instruct the City Clerk to bring forward the necessary amendment by-laws for the required readings and to set a date for the related Public Hearing.

CRAIG MacFARLANE
City Solicitor

JEAN LAMONTAGNE
General Manager,
Planning & Development

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Appendix "A": Corporate Report No. R014;2013

Appendix "B": Proposed Amendments to Zoning By-law, 1993, No. 12000, as amended

Appendix "C": Proposed Amendments to Delegation By-law, 2006, No. 15913, as amended

Appendix "A"

Item No. R014

Zoning By-law Amendments to Regulate the
Growing of Medical Marijuana
File: 3900-20-17410

Note: See By-law No. 17863 under Item H.7

The City Solicitor and the General Manager, Planning and Development submitted a report to obtain approval to amend the Zoning By-law to restrict the growing of medical marijuana within the City to the Community Commercial B (C-8B) Zone.

The City Solicitor and the General Manager, Planning and Development were recommending approval of the recommendations outlined in their report.

It was Moved by Councillor Gill
Seconded by Councillor Hayne
That Council:

1. Receive Corporate Report R014 as information;
2. Approve amendments to Surrey Zoning By-law, 1993, No. 12000, as amended (the "Zoning By-law") as documented in Appendix "I" attached to this report, which if adopted will act to prohibit the growing of medical marijuana in all Zones except in the Community Commercial B (C-8B) Zone that in effect will require that a rezoning process be undertaken as a means to establish any such growing operation in Surrey; and
3. Instruct the City Clerk to bring forward the necessary by-law for the required readings and to set a date for the related Public Hearing.

RES.R13-157

Carried

NO: **R014**

COUNCIL DATE: **January 28, 2013**

REGULAR COUNCIL

TO: **Mayor & Council** DATE: **January 24, 2013**
FROM: **City Solicitor and General Manager, Planning & Development** FILE: **3900-20-17410**
SUBJECT: **Zoning By-law Amendments to Regulate the Growing of Medical Marijuana**

RECOMMENDATION

It is recommended that Council:

1. Receive this report as information;
2. Approve amendments to Surrey Zoning By-law, 1993, No. 12000, as amended (the "Zoning By-law") as documented in Appendix "I" attached to this report, which if adopted will act to prohibit the growing of medical marijuana in all Zones except in the Community Commercial B (C-8B) Zone that in effect will require that a rezoning process be undertaken as a means to establish any such growing operation in Surrey; and
3. Instruct the City Clerk to bring forward the necessary by-law for the required readings and to set a date for the related Public Hearing.

INTENT

The purpose of this report is to obtain approval to amend the Zoning By-law to restrict the the growing of medical marijuana within the City to the Community Commercial B (C-8B) Zone.

BACKGROUND

On December 16, 2012, the Federal Minister of Health announced proposed changes to the Medical Marijuana Access Regulations (the "MMAR"). In effect, the MMAR are proposed to be amended to eliminate licenses for personal marijuana growing operations and to establish a licensing process for commercial growing operations from which persons needing marijuana for medical reasons can acquire marijuana. The announcement signalled the start of a 75-day public comment period related to the proposed changes.

In response to this announcement, Surrey City Council adopted a resolution on December 17, 2012, which instructed staff to prepare amendments to the Surrey Zoning By-law to restrict the commercial cultivation, production, delivery and sale of medical marijuana to a particular zone or zones within the City.

DISCUSSION

To pre-empt the establishment of commercial medical marijuana production facilities in Surrey in the absence of a comprehensive review process to confirm that the use can be established at the proposed site in a reasonable manner, the Zoning By-law should be amended to prohibit the operation of such growing operations except in the Community Commercial B (C-8B) Zone. In view of the location, and scale of the existing C-8B Zone in the City, the recommended amendments to the Zoning By-law will de facto result in any proposal to establish a commercial medical marijuana growing operation in Surrey needing to proceed through a full rezoning process, which would likely be to a Comprehensive Development Zone. Under such a process the City can ensure that the proposed use is compatible with the surrounding uses and that the owners of the neighbouring properties and any other concerned individuals or stakeholders can formally comment on the proposal before approval is considered by Council.

Health Canada may choose to make additional amendments to the MMAR in response to feedback it receives during the 75-day public comment period referenced above, which will end on February 28, 2013. Staff will provide a further report complete with appropriate further recommendations if Health Canada chooses to change its position regarding the MMAR from what it announced in December 2012.

Proposed Amendments to Surrey Zoning By-law No. 12000

To ensure the growing of medical marijuana is restricted to the Community Commercial B (C-8B) Zone, amendments are required to Surrey Zoning By-law No. 12000. Specifically, the definition of "horticulture" is proposed to be amended to exclude the growing of medical marijuana. For clarity, definitions for each of "marijuana" and "medical marijuana" are proposed to be inserted in the Zoning By-law. Further, the permitted uses section of the C-8B Zone needs to be amended to include "growing of medical marijuana" as a permitted use. The proposed amendments to the Surrey Zoning By-law No. 12,000 are documented in Appendix "I" attached to this report.

CONCLUSION


It is recommended that Council:

- Approve amendments to Surrey Zoning By-law, 1993, No. 12000, as amended (the "Zoning By-law") as documented in Appendix "I" attached to this report, which if adopted will act to prohibit the growing of medical marijuana in all Zones except in the Community Commercial B (C-8B) Zone that in effect will require that a rezoning process be undertaken as a means to establish any such growing operation in Surrey; and

- Instruct the City Clerk to bring forward the necessary by-law for the required readings and to set a date for the related Public Hearing.



CRAIG MacFARLANE
City Solicitor



JEAN LAMONTAGNE
General Manager,
Planning & Development

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Appendix "I" – Proposed Amendments to Zoning By-law, 1993, No. 12000, as amended

Appendix "I"

Proposed Amendments to Surrey Zoning By-law, 1993, No. 12000, as amended

1. Amend Part 1 Definitions as follows:
 - (a) Amend the definition of "Horticulture" by inserting the following immediately after the word "hydroponics":

"but shall exclude the growing of *medical marijuana*"
 - (b) Amend the definition of "Marijuana Dispensary" by italicizing the words "marijuana" and "medical marijuana"
 - (c) Insert the following new definition of "Marijuana" immediately after the definition of "Marijuana Dispensary":

"Marijuana
means all parts of the genus *cannabis* whether growing or not and the seed or clone of such plants."
 - (d) Insert the following new definition of "Medical Marijuana" immediately after the definition of "Marina":

"Medical Marijuana
means *marijuana* that may be administered to treat or alleviate a qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition under the Marijuana Medical Access Regulations, SOR/2001-227, as amended."
2. Amend Part 4 General Provisions, by amending Section C as follows:
 - (a) In Section C.1, delete the heading and replace with the following heading:

"Commercial, Industrial and Agricultural Uses"
 - (b) Insert a new Sub-section C.1(j) as follows:

"(j) Growing of *medical marijuana* ".
3. Amend Part 36B Community Commercial B Zone (C-8B) by inserting a new Section B.3 as follows and renumbering the remaining Sections accordingly:

"3. Growing of *medical marijuana*."

4. Amend Part 52 Comprehensive Development Zone, Section B by inserting a new Section B.5 after Section B.4, as follows:

"5. Uses permitted in the A-1 and A-2 Zones."

**Proposed Amendments to
Surrey Zoning By-law, 1993, No. 12000, as amended**

1. Amend Part 1 Definitions as follows:
 - (a) Amend the definition of "Medical Marijuana" by deleting the existing definition and replacing it as follows:

"Medical Marijuana"

means *marijuana* that is possessed, produced, grown, cultivated from seed or clone to a plant for harvest, stored, packaged, or warehoused, or any combination of these things, pursuant to authorization under applicable federal or provincial law.

2. Amend Section B.1 of Part 52 Comprehensive Development Zone by inserting the following immediately between "C-8A," and "C-15,":

"C-8B,"

**Proposed Amendments to
Delegation By-law, 2006, No. 15913, as amended**

1. Amend Schedule "A" by inserting the following row immediately above that row which, in Column 1, reads "Sections 937.2 - 937.9":

| | | |
|-------------|--|--|
| Section 929 | Directing that a building permit or business licence, or both, be withheld | General Manager, Planning & Development and Manager, By-law Enforcement & Licensing Services |
|-------------|--|--|