

NO: R200

COUNCIL DATE: OCTOBER 7, 2013

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **October 2, 2013**

FROM: **City Solicitor
Fire Chief**

FILE: **3900-20-15820**

SUBJECT: **Amendments to Controlled Substance Property Bylaw, 2006, No. 15820**

RECOMMENDATION

The Legal Services Division and the Surrey Fire Service recommend that Council:

1. Receive this report as information; and
2. Approve amendments to the Controlled Substance Property Bylaw, 2006, No. 15820 (the "Bylaw") as generally described in this report and as documented in Appendix "A" to this report; and
3. Authorize the City Clerk to bring forward for the required readings and adoption the necessary amendment by-law, a copy of which is attached as Appendix "A" to this report.

INTENT

The intent of this report is to bring forward for consideration amendments to the Bylaw that if adopted would:

- Require owners of a property used for a medical marijuana grow operation to remediate the property in accordance with the provisions of the Bylaw and to pay all related fees and costs;
- Make explicit the fact that the fees and costs associated with remediating a manufactured home, where it has been used in the production of a controlled substance or as a location for a medical marijuana grow operation, can be collected from the owner of the property on which the manufactured home was located when it was being put to such use; and
- Increase the special safety inspection fee charged by the City.

BACKGROUND

The health and safety risks associated with marijuana grow operations are well known. Individuals who grow marijuana often make significant electrical and structural changes to the building housing the growing operation without complying with the applicable codes, by-laws or regulations. The growing of marijuana typically produces significant heat and humidity, which results in the growth of mould, fungi and toxins. Many medical marijuana grow operations licensed by Health Canada share many of the same health and safety risks as illegal grow operations.

The number of medical marijuana grow operations has been increasing at a rapid pace. Surrey Fire Service has learned through Health Canada that in 2012, there were approximately 510 medical marijuana grow operations located in Surrey that were licensed by Health Canada. In 2013, the number of medical marijuana grow operations in Surrey had increased to approximately 788. Health Canada does not provide the addresses of these medical marijuana grow operations; however, the Electrical Fire Safety Initiative ("EFSI") team has, through its own initiative, identified and inspected approximately 250 buildings, mostly single family dwellings that contained medical marijuana growing operations. The large number of medical marijuana grow operations combined with the health and safety risks associated with these operations is a significant concern; particularly due to the fact that their locations are not all known and unsuspecting third parties could buy such buildings and be exposed to significant health risk.

The Bylaw provides for certain fees to be charged to the owner of a property that is or has been a marijuana grow operation. This allows the EFSI team, which performs the special safety inspections under the Bylaw, to operate on a cost recovery basis. To maintain the "self-funded" nature of the EFSI program, an increase to the special safety inspection fee is required.

DISCUSSION

In June 2013, the Federal government brought into effect new Marihuana for Medical Purposes Regulations (the "MMPR"), which will operate in conjunction with the current Marihuana Medical Access Regulations (the "MMAR") until March 31, 2014. Under the MMPR, Health Canada will not be issuing licenses to individuals to grow medical marijuana on or in residential properties. Instead, medical marijuana will be grown by licensed commercial producers. By March 31, 2014, all MMAR licenses will expire and no individuals will be authorized to grow medical marijuana on or in a residential property.

As a consequence of the transition to the MMPR, many buildings which are currently being used to grow medical marijuana will no longer be used for that purpose. To address the health and safety risks posed to future users of such buildings, amendments to the Bylaw are required to clarify its application.

Currently, the Bylaw requires property owners to remediate their property if it is used, among other things, to grow or manufacture an illegal or controlled substance. Remediation of a property by the owner includes:

- having a special safety inspection conducted by the City;
- obtaining all necessary permits, approvals or authorizations required to carry out and carrying out the work necessary to bring the property into compliance with the Bylaw and other applicable bylaws and provincial enactments;

- if required under an enactment, retaining a professional engineer to certify in writing that the building safety requirements required under the applicable enactments have been satisfied;
- paying all fees imposed in relation to the inspection of the property and issuance of permits;
- removing and disposing of all carpets and curtains in the building;
- if the building is heated by forced air heating, to have the furnace, all air ducts, main distribution ducts, venting, and filtering cleaned by a professional cleaner or by a duct cleaning company;
- have all walls, floors, insulation, moisture barrier and ceilings in the building replaced or cleaned and disinfected by a professional cleaner; and
- after a professional cleaner has been engaged and completed their work, a qualified professional must inspect the building and provide written certification to the City that, among other things, the building is substantially free of any pesticides, fertilizers, toxic chemical contamination, moulds and/or fungi.

These remedial measures help to ensure that a property, which was previously used for the growing or production of a controlled substance, is safe for its occupants. The proposed amendments to the Bylaw help to clarify the remedial measures, the City's ability to enforce those measures, and any applicable fees and costs related to inspections and other services, apply not only to properties used for the growing and manufacture of an illegal or controlled substance, but also to medical marijuana grow operations. Among the amendments is the requirement that medical marijuana grow operations be remediated within 60 days of the earlier of the expiry of the medical marijuana license, the posting of a "Do Not Occupy" notice, or any other period as determined by the Manager, By-law and Licensing Services.

Beginning on April 1, 2014, the EFSI team will commence inspections of known medical marijuana grow operations to enforce the provisions of the Bylaw and to ensure that the properties are remediated. The owners of the properties will be charged the applicable fees and/or costs associated with the inspections.

Historically, manufactured homes represented a special circumstance with respect to remediation. The proposed amendments clarify that the fees and costs related to remediating a manufactured home (when it has been used as a controlled substance property or medical marijuana grow operation) can be recovered *either* from the owner of the manufactured home or from the owner of the property upon which the manufactured home was located when it was being used for the production of a controlled substance or for growing medical marijuana.

To ensure that the EFSI program continues to be "self-funded," the special safety inspection fee, as contained in the Bylaw, needs to be increased from \$4,038.00 to \$5,263.00.

SUSTAINABILITY CONSIDERATIONS

The recommendations of this report will assist in achieving the objectives of the City's Sustainability Charter; more particularly, the following Charter scope action items:

- SC8: Municipal Outreach, Public Education and Awareness;
- SC9: Adequate, Appropriate and Affordable Housing; and
- SC11: Public Safety and Security.

CONCLUSION

Based on the above discussion, the Legal Services Division and Surrey Fire Service recommend that Council:

- Approve amendments to the Controlled Substance Property Bylaw, 2006, No. 15820 (the "Bylaw") as generally described in this report and as documented in Appendix "A" to this report; and
- Authorize the City Clerk to bring forward for the required readings and adoption the necessary amendment by-law, a copy of which is attached as Appendix "A" to this report.



CRAIG MacFARLANE
City Solicitor



LEN GARIS
Fire Chief

BL/HC:ld

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Appendix "A": Proposed Amendment By-law Related to Controlled Substance Property Bylaw,
2006, No. 15820

c.c. Dan Barnscher, Deputy Fire Chief
Manager, By-law and Licensing Services
Manager, Building Division

APPENDIX "A"

CITY OF SURREY

BY-LAW NO. _____

A by-law to amend the provisions of the "Controlled Substance Property Bylaw, 2006, No. 15820"

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The Council of the City of Surrey, in open meeting assembled, ENACTS AS FOLLOWS:

1. The "Controlled Substance Property Bylaw, 2006, No. 15820", is hereby amended as follows:
 - a. By inserting the phrase "and properties used for the production of other substances", immediately after the existing phrase "controlled substance properties" in the first full sentence after the title, "Controlled Substance Property Bylaw, 2006, No. 15820", and immediately preceding the preamble.
 - b. By inserting the phrase "and properties used for the production of other substances", immediately after the existing phrase "controlled substance properties" wherever it appears in the preamble;
 - c. Section 3.1 be amended by inserting the wording ", but does not include a medical marijuana grow operation", immediately after the existing phrase "psilocybin mushrooms" in the definition of "grow operation";
 - d. Section 3.1 be amended by adding the following new definitions of "medical marijuana grow operation" and "medical marijuana license" after the existing definition of "inspector":

"medical marijuana grow operation" means the cultivation and/or production of marijuana pursuant to a valid and subsisting license issued pursuant to applicable federal, provincial or municipal law;

"medical marijuana license" means a valid and subsisting license to cultivate and/or produce marijuana issued pursuant to applicable federal, provincial or municipal law;

- e. Section 3.1 be amended by inserting the wording "or marijuana" immediately after the existing phrase "grow controlled substances" in the definition of "professional cleaner";

- f. The definition of "service costs" in Section 3.1 be amended:
 - i. By deleting the paragraph immediately after the existing phrase "service costs" and before subparagraph (a) and replacing it with the following:

means all direct and indirect costs incurred by the City in relation to the inspection and removal of a grow operation, medical marijuana grow operation, clandestine drug lab or activities at a controlled substance property; or individuals or materials associated with or by-products resulting from a grow operation, medical marijuana grow operation, clandestine drug lab or activities at a controlled substance property, and includes:

 - ii. By inserting the wording ", medical marijuana grow operation" immediately after the existing phrase "a grow operation" in subparagraph (g)(i);

 - iii. By inserting the phrase "or marijuana" immediately after the existing phrase "controlled substance" in subparagraph (g)(ii);

 - iv. By inserting the wording ", medical marijuana grow operation" immediately after the existing phrase "a grow operation" in subparagraph (h);

- g. Section 3.1 be amended by inserting the wording "and includes a manufactured home as defined in the *Manufactured Home Act*, S.B.C. 2003, c. 75", immediately after the existing phrase "or other construction" in the definition of "structure";

- h. By inserting the wording ", medical marijuana grow operation" immediately after the existing phrase "a grow operation" in Section 4.6;

- i. By inserting the wording ", unless the remediation is required to be done pursuant to section 5.4.1," immediately after the existing phrase "section 5.2 of this bylaw must" in Section 5.4.
- j. By adding a new Section 5.4.1 immediately after Section 5.4 as follows:
 - 5.4.1 If a parcel or a building on a parcel is or has been used as a medical marijuana grow operation, the owner of the parcel must, subject to the *Residential Tenancy Act*, complete sections 4.11(a) to (f), 5.2(a) to (c), and 5.3 in respect of the building and parcel used for a medical marijuana grow operation, within 60 days of the earlier of:
 - (a) the expiry or termination of the medical marijuana license, or
 - (b) where a "Do Not Occupy" notice has been posted under section 7.1, the posting of the "Do Not Occupy" notice,or within any other period as determined by the Manager, By-law and Licensing Services.
- k. By inserting the wording ", medical marijuana grow operation" immediately after the existing phrase "a grow operation" in Section 5.8 and by adding the wording ", 4.11" immediately after the existing phrase "section 4.10" in Section 5.8;
- l. By inserting the wording ", medical marijuana grow operation" immediately after the existing phrase "a grow operation", wherever it appears in Section 5.9;
- m. By inserting the words "or building" after the existing phrase "a parcel" in Section 7.1(a) and the words "or is or has been used as a medical marijuana grow operation" immediately after the existing phrase "controlled substance property" in Section 7.1(a);
- n. By inserting the words "or a building or parcel that is or has been used as a medical marijuana grow operation" immediately after the existing phrase "controlled substance property" in Section 7.1(b);
- o. By inserting the words "or a building or parcel that is or has been used as a medical marijuana grow operation" immediately after the existing phrase "controlled substance property" in Section 7.1(c);

- p. By inserting the words "or a building or parcel that is or has been used as a medical marijuana grow operation" immediately after the existing phrase "controlled substance property" in Section 7.2(a);
 - q. By inserting the words "or a building or parcel that is or has been used as a medical marijuana grow operation" immediately after the existing phrase "controlled substance property" in Section 7.6(d);
 - r. By inserting the words "or is or has been used as a medical marijuana grow operation" immediately after the existing phrase "controlled substance property" in Section 8.2;
 - s. By inserting the wording ", medical marijuana grow operation" immediately after the existing phrase "a grow operation" in Section 10.1;
 - t. By inserting the wording ", medical marijuana grow operation" immediately after the existing phrase "a grow operation" in Section 10.3; and
 - u. By deleting the amount of "\$4,038.00" in Section 1 under the heading "Fees" in Schedule A and replacing it with amount of "\$5,263.00".
2. This By-law shall be cited for all purposes as the "Controlled Substance Property Bylaw, 2006, No. 15820, Amendment By-law, 2013, No. _____".

PASSED FIRST READING on the ____ day of _____, 2013.

PASSED SECOND READING on the ____ day of _____, 2013.

PASSED THIRD READING on the ____ day of _____, 2013.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the ____ day of _____, 2013.

_____ MAYOR

_____ CLERK