SUBJECT: Illegal Marijuana Grow Operations (PED07139) (City Wide)

RECOMMENDATION:

(a) That Legal Services be authorized and directed to prepare by-laws to prohibit marijuana grow operations and to charge fees for inspections of marijuana grow operations.

(b) That the 2007 Budget enhancement for Illegal Marijuana Grow Operations, with an estimated net cost of $73,500, for the hiring of two (2) inspectors be approved.

(c) That the one-time cost of $70,000 for the purchase of two (2) vehicles required for two (2) inspectors be funded from Capital Reserves.

EXECUTIVE SUMMARY:

Indoor marijuana grow operations harm the economic and social well-being of the City as a whole and the health, safety and well-being of its inhabitants. The proposed by-law prohibiting marijuana grow operations, if approved, will make it an offence to permit a property to contain a marijuana grow operation. After receiving Police notice of a marijuana grow operation, the City will have the authority to make use of enhanced inspection powers in the Municipal Act, 2001 in carrying out its statutory duty to inspect. The proposed by-law will also give the City the authority to clean up the properties at the expense of the owner. In appropriate cases, demolition may be carried out under the Property Standards By-law.
A follow-up report will be provided to Council to provide information on the protocol respecting the clean up of marijuana grow operations and, in particular, multiple unit residential grow operations. It will include the expected roles for Building and Licensing and Public Health staff and a draft by-law for Council’s consideration. Further, the report will include comparisons with other municipality’s procedures and a proposal that includes best practices.

**BACKGROUND:**

The Municipal Act, 2001 was amended with an effective date of August 1, 2006 to require that, if the clerk of the local municipality is notified in writing by a police force that a building contained a marijuana grow operation, the local municipality conduct an inspection of the building within a reasonable time.

The Municipal Act, 2001 further requires that the inspection shall be conducted pursuant to the powers of entry and inspection that the person conducting the inspection otherwise has under law, but only to the extent that the person conducting the inspection is able to do so. In the absence of a Province-wide protocol, Ontario municipalities are approaching this mandatory inspection in various ways. Many Ontario municipalities are using authority contained in the Building Code Act, 1992, the Fire Protection and Prevention Act, 1997 or enforcement of their respective Property Standards By-laws. Thus far all inspections in Hamilton have been performed by Building and Licensing staff with the consent of the owner and/or occupier of the building with any orders issued under the Building Code Act, 1992.

The Hamilton Police Service has advised that they can reasonably estimate that there are not less than 2,500 indoor grow operations at any given time in Hamilton. They expect to enter approximately 150 of these per year under warrant. Accordingly, the City should expect to perform at least two (2) inspections per illegal grow operation. First the inspection as mandated under the Municipal Act, 2001 and then at least one subsequent inspection per property to ensure compliance and, if necessary, to confirm that a building or unit within a building is fit for re-occupancy.

**ANALYSIS/RATIONALE:**

In the absence of a province wide protocol, Ontario Municipalities are approaching compliance with the changes to the Municipal Act, 2001 in various ways. A number of other municipalities and associations have presented options for protocols and authorities, but few have proposed by-laws that will allow for some cost recovery for the inspection and administration associated with the enforcement programs. However, municipalities from western Canada have used by-laws similar to that proposed here to recover costs and minimize the impact on the levy.
**ALTERNATIVES FOR CONSIDERATION:**

The question was raised as to whether the inspections of illegal grow operations could be performed with our current Building Construction complement. This would require the reduction of another program currently enforced. In addition, there would still be an impact on the levy because inspecting buildings for compliance with the Ontario Building Code (OBC) is funded by the revenue generated from building permits. It would be against the law to fund programs outside of OBC inspections with this revenue. The builders and homeowners doing construction in the City should not fund the inspection of illegal grow operations.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial**

A by-law prepared under the authority of the *Municipal Act, 2001* will allow the City to levy fees for the inspections performed on illegal marijuana grow operations.

We have been advised by the Hamilton Police Service that approximately 150 notices will be forwarded. Each notice will result in at least two (2) inspections. The by-law will recommend a fee of $300 for each inspection and an additional fee of $250 to certify completed restoration of the property. The fees will be reviewed on a regular basis to ensure that they accurately reflect the cost of inspection and administration of the program. Subject to the collection of these fees, which may be delayed or incomplete, it is estimated that a revenue of at least $82,500 will be generated to offset the cost of the program.

There will likely be some revenue generated from fines levied by the Courts as a result of non-compliance with the by-law, but that revenue stream is unpredictable and unreliable. Even if fines are levied by the Courts, it can be difficult for the City to collect them. We have assumed no additional revenue from fines but if some are collected, the levy would be reduced accordingly. Below is a summary of costs and revenues.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of two (2) inspectors and vehicles</td>
<td>$226,000</td>
</tr>
<tr>
<td>Revenue from inspections</td>
<td>(150*$300)</td>
</tr>
<tr>
<td>Revenue to certify completed restoration</td>
<td>(150*$250)</td>
</tr>
<tr>
<td>Funding for the initial purchase of the two (2) vehicles</td>
<td>from Capital Reserves</td>
</tr>
<tr>
<td>Net Levy Impact</td>
<td>$73,500</td>
</tr>
</tbody>
</table>

**Staffing**

The Hamilton Police Service has advised that the City will receive approximately 150 notices of illegal grow operations per year. Based on the number of anticipated inspections and the time allotted to each enforcement process, we have estimated that two (2) additional staff members will be needed to ensure appropriate and thorough inspections are performed. The inspections are specialized and the issues are unique to
marijuana grow operations. The staff will need appropriate training and the time to focus on enforcement and compliance techniques. The cost for two inspectors and vehicles is $226,000.

**Legal**

There will be legal resources required to draft the necessary by-laws, provide advice concerning enforcement and to pursue legal action for non-compliance if that is deemed appropriate.

Failure to perform the mandatory inspection would be in violation of a requirement of the Municipal Act, 2001.

**Policies Affecting Proposal:**

Not applicable.

**Relevant Consultation:**

Legal Services have been consulted in the preparation of this report.

**City Strategic Commitment:**

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑️ Yes  □ No
Increased protection to future tenants and homeowners.

Environmental Well-Being is enhanced. ☑️ Yes  □ No
Human health and safety are protected.

Economic Well-Being is enhanced. □ Yes  ☑️ No

Does the option you are recommending create value across all three bottom lines? □ Yes  ☑️ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? □ Yes  ☑️ No

:MB