As a follow-up to Report PED07222, the purpose of this report is to update Council on the efficiency/effectiveness of By-law 07-244 - The Prohibition and Inspection of Marijuana Grow Operations.

Background:

The Municipal Act, 2001 was amended with an effective date of August 1, 2006 to require that local Police forces notify the Municipal Clerk, in writing, when a property containing a marijuana grow operation had been raided and shut down. These notices act as a prompt to local municipalities to respond by conducting an inspection of the properties within a reasonable time. In the absence of a Province wide protocol, Ontario municipalities have approached these mandatory inspections in various ways. The majority of Ontario municipalities rely on their respective Property Standards By-laws as a means to ensure the rehabilitation of buildings. Many Ontario municipalities continue to use the authority contained in the Building Code Act, 1992, or the Fire Protection and Prevention Act, 1997 to deal with Marijuana Grow-ops.

The City of Hamilton created and enacted a ‘stand-alone’ By-law, specifically designed to ensure the proper rehabilitation of buildings and properties identified as Marijuana Grow Operations, (By-law 07-244). This By-law was passed by Council in August of 2007 in response to the Provincial Government’s amendment to the Municipal Act requiring that Municipalities conduct an inspection of any Marijuana Grow Operation identified by Police. The requirements of this By-law come into effect once a notice is received from the Hamilton Police Service by way of our Clerk’s Division.

In order to enforce the Grow-op By-law, the Building Services Division created the position of “Building Inspector – Illegal Grow Operations” (Grow-op Inspector) in accordance with the direction of Council shortly after By-law 07-244 was enacted.
Inspection Protocol:

Within 24 hours of receiving a Marijuana Grow-op notice from the Clerk's Division, the Inspector attends the subject property to post an Order to Comply, specific to By-Law 07-244. This initial Order is posted to ensure the property is not open to trespass. Additionally, the Order directs the property owner to obtain a field review, (performed by an accredited environmental consultant), along with air quality testing to determine if there are any elevated levels of mould spores or other contaminants present. In all cases, an inspection fee is applied on the tax roll of each identified property.

If the test results show elevated mould spore/contaminant levels, the report also must indicate all work required to be performed to bring the property back to healthy air quality levels.

If the work to be completed requires building permits, the Grow-op Inspector informs the property owner of his/her permit obligations by way of a letter. Once a permit has been issued and the required work is completed, (along with new testing indicating the mould spore levels have been brought down to a healthy level), the property owner must attend the Building Services Division offices to remit the “Notice of Compliance” inspection fee. Once paid, a request for a final inspection is made, and a date and time for inspection is established. The Grow-op Inspector then attends the site to inspect the work completed under permit to ensure the building or property conforms to that described in the Consultant’s Report. When buildings or properties are proven to be free of mould and all materials/equipment used as part of the illegal grow-operation have been removed the Grow-op Inspector issues a “Notice of Compliance” letter to the property owner. The notice states the identified property is in conformance with the Prohibition and Inspection of Marijuana Grow Operations By-Law 07-244.

Statistics (2008):

In 2008, 49 Illegal Grow Operations (approximately one per week) were reported to the City Clerk, which were forwarded to the Building Services Division.

Of those 49, 31 (or 64%) have had Consultant’s Reports submitted and inspection fees ($538) have been paid, with a Notice of Compliance inspection completed and approved. Two of these properties were voluntarily demolished by the property owners.

At two properties, (or 4%), Notice of Compliance inspections have been conducted, but hydro remains cut off. These files will remain active until such time the power is restored.

Nine properties, (or 19%) have submitted Consultant’s Reports but a Notice of Compliance inspection has not been completed to date.

Of the seven identified Illegal Grow Operations that remain non-compliant, the Building Services Division is still working towards resolution. The Grow-op Inspector is currently preparing to prosecute four property owners for non-compliance, and is preparing to contract out the remedial work necessary to rehabilitate the remaining three.
Statistics (2009):

In the first seven months of 2009, 41 Illegal Grow Operations (approximately 1.5 per week), were reported to the City Clerk, which were forwarded to the Building Services Division.

Of those 41, 19 (or 46%) have had Consultant’s Reports submitted and inspection fees ($556) have been paid, with a Notice of Compliance inspections completed and approved. Two of these properties were voluntarily demolished by the property owners.

At one property, (or 2%), Notice of Compliance inspections have been conducted, but hydro remains cut off. This file will remain active until such time the power is restored. Eight properties, (or 20%), have submitted Consultant’s Reports but a Notice of Compliance inspection has not been completed to date.

Of the 13 identified Illegal Grow Operations that remain non-compliant, the Building Services Division is still working towards resolution. The Grow-op Inspector is currently preparing to prosecute six property owners for non-compliance, and is conducting initial inspections at the remaining seven.
SUBJECT: Prohibition and Inspection of Grow Operations (PED07222(a)) (City Wide) - Page 4 of 6

2009 Illegal Grow Operations

- Legal Action (6)
- Notice of Compliance (N.O.C.) Granted (19)
- N.O.C. Inspection Done No Hydro (1)
- Report Received No Inspection Done (8)
- Recent Bust Contact Made (2)
- Recent Bust No Contact (5)

Financial Information:

<table>
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<th></th>
<th>2008</th>
<th>2009</th>
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<td></td>
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Effectiveness:

Statistics gathered through 2008 to July of 2009 clearly indicate the By-law has been effective in rehabilitating 50 of 90 identified grow-op properties to a habitable condition with only two being demolished. The remaining 38 are at various stages of enforcement with the expected result that the majority will be rehabilitated similarly.

It should also be noted that Building Services flags all properties identified as Marijuana Grow-ops. When Zoning Verifications are performed for Hamilton properties where
outstanding Marijuana Grow Operations enforcement files exist, this information is noted in the Zoning Verification warning prospective purchasers of the prior use of the building and the current status (i.e. non-rehabilitated).

**Efficiency:**

Council, in its approval of the Grow-op By-law, requested that the delivery of the enforcement program be funded as full cost recovery. While the Grow-op Inspector is well trained and the AMANDA tracking system has been modified to streamline the grow-op enforcement process, predicting workload is difficult as the volume of grow-ops identified is dependent on the number that are found and shut down by the Hamilton Police Service.

The original financial analysis as outlined in Report PED07139 was based on Hamilton Police Service’s advice that approximately 150 notices would be forthcoming and on salaries of $78,000 for each of two (2) Inspectors, inspection fee revenues of $300 and a certification fee of $250. This resulted in a net levy impact of $73,500. Council’s approval, however, directed staff to adjust the fees for 100% cost recovery.

Due to lower than projected activity, the enforcement program for 2008 resulted in a net levy impact of $70,620.59 with only 49 illegal grow-ops being reported (rather than the 150 expected) and the Building Services Division, therefore, took the following steps in an effort to better align the costs of the program:

- Reduced complement from two (2) to one (1) Inspector;
- Confirmed with Hamilton Police Service the anticipated activity for 2009; and,
- Increased associated grow-op fees plus 3.4%.

This reduced the employee related budget for 2009 to $94,564. Budgeted revenues were based on the volumes provided by the Hamilton Police Service and the fees were based on a 3.4% increase (as directed by Council) over the 2008 fees. This ended up with a $28,884 budgeted impact on the levy due to the reduced revenues (lower projected activity levels) and higher employee related costs.

The 2009 YTD revenue budget (as of July 31) is $41,026 and actual revenues are $37,876 for an unfavorable revenue variance of only $3,150. Further, expenses should be on budget with only the one Inspector.

**Staffing:**

Although the volume of work in 2008 was lower than expected, the Inspector’s workload was also dedicated to creating the Grow-op Policies and Procedures and developing the work flow patterns for the AMANDA upgrades necessary to track Grow-op enforcement in the City. Recent discussions between the Building Services Division and Hamilton Police Service has revealed that there will be more Grow-ops shut down in Hamilton in 2009 than in 2008 (the trend in the first half of this year confirms this). Also, recent conversations with the Hamilton Police Service revealed that they were only sending notices where Grow-ops were shut down in principal buildings. However,
the scope of By-Law 07-244 includes all properties (including agricultural properties where Marijuana Grow-ops are discovered in farmer’s fields, out-buildings and accessory structures). Hamilton Police Service has therefore commenced to send notices for all shut down grow operations in the City which will ensure the By-law is enforced equitably to all properties. This has resulted in an increase in work volume for the Grow-op Inspector already.

Notwithstanding previously described adjustments to the program, the fees collected continue to be insufficient to result in a revenue neutral enforcement process. The Building Services Division will therefore proceed to further reduce staffing costs (in balance with workload) by budgeting a part of the FTE in another cost centre (deptid) in 2010 to get the program to a zero impact on the levy.

**Note:** The inspection fee and certification fee will also be increased by 2% for 2010 as directed by Council.

**Conclusion:**

The overriding purpose of By-law 07-244 - *The Prohibition and Inspection of Marijuana Grow Operations* is to protect future homeowners and tenants in Hamilton from potentially harmful conditions such as mould growth and other defects related to former Grow-operations. The By-law has proven to be effective in the majority of cases and has yet to be tested in the remaining (i.e. prosecution in Provincial Court). Staffing levels require minor adjustment, as outlined above.

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Tim McCabe  
General Manager  
Planning and Economic Development Department

JS:JWL:fd