SUBJECT: By-law Respecting the Prohibition and Inspection of Marijuana Grow Operations (PED07222) (City Wide)

RECOMMENDATION:

That the By-law attached as Appendix A to Report PED07222 respecting the Prohibition and Inspection of Marijuana Grow Operations be approved.

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. In addition, it will require the owner or occupier to remediate the property and return it to a condition where its previous lawful use may be resumed. 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 also will give the City the authority to clean up the property at the expense of the owner. In appropriate cases, demolition may be carried out under the authority contained in the Property Standards By-law. This By-law allows Council to approve fees and charges for services and activities. The fees have been established on a full cost recovery basis.

In a previous report (PED07139) Council was advised that a follow-up report would be provided on a protocol respecting the clean up of marijuana grow operations and in particular multiple unit residential marijuana grow operations.
The proposed protocol is as follows:

1. Building Services and the Public Health Services Health Protection Division receive notification from Police that a property contained a marijuana grow operation.

2. If the building is a multiple unit residential property, Public Health determines if there is a public health hazard and communicates with the occupants of the property regarding potential health hazards. Building Services staff is responsible for issuing an order requiring remediation and carrying out an inspection in accordance with the proposed By-law and Section 447.2 of the *Municipal Act, 2001*.

3. If the building is not a multiple unit residential property, Building Services staff is responsible for issuing an order requiring remediation and carrying out an inspection in accordance with the proposed By-law and Section 447.2 of the *Municipal Act, 2001*.

4. Depending on the scale of the operation and the details in the notice forwarded by the Hamilton Police Services, Building Services staff either first enters on the property to carry out an inspection or issues an Order to Comply to the property owner or occupier.

5. The Order to Comply requires that: the building be immediately secured to prevent unauthorized entry; a qualified Environmental Health or Indoor Air Quality Consultant be retained to assess the conditions within the building; and that the consultant complete and submit to the City a certification form advising that the building is substantially free from pesticides, toxic chemicals, moulds or fungi normally found in a marijuana grow operation.

6. Upon completion of all required work under the Order to Comply a notice of compliance is issued to the owner.

**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 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 their respective Property Standards By-laws. Thus far all inspections in Hamilton have been performed by Building Services 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 Services has advised that they can reasonably estimate there are not less than 2,500 indoor grow operations at any given time in Hamilton. Since August 1, 2006 the Building Services Division has been notified of 47 separate properties, three (3) of which had a total of 49 units containing marijuana grow operations. Accordingly, Building Services staff has been involved in 93 units/buildings where marijuana grow operations have been found by the Police.

**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. Few have proposed a by-law that will allow for full cost recovery for the inspection and associated administration required under Section 447.2. However, municipalities from western Canada have used by-laws similar to the proposed By-law to recover costs and minimize the impact of dealing with marijuana grow operations on the tax levy.

**ALTERNATIVES FOR CONSIDERATION:**

Other Ontario municipalities are using authority contained in the *Building Code Act, 1992* to issue orders to repair properties used as marijuana grow operations. The disadvantages in using the *Building Code Act* is that an inspection is required before an order can be issued and there is some difficulty in gaining access to properties when consent is not granted. There are enhanced powers in the *Municipal Act, 2001* in regard to inspections and access that eliminate or diminish these disadvantages.

If this By-law is not approved the City's ability to collect fees to carry out the enforcement program, including performing the mandated inspection, will be limited.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial
This By-law, prepared under the authority of the *Municipal Act, 2001,* will allow the City to charge fees for the inspections performed on marijuana grow operations.

Council had previously requested that the delivery of the enforcement program be funded as full cost recovery. The By-law, once approved, will allow the collection of fees for inspections of the properties and issuance of a notice of compliance. The fee for inspection of the property is $545 which will be charged at least once in every case and in the cases where there is non-compliance with orders this fee will be charged for further inspections to monitor the status of the building. The cost for a notice of compliance, which will advise that there has been compliance with an Order, is $495. Again, this fee will be charged in every case. The fees are approved by Council through the Building Services’ Schedule of the User Fees By-law amended and approved every year by Council as part of the Budget process. The fees will be reviewed on a regular basis to ensure that they accurately reflect the cost of inspection and administration of the program.
Staffing
Based on the past year, the City may anticipate that approximately 100 notices of marijuana grow operations will be received annually. The enforcement program under the proposed By-law will be completed by the Building Services Division. The inspection staff will need appropriate training and the time to carry out enforcement. The inspection staff complement will increase by two (2) persons to complete these specialized inspections. The number of notices and the revenue generated by this program will be monitored and staffing needs will be changed as necessary.

Legal
There will be legal resources required to 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 and Finance and Administration have been consulted in the preparation of the By-law and establishing the fees.

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
Public services and programs are delivered in an equitable manner, coordinated, efficient, effective and easily accessible to all citizens.

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

JL:fd
Attach. (1)
CITY OF HAMILTON

BY-LAW NO. __________

Respecting the Prohibition and Inspection of Marijuana Grow Operations

WHEREAS Council desires to provide for the prohibition of marijuana grow operations in the City of Hamilton and for inspections of marijuana grow operations to meet the requirement for an inspection where notice of a marijuana grow operation has been given the City of Hamilton’s Clerk pursuant to subsection 447.2(1) of the Municipal Act, 2001, S.O. 2001, c. 25;

AND WHEREAS sections 8, 9 and 10 of the Municipal Act, 2001, S.O. 2001, c. 25, authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes, and in particular paragraphs 5 through 8 of subsection 10(2) authorize by-laws respecting: the economic, social and environmental well-being of the municipality; the health, safety and well-being of persons; the provision of any service or thing that it considers necessary or desirable for the public; and the protection of persons and property, including consumer protection;

AND WHEREAS section 425 of the Municipal Act, 2001, S.O. 2001, c. 25, authorizes the City of Hamilton to pass by-laws providing that a person who contravenes a by-law of the City of Hamilton passed under that Act is guilty of an offence;
AND WHEREAS the Municipal Act, 2001, S.O. 2001, c. 25, further authorizes the City of Hamilton, amongst other things, to delegate its authority, to impose fees or charges on persons for services or activities provided or done by or on behalf of it, to provide for inspections and inspection orders, and to make orders to discontinue activity or to do work;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

Definitions

1. In this By-law:

(a) “City” means the municipality of the City of Hamilton or the geographic area of the City of Hamilton, as the context requires;

(b) “Council” means the Council of the City of Hamilton;

(c) “Director” means the City’s Director of Building Services or his or her designate;

(d) “marijuana grow operation” means a property that contained a marijuana grow operation in respect of which the City’s Clerk has been notified in writing by a police force pursuant to subsection 447.2(1) of the Municipal Act, 2001;

(e) “occupier” means:

(i) a person residing on or in a property or in possession of a property; or

(ii) a person entitled to the possession of the property if there is no other person residing on or in the property or in possession of a property;
(f) “Officer”:

(i) means a Building Inspector, a Property Standards Officer, a Fire Prevention Officer, a Public Health Inspector, a Municipal Law Enforcement Officer appointed under any City by-law or any other person assigned or appointed by the Director to administer or enforce this By-law and includes a person employed by the City whose duties are to enforce this By-law; and

(ii) includes, for the purposes of exercising any power of entry under this By-law, a police officer;

(g) “owner” means a person who has a right, title, estate or interest in a property, other than that of an occupier, and shall include the agent of any such person;

(h) “person” includes a natural person, an association, a corporation, a body politic or a partnership whether acting by themselves or by a servant, agent or employee and the heirs, executors, administrators, successors and assigns or other legal representative of such person;

(i) “police force” means a municipal police force, the Ontario Provincial Police or the Royal Canadian Mounted Police; and

(j) “property” means land and any buildings appurtenant to such land.

Interpretation

2. The headings and subheadings used in this By-law shall not form a part of it, but shall be deemed to be inserted for convenience of reference only.
3. The requirements of this By-law are in addition to any requirements contained in any other applicable by-laws of the City or applicable provincial or federal statutes or regulations.

4. Unless the context otherwise requires, words imparting the singular number shall include the plural, and words imparting the masculine gender shall include the feminine, and further, the converse of the foregoing also applies where the context requires.

**Prohibitions and Duties**

5. No person, owner or occupier shall permit a property to contain a marijuana grow operation.

6. Every owner or occupier of a property that contained a marijuana grow operation shall:

   (a) remove all equipment or material used in the marijuana grow operation and eliminate any alteration resulting from or damage caused by the marijuana grow operation, including but not limited to removing, replacing or repairing conditions of disrepair or hazard such as mould or water damage; and

   (b) in complying with subsection 6(a), return the property to a condition where the property’s previous lawful use may be resumed, including but not limited to obtaining all of the inspections, permits or other approvals required for such resumption of use.
Inspections and Orders

7. In accordance with the conditions set out in sections 435 and 437 of the *Municipal Act, 2001*, including the provision of notice to an occupier, an Officer may enter on a property at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

(a) this By-law;

(b) a direction, requirement or order made under this By-law; or

(c) an order made under section 431 of the *Municipal Act, 2001* in respect of a contravention of this By-law.

8. An Officer may, for the purposes of an inspection under section 6:

(a) require the production for inspection of documents or things relevant to the inspection;

(b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;

(c) require information from any person concerning a matter related to the inspection; or

(d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
9. An inspection order made under section 8 may be served personally or by registered mail to the last known address of such persons affected by it as the Officer making the order determines. Service by registered mail shall be deemed to have taken place five (5) business days after the date of mailing.

10. Where service cannot be given in accordance with section 9, sufficient service is deemed to have taken place when the Officer places a placard containing the order in a conspicuous place on the property where the contravention occurred.

11. An Officer may, pursuant to an order under section 438 of the Municipal Act, 2001, undertake an inspection for a purpose described in section 7 and exercise powers described in section 8 where he or she has been prevented or is likely to be prevented from carrying out an inspection under sections 7 and 8, provided that:

   (a) unless otherwise provided in the order, the conditions set out in section 435 of the Municipal Act, 2001 apply; and

   (b) in the case of an order authorizing an inspection of a room or place actually being used as a dwelling, the occupier is given notice concerning the inspection in accordance with subsection 438(5) of the Municipal Act, 2001.

12. If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred to discontinue the contravening activity.

13. An order under section 12 shall set out:
(a) reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred; and

(b) the date or dates by which there must be compliance with the order.

14. If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred to do work to correct the contravention.

15. An order under section 14 shall set out:

(a) reasonable particulars of the contravention adequate to identify the contravention and the location of property on which the contravention occurred; and

(b) the work to be done, which may include but is not limited to requiring that:

(i) any buildings on the property be secured to prevent unauthorized entry;

(ii) prior to performing any work, all necessary permits or other approvals be applied for and obtained;

(iii) all workers or others attending the property be notified of the potential hazards resulting from the marijuana grow operation in writing with a copy of the notice supplied to the Director;

(iv) any equipment or material used in the marijuana grow operation be removed from the property;
(v) examinations or tests be conducted or samples be taken for the purpose of determining what if any alterations have resulted from or damage has been caused by the marijuana grow operation and that such examinations, tests or samples be supplied to the Director together with any accompanying reports required in the order;

(vi) the property be cleaned, disinfected or repaired to eliminate any alterations resulting from or damage caused by the marijuana grow operation; and

(c) the date or dates by which the work must be done.

16. If, after an inspection of a property, an Officer is satisfied that there has been compliance with an order made under this By-law he or she shall issue a notice of compliance with the order to the owner.

17. An order to discontinue contravening activity made under section 12 or an order to do work made under section 14 may be served personally or by registered mail to the last known address of:

(a) the owner or occupier of the property where the contravention occurred; and

(b) such other persons affected by it as the Officer making the order determines.

Service by registered mail shall be deemed to have taken place five (5) business days after the date of mailing.

18. In addition to service given in accordance with section 17, an order to discontinue contravening activity made under section 12 or an order to do work made under
section 14 may be served by an Officer placing a placard containing the order in a conspicuous place on the property where the contravention occurred.

19. Where service cannot be given in accordance with section 17, sufficient service is deemed to have taken place when given in accordance with section 18.

**Failure to Comply and Cost Recovery**

20. Where a person does not comply with a direction, requirement or order under this By-law to do a matter or thing, an Officer, with such assistance by others as may be required, may carry out such direction, requirement or order at the person’s expense.

21. The City may recover the costs of doing a matter or thing under section 20 by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes and such costs shall include an interest rate of 15 per cent commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full.

22. The Director is authorized to give immediate effect to any direction, requirement or order carried out under section 20 where the costs of carrying out the direction, requirement or order do not exceed $10,000 and, where the costs do exceed $10,000, as Council may authorize.

**Administration and Enforcement**

23. The Director is authorized to administer and enforce this By-law and has delegated authority granted by Council to execute the provisions of the By-law, including the imposition of conditions as necessary to ensure compliance with this By-law.

24. Fees or charges for services and activities provided under this By-law shall be set and approved by Council from time to time.
25. The owner shall pay the applicable fee for an inspection carried out or a notice of compliance issued under this By-law in respect of their property.

26. Unpaid fees or charges set and approved under section 24 constitute a debt to the City and may be added to tax roll and collected in the same manner as municipal taxes.

27. The Director may assign or appoint Officers to enforce this By-law who shall have the authority to carry out inspections, make orders to discontinue contravening activities or to do work to correct contraventions, give immediate effect to any order and otherwise enforce this By-law, and the Director may assign duties or delegate tasks under this By-law whether in his or her absence or otherwise.

28. This By-law may be cited as the “Marijuana Grow Operation Prohibition and Inspection By-law”.

29. If a court declares any provision of this By-law invalid, it is the intention of Council that the remainder of the By-law shall continue to be in force and effect.

**Penalties**

30. Every person who fails to comply with an order made under this By-law is, upon conviction, guilty of an offence and is liable to a fine of not more than:

   (a) $5,000 for a first offence; 

   (b) $25,000 for a second offence; or 

   (c) $100,000 for a third or subsequent offence.
Enactment

31. This By-law comes into force and effect on the day it is passed and enacted.

PASSED and ENACTED this day of , 2007.

_________________________       ___________________________
Fred Eisenberger              Kevin C. Christenson
Mayor                         City Clerk