

Marijuana Grow Operation Remediation by-law

This consolidation of By-law Number 2012-402 is provided for reference purposes only. Every effort is made to ensure the accuracy of this consolidation up to and including the last amending by-law (as identified in brackets). For legal requirements, please refer to copies of the official amending by-laws, which are available upon request from the City Clerk and Solicitor Department.

BY-LAW NO. 2012 – 402

A by-law of the City of Ottawa respecting the prohibition, inspection and remediation of buildings used for marijuana grow operations.

WHEREAS Section 447.2 of the *Municipal Act, 2001*, provides that upon receipt of a notice in writing to the municipal Clerk from a police force advising that a building contained a marijuana grow operation, the municipality shall ensure that an inspection is conducted of the building within a reasonable time frame and shall take whatever actions authorized by law in order to make the building safe and otherwise to protect the public;

AND WHEREAS Section 8 of the *Municipal Act, 2001* authorizes a municipality to pass by-laws in respect of a matter as is necessary and desirable for municipal purposes, and to regulate and prohibit and require persons to do things in respect of the matter, and subsection 10(2) of the *Municipal Act, 2001* authorizes a municipality to pass by-laws respecting the economic, social and environmental well-being of the municipality, the health, safety and well-being of persons, the provision of services and things, and the protection of persons and property, including consumer protection;

AND WHEREAS Section 128 of the *Municipal Act, 2001* authorizes a municipality to prohibit and regulate in respect of public nuisances,

AND WHEREAS Council deems it desirable to ensure that the costs associated with the actions required to be undertaken by the City in the inspection and the remediation of a building used as a marijuana grow operation are borne by the Owner, occupier, or person having possession or control of the offending property;

THEREFORE the Council of the City of Ottawa enacts as follows:

DEFINITIONS

1. In this by-law:

“building” means any structure used or intended for supporting or sheltering any use or occupancy;

“City” means the municipal corporation of the City of Ottawa;

“Director” means the director of Building Code Services in the Department of Planning and Growth Management, or authorized delegates;

“marijuana grow operation” means a property or portion of a property that a police force has identified in writing to the City pursuant to subsection 447.2(1) of the *Municipal Act, 2001* as having contained a marijuana grow operation;

“*Municipal Act, 2001*” means the *Municipal Act, 2001*, S.O. 2001, c.25, as amended;

“Officer” means any person currently appointed as an Inspector, Property Standards Officer or Officer under by-law No. 2001-17, as amended, as well as any other municipal law enforcement officer who has been appointed to enforce this by-law, and a police officer;

“Owner” includes:

- (a) the registered owner or occupier of the land on which the property is located;
- (b) the person for the time being managing or receiving rent for the property, whether on the person’s own account or as agent or trustee, or the person who would receive the rent if the property was let; and,
- (c) any person who takes possession of a property under a charge or mortgage registered on title of the land on which the property is located;

“police force” means the Ottawa Police Service, or Ontario Provincial Police or the Royal Canadian Mounted Police;

“professional engineer” means a person who holds either a valid license or a valid temporary licence issued by Professional Engineers Ontario pursuant to the *Professional Engineers Act*, R.S.O. 1990, c. P.28, as amended; and,

“property” means land, a building, or structure, or part of a building or structure, and includes any freehold units in a multi-unit building, a condominium unit, mobile home, mobile building, mobile structure and outbuildings.

INTERPRETATION

2. (1) This by-law includes the schedules annexed hereto and the schedules are hereby declared to form part of this by-law.
- (2) The headings and subheadings used in this by-law are inserted for convenience of reference only, form no part of this by-law, and shall not affect in any way the meaning or interpretation of the provisions of this by-law.
- (3) Unless the context requires otherwise, references to items in the plural include the singular unless used with a number modifying the term, and words imparting the masculine gender shall include the feminine.
- (4) It is declared that if any section, subsection, paragraph or part thereof is declared by any Court to be bad, illegal, or ultra vires, such section, subsection, paragraph part or parts shall be deemed to be severable and all other parts of this by-law are declared to be separate and independent, and enacted as such.
- (5) Unless otherwise defined, the words and phrases used in this By-law have their normal and ordinary meaning.

PROHIBITION AND DUTIES

3. No person or Owner shall have, cause, permit or allow a marijuana grow operation on or in a property.
4. No person or Owner have, shall cause, permit or allow water, rubbish, or noxious, offensive or unwholesome odours, liquids or materials to collect or accumulate in or around the property as a result of a marijuana grow operation.
5. Every Owner of a property that contained a marijuana grow operation shall:
 - (a) discontinue the occupancy or use of the property until such time as the property has been remediated and a certificate of compliance has been issued under this by-law authorizing the resumed occupancy or use of the property;
 - (b) under the direction of a professional engineer, remove all equipment or material used in the marijuana grow operation;
 - (c) under the direction of a professional engineer, remove and restore 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 hazards such as mould and water damage; and

- (d) under the direction of a professional engineer, return the property, or any affected adjacent property, to a condition where the property's, or any affected adjacent property's, previous lawful use can be resumed, including but not limited to obtaining all necessary permits, inspections, or other approvals required for such resumption or use.

INSPECTION

6. Subject to compliance with Sections 435, 436 and 437 of the *Municipal Act, 2001*, an Officer may enter in or onto a property at any reasonable time for the purpose of carrying out an inspection to determine compliance with this by-law, an Order issued under this by-law, or an Order made pursuant to s. 431 of the *Municipal Act, 2001* in respect of a contravention of this by-law.

- 7. (1) 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 purposes 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.
- (2) No person shall hinder or obstruct, or attempt to hinder or obstruct, an Officer in the discharge of his duties under this by-law.

ORDER

- 8. (1) Where an Officer determines that a contravention of this by-law has occurred, the Officer may make an Order requiring the person who caused or permitted the contravention, or the Owner, or other person having an interest in, or responsibility for the property on which the contravention occurred, to:
 - (a) discontinue the contravening activity;
 - (b) carry out such work, and if applicable under such conditions, as may be required to correct the contravention; and
 - (c) return the property, or any affected adjacent property, to a condition where all unsafe conditions are removed and the property, or any affected adjacent property, is safe for occupancy or use.
- (2) An Order under subsection (1) shall set out:

- (a) reasonable particulars of the contravention sufficient to identify the contravention and the location of the property on which the contravention occurred;
 - (b) the work to be done to restore the property to a condition where all unsafe conditions are removed and the building may be safely occupied or used, which may include but is not limited to requiring that:
 - i. the property be secured to prevent unauthorized entry, including requiring the installation of a fence around the perimeter of all or part of the property, or the boarding up of all points of access or egress to or from the property, to the satisfaction of the Director;
 - ii. prior to performing any work, all necessary permits or other approvals be obtained; and,
 - iii. examinations and tests be conducted or samples taken for the purposes 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 by the Director; and,
 - (c) the date or dates by which there must be compliance with the Order.
- (3) No person shall fail to comply with an Order issued pursuant to subsection (1).
- (4) The Director may register any Order issued pursuant to this by-law on the title of the property on which the by-law contravention occurred.
- (5) The Director shall cause to be released from title of the property any Order registered on title pursuant to subsection (1) following the issuance to the Owner of the certificate of compliance pursuant to Section 10.

SERVICE

9. (1) An Order issued pursuant to Section 8 may be served personally, be posted in a conspicuous place on the property where the contravention occurred, or be sent by registered mail to the last known address of the person contravening the by-law.
- (2) Where an Order under Section 8 is served personally, it shall be deemed to have been served on the date of delivery to the person or persons named.
- (3) The posting of an Order issued pursuant to Section 8 on the affected property shall be deemed to be sufficient notice of the Order on the person to whom the Order is directed on the date it is posted.

- (4) An Order issued pursuant to Section 8 shall also be sent by registered mail to the Owner at the last known address available to the Director, and shall be deemed to have been served on the fifth day after the Order is mailed.

CERTIFICATE OF COMPLIANCE

10. (1) An Owner shall apply for a certificate of compliance upon completion of the work to be done in accordance with the Order issued pursuant to Section 8 and pay the applicable fee.
- (2) The Officer shall issue to the Owner a certificate of compliance with the Order if the Officer, after having completed an inspection, is satisfied that the Order has been complied with.

FAILURE TO COMPLY WITH AN ORDER

11. Where a person does not comply with an Order issued under this by-law, an Officer, with such assistance of others as may be required, may effect compliance at the expense of the Owner.

12. (1) The City may recover the costs of effecting compliance with an Order under Section 8 by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.
- (2) The Director shall deliver to the Owner written notice of the costs to the last registered address of the Owner as identified in the assessment roll.
- (3) The total cost of effecting compliance with an Order as set out in Section 11 shall include an administration fee in the amount of 15 percent calculated for the period commencing on the day the City incurs the costs and ending on the day the cost, including the interest, are paid in full.
- (4) The compliance referred to in Section 11 and Section 12 (1) includes effecting compliance with the work required to an affected adjacent property, as set out in an Order issued under this By-law.

13. The Director is authorized to give immediate effect to any Order, notice or direction carried out under Section 11 and is authorized to enter upon the property at any reasonable time for that purpose.

14. (1) The amount of the costs, including interest, as set out in the notice of costs provided under subsection 12 (2) that remain unpaid after 30 days of the date of the notice of costs may be added to the tax roll and collected in the

same manner as property taxes, and the amount of the costs, including interest, constitutes a lien on the land upon the registration in the land registry office of a notice of lien.

- (2) Upon receiving payment of all costs payable plus interest accrued to the date of payment, the City shall register a discharge of the lien in the proper land registry office at the expense of the Owner of the property.

FEES

15. The Owner shall pay the applicable fees set out in Schedule "A" in respect of an inspection carried out under this by-law and the examination and investigation of any reports, samples or other information provided as a result of the inspection, the examination of any reports required as a result of an Order issued under this by-law, the registration or release of any notice or Order under this by-law, the issuance of a certificate of compliance, and any related administration or clerical activities related to the administration or enforcement of this by-law by the City or by a person on behalf of the City.

ADMINISTRATION AND ENFORCEMENT

16. The Director is authorized to administer and enforce this by-law and is authorized to execute the provisions of this by-law including the imposition of conditions and requirements relating to a property, as may be required to ensure compliance with this by-law.

17. (1) Subject to subsection (2), every person who contravenes any of the provisions of this by-law is guilty of an offence as provided for in subsection 429(1) of the *Municipal Act, 2001*.

- (2) Every person who fails to comply with an Order issued pursuant to Section 8 of this by-law is guilty of an offence and the offence is hereby designated a continuing offence as provided for in subsection 429(2)(a) of the *Municipal Act, 2001*.

18. A person who is convicted of an offence under subsection 17(1) of this by-law is liable to a minimum fine of \$500 and a maximum fine of \$100,000 as provided for in subsection 429(3), paragraph 1, of the *Municipal Act, 2001*.

19. A person who is convicted of an offence under subsection 17(2) of this by-law is liable, for each day or part of a day that the offence continues, to a minimum fine of \$500 and a maximum fine of \$10,000. The total of all daily fines for the offence is not limited to \$100,000 as provided for in subsection 429(3), paragraph 2, of the *Municipal Act, 2001*.

20. When a person has been convicted of an offence under this by-law, the Superior Court of Justice or any court of competent jurisdiction, in addition to any penalty imposed on the person convicted, may issue an Order:

- (a) prohibiting the continuation or repetition of the offence by the person convicted; and,
- (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

21. This by-law may be referred to as the “Marijuana Grow Operation Remediation by-law”.

ENACTED AND PASSED this 14th day of November, 2012.

CITY CLERK

MAYOR

Schedule “A” – Relating to Fees (2022-241)

Fee Type*	Fee
Type 1	\$1,036
Type 2	\$1,840
Type 3	\$458
Type 4	\$1,148
Type 5	\$231

The fees noted above shall be applicable to the corresponding Fee Type as provided in the Service Delivery Model and Fee Structure described in Document 1, attached, which was approved by City Council on October 24, 2010 (Council Disposition 44, Item 22, Report Ref N°: ACS2012-PAI-PGM-009)

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respecting the prohibition, inspection
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Enacted by City Council at its meeting of
November 14, 2012.

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LEGAL SERVICES
vb – G04-01-GROW

COUNCIL AUTHORITY:
City Council October 24, 2012
Council Disposition #43, Item 22
(PC Report 38, Item 7)