

Authority: Item 19, Economic Development
and Planning Committee
Report 07-014 (PED07222)
CM: August 8, 2007

Bill No. 244

CITY OF HAMILTON

BY-LAW NO. 07-244

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 to 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.

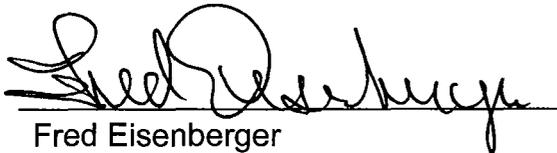
Penalties

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 8th day of August, 2007.



Fred Eisenberger
Mayor



Kevin C. Christenson
City Clerk