

NO: **R104**

COUNCIL DATE: **May 30, 2011**

---

## REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **May 26, 2011**

FROM: **City Solicitor**

FILE: **3900-20-17410**

SUBJECT: **Medical Marijuana Production Licensing and Regulation**

---

## RECOMMENDATION

The Legal Services Division recommends that Council:

1. Receive this report as information;
2. Approve a proposed "Surrey Medical Marijuana Production Licensing and Regulation By-law" (the "By-law") as documented in Appendix "A", which is attached to this report;
3. Instruct the City Clerk to bring forward the By-law for the required readings;
4. Endorse the Resolution attached as Appendix "B" to this report titled "Licenses Issued Under Medical Marijuana Access Regulations" (the "Resolution"); and
5. Request that the Resolution be introduced by the Mayor at the Big City Mayors' Caucus being held on June 1, 2011 with a recommendation that the Big City Mayors' Caucus endorse the Resolution and forward it for consideration at the 2011 Canadian Federation of Municipalities (the "FCM") Convention in Halifax.

## INTENT

The purpose of this report is to seek:

- Council approval to introduce a proposed Surrey Medical Marijuana Production Licensing and Regulation By-law that, if adopted, will require that a person to obtain a production license from the City prior to establishing a medical marijuana growing operation in Surrey. The regulatory provisions of the By-law, if adopted, will require producers of medical marijuana to provide plans acceptable to the City demonstrating compliance with prescribed environmental, electrical, odour control, security, and public safety requirements; and
- Council endorsement of a resolution related to the issuance of licenses under the Medical Marijuana Access Regulations for the purpose of the Mayor introducing the resolution at the next meeting of the Big City Mayors' Caucus.

## BACKGROUND

The Public Safety Committee at its meeting of April 28, 2011 recommended that staff develop for consideration by City Council a comprehensive new MMAR Licensing By-law that would cover all aspects of the medical marijuana grow operation. The By-law would require all applicants for an MMAR license to obtain a license from the City before setting up a growing operation in Surrey, to adhere to reasonable restrictions and provisions to ensure the safety of the operation and to ensure that the operation does not create a nuisance to others and is subject to regular inspections.

The Federal Government provides exemptions from the criminal prohibitions on possession and production of marijuana through the Marijuana Medical Access Regulations (the "MMAR"). Licenses are issued to individuals under the MMAR which designate the quantity that can be produced and by whom. Licenses can be issued for either personal production or production by a person on behalf of the user.

Local governments can regulate marijuana production under their zoning and licensing powers provided they are not in direct conflict with the Federal regulations.

As a further consequence of the lack of notice to local government of MMAR-licensed grow operations, the RCMP is often unable to distinguish between licensed and illegal grow operations. This can result in needless and costly investigations to determine whether a grow operation is licensed or not.

## DISCUSSION

### **Health Canada**

Further to Court decisions that took place in 2003, Health Canada was mandated to provide a framework for persons to gain access to a legal supply of marijuana seeds and/or dried marijuana for medical purposes. This resulted in Health Canada introducing the Medical Marijuana Access Regulations under which licenses are issued to allow persons to legally grow and possess marijuana for medical purposes.

Currently, in BC, 1,773 medical doctors have signed 3,627 patient authorizations to legally possess medical marijuana. This is the highest authorization level in Canada. Approximately 30% of the licenses are designated "person production licenses" whereby a person can grow medical marijuana for other persons who are authorized to possess medical marijuana.

Applications for "personal use production licenses" have tripled Canada-wide in the past two years to over 350 per month. However, many persons who do not wish to wait several months for a Health Canada authorization or who do not wish to grow their own marijuana are turning to marijuana dispensaries operated by compassion clubs. Although these dispensaries do not have legal protection by Health Canada there are approximately 40 operating in B.C.

### **Provincial and Municipal Roles**

Health Canada has no procedure in place to disclose the location of a MMAR license holder because of federal privacy legislation concerns. Local governments have no

knowledge of the location of such marijuana growing operations to ensure that appropriate permits are issued and inspections conducted so that the buildings/sites containing medical marijuana grow operations meet all necessary building, fire and electrical safety regulations and that they do not create a nuisance to others.

There is no legal reason standing in the way of Health Canada imposing a requirement that as part of its MMAR application process the applicant must proceed through a concurrent application process with the local government (within which the growing operation will take place) to obtain all necessary local permits and licenses from the local government prior to the issuance of the MMAR license by Health Canada.

Of particular concern to local governments with respect to MMAR grow operations is community public safety and nuisance concerns that they create. Medical marijuana growing operations can create a public and emergency responder safety hazard with respect to electrical wiring that is often improperly installed in such operations, the potential for “grow rips” by criminals and the deleterious effects on the building within which the growing operation is located if there is inadequate ventilation and other related infrastructure to properly support the growing operation. The growing operations can also create a nuisance to surrounding properties by way of odour that they create.

### **Proposed Surrey Medical Marijuana Production and Regulatory By-law**

Based on the above discussion, a proposed by-law has been developed titled the “Surrey Medical Marijuana Production and Regulatory By-law” (the “By-law”), which is attached as Appendix “A” to this report. The By-law provides for three (3) different types of licenses depending on the nature of Health Canada license for which the applicant has applied. Each of these license types will need to be renewed annually.

The By-law requires that a “**personal-use license**” be obtained by a person who wishes to store and consume medical marijuana.

If a person wishes to produce medical marijuana for his or her own consumption, the By-law requires that a “**personal-use production license**” be obtained which authorizes a person to produce medical marijuana for their own use.

If a person wishes to produce medical marijuana for use by others, the By-law requires that the person obtain a “**designated-person production license**” for producing medical marijuana on behalf of up to two other persons.

The By-law further provides that each application for a “production license” must provide the following information as part of the application:

- (a) a plan showing the growing operation layout, floor plan, design, equipment and storage areas, all of which must be located in an enclosed building;

- (b) methods used to prevent mould and discharge of waste water;
- (c) a security, storage and lighting plan including a monitored alarm system;
- (d) a ventilation plan so that no odour is apparent outside the production area and a description of how all such systems operate so as to prevent any odour from leaving the premises of the growing operation;
- (e) a declaration that no pesticide or toxic materials are to be used in cultivation; and
- (f) a rehabilitation plan.

In addition to the above, the applicant for a “designated-person production license” will also be required to provide the following information:

- (a) a plan for security cameras;
- (b) a neighbourhood responsibility plan;
- (c) a plan for disposal of any medical marijuana that is not distributed to a designated medical marijuana patient;
- (d) a criminal background check.

In support of the subject By-law it is necessary that Health Canada change its MMAR license application procedures to require that the applicant obtain a license or permit for the site of the proposed growing operation from the local government within whose jurisdiction the site is located and that such a license or permit be obtained in advance of the license being issued by Health Canada. It is proposed that a request for such a change to the MMAR licensing procedures be forwarded to Health Canada by way of a resolution from the Federation of Canadian Municipalities since the problems experienced by Surrey as articulated in this report related to the current MMAR licensing procedures are common to local governments across Canada.

### **Resolution to Big City Mayors’ Caucus**

The deadline in relation to the regular process for introducing a resolution for consideration at the 2011 FCM Convention has lapsed. As such, the only means by which to have a resolution brought forward for consideration at the 2011 FCM Convention is through the Big City Mayors’ Caucus. If the Big City Mayors’ Caucus endorses the resolution at its meeting on June 1<sup>st</sup>, 2011, it can at the same time request that the resolution be forwarded to the 2011 FCM Convention for consideration. On this basis, it is proposed that a resolution requesting a change to the Health Canada licensing requirements related to medical marijuana growing operations be taken by the Mayor to the Big City Mayors’ Caucus (BCMC) with a request that the BCMC endorse the resolution and forward it to the 2011 FCM Convention for consideration by the general membership. An appropriate resolution has been drafted and is attached as Appendix “B” to this report. The resolution requests that Health Canada amend the current MMAR licensing process such that a license or permit for the growing operation must be issued to the applicant by the local government in advance of the MMAR license being issued by Health Canada.

## CONCLUSION

Based on the above discussion, the Legal Services Division recommends that Council:

- Approve a proposed “Surrey Medical Marijuana Production Licensing and Regulation By-law” (the "By-law") as documented in Appendix "A", which is attached to this report;
- Instruct the City Clerk to bring forward the By-law for the required readings;
- Endorse the resolution attached as Appendix “B” to this report titled “Licenses Issued Under Medical Marijuana Access Regulations” (the “Resolution”); and
- Request that the Resolution be introduced by the Mayor at the Big City Mayors’ Caucus being held on June 1, 2011 with a recommendation that the Big City Mayors’ Caucus endorse the Resolution and forward it for consideration at the 2011 Canadian Federation of Municipalities (the "FCM") Convention in Halifax.

CRAIG MacFARLANE  
City Solicitor

CM:ld

c:\users\seh\appdata\local\microsoft\windows\temporary internet files\content.outlook\8qny454i\cr medical marihuana production licensing  
05 24.docx  
LJD 5/27/11 12:53 PM

Appendix "A" – Proposed Surrey Medical Marijuana Production Licensing and Regulation By-law  
Appendix "B" – FCM Resolution titled “Licenses Issued under Medical Marijuana Access Regulations”

**APPENDIX "A"**

CITY OF SURREY

BY-LAW NO. 17410

A by-law to license and regulate the cultivation and  
production of Medical Marijuana  
.....

- (a) WHEREAS Health Canada issues licenses under the Medical Marijuana Access Regulation to allow the cultivation and production of marijuana for medical purposes;
- (b) AND WHEREAS the cultivation and processing of Medical Marijuana poses inherent safety risks to the community;
- (c) AND WHEREAS the licensing and regulation of Medical Marijuana will improve the safety of persons and buildings; and
- (d) AND WHEREAS the licensing and regulation of such cultivation and production of Medical Marijuana will improve the health, safety and welfare of the residents and medical marijuana users in the City.

Therefore, under its statutory powers, including Section 15 of the Community Charter, SBC 2003, c. 26, the Council of the City of Surrey enacts the following provisions:

**INTENT OF BY-LAW**

- (a) to provide for the safe cultivation, production and distribution of Medical Marijuana to patients who qualify to obtain, possess and use marijuana for medical purposes under the Health Canada Medical Marijuana Access Regulation;
- (b) to protect public safety and welfare through reasonable limitations on medical marijuana cultivation and production in relation to noise, air and water quality, patient safety and security and other health and safety concerns; and
- (c) nothing in this By-law is intended to promote or condone the production, distribution or possession of medical marijuana in violation of any applicable law.

# CONTENTS

## **Part 1 Introductory Provisions**

1. Title
2. Definitions
3. Table of Contents
4. Severability
5. Duty of Administration and Enforcement

## **Part 2 Licenses**

- 6-7. Licenses
- 8-9. Form of License
10. Possession of License
11. Period of License
12. Transfer of License
13. Inspection
14. Refusal of a License
- 15 – 16. Granting of a License
- 17 – 18. Terms and Conditions of a License
19. Compliance with Zoning
- 20-22. Suspension or Cancellation of a License

**Part 3  
Offences and Penalties**

- 23. Offences
- 24. Penalties

**Part 4  
General Provisions**

- 25. Prohibited Acts
- 26. Costs of Inspection and Clean-up
- 27. Commencement

**Part 1  
Introductory Provisions**

**Title**

- 1. This By-law may be cited as "Surrey Medical Marijuana Production and Licensing Regulation By-law, 2011, No. 174910".

**Definitions**

- 2. In this By-law,

"Applicant"

means a person who makes application for a License under this By-law.

"Council"

means the City Council of the City of Surrey.

"Cultivation"

means the process by which a person promotes the germination and growth of a seed to a mature marijuana plant.

"Designated-Person Production or Designated-Person Production License"

means a License under this By-law authorizing a person to produce marijuana for the medical purpose of no more than two Licensed Persons.

"Infused Marijuana"

means Medical Marijuana infused with another product that is intended for use or consumption other than by smoking, including, without limitation, edible products, ointments and tinctures.

"Inspector"

means a person from time to time appointed as License Inspector of the City and includes any By-law Enforcement Officer or Peace Officer.

"License"

means a Personal-Use License, Designated-Person Production License or a Personal-Use Production License issued pursuant to this By-law.

"Licensed Persons" or "Licensee"

means a person who is Licensed under this By-law and who can qualify for Medical Marijuana, including its Cultivation, under the Health Canada MMAR or a person who is authorized to Cultivate and Produce Medical Marijuana on behalf of others by Health Canada pursuant to the MMAR.

"Marijuana"

means all parts of the genus cannabis whether growing or not and the seed of such plants.

"Marijuana Medical Access Regulations" or "MMAR"

means *Marijuana Medical Access Regulations*, SOR/2001-227, as amended.

"Medical Marijuana"

means Marijuana that may be administered to treat or alleviate a qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition, under the MMAR.

"Medical Marijuana Cultivation"

means the process by which a person promotes the germination and growth of a seed to a Medical Marijuana plant.

"Personal-Use License"

means a license issued under this By-law to a person authorized under this By-law and by Health Canada under the MMAR to store and consume dried or Infused Medical Marijuana.

"Personal-Use Licensee"

means a person authorized under this By-law and by Health Canada under the MMAR to store and consume dried or Infused Medical Marijuana.

"Personal-Use Production or Personal-Use Production License"

means a license issued under this By-law authorizing a person to Cultivate Medical Marijuana solely for medical use of that person under the MMAR.

"Premises"

means the indoor location within which the Licensee is authorized to possess or Produce Medical Marijuana.

"Produce" or "Production"

means (i) all phases of growth of Marijuana from seed to harvest; (ii) combining Marijuana with any other substance for distribution, including storage and packaging for future use; or (iii) preparing, compounding, processing, encapsulating, packing or repackaging, labelling or relabeling of Marijuana or its derivatives, whether alone or mixed with any amount of any other substance.

**Table of Contents**

3. The table of contents for this By-law is for convenient reference only, and is not for use in interpreting or enforcing this By-law.

**Severability**

4. A decision by a court that any part of this by-law is illegal, void or unenforceable severs that part from this By-law and is not to affect the balance of this By-law.

**Duty of Administration and Enforcement**

5. The intent of this By-law is to set standards in the general public interest, and not to impose a duty on the City or its employees to enforce its provisions, and:

- (a) a failure to administer or enforce its provisions or the incomplete or inadequate administration or enforcement of its provisions does not give rise to a cause of action in favour of any person; and
- (b) the grant of any approval or permission or issuance of any permit is not a representation, warranty or statement of compliance with the By-law and the issuance thereof in error is not to give rise to a cause of action.

## **Part 2 Licenses**

### **Licenses**

- 6. No person shall cultivate Marijuana or Medical Marijuana without holding a valid and subsisting Personal-Use License, a Personal-Use Production License or a Designated-Person Production License.
- 7. All applications for Licenses under this By-law must be made to the Inspector on the application form provided for that purpose and shall contain the information described in Section 16 of this By-law, as well as:
  - (a) two copies of a current photograph of the applicant;
  - (b) the full address of the place the applicant ordinarily resides; and
  - (c) a declaration that the License applied for is either:
    - (i) a Personal-Use License;
    - (ii) a Personal-Use Production License; or
    - (iii) a Designated-Person Production License, in which case the Personal-Use Licensee must be named.

### **Form of License**

- 8. Every License issued under this By-law will state that the holder is licensed as a Personal-Use Licensee or authorized to carry on either Personal-Use Production or Designated-Person Production in a lawful manner for the periods specified in the License at the premises specified in the License, subject to the terms and conditions specified on the License and in this By-law.
- 9. Every License issued under this By-law will be made out in duplicate and one copy will be delivered by the City to the person licensed.

### **Possession of License**

- 10. The person licensed must keep the License available for examination by the Inspector.

### **Period of License**

11. All Licenses granted under this By-law will be issued annually to terminate one year from the date of issuance of the License.

### **Transfer of License**

12. No License issued under this By-law is transferrable or assignable.

### **Inspection**

13. Every Inspector and every Medical Health Officer is authorized to enter at all reasonable times, any house, place, premises, vehicle, or other place for an application for a License has been received, granted or may be required under this By-law, to ascertain whether the regulations and provisions of this By-law are being obeyed. No person shall prevent, obstruct or attempt to prevent or obstruct the entry of a person authorized entry under this Section.

### **Refusal of a License**

14. (1) An application for a License may be refused by Council or the Inspector in any specific case, provided that:
  - (a) the application must not be unreasonably refused; and
  - (b) Council or the Inspector must give reasons for the refusal.
- (2) If the Inspector has refused to grant a License, the applicant who is subject to the decision is entitled to have Council reconsider the matter.

### **Granting of a License**

15. The Inspector may grant a License under this By-law where the Inspector is satisfied that the applicant has complied with the requirements of this By-law and the Health Canada Marijuana Medical Access Regulations and the City's by-laws regulating building, zoning, health and sanitation, and for that purpose the applicant must provide the City with detailed plans and other information including without limitation the following:
  - (a) a dimensioned floor plan, showing the layout, floor plan design and equipment, in which the Medical Marijuana Cultivation facility is to be located, which shall only be located inside an enclosed building;
  - (b) a plan describing the ventilation systems that will be used to control the environment for the plants and describe how such systems operate with the systems preventing odour leaving the premises so that no odour can be detected by a person with a normal sense of smell at the exterior of the Premises;

- (c) a plan that specifies the methods to be used to prevent the growth of harmful mould and achieve compliance with limitations on discharge into the waste water system of the City;
  - (d) a security and lighting plan, including a monitored alarm system;
  - (e) an electrical, lighting and equipment plan for the Medical Marijuana Cultivation;
  - (f) a storage plan for the medical marijuana grown and/or otherwise stored on the Premises;
  - (g) a declaration that no pesticides or other toxic substance shall be used in Medical Marijuana Cultivation;
  - (h) a plan for disposal of any Medical Marijuana or Infused Marijuana that is not consumed by patients in a manner that protects any portion thereof being possessed or ingested by any person or animal;
  - (i) in the case of a Designated-Person Production License a plan for delivery of Medical Marijuana to patients, a plan of the placement and use of security cameras, a neighbourhood responsibility plan, a criminal background check for the applicant and a plan for disposal of Medical Marijuana that is not distributed to a patient.
16. If the application for a License is refused by the Inspector, the Inspector must notify the applicant of the right to have the application reconsidered by Council.

### **Terms and Conditions of a License**

17. The Inspector or Council may impose terms and conditions on a License granted under this By-law in addition to the terms and conditions imposed by this By-law.
18. The terms and conditions imposed on a License may include any one or more of the following:
- (a) a requirement that the license holder comply with a particular provision of a City by-law or any other provincial or federal enactment within a specified period of time; and/or
  - (b) a requirement that the holder provide to the Inspector within a specified period of time evidence satisfactory to the Inspector of compliance with a particular provision of a City by-law or any other provincial or federal enactment.

### **Compliance with Zoning**

19. Before a License is granted under this By-law, the Inspector must be satisfied that the use for which the License is sought is not in violation of Surrey Zoning By-law, 1993, No. 12000, as amended or of any by-law then in force in the City, and no License will be issued

if the carrying on of the licensed activity in or from the premises would be contrary to any City by-law.

### **Suspension or Cancellation of a License**

20. (1) A License may be suspended or cancelled by Council or the Inspector for reasonable cause.
- (2) Without limiting Subsection (1), any one of the following circumstances may constitute reasonable cause:
  - (a) the holder fails to comply with a term or condition of the License;
  - (b) the holder is convicted of an offence indictable in Canada;
  - (c) the holder has ceased to comply with a by-law or has otherwise ceased to meet the lawful requirements to carry on the activity for which the holder is Licensed or with respect to the premises named in the License; and
  - (d) in the opinion of the Council or the License Inspector, the holder has engaged in misconduct that warrants the suspension or cancellation of the License.
21. (1) Before suspending or cancelling a License, the Council must give the License holder notice of the proposed action and an opportunity to be heard.
- (2) A suspension under Section 20 is for the period determined by the Council or the Inspector, and the Council or the Inspector may impose additional conditions on the License that relate to the reasons for the suspension and that will apply after the period of suspension.
- (3) In the case of a suspension or cancellation of a License by the Inspector, the Inspector must notify the holder of the right to have the suspension or cancellation reconsidered by Council.
- (4) The obligations under Subsections (1) and (3) are satisfied if a reasonable effort is made to mail or otherwise deliver the notices.
22. If the Inspector has suspended or cancelled a License, the License holder who is subject to the decision is entitled to have Council reconsider the matter.

### **Part 3 Offences and Penalties**

#### **Offences**

23. Every person who violates any of the provisions of this By-law or who suffers or permits any act or thing to be done in contravention of this By-law or who neglects to do or refrains from doing any act or thing which violates any of the provisions of this By-law shall be liable to the penalties hereby imposed and each day that such violation is permitted to exist shall constitute a separate offence.

#### **Penalties**

24. Any person who violates any of the provisions of this By-law shall upon summary conviction, be liable to a penalty of not less than \$100 and not more than \$5,000 plus the costs of the prosecution.

### **Part 4 General Provisions**

#### **Prohibited Acts**

25. It shall be unlawful for any person to:
- (a) distribute Medical Marijuana without a License;
  - (b) obtain Marijuana from a person who is not a Licensed person;
  - (c) take Marijuana for medical use in any form in plain view of, or in a place open to, the general public, and for the purposes of this By-law, places open to the general public include without limitation any property owned, leased or used by a public entity, retail malls, businesses open to the public, common areas of a building or in vehicles visible from a place open to the general public;
  - (d) produce, distribute or possess more Medical Marijuana other than allowed under applicable law;
  - (e) make any changes, or for the Licensee to allow any changes to be made, to the items included in the plans submitted with the License application and approved by the City, or the individuals identified in the application, without prior written approval of the City.

**Costs of Inspection and Clean-up**

- 26. In the event the City incurs costs in the inspection or clean-up of any premises whether or not they are premises producing Marijuana, the responsible person shall reimburse the City all actual costs incurred by the City of such inspection and/or cleanup.

**Commencement**

- 27. This By-law shall come into force on the date of final adoption hereof.

PASSED THREE READINGS on the \_\_\_\_th day of \_\_\_\_\_, 2011.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the \_\_\_th day of \_\_\_\_\_, 2011.

\_\_\_\_\_ MAYOR

\_\_\_\_\_ CLERK

## **APPENDIX "B"**

### **Resolution**

#### **Licenses Issued Under Medical Marijuana Access Regulations**

WHEREAS Health Canada is issuing an increasing number of licenses under the Marijuana Medical Access Regulations to allow the cultivation and processing of marijuana for medical purposes; and

WHEREAS due to Federal privacy legislation Health Canada does not have a process in place to notify a municipality when a license is issued for a site within the municipality's jurisdiction; and

WHEREAS, based on the experience of local governments, these Health Canada licensed medical marijuana grow operations are not generally compliant with municipal bylaws and/or provincial electrical, fire, health, safety and/or building regulations; and

WHEREAS Health Canada licensed medical grow operations are often creating health and public safety concerns and are also causing odour and other nuisance concerns in the communities within which they are located;

THEREFORE BE IT RESOLVED that Health Canada be requested to take immediate action to amend its legislation and regulations to require that any applicant for a license under the Marijuana Medical Access Regulations for the purpose of cultivation and/or processing of marijuana for medical purposes be required to obtain a municipal license or permit that demonstrates that the proposed location for the growing operation is compliance with all local bylaws and all electrical, fire, health, building and safety regulations prior to issuance a license by Health Canada for such a growing operation.

Submitted by  
City of Surrey