



Corporate Report

NO: R212

COUNCIL DATE: October 6,

2003

REGULAR COUNCIL

TO: Mayor & Council DATE: September 25, 2003

FROM: City Solicitor FILE: 3900-20-14422

SUBJECT: Community Improvement and Controlled Substance Manufacture By-law, 2001, No. 14422

RECOMMENDATION

1. That Council enact the Surrey Community Improvement and Noxious or Offensive Trade By law (the "By law") attached hereto as Appendix "A".
2. That Council repeal Community Improvement and Controlled Substance Manufacture By law, 2001, No. 14422 ("By law No. 14422").

INTENT

The intent of this report is to enact a new By law replacing the existing "grow op" by law to address concerns raised by Legal Services and Legal Counsel for the RCMP.

BACKGROUND

By law No. 14422 was enacted on June 18, 2001 to recover the clean up costs of noxious or offensive drug manufacturing. The activity did not have to be a criminal offence to be illegal under the By law. For example, the City pursued legal action against Money's Mushrooms under the statutory provision in the **Local Government Act**, R.S.B.C. 1996, c. 323 dealing with nuisances and we were ultimately successful in forcing Money's Mushrooms to relocate to new premises where the growing, manufacture and trade of mushrooms would not be offensive and noxious to its neighbours.

In the City methane laboratories and marijuana grow operations have been found in high rise apartment buildings, garages, greenhouses and the inside of private homes where the toxic chemicals used to make the drugs put the neighbours at risk of an explosion and/or fire. In some cases the police and fire departments require the assistance of hazmat teams and the support of drug experts from Health Canada in order to safely dismantle these operations. The public is not only at risk, but also our police and fire personnel.

DISCUSSION

The new By law makes changes to the entry and inspection of premises. The entry and inspections are to be

performed only with City Inspectors within their statutory authority under the *Local Government Act*, R.S.B.C. 1996, c. 323. Reference to entry by the RCMP under By law No. 14422 has been deleted. The City retains its ability to approach private properties and the RCMP's direct involvement in these property inspections is removed. By law No. 14422 could have come under criticism for potentially allowing RCMP search of properties for illegal drugs without a search warrant. This was not the intent of By law No. 14422 hence the deletion of any reference to RCMP Officers.

If City Inspectors discover issues of concern to the RCMP during these by law inspections, the RCMP will be notified and may then obtain search warrants under s. 11 of the *Controlled Drugs and Substances Act*, R.S.C. 1996, c. 19.

In cases where the RCMP has exercised a warrant to investigate a grow op or drug lab before the attendance of a City Inspector, the Inspector will then do a follow up inspection to assess whether the premises are being used in contravention of the by law and the need for property clean up or remediation. If property remediation is found to be necessary, the costs of the clean up is then assessed as an expense to the owner.

CONCLUSION

The City Solicitor and legal Counsel for the RCMP "E" Division have jointly drafted the attached By law to reflect the separate property search powers of the City and the RCMP.

CRAIG MacFARLANE
City Solicitor

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Encl.

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CITY OF SURREY

BY-LAW NO. _____

Surrey Community Improvement and
Noxious or Offensive Trade By-law, 2003, No. _____

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- (a) WHEREAS the property values and the general welfare of the community are founded, in part, upon the appearance and maintenance of property and the prohibition of noxious or offensive trade in the City;

- (b) AND WHEREAS unsightly conditions and noxious or offensive trade have been found to exist from place to place throughout the City;

- (c) AND WHEREAS the existence of such conditions is detrimental to the welfare of the residents of the City and contributes substantially and increasingly to the deterioration of neighbourhoods;
- (d) AND WHEREAS the prevention and abatement of such nuisance conditions will improve the general welfare and image of the City;
- (e) AND WHEREAS the City may recover the cost of abatement of nuisances from the person causing the nuisance or other persons described in the By law.

Under its statutory powers, including Section 725 of the *Local Government Act*, R.S.B.C. 1996, c. 323, the Council of the City of Surrey enacts the following provisions:

INTENT OF BY-LAW

- (a) to protect the community from unsightly, hazardous and blighting conditions that contribute to the deterioration of neighbourhoods;
- (b) to prevent noxious or offensive trade on or within properties within the City of Surrey; and,
- (c) to provide for the prevention and abatement of such nuisances and the recovery of the cost of such abatement.

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Part 1 Introductory Provisions

Title

1. This By law may be cited as "Surrey Community Improvement and Noxious or Offensive Trade By law, 2003, No. _____".

Definitions

2. In this By law:

"Inspector"

means the Manager of the By laws & Licensing for the City of Surrey, or designate, and all members of the Surrey Fire Department.

"Noxious or offensive trade"

means the production, use, transfer, storage and disposal of substances on or within properties within the City of Surrey that emit offensive odours, fumes, particulate matter or noises into or onto surrounding properties, but does not include the production, use, transfer, storage and disposal of substances that emit offensive odours, fumes, particulate matter or noises into or onto surrounding properties where those emissions are permitted under federal or provincial legislation or the by laws of the City of Surrey.

"Occupant"

includes:

- (a) a person residing on or in property;
 - (b) the person entitled to the possession of property if there is no person residing on or in the property;
- and,
- (c) a leaseholder;

and shall include the agent of any such person.

"Owner"

means a person who has any right, title, estate or interest in property, other than that of an occupant, and shall include the agent of any such person.

"Person"

includes natural persons of either sex, associations, corporations, bodies politic, co partnerships, 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 persons.

"Property"

means all real property, including, but not limited to, front yards, side yards, back yards, driveways, walkways and sidewalks and shall include the exterior surfaces and interior rooms, areas and spaces in any building, structure or fence located on such real property.

Part 2 Prohibition

Use

3. No person, owner or occupant of property within the City of Surrey shall permit or allow the property to be used for noxious or offensive trade.

Accumulation

4. No person, owner or occupant of property within the City of Surrey shall cause or permit water, rubbish, or noxious, offensive or unwholesome matter to collect or accumulate around that property.

Part 3 Inspection and Notice

Inspection

5. An Inspector shall have the right to enter upon the property of any person at reasonable times and in a reasonable manner for the purposes of inspecting the property and declaring whether the property is being used for noxious or offensive trade or otherwise not in compliance with the provisions of this By law.

Part 4 Non-Compliance and Remediation

Remedy by City

6. If an owner or occupant fails to comply with a written notice of an Inspector, the City, by its employees or other persons, at reasonable times and in a reasonable manner, may enter the property and remediate the

property at the expense of the owner or occupant who has failed to comply.

7. Where an Inspector enters a property under Section 6 of this By law, the costs of remediation of the property shall be at the expense of the owner or occupant who has failed to comply.

Costs Added to Taxes

8. In the event that the person who has failed to comply does not pay the costs of compliance before the 31st day of December in the year that the remediation was effected, the costs shall be added to and form part of the taxes payable on the property as taxes in arrears.

Part 5 Offences and Penalties

Offences and Penalties

- 9. Any person who contravenes, suffers or permits any act or thing to be done in contravention of, or neglects to do so refrains from doing anything required to be done pursuant to the provision of this By law or any notice issued pursuant hereto, commits an offence punishable on summary conviction, and shall be liable to a fine of not less than \$100.00, but not exceeding \$5,000.00.
- 10. Where an offence is a continuing offence, each day that the offence is continued shall constitute a separate and distinct offence.
- 11. Prosecution of a person pursuant to Section 9 of this By law does not exempt the person from the remediation provisions of Sections 6, 7, and 8 of this By law.

Part 6 General Provisions

Repeal

12. The Surrey Community Improvement and Controlled Substances Manufacture By-law, 2001, By Law No. 14422, is repealed.

Commencement

13. This By law shall come into force on the date of its final adoption.

PASSED THREE READINGS on the _____, 2003.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk and sealed with the corporate seal on the _____, 2003.

_____MAYOR

_____CLERK

