

Report to/Rapport au :

Agriculture and Rural Affairs Committee  
Comité de l'agriculture et des affaires rurales

and / et

Planning Committee  
Comité de l'urbanisme

and Council / et au Conseil

September 20, 2012  
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Submitted by/Soumis par : Nancy Schepers, Deputy City Manager  
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CITY WIDE / À L'ÉCHELLE DE LA VILLE

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**SUBJECT: PROHIBITION, INSPECTION AND REMEDIATION OF BUILDINGS USED FOR MARIJUANA GROW OPERATIONS**

**OBJET : INTERDICTION, INSPECTION ET REMISE EN ÉTAT DES BÂTIMENTS AYANT SERVI À LA CULTURE DE LA MARIJUANA**

**REPORT RECOMMENDATIONS**

That the Agriculture and Rural Affairs Committee and Planning Committee recommend to Council:

1. Approve the service delivery model and fee structure for the prohibition, inspection and remediation of buildings used for marijuana grow operations, as outlined in this report and summarized in Document 1;
2. Approve the By-law substantially in the form of Document 2, pertaining to the prohibition, inspection and remediation of buildings used for marijuana grow operations; and

3. **Direct staff to prepare comments on Health Canada's proposed regulations with respect to the production and distribution of medical marijuana that will reform the Marijuana Medical Access Program, and report back to City Council early in 2013.**

### **RECOMMANDATIONS DU RAPPORT**

**Que le Comité de l'agriculture et des affaires rurales et le Comité de l'urbanisme recommandent au Conseil:**

1. **d'approuver le modèle de prestation de services et la structure tarifaire concernant l'interdiction, l'inspection et la remise en état des bâtiments ayant servi à la culture de la marijuana, comme le précise le présent rapport et le résumé le document 1;**
2. **d'adopter le règlement essentiellement sous la forme où il apparaît dans le document 2 ci-joint, concernant l'interdiction, l'inspection et la remise en état des bâtiments ayant servi à la culture de la marijuana; et**
3. **de demander au personnel de formuler des observations sur le projet de règlement de Santé Canada concernant la production et la distribution de marijuana à des fins médicales, qui viendra réformer le Programme d'accès à la marijuana à des fins médicales, et de faire rapport au Conseil municipal au début de 2013.**

### **EXECUTIVE SUMMARY**

#### **Assumptions and Analysis**

Buildings used for marijuana grow operations (MGOs) can sustain damage to structural, plumbing, ventilation and electrical systems. Moisture damage, unseen toxic moulds and chemical residues compromise air quality and present a health risk to unsuspecting occupants if left un-remediated. Alterations to the electrical system pose a fire hazard to the building and endanger the surrounding community.

A service delivery model is proposed that will ensure the successful remediation of buildings that were used as MGOs and dismantled by the police. Aligned with the service delivery model, it is proposed that a new By-law be adopted which will prohibit the illegal conversion of buildings for use as MGOs and provide for the inspection and remediation of such buildings. It will inform the public, and provide clarity to property owners and landlords of the requirements, fees and processes for remediating such buildings or rental units.

The service delivery model reinforces the best practices and processes developed by the Building Code Services Branch during the pilot program that began in 2006. The pilot followed amendments to the *Municipal Act*, that require municipalities, once notified

by a police force, to inspect buildings that contained MGOs, and take whatever actions authorized by law in order to make the building safe and otherwise protect the public.

The service delivery model consists of:

- Issuing orders to the property owner of an identified MGO, including: an Order to Comply (OTC), under the *Municipal Act*, and an Order to Remedy an Unsafe Building, and an Order Prohibiting Occupancy, both under the *Building Code Act*, (BCA);
- Providing the property owner with a guidance document which details the remediation process and the requirements they must follow to successfully remediate the building;
- Registering the OTC on title to provide notice to prospective purchasers, lawyers and real estate agents that the building requires remediation before it can be occupied;
- Requiring the property owner to engage the services of a professional engineer to oversee the assessment and remediation of the building. This will ensure an appropriate standard of remediation and air quality which reduces the risk of liability to the City;
- Requiring the property owner to install a security fence around the building;
- Ensuring the safety of City staff by requiring an environmental assessment on air quality, to confirm the building is safe to enter to undertake inspections and by extension, of any contractor or utility worker before they begin any repairs or reconnect services; and
- Issuing a Certificate of Compliance and removing the OTC from title when the Building Code Services Branch has inspected the building and is satisfied remediation is complete.

This remediation process will ensure that buildings used for MGOs, for which notification by a police force has been received, are properly remediated and made safe for re-occupancy. This will be undertaken in accordance with the standards set out in the By-law and the Ontario Building Code for the benefit of the current and future owners and occupants while reducing the risk of liability for the City. Property owners also have the option of demolishing the building if they consider remediation to be too costly.

### **Financial Implications**

The recommended fee structure will implement cost recovery of Building Code Services' and Ottawa Public Health's involvement in the enforcement of the remediation process.

### **Public Consultation/Input**

The majority of key stakeholders, representing landlords and the real estate industry, expressed their support for the service delivery model and generally accept the idea of a separate fee. Public feedback regarding the installation of a security fence around MGO buildings was mixed; with some residents enthusiastic about the idea, while

others expressed concern about the appearance of a fence and potential impact on property values.

## RÉSUMÉ

### **Hypothèses et analyse**

Les bâtiments utilisés pour la culture de la marijuana subissent parfois des dommages structuraux ainsi que des dommages aux systèmes électriques, de plomberie et de ventilation. Les dommages causés par l'humidité, les moisissures toxiques invisibles ainsi que les résidus de produits chimiques compromettent la qualité de l'air et présentent un risque pour la santé des occupants si le bâtiment n'est pas remis en état. Les modifications apportées au système électrique constituent un risque d'incendie pour le bâtiment même et pour le voisinage.

Il est proposé d'adopter un modèle de prestation de services qui assurera la remise en état des bâtiments qui ont abrité des installations pour la culture de la marijuana ayant été démantelées par la police. Il est aussi proposé de compléter ce modèle de prestation de services par l'adoption d'un règlement municipal qui interdira la transformation de bâtiments en vue de la culture de la marijuana et prévoira l'inspection et la remise en état de tels immeubles. Le règlement permettra d'informer la population et de préciser aux propriétaires d'immeubles locatifs et de résidences les exigences, frais et processus liés à la remise en état d'immeubles ou de logements locatifs.

Le modèle de prestation de services vient renforcer les pratiques et processus exemplaires élaborés par la Direction des services du code du bâtiment au cours du programme pilote qui a été lancé en 2006. Celui-ci faisait suite aux modifications apportées à la *Loi de sur les municipalités*, qui exigent que les municipalités, une fois qu'elles ont été avisées par un service de police, procèdent à l'inspection des bâtiments ayant servi à la culture de la marijuana et prennent toutes les mesures autorisées par la loi afin de rendre le bâtiment sécuritaire et de protéger la population.

Voici ce en quoi consiste le modèle de prestation de services :

- Signification d'ordonnances d'observation au propriétaire d'un bâtiment servant ou ayant servi à la culture de la marijuana, y compris une ordonnance de conformité aux termes de la *Loi sur les municipalités*; et une ordonnance de remise en état d'un bâtiment non sécuritaire ainsi qu'une ordonnance interdisant l'occupation du bâtiment, aux termes de la *Loi sur le code du bâtiment*.
- Remise au propriétaire d'un document décrivant le processus de remise en état d'un bâtiment et les exigences à respecter pour assurer le succès de cette opération.
- Inscription de l'ordonnance d'observation au titre de propriété afin d'informer les acheteurs éventuels, les avocats et les agents d'immeuble que le bâtiment doit être remis en état avant de pouvoir être occupé.
- Obligation pour le propriétaire de retenir les services d'un ingénieur professionnel pour superviser l'évaluation et la remise en état du bâtiment, de façon à assurer l'application de normes appropriées de remise en état et de qualité de l'air, ce qui réduit la possibilité que la responsabilité de la Ville soit engagée.

- Obligation pour le propriétaire d'entourer le bâtiment d'une clôture de sécurité.
- Assurer la sécurité du personnel de la Ville en exigeant une évaluation de la qualité de l'air ambiant afin de confirmer qu'il est sécuritaire d'entrer dans le bâtiment pour y effectuer des inspections et par le fait même, autoriser l'accès aux entrepreneurs ou aux travailleurs des services publics avant qu'ils ne commencent les travaux ou le branchement des services publics; et
- Délivrance d'un certificat de conformité et retrait de l'ordonnance d'observation du titre de propriété lorsque la Direction des services du code du bâtiment a inspecté le bâtiment et a acquis la conviction qu'il a été convenablement remis en état.

Ce processus permettra d'avoir l'assurance que les immeubles ayant servi à la culture de la marijuana et ayant fait l'objet d'une notification en ce sens de la part d'un service de police seront convenablement remis en état et pourront être occupés de nouveau en toute sécurité. Le processus sera mis en œuvre conformément aux normes fixées par le règlement municipal et le Code du bâtiment de l'Ontario, au bénéfice des propriétaires et occupants actuels et futurs, tout en réduisant la possibilité que la responsabilité de la Ville soit engagée. Les propriétaires pourront aussi démolir le bâtiment s'ils estiment que sa remise en état serait prohibitive.

### **Répercussions financières**

La structure tarifaire recommandée permettra la mise en œuvre du recouvrement des coûts engendrés par la participation des Services du Code du bâtiment et de Santé publique Ottawa à l'application du processus de remise en état.

### **Consultation/participation du public**

La majorité des principaux intervenants, représentant les propriétaires et le secteur de l'immobilier, ont exprimé leur appui au modèle de prestation de services et acceptent, dans l'ensemble, l'idée d'établir des frais distincts. Les réactions de la population à la proposition d'exiger l'installation d'une clôture de sécurité autour des immeubles ayant servi à la culture de la marijuana étaient mitigées. Certains résidents ont réagi avec enthousiasme, alors que d'autres se sont dits préoccupés par l'aspect qu'auront les éventuelles clôtures et leur effet possible sur la valeur des propriétés.

### **BACKGROUND**

Marijuana grow operations (MGOs) have been located in open spaces such as in a field or wooded area or inside buildings. Use of buildings designed for residential occupancy is of particular concern due to the significant public safety issues associated with MGOs. These buildings, which were designed and constructed for human occupancy and converted into industrial greenhouses, can be damaged and rendered unsafe for occupancy in a number of ways:

**Utility Modifications:**

- **Electrical Systems:** Large quantities of electricity are needed to operate the high-intensity lighting, watering systems (pumps), air conditioners, fans, humidifiers and fertilizer/pesticide applicators, etc., necessary to grow marijuana plants with the desired potency. Marijuana grow operators bypass the electrical panel or the main electrical line to the dwelling, to avoid paying the high electrical costs, and to camouflage the illegal operations costing Ontario's electrical utilities an average of \$1,500 per month per MGO. Other modifications to the electrical system include additional ballasts and wiring throughout the grow area, often exceeding the capacity of the existing system and wiring. In addition to the risk of electrocution and of overloading the electrical wiring, there is the inevitable risk of an electrical fire. Reports on MGOs identify that dwellings housing MGOs are up to 40 times more likely to catch fire than a typical dwelling. In fact, a number of MGOs in Ottawa have been discovered as a result of a fire.
- **Water Meter:** Large quantities of water combined with fertilizers are also needed to feed the plants; and some operators will bypass the water meter to camouflage the operation, and avoid paying the associated costs. There is a low risk of contaminated water backflowing into a municipality's drinking water supply.

**Structural Alterations:** Structural alterations are often made to floors, floor joists and roof trusses to allow for the ventilation of odours and gases. Gas appliances, such as hot water tanks and furnaces, may have their flues disconnected to release carbon dioxide into the building to better simulate ideal growing conditions; while exposing the occupants of the building to carbon dioxide poisoning. Foundations and concrete walls are often cored or breached to permit direct access to utilities and bypass the meters, or to enable hidden access to vehicles for loading and unloading of supplies or crops.

**Moisture Damage:** Moisture damage from the high temperatures and humidity necessary to effectively grow high yield marijuana can cause wooden structures, such as staircases, floors and window cases, to warp and rot. Of greater concern is the growth of toxic moulds which form not only in the open, but also within wall cavities, inside window frames, ventilation systems and attic spaces, and thus not visible to the occupant. This mould can spread poisonous spores, compromising air quality, and leaving these buildings unfit for habitation. Simply airing these is not sufficient to remove the contaminants.

**Chemical contamination:** Growing marijuana plants requires the application of chemicals such as fertilizers and insecticides. These chemicals can be improperly stored or labeled and applied indiscriminately, which can be dangerous and/or lethal. The particulates can become airborne and attach to walls, carpets and inside the ventilation systems and wall cavities such that, although the chemicals may be used in one area of the building, the particulates are carried to all other areas of the dwelling.

Damage to buildings reflects the size and duration of the operation. MGOs are frequently established in rental properties without the owner's knowledge. Insurance

coverage is typically cancelled when the operation has been identified, and thus the owner is left to remediate the building without assistance. There is no home insurance policy in Canada that will insure a property owner or landlord against the damages caused by a MGO.

Of particular concern to the legislators and the public was the practice of operators superficially renovating a former MGO building and selling it to unsuspecting purchasers, or re-renting to new occupants, without fully addressing such hazards as the structural deficiencies or the air contaminants (mould and chemical residues). A legislative solution was needed to ensure buildings used for MGOs dismantled by the police, were properly remediated prior to re-occupancy. As a result, in 2005, the Ontario Government introduced the *Law Enforcement and Forfeited Property Management Statute Law Amendment Act*. Among other things, this *Act* amended the *Municipal Act* to require a local municipality, if it is notified in writing by a police force that a building contained a MGO, to take whatever actions authorized by law in order to make the building safe and otherwise protect the public.

The wording of the amendments to the *Municipal Act* allowed municipalities to determine which municipal enforcement group and legislation would be used to ensure the building was remediated prior to re-occupancy. Consequently, municipalities in Ontario adopted different service delivery models and used different legislations to implement the directive, including the *Provincial Building Code Act* or *Fire Prevention and Protection Act* and Municipal Property Standards By-laws.

In 2006, Ottawa's Building Code Services Branch commenced to deal with properties used as MGOs, assuming the lead to negate the duplication of effort with other branches and departments that could or would become involved. As there were no guidelines, nor experience upon which to determine how best to manage this new responsibility; the Branch opted to proceed on a pilot basis to determine the best practices and identify the service delivery model best suited for the City. At the outset of the pilot, Building Code Services Branch relied on the authorities set out in the *Building Code Act* and determined that the remediation would be carried out under authority of a building permit.

It is important to note that the Building Code Services Branch can only enforce the remediation or demolition of those properties referred to the Branch by a police force. There may be buildings used as MGOs that have been cosmetically fixed and sold to a buyer without the knowledge and involvement of police or the City. Some MGO buildings are restrained and/or forfeited by the Federal Government under the *Controlled Drugs and Substances Act* which delays the remediation process. It is noted that the Federal Government has adopted the City's remediation guidelines for such buildings.

### Current Program (Pilot)

Buildings that were used for MGOs are deemed unsafe and orders under the *Building Code Act* are issued, including an order prohibiting occupancy of the building until such time as the building is safe to occupy.

The orders direct the property owner to engage an engineer(s), licensed in the Province of Ontario, with a practice associated with the disciplines of environmental assessment and remediation related to moulds and chemical contaminations, to assess the air quality and all structural systems in the building. In addition to the orders, the property owner is also provided with a copy of the City's "Guidance Document for Environmental Assessment and Remediation of a Building Used for a Marijuana Grow Operation", which details the remediation process for the owner and the professional engineer.

The professional engineer must provide the property owner and the Building Code Services Branch a pre-remediation assessment detailing the building's air quality and identifying issues with the structural and mechanical systems of the building. The professional engineer must oversee all required remediation work which is to be undertaken using contractors experienced in remediating buildings with mould and chemical contamination. After the environmental issues have been addressed, the professional engineer must provide the Branch with post-remediation air quality results. This report is forwarded to Ottawa Public Health to review the post-remediation air quality results and advise as to whether occupancy of the building based on the air quality results is accepted. Once the remediation is completed, the engineer will then provide a post-remediation report detailing the structural and mechanical work completed, ensuring all systems are certified, if necessary, and operating according to the manufacturer's specifications.

Alternatively, the professional engineer could advise the property owner that the damage to the building is substantial and remediation costs too high. In these cases, the property owner may consider demolishing the building. Since 2006, approximately 10 per cent of the buildings used as MGOs referred to the City by the police have been demolished.

The property owner is responsible for covering the costs of the professional engineer and work required to successfully remediate the building. The requirement that all remediation be carried out under the authority of a building permit has provided the Branch with the ability to collect a fee in the absence of a separate fee structure, though the building permit fee has proven not to offset sufficiently the costs incurred by the Branch.

Since the fall of 2006, the Ottawa Police Services has referred 129 properties to the City. These include buildings housing MGOs discovered by Fire Services as a result of a fire, or those dismantled by the Ontario Provincial Police or the Royal Canadian Mounted Police. As of end of August 2012, there were 37 buildings in the process of being remediated under the pilot program.



## Lessons Learned

There were a number of lessons learned from the pilot. The key findings were:

- The building permit fee structure under the *Building Code Act* did not ensure full cost recovery.
- For the safety of the “worker”, an environmental assessment on air quality is required to be undertaken by the owner’s consultant to confirm the building is safe for entry by staff, contractors and employees of utility companies. Building Code Services Branch management determined that equipping and training staff with specialized hazmat gear was too costly and resource intensive.
- Orders Prohibiting Occupancy of an Unsafe Building are required to prevent occupancy pending completion of remediation and confirmation the air is safe for occupancy.
- The use of a guidance document for the property owner and their professional consultants ensured successful remediation.
- The requirement for the professional engineer to sign off on all remediation reports provides a measure of liability insurance for the City.
- There is a greater time commitment required by staff to complete the remediation process than there would be for a regular building permit for a residential dwelling. Property owners often require guidance and support by the staff to efficiently and effectively follow the program.
- Financial institutions are notified and copied on the orders so they can take steps to protect their investments.

## DISCUSSION

### **Recommendation 1**

#### **A. Service Delivery Model**

The service delivery model developed during the pilot has proven to be effective in ensuring buildings are properly remediated, and is only being modified to reflect the shift from relying solely on the *Building Code Act* for the authority to ensure remediation of buildings used as MGOs, to relying primarily on the authority of the *Municipal Act*. The shift will provide for a standalone by-law, allow the City to recover the costs associated with the task of ensuring the buildings are remediated properly, and require the property owner to install a security fence around the building. The following details the service delivery model:

#### **Police Notice to the City Clerk and Building Code Services**

Following the completion of their investigation, Ottawa Police Services will notify both the City Clerk and Solicitor Department and Building Code Services Branch to fast track notification and action. It is noted that the Ottawa Police Services will provide notice for MGOs they dismantle, in addition to any that may be dismantled in cooperation with the Ontario Provincial Police and/or the Royal Canadian Mounted Police. A few buildings

used for MGOs are discovered by the Ottawa Fire Services Branch or Hydro Ottawa, and they will alert the Ottawa Police Services of their finding.

#### Notice to Hydro Ottawa or Hydro One

The Ottawa Police Services will notify Hydro Ottawa or Hydro One, if necessary, to arrange for the electricity to be disconnected, in order to protect police personnel from the hazards associated with the operator tampering with the electrical systems. In addition, if the Ottawa Fire Services Branch discovers the illicit operation as a result of a fire, they will contact these electricity distribution companies to arrange for the power to be disconnected, as there is a need to eliminate the hazard of electrocution during fire suppression activities. Ottawa Fire Services may also have the natural gas shut off in some cases if they feel it could pose a hazard.

Because of the dangerous modifications to the electrical systems in some MGOs, the Province amended the *Electricity Act* to allow Ontario electricity distributors to shut off electricity to a property without notice if it suspects the property poses a threat to public safety.

#### Notice to the City's Environmental Services Department

The remediation process can take several months. With the electricity supply disconnected and no heat in the building, there is the risk that a water pipe could burst during cold weather months, causing further significant moisture damage. Shutting off the water at the exterior service post will limit the damage caused by a burst pipe. As a result, Building Code Services Branch has established a protocol with the Environmental Services Department to immediately disconnect the water supply to buildings used for MGOs once notified by the police. Drinking water will be reconnected when the air quality is found to be safe for workers and staff to enter the building and the building has been inspected by an officer.

#### Notice to the Property Owner

Once Building Code Services has been notified by the Ottawa Police Services that a building has been used as a MGO, an officer will determine the ownership of the property, and inspect the exterior of the building to ensure it is secured and confirm that it is not occupied.

The officer will issue an Order to Comply (OTC) pursuant to the *Municipal Act* which will be sent by registered mail to the owner and occupants of the building, and posted by the officer at the property to give notice to the public.

This order will require the property owner of the building to engage a professional engineer who will:

- Ensure that all belongings and materials, including any equipment or systems related to the MGO, have been removed to enable testing of the building without the

contents;

- Provide report(s) assessing the building and detailing required remedial action to remove all detrimental effects of the grow operation; and
- Oversee the restoration of the building to its previous use.

This order will be accompanied by the City's "Guidance Document for Environmental Assessment and Remediation of a Building Used for a Marijuana Grow Operation".

The process requires the assessment and report on the air quality, structural, mechanical (plumbing and HVAC) and electrical systems of the building. A geotechnical assessment will also be required if the building foundations were not heated during winter conditions, or where septic systems may have been used for disposal of residues.

In addition to the OTC under the *Municipal Act* two orders pursuant to the *Building Code Act* will also be issued as the specific related authorities have not been replicated in the *Municipal Act*.

1. The issuance of an Order to Remedy an Unsafe Building will ensure that the professional engineer identifies work in his/her initial assessment of the building, to be undertaken under his/her supervision and in compliance with the occupancy requirements of the Ontario Building Code.
2. An Order Prohibiting Occupancy of an Unsafe Building will be issued to ensure the building remains unoccupied until its remediation is complete. In most cases, the building will no longer be occupied as the owner and/or occupier is incarcerated or has otherwise abandoned the building, and the hydro and water have been disconnected. However, there have been cases, where the operators who have not been apprehended, return to hide out, or too often, tenants have reoccupied the building despite the safety hazards. The intent of the *Law Enforcement and Forfeited Property Management Statute Law Amendment Act (now s.447.2 and 447.3 of the Municipal Act)* is very clear – no person may occupy a building used as a MGO, and dismantled by the police force, without it being fully remediated under the direction of the municipality. This is important because of the significant safety hazards and poor air quality associated with MGOs.

If the MGO was housed in a semi-detached, or in a row house unit or apartment unit in a multi-dwelling building, then the report on air quality must include all adjacent dwelling units. Any required remediation must involve the affected units that must be cleared of potential hazards or deficiencies, such as mould or other contamination that can penetrate common walls or other hidden spaces. The costs of remediation of any adjacent units are borne by the owner of the building that was used as a MGO or by civil action by the neighbours against the owner of the building that was used as a MGO. Often the home insurance coverage of the affected neighbours will not cover damages that are the result of criminal activity in an adjacent unit. It is noted that to date, all MGO property owners have covered the costs of remediation of adjacent units.

### Notice to Financial Institutions

Many buildings used for a MGO are purchased using a secured mortgage. Where the financial institution can be identified, notification will be provided to institution(s) holding the mortgage to alert them of the situation, particularly if the property owner has disappeared or been arrested and is in custody. The lender has much invested in the property and may wish to protect it against further damage pending the outcome of the police investigation and prosecutions. The City will work with the financial institution to ensure the building is properly remediated.

### Notice to the Public, Legal Representatives, Real Estate Agents and Brokers and Prospective Property Buyers:

The Order to Comply will be posted at the property to notify the public. It is noted that the Ottawa Police Service maintains a web page of the addresses for which notification has been provided to the City, for a period of three months. These can be viewed at: [www.ottawapolice.ca/en/ServingOttawa/SectionsAndUnits/Drugs/index.aspx](http://www.ottawapolice.ca/en/ServingOttawa/SectionsAndUnits/Drugs/index.aspx).

The OTC will also be registered on title, pending issuance of the Certificate of Compliance which is issued once the remediation is completed in accordance with the City's program. Registering the Order to Comply on title will protect prospective buyers, real estate agents and brokers and legal representatives by giving them notice that the building had been used as a MGO and requires remediation. It will also act as a strong incentive for the property owner or mortgage holder to comply with the order and remediate the building, to avoid hindering the process of selling or re-financing the property.

Once the order is removed from the title registry, there is no lingering "mark" on title that would impact property value and the ability to sell the property. In fact, once a Certificate of Compliance and, if applicable, an Occupancy Permit has been issued, the building is considered to be no different than any other building for which a permit for remediation or renovation has been issued and an Occupancy Permit granted.

In addition, the Office of the City Clerk and Solicitor has been in contact with the Ottawa Police Service to request that the OPS maintain posted on its website information about MGOs for an indefinite period of time so that this information be available to the public. At present, information on the OPS website about the location of MGOs is only posted for approximately 3 months; however, recent discussions with the OPS staff indicate that an amendment to this practice is being considered in order to keep the information available for a longer period of time.

### Requirement to Fence the Building

A new protocol to the program is the requirement to fence the building. To date, buildings are secured and where necessary, boarded up against entry in view of the safety hazards. Where securing against entry to a building is not effective, or where

additional measures are required to safeguard the public and community, the Order to Comply will require the owner to immediately install a temporary 1.8 metre security fence around the dwelling unit at the owner's expense. This fence will remain until the building has been remediated. A sign with the City of Ottawa logo and the words "Do Not Enter" in large print will be placed on the fence to warn members of the public of the possible hazards on the property. The sign will also advise that remediation of the unit is required pursuant to the new By-law, and directing concerned residents to contact 311 for more information, and providing them with a direct link to the Ottawa.ca website where there will find more information on the prohibition, inspection and remediation of buildings used for MGOs.

Authorized personnel will have access through a locked gate. Because of the potential for serious hazards inside the building, the City will arrange to have the fence installed, if the property owner does not comply within two days of being served personally the notice, or seven days after the order was sent by registered mail. In these cases, the installation cost and monthly rental fee will be added to the property taxes of the property owner. A typical fee is a minimum rental fee of \$300 which covers installation, removal and the first month of rent. Thereafter, a typical security fence rental is approximately \$2.50 per linear metre per month.

The fence will ensure the building is secured for public safety. Specifically, the fence will secure the property from entry by:

- Vagrants or vandals who may further damage the interior of the building including commencing a fire (the building being without heat and electricity);
- Members of the public (particularly children and teens) who may consider the empty building an attractive meeting place;
- Former marijuana grow operators, who may want to get back in the building; and
- Employees of utility services or contractors and City staff who may not be aware of the hazards inside.

Calgary, Alberta recently adopted this measure and report that neighbours and the community are supportive of this initiative, and feel more secure as a result. The fence also encourages property owners to remediate their properties in a timelier manner to avoid having to pay the rental fee for the fence over a prolonged period of time. Calgary has noted a significant drop in the period of time required to remediate the buildings since introducing the requirement to fence and sign the properties.

If a fence is impractical for any reason due to site constraints, all doors and window openings to the building at the ground floor will be boarded up to prevent unauthorized access, the cost of which will be borne by the owner.

## Role of Professional Engineer in the Remediation Process

Based on the types of hazards present in buildings used for MGOs, and the degree of expertise required to best address these for public safety, it was determined that in all cases the property owner will be required to engage the expertise of a professional engineer in a practice relating to the disciplines of environmental assessment and remediation related to moulds and chemical contaminations. Because they are from a certified and regulated profession, the City is assured that the professional engineer is qualified to oversee the work, given in most cases, the air quality has been compromised and the building structure requires repair or restoration. The property owner must also engage a qualified air quality consultant to work under the direction of the professional engineer.

The professional engineer will meet with staff to discuss the steps required to remediate the building. The professional engineer will conduct a thorough assessment of the building and provide reports to the City detailing any deficiencies with the structure, mechanical and electrical systems, and geotechnical and environmental issues to be addressed. The reports will make recommendations on how to make the building safe for re-occupancy, and will include pre-air quality test results. Building Code Services Branch staff will review the reports with Ottawa Public Health, and if satisfied, approve the remediation plan. The professional engineer could also recommend demolition at this point in the process if the damage to the building is too great.

The professional engineer may identify structural defects or other issues that would require the owner to apply for a building permit pursuant to the *Building Code Act*. In these instances, the building permit must be acquired prior to correcting these deficiencies.

The professional engineer will oversee all remediation work using contractors experienced in removing mould and contaminants. They will ensure the electrical system is inspected and certified by the Electrical Safety Authority and that all mechanical systems are restored and operating according to manufacturer's specifications. The professional engineer will certify with his/her seal that all remediation work has been completed and the building is safe to occupy.

## Participation by Ottawa Public Health

Ottawa Public Health is involved in the remediation process of these buildings. The department provides support by reviewing the initial air quality results taken by a qualified air quality consultant, on behalf of the owner; and in accordance with the orders issued and the guidelines provided by the Building Code Services Branch.

When the remediation is completed, post remediation air testing is conducted by the air quality consultant, and the results are presented to the City as part of the required professional engineer's report. The post-air quality results are then submitted to Ottawa Public Health for review and comment. The air sampling results are interpreted based on Health Canada's guidelines as provided in Section 3.4.2 of *Fungal Contamination in*

*Public Buildings: Health Effects and Investigation Methods, Health Canada.* Access to the building is permitted once the air sampling results have been accepted by Ottawa Public Health and Building Code Services Branch.

### Final Inspections

If the officer is satisfied with the reports submitted, an inspection will be undertaken to confirm compliance with the OTC under the proposed By-law, including confirmation that the remediation detailed in the professional engineer's reports was completed. If a building permit was issued, the officer will also inspect the building to ensure compliance with the Building Code standards.

Once it has been determined that the building has been remediated and is safe to re-occupy, a Certificate of Compliance is issued. The Certificate of Compliance will state the City is satisfied that all remediation requirements identified by the professional engineer have been addressed, and the building is safe to occupy on that date. If a building permit was issued, the owner will also need to acquire an Occupancy Permit specifying the building has been restored to the occupancy standards set out in the Ontario Building Code. The Occupancy Permit must be acquired before a Certificate of Compliance will be issued.

The Certificate of Compliance (and Occupancy Permit if applicable) must be issued before the OTC is lifted from title. Lifting the order from title removes any negative stigma that would otherwise attach to the property title.

### Safety of City Staff, Contractors and Employees of Utility Companies

There are significant and potential health and safety risks to contractors and employees of utility companies who may attend the property in the course of its rehabilitation and City staff involved in the inspection of a building that has been used as a MGO. Outside the building, there may be booby traps, live electrical circuits, as well as the possible encounters with criminals involved in the drug trade. Inside the building, the greatest concern is with regards to structural deficiencies, ungrounded electrical sources, booby traps and air contaminants due to toxic moulds and chemicals (which may not be visible or detectable without specialized equipment). Pursuant to the *Occupational Health and Safety Act*, it is the responsibility of the employer to ensure an employee is made aware of all potential hazards that the employee may encounter. It is also the responsibility of the employer to provide for the required training and equipment to protect the employee and mitigate these hazards.

For a standard inspection of buildings under construction, staff use their personal vehicle for attending construction sites. However, because there is always a possibility that the MGO operators/criminals could return to the property and record and trace the license plate numbers of the staff and uncover their name, personal address and telephone number; a City of Ottawa fleet vehicle is assigned to them. This will also ensure that when they are attending the property of a former MGO, it is clearly identifiable that there is a City of Ottawa representative on site. This also alerts the

neighbours that if they see someone walking around the property, they need not be alarmed that the MGO operator has returned.

Only those contractors who are experienced in the remediation of mould and chemical residues under the supervision of a professional engineer will be permitted to enter the building to conduct the remediation of environmental hazards. Accordingly, the property owner is required to provide the results of an air quality assessment following the removal of all contents in the building/unit to ensure the safety of staff and by extension, the safety of contractors, and utility employees, before these parties enter to work or inspect.

### Seized or Forfeited Property

The *Criminal Code of Canada* and the *Controlled Drugs and Substances Act (CDSA)* contain provisions that allow for the Federal Government to seize or restrain offence-related property, such as buildings used for MGOs, in the course of a criminal investigation; and also to provide for forfeiture of the buildings and land to the Crown upon conviction of the property owner.

Where the Federal Government issues a Restraint Order and Management Order under the *CDSA* against a property in Ottawa, there is a delay in the remediation process. During the restraint period, which typically lasts two years or more, the remediation of the building will not be undertaken other than basic maintenance and repairs until the courts decide whether the property owner is guilty of an offence under the *CDSA*.

If the property owner is found guilty, the property may be seized by the Crown. If this occurs, the Seized Property Management Directorate of the Department Public Works and Government Services Canada will work with Building Code Services Branch to ensure the property is remediated based on the City's guidelines before the building is sold.

If the property owner is not found guilty, or if the courts choose to return the property to the owner, the Restraint Order and Management Order would be lifted and the property owner would be required to immediately act upon the City's initial orders and remediate the building accordingly.

### Risk Mitigation

When the Ottawa Police Service informs the City in writing that a building contained a MGO, the municipality becomes responsible for ensuring the building is safe to re-occupy. Municipalities face a risk of liability when enforcing building regulations despite exercising best efforts due to the joint and several liability regime presently in place in the Province of Ontario. Specifically, there is an expectation by the public and future owners of the building that has been remediated at the direction of the municipality, that the remediation has eliminated all hazards, visible or not, or latent. Mould and toxins can be invisible and if not removed under the direction of an expert, may return once the building has been re-occupied. Any mould or toxin that has been missed could, with the



re-introduction of moisture through normal household use, replicate or be released into the air to the detriment of the occupants.

To minimize the City's exposure to liability in view of the above noted risks and the very specialized nature of the reviews and inspections, the City's service delivery model includes the following key requirements:

- All remediation work must be completed under the supervision of a professional engineer licensed in the Province of Ontario, who certifies the building is safe to re-occupy and thereby shares in the risk of liability;
- Pre- and post-air quality testing must be undertaken by a certified air quality consultant;
- Ottawa Public Health will review and accept the results of all pre- and post-remediation air quality reports to verify air quality test results which will indicate that at the time occupancy was permitted, Ottawa Public Health had no objections; and
- Before allowing occupancy, an officer will inspect the building to verify compliance with the OTC before issuing a Certificate of Compliance. This will ensure all remediation is done according to the guidance document, and the building meets the minimum standards for occupancy.

The service delivery model and inspection requirements outlined in this report have been developed over a period of six years through the pilot program and have been refined and modified as necessary with the view to ensure public safety and to mitigate risk to the City. It is anticipated that refinements to the process will continue to improve delivery of the model.

## **B. Fee Structure**

Recovery of costs during the pilot has not been effective due to the fee structure of the Building By-law and the *Building Code Act*. Relying on the owner to pay the building permit fee when an application is submitted results in the City carrying costs for an extended time, with a risk that the fee is insufficient to offset the costs incurred by the City. For example, Building Code Services Branch will have inspected the property, ensured the building is secured, issued orders, met with the owner and his/her consultants a number of times, met with adjacent property owners, then waited for the owner to apply for a building permit before it could collect a fee. Fees for recovery are insufficient where an owner chooses to demolish the building instead of remediating it as the demolition permit fee is only \$100.

The work involved in ensuring buildings used for MGOs are made safe requires an additional allocation of resources compared to the requirements for work related to a typical renovation of a residential building. A case management approach is required to ensure the properties are remediated by sometimes reluctant or absent owners, and must involve different professionals and experts, which is more time consuming. In

many cases, staff must spend several hours coaching an owner through the remediation process and requirements. Resource allocation increases when the owner has disappeared or has been incarcerated, or will not co-operate thereby necessitating court action to obtain compliance.

Given these challenges, a new fee structure is required to ensure cost recovery, and ensure that neither the tax base, nor other permit applicants subsidize the City's role in the remediation of buildings used for MGOs.

The *Municipal Act* provides the tools and gives municipalities the authority to impose fees for services, which include recovering costs incurred by the municipality related to administration and enforcement, and to add unpaid fees to the tax roll to ensure these debts are paid.

The proposed fee structure will replace the City's reliance on the fee limitations of a building permit. It will recognize the different stages in the remediation process and will allow for the collection of fees at the different stages of the remediation process, thus ensuring cost recovery while minimizing fee costs to the owner. The fee structure also accounts for property owners who may choose to demolish the building.

The fee structure comprises three components.

1. An overall basic fee of \$3,500 based on the average cost Building Code Services Branch has incurred to oversee the remediation of a building used for a MGO. This fee is paid in three installments (\$900, \$1,600 and \$1,000 at key points in the process). If an owner chooses to demolish the building, fees can be collected up to that point in the process, ensuring cost recovery while minimizing fee costs to the owner. The costs associated with the work and activities for each installment are outlined in Document 1.
2. A further incremental fee of \$200 will be charged for each additional inspection by an officer or review of air quality reports by Ottawa Public Health until compliance is achieved. An additional inspection or review of air quality reports could be required if:
  - The property owner fails to respond to the OTC, requiring staff to become more involved thus incurring additional costs.
  - Work is proceeding without adherence to the City's guidelines and/or without a building permit where such is required.
  - The building is being occupied contrary to orders.
  - Any other enforcement measure that necessitates staff attending the site to investigate and respond to the issues.
  - The post-remediation air quality results are not accepted by Ottawa Public Health and further remediation is required resulting in reviews of additional post-remediation air quality results.

This ensures that those who cause higher than average costs, pay the higher costs; rather than expecting all other property owners who are subject to the MGO process

to subsidize one particular owner's poor management of their particular building's remediation.

3. A fee of \$400 is charged after the initial \$900, if the property owner decides to demolish the building instead of completing the remediation process. This would usually occur after the professional engineer has investigated the property and has given advice to the property owner on the cost and requirements necessary to remediate the building. The fee would cover the cost of issuing the Certificate of Compliance and deregistering the OTC from title after demolition has been completed. The property owner would be required to pay an additional \$100 fee for a demolition permit under the *Building Code Act*. Where applicable, and should the owner decide to demolish the building, fees related to seeking approvals under the *Planning Act* (demolition control) and/or the *Ontario Heritage Act* would apply as well.

Building Code Services has received approximately 22 notifications annually from Ottawa Police of buildings used for MGOs since 2006. Based on this experience since 2006, Building Code Services expects that approximately 10 percent of MGOs referred to the City by police will only result in a MGO fee of \$1,300 as the property owner will decide to demolish the building instead of completing the remediation process. It is expected that another 10 percent of properties used for MGOs will require the full \$3,500 fee in addition to a building permit fee as a result of damage requiring a building permit to repair. It is expected that the balance, or approximately 80 percent of buildings used for MGOs, will now only require the \$3,500 fee and will no longer require a building permit fee.

Most municipalities in Ontario have developed their own processes and fee structure in response to *Municipal Act* amendments. Applicable fees in other municipalities vary greatly depending on their process, requirements on City staff resources, whether orders are registered on title, the number of documents that must be viewed, whether public health reviews the air quality reports, and whether or not the objective is full cost recovery. For example, although London's process is almost identical to Ottawa's, London's fees are lower as some of the costs are offset through the tax base. Toronto's are higher as more departments are involved in the review and remediation process. Hamilton's service delivery model is basic and relies solely on the submission of a certificate from an environmental health or indoor air quality consultant retained by the owner, attesting to the building being substantially free from pesticides, toxic chemicals, moulds or fungi normally found in buildings used as MGOs.

The following table illustrates the fees charged and average number of new MGO cases annually in a number of municipalities.

Municipality	Toronto	Richmond, BC	Ottawa	London	Hamilton
Fee	\$5,750	\$4,500	<b>\$3,500</b> (proposed)	\$2,175	\$1,241
Average # of cases annually	100	17	<b>22</b>	20	35

The proposed fee structure for Ottawa is considered reasonable given the thoroughness of the process and remediation standards, and the associated costs the City incurs in ensuring building compliance and safety of staff, workers, occupants and the public. It also adheres with the direction of Planning Committee in 2009 that staff ensure that the costs of ensuring the remediation of buildings used as MGOs not be offset by fees paid by other permit applicants.

If a building permit is required pursuant to the *Building Code Act*, there will still be the above noted fees, plus a fee for the building or demolition permit. Before a Certificate of Compliance can be issued and occupancy permitted, all fees must be paid in full.

Under this proposed fee for service structure, fees will be collected at different stages of the process. The property owner will be given an invoice. If the fee is not paid by the due date, the full amount will be added to the tax roll and collected in the same manner as property taxes.

Property owners that actively seek to remediate and comply with orders and the guideline document will occasion less costs (fewer inspections, for example). Those that do not take proper responsibility and fail to follow the guidelines or orders given to them, will occasion more inspections, and accordingly pay more fees.

See Document 2 for a chart detailing the remediation process and fee charged at each point of the process.

### **Failure to Comply and Enforcement**

The primary objective of the recommended By-law for the Prohibition, Inspection and Remediation of Buildings Used for Marijuana Grow Operations is to assist property owners so that they may achieve compliance. The purpose is to ensure that all buildings used for MGOs and referred to the City by the police, are safe to re-occupy. However, there is always the possibility that a property owner will ignore orders or undertake work that does not comply with the guidance document.

Municipalities have the authority under the *Municipal Act* to order any work to be done at the property owner's expense. This includes having a security fence installed around the building or the boarding up of the building. Cost recovery for any work would be achieved by adding the costs to the tax roll and collecting them in the same manner as property taxes.

The *Municipal Act* also provides the authority for municipalities to pass by-laws establishing offences, fines and penalties.

This By-law establishes two offences:

1. An offence for every person who contravenes any of the provisions of the By-law.
2. A continuing offence for every person who fails to comply with an order under this By-law.

Property owners who contravene any provisions of this By-law are liable to a minimum fine of \$500 and a possible maximum fine of \$100,000.

Property owners who fail to comply with an order are liable to a daily fine for each day or part of a day the offence continues. The minimum daily fine would be \$500 with a maximum possible daily fine of \$10,000. The total of all daily fines can exceed \$100,000. Fines are assessed by the courts.

## **Recommendation 2**

While reliance on the authorities of the *Building Code Act* has enabled the development of an effective service delivery model for managing the new responsibilities introduced by the Province in 2006, recent amendments to the *Municipal Act* have presented an opportunity to improve service delivery and to establish a standalone By-law. This By-law will be accessible on the City's website and will clearly delineate the processes and responsibilities of parties, in line with the objectives of Service Ottawa and service excellence principles.

The proposed By-law will:

- Prohibit the illegal conversion of buildings to MGOs.
- Establish the authority to issue orders directing the property owner and/or agents to remediate the building in accordance with the standards set out in the By-law and the Ontario Building Code.
- Enable the registration of any OTC on title to provide notice to prospective purchasers, real estate agents and legal representatives.
- Require the owner of the property to immediately secure the property with a 1.8 metre security fence around any building on the property that contained the MGO, as determined by the Building Code Services Branch.
- Ensure full recovery of the costs incurred by the Building Code Services and Public Health Branches through a new staged fee structure.
- Require the owner of the property to obtain a Certificate of Compliance (and Occupancy Permit if applicable) prior to allowing the building to be re-occupied.
- Establish fines and penalties for cases of non-compliance.
- The by-law will come into force on the day it is enacted by Council, at the first Council meeting in November.

### **Recommendation 3**

In July 2001, Health Canada's current Marijuana Medical Access Regulations came into force. The regulations established a framework to allow legal access to marijuana by individuals suffering from grave or debilitating illnesses, where conventional treatments are inappropriate or not providing adequate relief.

Applicants that meet the specified criteria may receive an annual "Authorization to Possess" dried marijuana for medical purposes, and may also receive a license to produce marijuana for personal use for medical purposes. A license may also be granted to an individual who has been designated to grow marijuana for an individual who is legally permitted to possess marijuana for medical purposes.

Health Canada did not establish regulations or guidelines as to where this legal marijuana could be grown, and many license recipients have been growing their marijuana in residential dwellings.

In June 2011, the Minister of Health announced that the Federal Government was considering changes to the Marijuana Medical Access Program (MMAP) in response to concerns raised by municipalities, Federal and Provincial public safety officials, law enforcement agencies and fire officials including:

- Public health risks due to the presence of excess mould and poor air quality associated with the cultivation of marijuana plants in homes;
- Public safety risks, including electrical and fire hazards, also stemming from such cultivation;
- The potential for diversion of marijuana produced for medical purposes to the illicit market; and
- The risk of home invasion due to the presence of large quantities of dried marijuana or marijuana plants.

Under the proposed reforms, which were the subject of public consultations in 2011, personal and designated production would be phased out. The only legal sources of dried marijuana would be commercial operations licensed by Health Canada. Licensed commercial growers would have to meet strict guidelines with respect to product quality, compliance and enforcement and security at production facilities. Production would be restricted to non-residential areas and the whereabouts of the facilities would not be public, though municipalities would be informed of the location.

Health Canada has since announced that proposed regulations on the Marijuana Medical Access Program will appear in the Canada Gazette later in 2012. There will be an opportunity for stakeholders to comment on the regulations before they are finalized and adopted.

It is recommended that Building Code Services Branch review the proposed regulations and prepare comments for submission to Health Canada following approval of the comments by City Council.

## **Conclusion**

The proposed service delivery model and By-law for the Prohibition, Inspection and Remediation of Buildings used for MGOs will ensure that all MGOs brought to the attention of the City by a police force are properly remediated and safe for occupancy. It will protect future occupants and the general public from the contaminants and structural damage caused to buildings converted to MGOs. Landlords, real estate brokers and financial institutions will be assured that the building is safe to occupy, is not stigmatized in anyway, and that the value of the property is maintained.

The service delivery model will serve to minimize the City's exposure to liability by demonstrating due diligence and by placing the responsibility for the assessment and remediation of the property on specially qualified professionals. A final inspection by staff will confirm all orders have been complied with.

The new fee structure will ensure cost recovery so that the remediation of buildings used for MGOs is not being subsidized through general taxation or building permit fees.

## **RURAL IMPLICATIONS**

Buildings that contain MGOs in the rural areas have additional issues that need to be considered if these buildings are not connected to City sewer and water services.

Hydro Ottawa or Hydro One may be contacted to disconnect the power by the police services if the electrical system has been tampered with. This may affect the operation of the sump pump, septic system and well on rural properties.

By the time Building Code Services Branch is notified of the illicit MGO, the property could have been without electricity for quite some time, and there is the potential of having a metre or more of water in the basement; which then is required to be tested for chemicals and if necessary, pumped out and taken away by a certified environmental company.

If the property is so badly damaged that remediation is too costly, then demolition may be the only viable option. In this case, the Rideau Valley Conservation Authority and Ministry of the Environment become involved. The Rideau Valley Conservation Authority oversees the decommissioning of the septic system through the Ottawa Septic System Office which issues the necessary permits and conducts the necessary inspections. The Ministry of the Environment oversees the capping of the decommissioned wells as they must be properly plugged and sealed as set out in *Ontario's Wells Regulation (Regulation 903)*.

## CONSULTATION

Stakeholders representing landlords, the real estate industry, property management companies, home builders and Ottawa Community Housing were provided with a consultation document detailing the proposed service delivery model and fee structure. A meeting was also arranged to discuss their comments.

The majority of stakeholders expressed their support for the service delivery model which has proven effective at remediating the buildings and maintaining their market value while protecting the City from liability. Stakeholders accepted the fee as a necessary part of ensuring these buildings are safe for occupancy.

A number of residents located in proximity to MGOs currently undergoing remediation were consulted on the proposal that a fence be installed around the building to secure it from entry and protect the surrounding community. Some residents agreed the fence would make them feel more secure as it would keep intruders out of the hazardous building, reduce the risk of a fire being started, and protect the neighbourhood. Others expressed a concern that the fence would be aesthetically unappealing and could affect the market value of properties in the vicinity. Some wanted to see remediation completed in a timelier manner.

While staff recognizes that the temporary fencing is not attractive visually, the alternative is to have the building boarded up to prevent entry because of the significant hazards inside. The experience in Calgary, Alberta indicates that the installation of the security fence reduces remediation times significantly because the property owner proceeds faster when they have to pay a monthly fee for the fence. It is expected that the installation of the fence will have a similar positive effect on remediation times in Ottawa, which will reduce the aesthetic and market impact on the neighbourhood, while providing a high level of security to the property and community.

## LEGAL IMPLICATIONS

There are no legal impediments to implementing the recommendations outlined in this report.

## RISK MANAGEMENT IMPLICATIONS

There are risk implications. These risks have been identified and explained in the report and are being managed.

## FINANCIAL IMPLICATIONS

### **Recommendation 1**

The recommended fee structure will implement cost recovery of Building Code Services' and Ottawa Public Health's involvement in the enforcement of the remediation process.



The fee structure comprises three components, as described within the body of the report. The property owner will be invoiced; if the fee is not paid by the due date, the full amount will be added to the tax roll and collected in the same manner as property taxes.

Building Code Services has received approximately 22 notifications annually from Ottawa Police of buildings used for MGOs since 2006. Based on this experience, Building Code Services expects that approximately 10 percent of MGOs referred to the City by police will only result in a MGO fee of \$1,300 as the property owner will decide to demolish the building instead of completing the remediation process. It is expected that another 10 percent of properties used for MGOs will require the full \$3,500 fee in addition to a building permit fee as a result of damage requiring a building permit to repair. It is expected that the balance, or approximately 80 percent of buildings used for MGOs, will now only require the \$3,500 fee and will no longer require a building permit fee. A \$200 fee will be charged for each additional inspection by Officer or review of air quality reports by Ottawa Public Health until compliance is achieved.

Estimated revenues associated with the fees are below. The additional revenues will be brought forward in Building Code Services' and Ottawa Public Health's future operating budgets.

	<b>Estimated Number / Year</b>	<b>Building Code Services Fee</b>	<b>Ottawa Public Health Fee</b>	<b>Building Code Services Revenues / Year</b>	<b>Ottawa Public Health Revenues / Year</b>
<b>Fee Type 1</b>	22	\$900	-	\$19,800	-
<b>Fee Type 2</b>	20	\$850	\$750	\$17,000	\$15,000
<b>Fee Type 3</b>	2	\$400	-	\$800	-
<b>Fee Type 4</b>	20	\$1,000	--	\$20,000	-
<b>Fee Type 5</b>	TBD	\$200	\$200	-	TBD
<b>Total Revenues</b>				<b>\$57,600</b>	<b>\$15,000</b>

If a building permit is required pursuant to the *Building Code Act*, there will still be the above noted fees, plus a fee for the building or demolition permit. Before a Certificate of Compliance can be issued and occupancy permitted, all fees must be paid in full.

Should the City be required to install a security fence, costs will be recovered from the property owner.

## **Recommendation 2**

Should the By-law be enacted, property owners who fail to comply with an order are liable to a daily fine for each day or part of a day the offence continues. The minimum daily fine would be \$500 with a maximum possible daily fine of \$10,000. The total of all daily fines can exceed \$100,000. Fines are assessed by the courts.

### **Recommendation 3**

There are no financial implications.

#### ACCESSIBILITY IMPACTS

There are no accessibility implications associated with the report recommendations.

#### ENVIRONMENTAL IMPLICATIONS

This By-law will ensure that any environmental contaminants in a building that housed a MGO are removed and the building properly remediated and safe for occupancy.

#### TECHNOLOGY IMPLICATIONS

There are no technology implications associated with this report.

#### TERM OF COUNCIL PRIORITIES

Bringing forward this new By-law supports Council's Strategic Priority – Healthy and Caring Communities: “Help all residents enjoy a high quality of life and contribute to community well-being through healthy, safe, secure, accessible and inclusive places”. However, there are no specific Strategic Objectives for healthy and caring communities, that have been approved for this term of Council, that directly relate to the recommendations in this report.

The proposed service delivery model and new fees are aligned with the Strategic Priority – Service Excellence – and with Strategic Objective SE2 to improve operational performance as follows: “Improve the effectiveness and efficiency of service delivery to reach targets that have been approved by Council and communicated to residents and staff”.

#### SUPPORTING DOCUMENTATION

Document 1 Summary of Service Delivery Model and Fee Structure

Document 2 Draft By-law for the Prohibition, Inspection and Remediation of Buildings Used for Marijuana Grow Operations

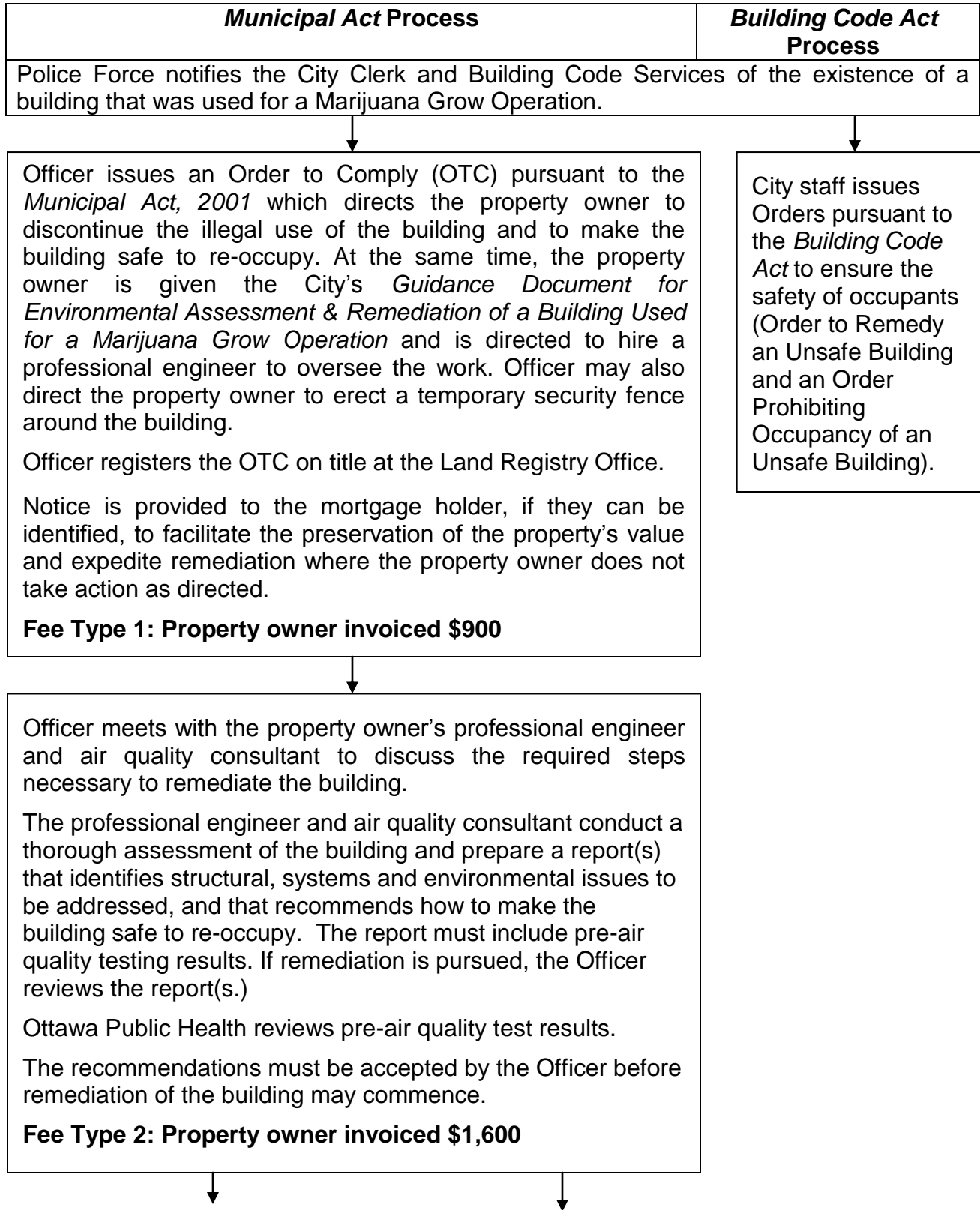
#### DISPOSITION

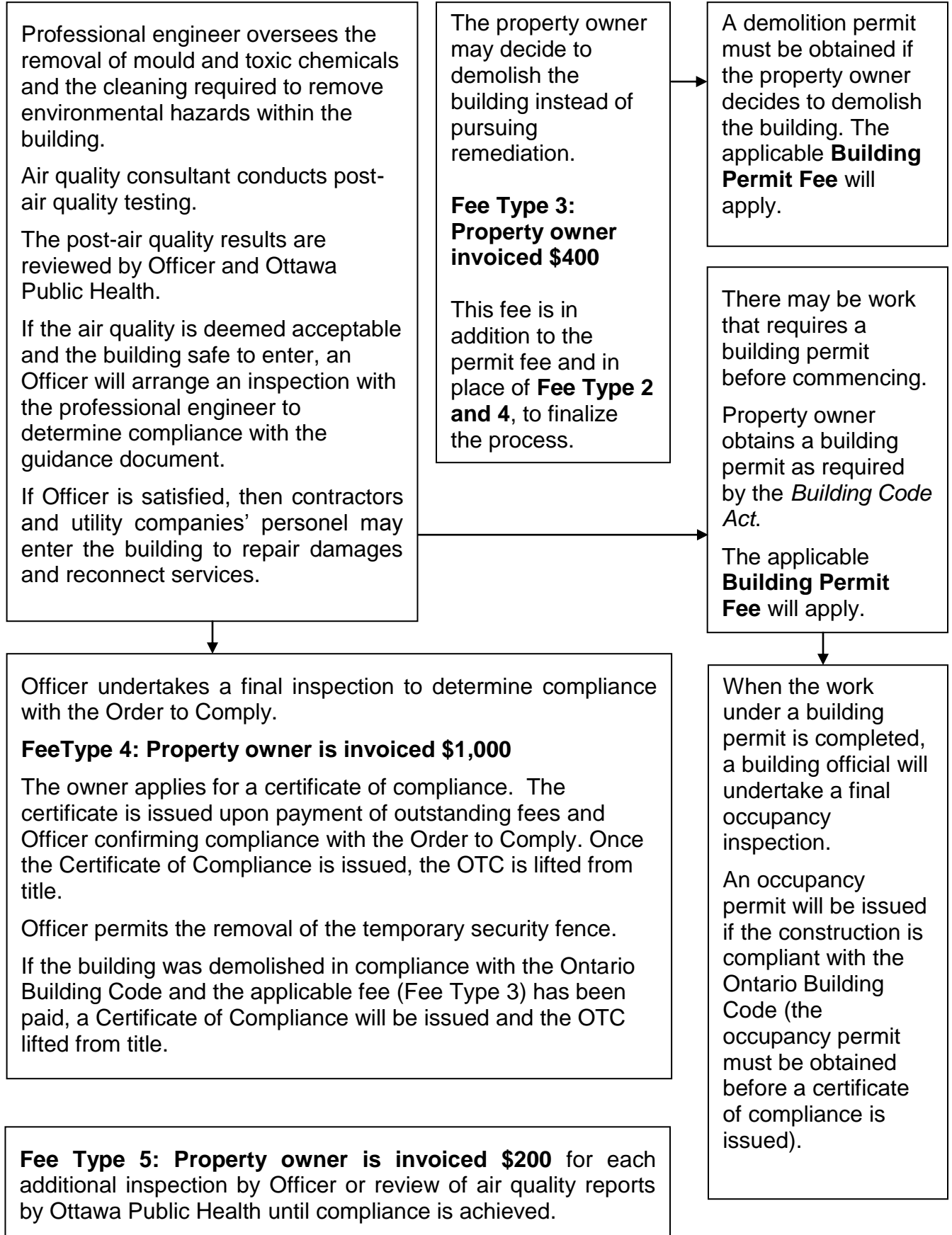
Upon approval, Building Code Services Branch together with the City Clerk and Solicitor Department will bring forward the by-law for enactment by Council.

City Operations, Emergency and Protective Services department, By-law and Regulatory Services Branch will apply for set fines in relation to the offences created by the new By-law.

**SUMMARY OF SERVICE**  
**DELIVERY MODEL AND FEE STRUCTURE**

DOCUMENT 1





**DRAFT BY-LAW FOR THE PROHIBITION,  
INSPECTION AND REMEDIATION OF BUILDINGS  
USED FOR MARIJUANA GROW OPERATIONS**

DOCUMENT 2

BY-LAW NO. 2012 –

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 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 or occupier 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;

“property” means 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 and 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 re 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 cause, permit or allow a marijuana grow operation on or in a property.
4. No person or Owner 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 shall 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 Section 8 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 shall 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) Where an Order issued pursuant to Section 8 is sent by registered mail, it shall be sent to the last known address of the Owner 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 having completed the 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 the work required on the affected adjacent property, which in the opinion of the Officer was incurred as the result of the MGO.

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 by the owner 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 “MGO Building Remediation by-law”.

ENACTED AND PASSED this      day of                      , 2012.

CITY CLERK

MAYOR

**Schedule "A" – Relating to Fees**

<b>Fee Type*</b>	<b>Fee</b>
<b>Type 1</b>	\$900
<b>Type 2</b>	\$1,600
<b>Type 3</b>	\$400
<b>Type 4</b>	\$1,000
<b>Type 5</b>	\$200

- The fee type for each step in the Service Delivery Model is described in Document 1 of City Council report Ref N°: ACS2012-PAI-PGM-0091.