



## **The Municipal Corporation of the Town of Fort Erie**

**BY-LAW NO. 63-13**

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### **BEING A BY-LAW TO AUTHORIZE THE ENTRY INTO A MARIJUANA GROW OPERATIONS PROTOCOL AGREEMENT WITH THE NIAGARA REGIONAL POLICE SERVICE**

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**WHEREAS** at the Council-in-Committee meeting held on June 10, 2013, Report No. CDS-57-13 was approved, authorizing the entry into a Marijuana Grow Operations Protocol Agreement with the Niagara Regional Police Service, and

**WHEREAS** it is deemed desirable to enter into a Marijuana Grow Operations Protocol Agreement with the Niagara Regional Police Service;

**NOW THEREFORE** the Municipal Council of the Town of Fort Erie hereby enacts as follows:

1. **THAT** the entry into a Marijuana Grow Operations Protocol Agreement with the Niagara Regional Police Service, is hereby authorized and approved.
2. **THAT** the Clerk and Fire Chief are hereby authorized and directed to execute the Marijuana Grow Operations Protocol Agreement and to affix the corporate seal thereto.
3. **THAT** pursuant to the provisions of Sections 23.1 to 23.5 inclusive of the *Municipal Act, 2001*, as amended, the Clerk of the Town of Fort Erie is hereby authorized to effect any minor modifications or corrections solely of an administrative, numerical, grammatical, semantical or descriptive nature or kind to this by-law or its schedules as such may be determined to be necessary after the passage of this by-law.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 17<sup>th</sup> DAY OF JUNE, 2013.**

\_\_\_\_\_  
**MAYOR**

\_\_\_\_\_  
**CLERK**

I, Carolyn J. Kett, the Clerk, of The Corporation of the Town of Fort Erie hereby certifies the foregoing to be a true certified copy of By-law No. 63-13 of the said Town. Given under my hand and the seal of the said Corporation, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.



## Niagara Regional Police Service

*Niagara Regional Police Service  
And  
(Fort Erie\*)*

# 2012 Marihuana Grow Operations Protocol

Prepared by

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Prepared for

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**Marihuana Grow Operation Protocol**

**The Niagara Regional Police Service**

**And**

**The Town of Fort Erie**

MGO PROTOCOL NRPS & Fort Erie

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## **Part 1 - PURPOSE**

The purpose of this protocol is to delineate for the Niagara Regional Police Service and the local municipalities within the Regional Municipality of Niagara the mutual and separate responsibilities for the provision of an effective response dealing with premises that have operated as a Marihuana Grow Operation (MGO). This response will help to ensure that, once police identify a property as a MGO, steps deemed necessary may be taken and measures implemented to ensure the building does not present a hazard to the safety of the public interest and surrounding community.

## **Part 2 - DEFINITIONS**

"**CDSA**" means the Controlled Drugs and Substances Act, S.C. 1996, c.19, as amended.

"**Clerk**" means the Clerk of the Town of Fort Erie.

"**Fire Department**" means the Fire Department of the Town of Fort Erie.

"**Fire Safety Inspection**" means the inspection of an MGO by the Fire Department in accordance with the *Fire Protection and Prevention Act*,

"**MGO**" means a Marihuana Grow Operation, including a Marihuana Grow Operation which is licenced by Health Canada.

"**Municipality**" means the Town of Fort Erie.

"**NRPS**" means the Niagara Regional Police Service.

"**OFM**" means the Ontario Fire Marshall.



**"Police Notification of MGO"** means the Notification of a Marihuana Grow Operation provided by the NRPS to a local municipality in the form of Appendix 1 to this Protocol.

**"Premises"** means lands, buildings and structures.

### **Part 3 - STATEMENT OF PRINCIPLE**

MGOs pose a serious threat to the safety and security of the public throughout Ontario. The detection, investigation, dismantling and return of Premises to legitimate use is a complex undertaking requiring the cooperation and sharing of information between the police and municipal officials. A coordinated approach to this problem will help ensure that the entire process is conducted in a safe and effective manner while at the same time acknowledging and ensuring that the separate and distinct legal mandates of the police and the municipal bodies are maintained. The safety of the personnel involved in the process and that of the public is of paramount importance.

MGOs are typically residential homes utilized for the indoor cultivation of marihuana. However, marihuana grow operations of varying size and sophistication have also been identified in residential apartments, as well as in commercial and industrial buildings.

In many cases, in order to convert a Premise for the illegal cultivation of marihuana, significant and sophisticated changes are made to the home's structural, electrical and HVAC system. High intensity lighting is needed to grow the marihuana plants. Typically, grow operations will by-pass the electrical panel putting the Premises and perhaps the neighbourhood at **risk**

**of fire** and **possibly electrocution** for those attending on site to dismantle the MGO.

Further hazards and threats to safety have been noted to occur in the form of alterations and damage made to the Premises in order to accommodate the MGO and which compromise the structural integrity of the Premises. For example, it is common to find significant holes made to the foundation wall to provide for an electrical by-pass. Floors and ceilings are also altered by large holes carved out of them to permit for ventilation of the excess heat and odours generated by the MGO. Finally, the holes are made to the exterior walls to allow access to attached garages and thereby facilitate the movement of grow equipment and cultivated marijuana product beyond public perception.

Both structural damage and toxic mould have been found to result from the excess moisture introduced into the building due to irrigation systems used to provide water to the plants and increased humidity due to the number of plants.

The structural and electrical alterations along with the potential for water damage and toxic mould often make the Premises unsuitable for human habitation unless major repairs and restorations are undertaken. If the necessary remedial measures are not taken, the Premises may be permanently damaged and rendered uninhabitable. Property values of other homes in the area may also be lowered in the result.

The operators of MGOs are typically connected to a network of criminal associations and organized crime elements for both the production and distribution of the product. As well, individuals associated with grow

operations have been found to carry weapons and may be considered dangerous. Evidence of booby-traps both outside and inside Premises used for MGOs has also been documented. These booby-traps have been known to include:

- (i) Electrified door handles and window frames,
- (ii) Boards with large nails protruding up placed outside the Premises around windows, and
- (iii) Hidden holes cut in interior floors.

There is also a possible risk of increased violence and residual crimes in neighbourhoods where MGOs are located. Home invasions have occurred in neighbourhoods of all manner of description and demographic makeup. Clearly, MGOs present an increasingly growing public safety issue that has placed them as a high priority policing and municipal concern.

#### **Part 4 – DANGERS ASSOCIATED WITH MARIHUANA GROW OPERATIONS**

The following dangers have been associated with MGOs:

**Poisonous Fumes** – Harmful fumes from the grow operations can build up inside the Premises. Mould and fungus caused by high humidity and condensation can accumulate inside the Premises creating a potential health hazard. Gases from chemicals used in the grow operation can also build up inside the Premises or be vented outside, possibly impacting nearby residents.



**Fire Hazard** - Electrical systems are often tampered with to accommodate high intensity lighting utilized in grow operations, which in turn creates excessive heat. This increases the risk of fire due to unauthorized tampering with the electrical system.

**Power Outages** - Tampering with the electrical systems in grow operations can cause possible overloads and may even cause hydro transformers to malfunction or explode.

**Higher Utility Costs** - The cultivation of marihuana requires large amounts of water and electricity. As a result, utilities are either stolen from or their services and monitoring equipment tampered with to avoid actual consumption rates being documented. By stealing from the utilities, the costs of growing the marihuana are lowered. However, this theft leads to higher utility bills for the general public.

**Electrocution** - Persons not professionally qualified and accredited for the installation and repair of electrical systems may electrocute themselves or others exposed to hazards associated with faulty wiring. Even persons outside the Premises could possibly be shocked by an electrical panel bypass, which has charged the ground around the Premises.

**Environmental Damage** - Chemicals used in the grow operation have been improperly disposed of, draining onto the ground or into the sewer system. High humidity and water damage result in harmful mould forming in the Premises. Extensive testing and remediation to the Premises for harmful mould may be required to make the Premises habitable after the grow operation has been terminated and dismantled

**Structural Damage** – Premises are structurally altered to allow for the marihuana grow operation. Damage is caused from alterations to the structure such as holes in foundation walls, floors, ceiling and exterior walls above grade. Major remedial measures may be required to make the premises structurally sound and safe for the occupants after the grow operation has been terminated.

**Violence** – To protect production and distribution of marihuana, those involved in a grow operation may be armed with weapons and have been known to carry out assaults, home invasions and homicides. Criminal elements attracted to the area to purchase or transport marihuana bring an increased and unwanted potential for the proliferation of crime and violence in the community.

**Increased Crime** – Marihuana is a controlled substance. Marihuana from illegal grow operations is sold to members of the community, including minors, and is also a commodity of choice that trades at par with cocaine in the United States. Distribution routes leading to a substantial export trade with the United States reveal that marijuana is exported from Canada in exchange for cocaine as well as firearms that are imported into Canada. The MGO is not an isolated phenomenon but a manifestation of organized crime networks that are trans and international in scope. Profits generated from the sales and distribution of marijuana feed into and fund a larger organized crime fabric, with an accompanying detrimental effect on overall public safety and which spawns further and more violent crime.

## Part 5 - LEGISLATION

The following legislation is relevant to this protocol.

The Municipal Act (Municipal Act, 2001s.o 2001 chapter 25)

The *Municipal Act, 2001* places an obligation on municipalities to take certain action upon notification by a police service of a marihuana grow operation.

The *Municipal Act, 2001*, provides as follows:

### Inspection of buildings containing Marihuana Grow Operations

**447.1** (1) If the clerk of a local municipality is notified in writing by a police force that a building located on land in the local municipality contained a marihuana grow operation, the local municipality shall ensure that an inspection of the building is conducted within a reasonable time after the clerk has been notified.

### Persons who may conduct inspection

- (2) An inspection referred to in subsection (1) may be conducted by,
  - (a) A by-law enforcement officer of any municipality or of any local board of any municipality; or
  - (b) An officer, employee or agent of any municipality or of any local board of any municipality whose responsibilities include the enforcement of a by-law, an Act or a regulation under an Act.

### Nature of inspection

- (3) The requirement in subsection (1) for an inspection is for an inspection that includes entering upon the land and into the building.

### Powers to conduct inspection

- (4) The inspection shall be conducted pursuant to the powers of entry and inspection that the person conducting the inspection

otherwise has under law, but only to the extent that the person conducting the inspection is able to do so.

### **Action to be taken**

- (5) Upon conclusion of the inspection, the person who conducted the inspection shall take whatever actions he or she is authorized by law to take in order to make the building safe and otherwise protect the public.

### **Definition**

- (6) In this section, "police force" means a municipal police force, the Ontario Provincial Police or the Royal Canadian Mounted Police.

### **Where Marihuana Grow Operation is in a lower-tier municipality**

447.3 (1) If the clerk of a local municipality that is a lower-tier municipality is notified under subsection 447.2.(1) that a building located on land in the lower-tier municipality contained a marihuana grow operation, the lower-tier municipality shall, if in its opinion it is appropriate to do so, forward a copy of the notice referred to in subsection 447.2(1) to the clerk of the upper-tier municipality of which the lower-tier municipality forms a part. 2006.c.32.Sched.A.s.184

### **Same**

- (2) Upon the clerk of the upper-tier municipality being notified under subsection (1), the obligation under subsection 447.2 (1) to ensure that an inspection of the building is conducted becomes the obligation of both the lower-tier municipality and the upper-tier municipality. 2006.c.32.Sched.A.s.184

### **The Fire Protection and Prevention Act, 1997 – S.O. 1997, Chapter 4**

The *Fire Protection and Prevention Act* provides rights of entry to municipal fire inspectors to enter and inspect land and premises for the purpose of assessing fire safety. Section 19 of that Act provides as follows:

19. (1) The Fire Marshal, an assistant to the Fire Marshal or a fire chief is an inspector for the purposes of this Part.
- (2) An inspector may, without a warrant, enter and inspect land and premises for the purposes of assessing fire safety.
- (3) The power to enter and inspect land and premises without a warrant may be exercised at all reasonable times.
- (4) An inspector who enters land or premises under this section may take with him or her a police officer or such other person as he or she considers advisable to assist.
- (5) On the request of an owner or occupant of the land or premises, an inspector shall identify himself or herself and shall explain the purpose of the entry.
- (6) An inspector conducting an inspection may,
- (a) examine a document or other thing that is relevant to the inspection;
  - (b) demand the production for inspection of a document or other thing that is relevant to the inspection;
  - (c) remove any thing that is relevant to the inspection for review and examination and remove any document that is relevant to the inspection for review and copying;
  - (d) conduct tests, take and remove samples, take photographs and make videotapes and other images, electronic or otherwise, that are relevant to the inspection;
  - (e) in order to produce a document in readable form, use data storage, information processing or retrieval devices or systems that are normally used in the premises being inspected; and
  - (f) question a person on matters relevant to the inspection.
- (7) If an inspector demands that a document or other thing be produced for inspection, the person who has custody of the document or thing shall produce it and, in the case of a document, shall on request provide any assistance that is reasonably necessary to interpret the document or to produce it in a readable form.
- (8) A document or other thing that has been removed from land or premises,

- (a) shall be made available to the person from whom it was removed on request and at a time and place that are convenient for the person and for the inspector; and
  - (b) shall, if it is possible to return the document or thing to the person, be returned within a reasonable time.
- (9) A copy of a document that purports to be certified by an inspector as being a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

The responsibilities and procedures outlined in this Protocol are based on the principle of information sharing between the relevant parties to the Protocol. Each party to the Protocol shall remain governed and engaged by the separate and distinct legislative regimes that applies to each of them in the discharge of their respective duties and mandates as they relate to MGOs.

This Protocol recognizes and in no way interferes with or undermines the principle that the investigative responsibilities undertaken by each respective party are done so independently of each other and in accordance with the separate legal and statutory mandates that engage each of them and that remain extant. The investigations shall remain at all times separate and distinct from each other.

## **Part 6 – PROCEDURE – RESPONSIBILITIES OF THE NIAGARA REGIONAL POLICE SERVICE**

Where an MGO has been discovered in Premises within the Municipality, the Niagara Regional Police Service have the responsibilities set out below:

1. The NRPS shall conduct its own and separate investigation into the MGO in accordance with the governing and applicable provincial adequacy standards and requirements in police operations as they



pertain to drug investigations, as well as the NRPS's policies and procedures, and pursuant to the Controlled Drugs and Substances Act and its Regulations, and the Criminal Code.

2. The NRPS will provide the Clerk with a Police Notification of MGO by fax or by email, upon completion of the on-site phase of the police investigation. This will include identifying any potential risks associated with the building or structure, such as but not limited to:

- Structural damage or alterations
- Water damage
- Visible mould
- Electrical system tampering
- Chemicals and potentially hazardous materials
- Possible theft of power and /or water
- Status of occupancy
- Foreign substances
- Booby traps
- Any other potential hazards or safety concerns

3. The NRPS may request a Fire Safety Inspection in accordance with the process set out below in items (a) through (e). This process is recognized as part of the Community Safety Initiative between the NRPS, the OFM and local Fire Departments pertaining to MGOs. This initiative calls for a process for requesting a Fire Safety Inspection upon the execution of a search warrant at a suspected MGO or when discovered inadvertently, when the circumstances justify it. This process enables the Local Fire Department to provide direct and specialized advice and assistance by conducting and/or coordinating a

Fire Safety Inspection at a MGO as required and to ensure the public safety. This process also applies to Fire Safety Inspections conducted on behalf of a Municipality by the OFM.

The process in relation to a Fire Safety Inspection is as follows:

- a) NRPS requests for Fire Safety Inspections will come directly from the Intelligence Unit e.g. Morality & Guns, Gangs and Grow. The request will primarily be associated with the execution of a CDSA search warrant.
- b) Circumstances may warrant a request for a Fire Safety Inspection in advance. The NRPS will use best efforts to make such requests at least 24 hours in advance. The parties to this protocol recognize that it is not always practical nor justified to provide advance notice. The request for a Fire Safety Inspection can also be made **at the time of the execution** of the CDSA warrant at a suspected MGO.
- c) In all circumstances, the primary contact for a Fire Safety Inspection will be the Municipality's Fire Department or the OFM representative for the Region. Where the Fire Department does not intend to conduct a Fire Safety Inspection, the Police shall ensure that the Police Notification of MGO is provided to the OFM. The initial contact will be documented with the time, date and specific location as to when and where the Fire Safety Inspection will occur.

- d) The location of the MGO will not be provided prior to the execution of the CDSA warrant. This is done to ensure that there is no risk of compromising the on-going criminal and/or drug investigation. In addition, the OFM or Fire Department representative will also be provided with the police contact's name and cellular phone number.
  - e) Once the NRPS **has executed** the CDSA warrant, the OFM and/or the local Fire Department will be provided the location in which the Fire Safety Inspection is to be conducted. This will only be done once the scene has been safely secured.
  - f) OFM or Fire Department representative notes will be required for court disclosure upon request of the Crown.
4. NRPS will contact the local hydro provider and request disconnection of the electrical service, if required.

The NRPS will also provide the local hydro provider with the following information:

- a) Lead investigator's name and badge number
  - b) Division and/or Unit
  - c) Contact telephone number Re: current investigation
5. The NRPS will contact any other additional appropriate agencies and/or personnel necessary that, in the opinion of the NRPS officers conducting the investigation, are required. These may include but are not limited to hydro officials, other local municipal fire departments,

building official(s), Family & Children Services, and/or Canada Immigration.

Where other municipal fire and/or building officials attend, these municipal authorities shall work together to ensure the appropriate measures are taken in order to ensure the safety of the occupants, first responders, and the general public. This may include enforcement of regulations under the Fire Code and the Building Code.

6. The NRPS shall determine when a site is suitable for inspection by agencies other than the police, in accordance with the following criteria:
  - a. The police investigation of the Premises and removal of marihuana plants is complete;
  - b. All hazards of which police are aware have been contained, dismantled and/or are listed on the Police Notification of MGO and sent to the Municipality; and
  - c. The notice, in the form of Appendix II, has been affixed to the principal entrance of the Premises indicating that a MGO was dismantled and the Premises may not be suitable for habitation/use until inspected by the Municipality.
7. The NRPS shall gather physical and photographic evidence, **dismantle** the grow operation and **remove** marihuana plants and/or chemicals.

8. The NRPS shall place a notice, in the form provided in **Appendix II**, on the principal entrance to the Premises, which is the subject of the MGO.

## **Part 7 – PROCEDURE – RESPONSIBILITIES OF The Town of Fort Erie**

The Municipality shall have the following responsibilities with respect to MGOs.

1. Where the Municipality becomes aware of a MGO, the Clerk or a representative of the Fire Department shall notify the NRPS, in order to allow the police to undertake their own separate investigation.
2. The Municipality shall ensure that the NRPS is provided with and continues to be updated with respect to contact information for the Clerk of the Municipality and the Fire Chief.
3. Where a MGO has been discovered on Premises within the Municipality, upon receipt of the Police Notification of MGO, the Municipality shall ensure:
  - a) The name of the registered owner of the property as contained in the records of the Municipality is forwarded to the police;

- b) Appropriate inspection measures are taken by municipal authorities within a reasonable time, to identify and list all hazards resulting from the MGO; and
  - c) Appropriate information received from the police is forwarded to the respective inspection agency/personnel e.g. Fire Department, Building Department, Public Health Department.
- 4. Where the Police Notification of MGO indicates the possibility of the presence of combustible or volatile chemicals or liquids, the Clerk will ensure the notice is provided to the Fire Department for investigation and follow-up on any violations of the *Fire Protection and Prevention Act, 1997, S.O. 1997, c4*.
  - 5. The Municipality shall conduct any and all appropriate subsequent investigations as required by law.
  - 6. The Municipality shall ensure that the police contact identified on the Police Notification of MGO is contacted to acknowledge receipt of the notification.

## **Part 8 – PROCEDURES – RESPONSIBILITIES OF THE FIRE DEPARTMENT**

- 1. If the Fire Department becomes aware of an MGO, it shall notify the NRPS and follow the department's standard operating guidelines.
- 2. Upon receiving a Police Notification of MGO, the Fire Department may conduct its own investigation and follow-up pursuant to possible violations of the Fire Protection and Prevention Act, S.O. 1997, c 4.



3. At the request of the NRPS, the Fire Department shall conduct a Fire Safety Inspection at the MGO in accordance with the procedures set out in Part 6, Section 3, items (a) through (f).
4. Once the scene is secured and made safe by the NRPS, the Fire Department or the OFM, as the case may be, will make a "hazard vs. risk" assessment based on the information provided by the NRPS. The Fire Department representative or the OFM representative, as the case may be, shall carry out its own investigation for the purposes of the *Fire Protection and Prevention Act*. Best practices include not disturbing the scene or touching anything during the inspection of the MGO.
5. Any and all documentation, notes, photo and video obtained by the OFM or the Fire Department shall be provided for disclosure purposes and may include a statement by any representative of the OFM or Fire Department upon request of the Crown.
6. After completing the Fire Safety Inspection, the OFM or Fire Department representative will determine whether or not there are compliance issues to be addressed. If the enforcement option is required, the OFM or Fire Department representative will work with local fire Service and Building Department.
7. It shall be the responsibility of the Fire Department to notify the OFM with respect to fires or explosions involving any MGO.

## **Part 9 – CONCLUSION**

With the completion of this protocol, the NRPS and the Town of Fort Erie agree that their respective agencies have a commitment to responding to MGOs in their community.

It remains the responsibility of each of the parties to this protocol to deal with any and all enforcement issues within their own specific mandate.

MGO PROTOCOL NRPS & Fort Erie

## CONTACT INFORMATION

### The Clerk of the Municipality:

Name: Carolyn Kett- Town Clerk

Phone: 905 871 1600 ext 2211

Fax/Email: [ckett@forterie.on.ca](mailto:ckett@forterie.on.ca)

### Niagara Regional Police Service:


Name: S/Sgt. Shawn CLARKSON

Phone: 905 688 4111 ext 5370

Fax/Email: 1298@nrps.on.ca

### THIS PROTOCOL HAS BEEN AGREED TO

**DATED AT** St. Catharines, this 27<sup>th</sup> day of October, 2013

 Chief of Police

Niagara Regional Police Service  
(name)  
(68 Church Street, St Catharines)

**DATED AT** Fort Erie, this 10<sup>th</sup> day of October, 2013



Municipality- Fort Erie  
Carolyn Kett-Town Clerk  
1 Municipal Centre Drive  
Fort Erie, ON L2A 2S6

# APPENDIX I

## POLICE NOTIFICATION OF ILLICIT MARIHUANA GROW OPERATION

Please be advised that the **Niagara Regional Police Service** has investigated and dismantled an Illicit Marihuana Grow Operation at the following location.

Date	Time	NRP Incident Number #
<b>Contact Information</b>		
<b>Contact Person</b>	<b>Niagara Regional Police Service</b>	<b>Address / Phone and Fax Number / Email Address</b>
<b>Municipality</b>	<b>Officer In Charge of Case &amp; Badge Number</b>	<b>Address/Phone</b>
<b>SITE Details</b>		
<b>Lot No. / Street</b>	<b>Town/City</b>	<b>Postal Code</b>
<b>Urban</b>	<b>Rural</b>	<b>Industrial</b>
<b>PLEASE PROVIDE THE FOLLOWING ADDITIONAL INFORMATION IF AVAILABLE:</b>		
<b>Registered Owner</b>	<b>Mortgagee</b>	<b>Length of Ownership/ Own/Lease/Rent</b>
<b>Realtor/Property Management</b>	<b>Insurer</b>	<b>Name on Rental / Lease Agreement</b>
<b>Comments / Hazards Identified*</b>		
<b>Hazard</b>	<b>Location</b>	<b>Comments</b>
<b>Structural Alteration/Damage</b>		
<b>Chemicals or fuels</b>		
<b>Mould/Water Damage</b>		
<b>Electrical Wiring/Fire Damage</b>		
<b>Other</b>		

**\*Disclaimer:** Police Services are not experts at identifying all hazards. This list is not exhaustive and hazards not identified here may exist.

# APPENDIX II



# NOTICE

**Niagara Regional Police Incident #:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**These Premises at (Location /address)** \_\_\_\_\_

were investigated by the Niagara Regional Police Service and found to contain an illegal Marihuana Grow Operation. As a result, the Premises may contain numerous hazards and may not be fit for occupancy. The Regional Municipality of Niagara – City or Town \_\_\_\_\_ has been notified.

# Niagara Regional Police Service – Marihuana Grow Operation Protocol

## Notification Process

March 26<sup>th</sup>, 2012

