

Please see comments below (in Red)

THE CORPORATION OF THE
T O W N O F P E L H A M
BY-LAW NO. (2019)

Being a by-law to regulate certain matters related to cannabis production facilities.

WHEREAS, Section 128 of the *Municipal Act, R.S.O. 2001, .c25* provides that a local municipality may prohibit and regulate with respect to public nuisances including matters that in the opinion of Council are, or could become, or cause public nuisances;

WHEREAS, without proper regulation, the activities regulated by this By-law, especially in the absence of sufficient regulation and enforcement by another level of government, could become or cause public nuisances;

AND WHEREAS the Council of the Town of Pelham has deemed it to be in the public interest that such a by-law be enacted;

NOW THEREFORE, THE COUNCIL OF THE CORPORATION OF THE TOWN OF PELHAM ENACTS AS FOLLOWS:

Interpretation

1. In this By-law:

a) "Cannabis" shall have the same meaning as cannabis as defined in the *Cannabis Act* (Canada).

b) "Cannabis Production Facility" means an indoor facility on which cannabis, cannabis seed or cannabis oil is grown, processed, extracted, packaged or otherwise made ready for sale, tested, destroyed, stored and/ or shipped, but shall not mean any property on which cannabis is grown exclusively for legal use solely (typo solely) by the registered owner of the Property.

c) "Cannabis Products" means any product for which cannabis is one of the principal ingredients, including cannabis derivatives.

d) "Cannabis Related Activity" means growing, processing, extracting, packaging or otherwise making ready for sale, testing, destroying, storing, shipping, permitting consumption or sale of cannabis or cannabis products.

e) "Council" means the Council of the Municipality.

f) "Enforcement Officer" means Municipal By-law Enforcement Officers appointed by Council from time to time to enforce this by-law.

g) "Glare" means light emitting from a luminaire with intensity great enough to reduce a viewer's ability to see, or to produce a sensation of discomfort.

h) "Light Trespass" means the shining of light by a luminaire beyond the boundaries of a property on which it is located.

i) "Luminaire" means a complete lighting system including a lamp or lamps enclosed in a housing complete with reflectors or refractors.

j) "Municipality" means The Corporation of the Town of Pelham.

k) "Obnoxious Odour" means an odour of cannabis or an odour from a cannabis production facility emanating from a premise that is persistent or continuous and is likely to interfere with the ordinary enjoyment of other property in the vicinity of the premises.

Comment: I would suggest refraining from using the word "obnoxious" as this is a subjective descriptor (personal characterization term). Many facilities discharge "pleasant" odours such as fragrance manufacturers and yet cause off-property issues. Perhaps "Cannabis Odour" would be more appropriate or simply odour.

l) "Process" means the operation whereby harvested cannabis is transformed by the application of manual, mechanical or chemical methods into another form, but does not include the application or use of a dangerous substance or method.

m) "Sensitive Use" means a school, day care, playground, sporting venue or any other place which has as its primary purpose of being a place where persons under the age of 18 years comprise the majority of persons present or intended to be present, a residential use, a place of worship, or a community center.

Comment: This definition is different than the odour bylaw and excludes some uses that perhaps should be incorporated such as campgrounds, hotels/motels. Provided below is a Ministry of the Environment, Conservation and Parks (MECP) definition of Sensitive Receptor. Perhaps the Town could incorporate these uses in their definition.

"Sensitive Receptor" means any location where routine or normal activities occurring at reasonably expected times would experience adverse effect(s) from odour discharges from the Facility to the atmosphere, including one or a combination of:

(a) private residences or public facilities where people sleep (eg: single and multi-unit dwellings, nursing homes, hospitals, trailer parks, camping grounds, etc.);

(b) institutional facilities (eg: schools, churches, community centres, day care centres, recreational centres, etc.);

(c) outdoor public recreational areas (eg: trailer parks, playgrounds, picnic areas, etc.); and

(d) other outdoor public areas where there are continuous human activities (eg: commercial plazas and office buildings).

n) "Zone" means an area delineated on a zoning map schedule and established and designated by the Comprehensive Zoning By-law 1136(1987), or any amendment or subsequent comprehensive Zoning By-law duly enacted, for a specific use or group of uses.

Prohibitions

2. No person shall:

- a) operate a cannabis production facility except in accordance with the provisions of this By-Law;
- b) operate a cannabis production facility where cannabis is grown outdoors; and
- c) process cannabis using substances dangerous or noxious to the public.

Comment: How does the town define "noxious"? My definition of noxious may be quite different from another persons.

How does the Town define a "Dangerous Substance"? Almost every substance (including water) is dangerous if the concentration and dosage is sufficiently high.

Industrial facilities in Ontario are permitted to use dangerous substances however, their emissions cannot exceed provincial limits and guidelines.

Suggested wording:

- c) process cannabis using substances that exceed the Ministry of Environment, Conservation and Parks (MECP) air contaminant benchmark limits, and**
- d) operate a cannabis production facility where the off-property odour and light impact cannot be reduced to a level of trivial impact at sensitive receptors.**

Licenses

3. The owner, occupier and/ or operator of a cannabis production facility shall produce for inspection any license or other form of authorization which permits the cannabis related activity on the premises.

Cannabis Production Facilities

4. A cannabis production facility shall:

- a) operate in accordance with its license from Health Canada, and any other requirements of the Province of Ontario and any other competent authority;
- b) operate indoors;
- c) prior to commencing operation, obtain site plan approval and enter into a Site Plan Control Agreement pursuant to Section 41 of the *Planning Act*, R.S.O. 1990, c.P.13;
- d) operate only in a Zone designated for such use
- e) in any building or part of building where cannabis is **grown**, produced, packaged, labelled, stored, sampled and/or tested, use a system which filters air to prevent the escape of obnoxious odours;

Comments:

- i. Include the word grown (see above).**
- ii. The word obnoxious should be avoided since it is a subjective descriptor. The Federal legislation simply uses the word odour.**
- iii. Short of enclosing these Cannabis Production Facilities in large bubbles and controlling the odour to 100% efficiency, is it not technically possible to**

prevent the escape of odours. The goal should be to control the odour down to a level of trivial impact (i.e. no adverse effect) at sensitive receptors.

- f) all security and parking lot lighting shall be shielded, directed downward and shall not spill onto adjacent properties or create light trespass or glare so as to cause a nuisance to adjacent properties;
- g) cannabis production facilities in greenhouse structures that require interior lighting for the growing of cannabis shall employ a light control plan and light blocking systems to prevent the skyglow at night so as to not cause a nuisance to the public generally;

Comment: Is nuisance defined? Perhaps use “adverse effect” since it is defined in the Environmental Protection Act of Ontario.

- h) be limited to the production, processing and packaging of cannabis on behalf of the holder of the license for the premises on which the cannabis production facility is located.

Severability

5. If a Court of competent jurisdiction should declare any section or part of a section of this By-law to be invalid, such section shall not be construed as having persuaded influenced Council to pass the remainder of the By-law and it is hereby declared that the remainder of the By-law shall be remain in force.

Penalty

6. The following penalties would apply to any contravention of this By-law:

- a) any contravention of a provision of this By-law is designated as a continuing offence, pursuant to Section 429 (2)(a) of the *Municipal Act 2001, R.S.O. 2001, c.25*;
- b) any person, firm or corporation who contravenes any provision of this By-law is guilty of an offence and upon conviction, is liable to a fine, including the fines set out in this By-law and such other penalties as provided for in the *Provincial Offences Act, R.S.O, 1990 c.P.33*, and the *Municipal Act 2001, R.S.O. 2001. c.25*;
- c) every person who contravenes any provision of this By-law is guilty of an offence and on conviction, is liable to a fine not exceeding \$5,000 per day that the offence continues;
- d) despite paragraph (c) above, every corporation who contravenes any provision of this By-law is guilty of an offence and on conviction, liable to a fine not exceeding \$10,000 per day that the offence continues

Continuing Offence

7. Each calendar day a violation of Section 2 continues is deemed to be a separate offence.

Enforcement

8. In addition to any other penalty or remedy available to the Municipality, the Council may apply to the Superior Court of Justice for an order requiring all or part of a cannabis production facility to be closed for a period not exceeding two (2) years if it be proved on a balance of probabilities that:

- a) activities or circumstances on or in the premises of a cannabis production facility constitute a public nuisance or cause or contribute to activities or circumstances constituting a public nuisance in the vicinity of the premises;

Comment: consider using “adverse effect” unless nuisance is clearly defined.

- b) the public nuisance has a detrimental impact on the use and enjoyment of a sensitive land use in the vicinity of the cannabis production facility;
- c) the owner or occupants of the cannabis production facility or part of the facility knew or ought to have known that the activities or circumstances constituting the public nuisance were taking place or existed and did not take adequate steps to eliminate the public nuisance; or
- d) a conviction for a contravention of this By-law by a court of competent jurisdiction of a public nuisance in respect to the cannabis production facility has been entered, and the conviction is not currently under appeal.

Powers of Entry

9. Pursuant to Section 436 of the *Municipal Act 2001, R.S.O. 2001, c.25* and in addition to any other powers of entry granted to the Municipality, the Municipality, by its employees or agents, may enter on the premises of a cannabis production facility at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- a) this By-law or any other by-law passed by the municipality;
- b) any direction or order of the Municipality made under the *Municipal Act 2001, R.S.O. 2001, c.25*, or this By-law;
- c) a condition of a license issued by the Municipality; or
- d) an order to discontinue or remedy a contravention of this By-law for which a conviction has been entered by a court of competent jurisdiction.

Powers of Inspection

10. The Municipality may do any of the following for the purpose of an inspection under Section 9:

- a) require the production for inspection of documents or things relevant to the enforcement of this By-law
- b) inspect and remove documents or things relevant to the enforcement of this By-law for the purpose of making copies or extracts;
- c) require information from any person concerning the matter relevant to the enforcement of this By-law; and
- d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, sample or photographs necessary for the purposes of the inspection; and

Comment: Where testing is warranted, consider requiring the Operator to hire and pay for an independent third party (odour practitioner) who would report simultaneously to the Town and the Operator.

- e) no person shall interfere, obstruct or hinder with an Enforcement Officer lawfully conducting an inspection under this By-law.

Effect

11. This By-law shall take effect and be in force upon enactment.

ENACTED, SIGNED AND SEALED THIS
____ DAY OF _____, 2019 A.D.

MAYOR MARVIN JUNKIN

CLERK NANCY J. BOZZATO