

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 excessive and obnoxious odours.

Comment: the word obnoxious is a subjective descriptor of an odour. Consider using “Cannabis Odour” or simply “Odour”

WHEREAS, Section 129(1) of the *Municipal Act 2001, R.S.O. 2001, c.25* provides that a local municipality may prohibit and regulate with respect to odours;;

AND WHEREAS Section 429 of the *Municipal Act 2001, R.S.O. 2001, c.25* provides a municipality with the authority to impose fines for offences of a by-law of the municipality passed under the *Municipal Act 2001, R.S.O. 2001, c.25*;

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 PELHAM ENACTS AS FOLLOWS:

Interpretation

1. In this By-law:

a) "Council" means the Municipal Council of the Municipality.

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

c) "Excessive and Obnoxious Odour" means an odour that;

(i) is 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 and

Comment: Why does the odour have to be persistent or continuous? An adverse impact can result from short term emissions. Consider deleting this wording.

(i) is 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 and

(ii) is of such strength that the odour creates a nuisance.

Comment: Is nuisance defined? Consider adopting “adverse effect” as defined in the Ontario EPA.

d) "Industrial Area" means those areas of the municipality designated as industrial in Pelham Zoning By-law No. 1136(1987)

e) "Municipality" means The Corporation of the Town of Pelham.
Prohibitions

2. No person shall conduct or permit any activity that causes an excessive and obnoxious odour.

Comment: see above regarding obnoxious.

Non Application of By-law

3. Section 2 of this by-law does not apply to an odour created by any one of the following activities:

a) A normal farm practice as determined pursuant to the *Farming and Food Production Protection Act, 1998 S.O. Chap. 1*.

b) An activity carried on in compliance with an order of the Normal Farm Practices Protection Board.

c) An activity that is an essential part of an industrial process that is established on an industrial lot.

Comment: I am unsure why the Town would have this exclusion.

e) An activity carried on in compliance with a certificate of approval or permit issued pursuant to *the Environmental Protection Act, R.S.O. 1990, c.E19*.

Comment: Certificate of Approvals are now called Environmental Compliance Approvals (ECAs) or Environmental Approval and Sector Registry (EASRs).

Comment: I am unsure why the Town would have this exclusion. Complying with one's provincial approval does not guard against odour emissions.

f) An activity carried on by the municipality or any other level of government.

g) An activity carried on in compliance with an approved nutrient management plan pursuant to *the Nutrient Management Act, 2002, S.O. 2002 c.*

Grant of Exemption by Council

4. a) Application to Council:

Notwithstanding anything contained in this By-law, any person may make application to Council to be granted an exemption from any of the provisions of this By-law with respect to any source of odour for which the person might be prosecuted and Council, by resolution, may grant or refuse to grant the exemption applied for and any exemption granted shall specify the time period, during which the exemption is effective and may contain such terms and conditions as Council deems appropriate.

b) Adjournment:

Council may adjourn consideration of the matter for any reason Council deems appropriate, provided that the reason for adjournment is stated and recorded in the minutes.

c) Decision:

In deciding whether to grant the exemption, Council shall give the applicant and any person

opposed to the application, an opportunity to be heard and may consider such other matters as Council deems appropriate.

d) Breach:

A breach of any of the terms or conditions of any exemption granted by Council shall render the exemption null and void.

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 or 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 property or 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 property or facility constitute a public nuisance or cause or contribute to activities or circumstances constituting a public nuisance in the vicinity of the premises;

b) the public nuisance has a detrimental impact on the use and enjoyment of a sensitive land use in the vicinity of the property or facility;

c) the owner or occupants of the property or 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 property or 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 property or 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