

Committee Report  
Tuesday, September 10, 2019

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## **Subject:** Information Report on Proposed Cannabis Regulations

### **Recommendation:**

**THAT Committee Receive Report 2019-0061 for information it pertains to the proposed Cannabis Regulations; and recommend:**

**THAT Committee direct Planning staff to prepare the Recommendation Report regarding the Proposed Cannabis Regulations.**

### **Background:**

On October 15, 2018, Council approved By-law 4046(2018) prohibiting the use of land, buildings or structures for Cannabis purposes for a period of one year in order to allow the Town to review policies and regulations relating to Cannabis uses.

Since that time, Town planning staff have been conducting research on best practices and receiving feedback from the Cannabis Control Committee in an effort to prepare draft policies and regulations that will fairly address land use impacts in the Town of Pelham.

Work by Town staff (Planning, By-law Enforcement and Clerk's Departments) has resulted in a number of proposed policy changes, amended and new regulations which are intended to work together to protect residents from negative impacts associated with Cannabis production in the Town.

The proposed policy changes, amended and new regulations include:

- A draft Official Plan Amendment
- A draft Zoning By-law Amendment
- A draft amended Fence By-law
- A draft Fortification By-law

- A draft Cannabis Nuisance By-law
- A draft Odour By-law

Council has also previously made changes to the Site Plan Control By-law and at the time of writing this report is anticipated to make changes to the Development Charges By-law so that Cannabis production facilities would be subject to development charges fees.

## **Analysis:**

### ***Policy Review & Proposed Changes***

#### ***Planning Act***

Sections 17 and 34 of the *Planning Act* provide the process for consideration of Official Plan and Zoning By-law amendments.

Section 38 of the *Planning Act*, R.S.O. 1990 provides Council with the ability to adopt an Interim Control By-law for a one-year period in order to undertake a review of land use planning policies within the municipality. An Interim Control By-law can be extended for an additional year.

The *Planning Act*, R.S.O. 1990 provides that decisions of Council in respect to planning matters shall be consistent with provincial policy statements that are in effect as of the date of Council's decision and shall conform with provincial plans that are in effect.

#### ***Provincial Policy Statement, 2014***

The Provincial Policy Statement, 2014 (PPS) provides guidance for managing and directing land use to achieve efficient and resilient development and land use patterns.

Policy 2.3.3.2 states that all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards in prime agricultural areas. Agricultural uses are defined in the Provincial Policy Statement as "the growing of crops, including nursery, biomass and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures, including, but not limited to livestock facilities, manure storages, value-retaining facilities, and accommodation for full-time farm labour when the size and nature of the operation requires additional employment."

The definition of agricultural uses in the Provincial Policy Statement includes the growing of crops and includes horticultural crops. Based on this definition, Cannabis

cultivation is an agricultural use. Agricultural uses are supported and promoted in the prime agricultural area.

### ***Greenbelt Plan, 2017***

The Greenbelt Plan, 2017 applies to lands designated Specialty Agricultural in the Town's Official Plan. These areas are designated Protected Countryside and Niagara Peninsula Tender Fruit and Grape Area in the Greenbelt Plan.

Policy 3.1.2.1 indicates that all types, sizes and intensities of agricultural uses shall be promoted and protected and a full range of agricultural uses, agriculture-related uses and on-farm diversified uses are permitted based on Provincial Guidelines. Where agricultural uses and non-agricultural uses interface, land use compatibility shall be achieved by avoiding or, where avoidance is not possible, minimizing and mitigating adverse impacts on the Agricultural System, based on provincial guidance. Where mitigation is required, measures should be incorporated as part of the non-agricultural uses, as appropriate, within the area being developed (3.1.2.5).

### ***Niagara Escarpment Plan, 2017***

The Niagara Escarpment Plan, 2017 (NEP) applies to lands designated Niagara Escarpment Plan Area in the Town of Pelham Official Plan, 2014. Policies of the NEP apply to these lands. Areas within the Town of Pelham are designated Escarpment Rural Area, Escarpment Protection Area and Escarpment Natural Area.

The NEP permits agricultural uses in the Escarpment Rural Area and Escarpment Protection Area (1.5.3.1 & 1.4.3.1) but limits the permission to only existing agricultural uses in the Escarpment Natural Area (1.3.3.1).

Part 1.1.1 of the NEP allows municipalities to set standards and policies that are more stringent than the requirements of the NEP unless doing so would conflict with the NEP. Zoning By-laws do not apply to the NEP area.

### ***Growth Plan for the Greater Golden Horseshoe, 2019***

The Growth Plan for the Greater Golden Horseshoe, 2019 (GPGGH) applies to lands within the Town's urban areas of Fenwick and Fonthill (Settlement Areas) and the Good General Agricultural Area in the Town's Official Plan (Prime Agricultural Area).

The definition of agricultural uses in the GPGGH is consistent with the definition in the Provincial Policy Statement and therefore, the cultivation of Cannabis is considered an agricultural use.

Policy 4.2.6.3 indicates that where agricultural use and non-agricultural uses interface outside of settlement areas, land use compatibility will be achieved by avoiding or where not possible, minimizing and mitigating adverse impacts on the

Agricultural System. Where mitigation is required, measures should be incorporated as part of the non-agricultural uses, as appropriate, within the area being developed. Where appropriate, this should be based on an agricultural impact assessment.

### ***Regional Official Plan, consolidated August 2015***

The Regional Official Plan (ROP) applies to all lands within the Town of Pelham. According to the ROP, agricultural uses means the growing of crops, including nursery and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry, maple syrup production; and associated on-farm buildings and structures, including accommodation for fulltime farm labour when the size and nature of the operation requires additional employment. Agricultural uses include value retention uses required to make a commodity saleable (i.e. Corn dryer, washing, sorting, packing, and packaging). According to this definition, Cannabis production is considered an agricultural use.

The predominant use of land in unique and good general agricultural areas is for agriculture of all types, including livestock operations as well as associated value retention uses (Policy 5.B.6).

The Region has also indicated that growing, processing and distribution of Cannabis may also be considered an industrial use and permitted on employment lands. Industrial lands within the Town of Pelham are designated Rural Employment as no municipal services are available. Detailed land uses shall be identified in the local official plan and are to be compatible with adjacent agricultural uses, planned agricultural uses and not negatively impact normal farm operations (Policy 3.B.2.3).

### ***Town of Pelham Official Plan (2014) & Draft Official Plan Amendment***

The existing Town of Pelham Official Plan supports greenhouses in the Good General Agricultural and Specialty Agricultural designation and does not differentiate between greenhouses for Cannabis production and other growing. Outdoor Cannabis production is also considered an agricultural use and not treated differently than other field crops.

The draft Official Plan Amendment proposes to allow Cannabis production within a greenhouse in the Good General Agricultural, Specialty Agricultural, Industrial and the Niagara Escarpment Plan Area subject to new policy requirements for:

- Installing and operating odour and light mitigation systems;
- Preparing odour and light control, maintenance and monitoring plans;
- Maintaining appropriate setbacks from sensitive receptors as detailed in the Zoning By-law;
- Preparing a waste management plan.

Existing Official Plan policies (B2.1.3.12 & B2.2.8) require a Zoning By-law amendment for greenhouses and hoopouses in the Good General and Specialty Agricultural areas when:

- The lot area of the parcel is less than 3 hectares;or
- The lot coverage of the greenhouse or hoopouse is greater than 30%; or
- A retail component is proposed as an accessory use;or
- Greater than 10,000 litres of water per day will be required.

The draft Official Plan amendment proposes that Cannabis production within a greenhouse will also be required to obtain approval of a Zoning By-law amendment in the same instances.

Existing Official Plan policies (B2.1.3.12 & B2.2.8) require that any greenhouse or hoopouse will be subject to Site Plan Control to ensure lighting, traffic, landscaping and other planning and design matters can be addressed prior to issuance of a building permit. The draft Official Plan amendment proposes that Cannabis production within a greenhouses would also be subject to this requirement.

The draft Official Plan amendment proposes that outdoor Cannabis production will only be permitted with approval of a Zoning By-law amendment in the Good General Agricultural, Specialty Agricultural and Industrial designations. The draft Official Plan amendment proposes that outdoor Cannabis production will not be permitted in the Niagara Escarpment Plan Area.

### ***Zoning By-law 1136 (1987), as amended & Draft Zoning By-law Amendment***

According to Zoning By-law 1136 (1987), as amended, Cannabis production is considered an agricultural use and the existing regulations for greenhouses in Section 7.3 apply to Cannabis production within a greenhouse.

Consistent with the draft Official Plan amendment, the draft Zoning By-law amendment proposes to prohibit outdoor storage, growing and production of Cannabis. Cannabis production in greenhouses and structures would be permitted in the Agricultural (A) and Light Industrial (M1) zones subject to meeting specific regulations.

A number of the proposed regulations are consistent with the policies currently included in the Official Plan for greenhouses, including the minimum lot area, maximum lot coverage, prohibition of a retail store as an accessory use and limit of 10,000 litres of water per day.

The draft zoning by-law amendment proposes additional regulations for greenhouses and structures for Cannabis production including:

- a minimum setback to a sensitive land use of the greater of 150 metres or the distance recommended by an odour impact analysis;
- a minimum planting strip of 3.0 metres where abutting a sensitive land use;
- a maximum parking area coverage of 25 percent;
- a minimum separation distance between Cannabis production greenhouse operations of 500 metres;
- a parking requirement of 1 space per employee on the largest shift.

Sensitive land uses would include a grade school, secondary school, day care, playground, sporting venue, residential use, place of worship or community centre.

Cannabis production is proposed to include commercial cultivation of marihuana or marijuana, and associated processing, testing, destruction, packaging and/or shipping.

### ***Additional Regulations:***

#### ***Draft Amended Fence By-law***

The draft amendments to the Fence By-law prohibit barbed and razor wire fencing where abutting residential properties except where required by provincial or federal regulations. Further, the draft amendment prohibits electrified fences except for containment of livestock and where required by provincial or federal regulations and requires warning signs at specified intervals.

Some additional housekeeping items have been included to update definitions (ie. exterior side to corner side) and ensure the by-law is consistent with approved urban design guidelines.

#### ***Draft Fortification of Lands By-law***

The draft Fortification By-law intends to prohibit excessive protection of land and buildings in an effort to address the safety of emergency personnel, occupants of buildings and nearby properties. Examples of excessive fortification include, electric fencing, bullet-proof glass, armored doors and masonry over windows and doorways.

#### ***Draft Cannabis Nuisance By-law***

On April 15, 2019, Council directed staff to prepare an amendment to the Town's nuisance by-law or a standalone Cannabis by-law which would authorize the Town to issue fines to licensed Cannabis producers relating to odour and light.

The draft Cannabis nuisance by-law would allow the Town to issue fines and take legal action against existing and future Cannabis producers who produce obnoxious odours and light trespass which impacts neighbouring properties.

### ***Draft Odour By-law***

The draft odour by-law will permit the Town to generally deal with excessive and obnoxious odours in the Town and take legal action when required.

### ***Site Plan Control***

In addition to the new draft policies and regulations detailed in this report, Council amended the Town's Site Plan Control By-law No. 1118 (1987) on May 21, 2019 to require site plan control for greenhouses. Site Plan Control requires property owners to enter into a legal agreement with the Town which controls details on how a property develops and allows the Town to hold financial security to ensure that development takes place as outlined in the agreement. Any future greenhouses or structures for Cannabis production are subject to site plan control.

### **Financial Considerations:**

The Town of Pelham received a total of \$13,838.00 from the provincial government through the Ontario Cannabis Legalization Implementation Fund to help with the implementation costs of recreational Cannabis legalization.

Financial impacts associated with the proposed Cannabis regulations are anticipated relating to indirect costs of staff time for enforcement of the proposed regulations, as well as the direct costs for training, odour monitoring equipment and annual calibration. It is anticipated that the initial costs will be covered by the amount received through the Ontario Cannabis Legalization Implementation Fund.

Any necessary legal costs relating to enforcement of the regulations would be in addition.

Future applications for new or expanded Cannabis production operations would require planning approvals (Site Plan and/or Zoning By-law Amendment). Staff time for processing these applications is partially funded through application fees collected from applicants.

### **Alternatives Reviewed:**

Town staff have reviewed regulations in a number of other municipalities and jurisdictions to inform potential regulations for the Town. A number of revisions to the draft policies and regulations have taken place as a result of feedback received from the Cannabis Control Committee and external legal counsel. Further revisions may occur after consideration of feedback received on the draft policies and regulations prior to final versions being presented to Committee for recommendation.

## **Strategic Plan Relationship: Build Strong Communities and Cultural Assets**

The Strategic Plan includes addressing Cannabis requirements and regulations as an action for 2019. The proposed amendments to the Town Official Plan, Zoning By-law and Fence By-law, along with the new Cannabis Nuisance By-law and Fortification By-law and the changes already made to the Site Plan Control By-law (and anticipated to be made to the Development Charges By-law) all work together to achieving Council's Strategic Plan goal of addressing Cannabis requirements and regulations in 2019.

### **Other Pertinent Reports/Attachments:**

Appendix A Draft Official Plan Amendment

Appendix B Draft Zoning By-law Amendment

Appendix C Draft Amended Fence By-law

Appendix D Draft Fortification By-law

Appendix E Draft Cannabis Nuisance By-law

Appendix F Draft Odour By-law

### **Consultation:**

Town staff have solicited input from the Cannabis Control Committee on a weekly basis for a number of months and attempted to incorporate comments and concerns into the draft policies and regulations presented where appropriate. Town staff recognize that some of the comments and concerns raised by the Cannabis Control Committee members are not reflected in the draft policies and regulations. Staff is making no recommendations at this time. The draft policies and regulations are for comment at this time and will likely be revised following public, Cannabis Control Committee, Council and agency input as well as additional research.

Notice of the public meeting was published in the Voice of Pelham on August 21, 2019, posted to the Town's website and social media as well as circulated to commenting agencies and Town departments. The public meeting is being held in order to receive input from the public and other interested parties.

No comments have been received as of the date of writing of this report.

### **Legal Consultation, If Applicable:**

The proposed policy and regulation changes have been forwarded to external legal counsel for review.



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