

Committee of the Whole Meeting Agenda

SCOW-05/2019 - Public Meeting - Proposed Cannabis Regulations - 5:30 p.m.

Tuesday, September 10, 2019

Meridian Community Centre - Accursi A and B

100 Meridian Way

Fonthill, ON

L0S 1E6

If you require any accommodations for a disability in order to attend and participate in meetings or events, please contact the Office of the Clerk at 905-892-2607 ext. 315 or 320.

Pages

- 1. Call to Order and Declaration of Quorum**
- 2. Adoption of Agenda**
- 3. Disclosure of Pecuniary Interest and General Nature Thereof**
- 4. Opening Remarks - Mayor Junkin**
- 5. Planning Act Remarks - B. Wiens, Director of Community Planning and Development**
- 6. Department Reports**
 - 6.1 Community Planning and Development**
 - 6.1.1 Information Report Proposed Cannabis Regulations, 2019-0061-Planning**

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Staff Report and Proposed By-laws

7. Public Input

Pelham Council values public feedback. Members of the public shall address Council in accordance with decorum and respect as outlined in the Procedural By-law, as follows:

- Form a single line at the public microphone;
- Address Council one speaker at a time, for a maximum of three (3) minutes;
- Identify oneself to the Council (state your name);
- Present information in a clear, concise, respectful and temperate manner;
- Provide a copy of all written materials or presentations to the Clerk;
- Speakers shall not speak disrespectfully of any person, including Council or Staff;
- Speakers shall not use offensive language or make comments that constitute harassment or inappropriate behaviour;
- The Chair has the responsibility to expel a speaker from the meeting for non-compliance, and may call a recess or adjourn the meeting in the case of grave disorder;
- Attendees shall maintain order by not applauding, heckling or engaging in behaviour that would be disruptive or disrespectful to other attendees, the Council, or Staff.

7.1 Correspondence received from the public

76 - 104

1. Violet Konkle
2. Dr. Jim Jeffs
3. Josephine Pignataro
4. Phil Girard

8. Committee Input

9. Adjournment

Committee Report
Tuesday, September 10, 2019

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.

Prepared and Recommended by:

Shannon Larocque, MCIP, RPP
Senior Planner, Community Planning and Development Department

Barbara Wiens, MCIP, RPP
Director of Community Planning and Development Department

Approved and Submitted by:

David Cribbs, Chief Administrative Officer

AMENDMENT NO. XX
TO THE
OFFICIAL PLAN (2014)
FOR THE
CORPORATION OF THE TOWN OF PELHAM

DRAFT

CONTENTS

PART “A” – THE PREAMBLE

- Section 1 Title and Components
- Section 2 Purpose of the Amendment
- Section 3 Location of the Amendment
- Section 4 Basis of the Amendment
- Section 5 Implementation of the Amendment

PART “B” – THE AMENDMENT

- Introductory Statement
- Details of the Amendment

PART “A” – THE PREAMBE

SECTION 1

TITLE AND COMPONENTS

This document was approved in accordance with Section 17 and 21 of the Planning Act, R.S.O. 1990, as amended and shall be known as Amendment No. XX to the Official Plan adopted by By-law No. 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014, for the Town of Pelham Planning Area.

Part “A”, the Preamble does not constitute part of this amendment.

Part “B”, the Amendment, consisting of the following text constitutes Amendment No. XX to the Official Plan adopted by By-law 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014 for the Town of Pelham Planning Area.

SECTION 2

PURPOSE OF THIS AMENDMENT

The purpose of this Amendment is to amend Sections B2.1.3.12, B2.2.8, B2.3.4 and B3.1.1 of the Town of Pelham Official Plan to implement recommendations on cannabis production in the Town with the goal of promoting land use compatibility.

SECTION 3

LOCATION OF THE AMENDMENT

The lands that are subject to this Amendment are all lands within the Town of Pelham.

SECTION 4

BASIS OF THE AMENDMENT

The Planning Act, R.S.O. 1990, as amended, provides that amendments may be made to the Official Plan. Policies of the Official Plan have been considered in the preparation of this Amendment and the following factors:

1. The policies will ensure compatibility with the surrounding land uses.
2. This Amendment is consistent with the Provincial Policy Statement and conforms to the Growth Plan for the Greater Golden Horseshoe and the Region of Niagara Official Plan.

SECTION 5 IMPLEMENTATION AND INTERPRETATION

The relevant policies of the Official Plan adopted by By-law No. 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014, of the Town of Pelham Planning Area shall apply to the implementation and interpretation of this Amendment.

DRAFT

PART “B” – THE AMENDMENT

1. The Official Plan adopted by By-law No. 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014, for the Pelham Planning Area is hereby amended by adding the following to Section B2.1.2.:

l) Outdoor storage, growing and production of cannabis subject to a Zoning By-law amendment.

2. The Official Plan adopted by By-law No. 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014, for the Pelham Planning Area is hereby amended by adding the following to Section B2.1.3.12:

In addition to these requirements, greenhouses for cannabis production will be required to ensure compatibility with neighbouring land uses through:

- a) Installation and operation of odour and light mitigation systems;
- b) Odour and light control, maintenance and monitoring plans;
- c) Maintaining appropriate setbacks from sensitive receptors as detailed in the Zoning By-law;
- d) A waste management plan.

3. The Official Plan adopted by By-law No. 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014, for the Pelham Planning Area is hereby amended by adding the following to Section B2.2.2:

k) Outdoor storage, growing and production of cannabis subject to a Zoning By-law amendment.

4. The Official Plan adopted by By-law No. 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014, for the Pelham Planning Area is hereby amended by adding the following to Section B2.2.8:

In addition to these requirements, greenhouses for cannabis production will be required to ensure compatibility with neighbouring land uses through:

- a) Installation and operation of odour and light mitigation systems;
- b) Odour and light control, maintenance and monitoring plans;

- c) Maintaining appropriate setbacks from sensitive receptors as detailed in the Zoning By-law;
 - d) A waste management plan.
5. The Official Plan adopted by By-law No. 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014, for the Pelham Planning Area is hereby amended by adding the following to Section B2.3.2:
- k) Outdoor storage, growing and production of cannabis subject to a Zoning By-law amendment.
6. The Official Plan adopted by By-law No. 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014, for the Pelham Planning Area is hereby amended by adding the following to Section B2.3.4(h):

In addition to these requirements, greenhouses for cannabis production will be required to ensure compatibility with neighbouring land uses through installation and operation of odour and light mitigation systems; odour and light control, maintenance and monitoring plans; maintaining appropriate setbacks from sensitive receptors as detailed in the Zoning By-law; and a waste management plan.

7. The Official Plan adopted by By-law No. 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014, for the Pelham Planning Area is hereby amended by adding the following to Section B3.1:

Outdoor storage, growing and production of cannabis is not supported within the Niagara Escarpment Plan Area. Cannabis production within a greenhouse or structure is supported subject to the requirements of policies B2.1.3.12 and B2.2.8.

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 amend Zoning By-law 1136 (1987), as amended,
with respect to Cannabis Production in the Town of Pelham**

Town of Pelham

File No. AM-07-19

WHEREAS, Section 34 of the Planning Act. RSO 1990, as amended provides that the governing body of a municipal corporation may pass by-laws to regulate the use of lands and the character, location and use of buildings and structures;

WHEREAS, the Council of the Town of Pelham considers it to desirable to amend Zoning By-law 1136 (1987) to implement the policies of Official Plan Amendment No. XX with respect to cannabis production in the Town of Pelham;

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

1. **THAT** By-law 1136 (1987), as amended, is hereby amended by the addition of Section 6.18(a) (xxiv) to Section 6.18(a) Prohibited Uses as follows:

(xxiv) outdoor storage, growing and production of cannabis.

2. **THAT** By-law 1136 (1987), as amended, is hereby amended by the addition of Section 7.1(i) to Section 7.1 as follows:

(i) Cannabis production within a Greenhouse or Structure;

3. **THAT** By-law 1136 (1987), as amended, is hereby amended by the addition of Section 7.8 as follows:

7.8 REQUIREMENTS FOR CANNABIS PRODUCTION

The regulations of Section 7.3 shall apply to greenhouses and **structures** used for cannabis production. In addition, greenhouses and structures used for cannabis production shall be subject to the following regulations:

- (a) Minimum Setback to a Sensitive Land Use

the greater of 150
metres or the
distance
recommended by an
odour impact
analysis

- | | |
|---|---|
| (b) Minimum Planting Strip | 3.0 metres where abutting a sensitive land use. |
| (c) Maximum Parking Area Coverage | 25 percent |
| (d) Minimum Separation Distance Between Cannabis Production Greenhouse Operations | 500 meters |

4. **THAT** By-law 1136 (1987), as amended, is hereby amended by inserting the following alphabetically to Section 22.1(a):

“cannabis production within a Greenhouse or Structure”

5. **THAT** By-law 1136 (1987), as amended, is hereby amended by replacing Section 7.3 (b) with the following:

- | | |
|----------------------|------------------------|
| (b) Minimum Lot Area | 3 hectares (7.4 acres) |
|----------------------|------------------------|

6. **THAT** By-law 1136 (1987), as amended, is hereby amended by replacing Section 7.3 (c) with the following:

- | | |
|--|------------|
| (i) Greenhouse only | 30 percent |
| (ii) Greenhouse in conjunction with use permitted in 7.1 | 40 percent |

7. **THAT** By-law 1136 (1987), as amended, is hereby amended by inserting the following in Section 7.3:

- (h) A retail store is not permitted as an accessory use to a greenhouse.
- (i) Greenhouses requiring more than 10,000 litres of water per day are not permitted.

8. **THAT** By-law 1136 (1987), as amended, is hereby amended by inserting the following in Section 22:

22.3 REGULATIONS FOR CANNABIS PRODUCTION

The regulations of Section 22.2 shall apply to greenhouses and structures used for cannabis production. In addition, greenhouses and structures for cannabis production shall be subject to the following regulations:

- | | |
|--|---|
| (a) Minimum Setback to a Sensitive Land Use | the greater of 150 metres or the distance recommended by an odour impact analysis |
| (b) Minimum Planting Strip abutting a sensitive land use | 3.0 metres where |

- (c) Maximum Parking Area Coverage 25 percent
- (d) Minimum Separation Distance Between Cannabis Production Greenhouse Operations 500 meters

9. **THAT** By-law 1136 (1987), as amended, is hereby amended by adding the following to Section 6.16(a) Parking Requirements:

Greenhouses and Structures for Cannabis Production 1 parking space per employee on the largest shift

10. **THAT** By-law 1136 (1987), as amended, is hereby amended by deleting the definition of “Agricultural Use” from Section 5.5 and replacing it with the following:

“Agricultural Use” means a use of land, building or structure for the purpose of animal husbandry, bee-keeping, dairying, fallow, field crops, forestry, fruit farming, horticulture, market gardening, pasturage, nursery, poultry-keeping, greenhouses, or any other farming use and includes the growing, raising, packing, treating, storing or sale of farm products produced on the farm and other similar uses customarily carried on in the field of general agriculture and which are not obnoxious, but does not include cannabis production.

11. **THAT** By-law 1136 (1987), as amended, is hereby amended by adding and alphabetically inserting new definitions into Section 5 as follows:

“Cannabis Production” means lands, buildings or structures used for the commercial cultivation of marihuana (or alternative names including marijuana) and/or the processing, testing, destruction, packaging and/or shipping of marihuana.

“Sensitive Land Use” means a grade school, secondary school, day care, playground, sporting venue, residential use, place of worship or a community centre.

12. **THAT** this Bylaw shall come into effect and force from and after the date of passing thereof, pursuant to Section 34(21) and 34(30) of the Planning Act, RSO 1990, as amended.

ENACTED, SIGNED AND SEALED THIS

XXth DAY OF XXXXXXXXXX, 2019 A.D.

MAYOR MARVIN JUNKIN

DRAFT

THE CORPORATION OF THE
T O W N O F P E L H A M
BY-LAW NO. 0000(2019)

Being a by-law to repeal and replace By-law 1034(1985) being a by-law to prescribe the height and description of lawful fences.

WHEREAS Section 11 of the *Municipal Act*, 2001, S.O. 2001, c.25 provides that a lower-tier municipality may pass by-laws respecting structures, including fences;

AND WHEREAS, The Town of Pelham is a lower-tier municipality; within the upper-tier Regional Municipality of Niagara;

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

1. DEFINITIONS

- (a) **"Enforcement Officer"** shall mean the By-law Enforcement Officer appointed by the Council of the Corporation of the Town of Pelham for the purpose of the enforcement of Town by-laws; or any Police Officer as defined by the *Police Service Act*, R.S.O. 1990 c.p. 15 as amended.
- (b) **"Grade Level of Roadway"** shall mean the grade level of the centre of the travelled portion of any roadway;
- (c) **"Highway"** shall mean and include a common and public highway, street, avenue, parkway, driveway, square or place designed and intended for or used by the general public for the passage of vehicles, but shall not include an alley;
- (d) **"Intersection"** shall mean the area embraced within the prolongation or connection of the lateral boundary lines of the roadway of two or more highways which join one another at an angle, whether or not one highway crosses the other;
- (e) **"Front Yard"** shall mean a yard extending across the full width of any lot or parcel between the front lot line and the nearest wall of any building or structure on the lot or parcel;
- (f) **"Lawful Fence"** shall mean any fence, wall (other than a wall of a building), hedge or gate which separates or divides any parcel of land or part thereof from any other parcel of land or part thereof, immediately adjacent thereto, which is erected and maintained in accordance with the provisions of this by-law;
- (g) **"Electrical Fence"** shall mean a fence equipped with a

device for transmitting an electric current thereon or there through. It shall not include an underground electrical fence system used for the containment of domestic pets in which the pet wears a receiving collar to deter it from crossing the electrical boundary.

- (h) **"Hedge"** shall mean a row of three or more shrubs or bushes, but shall not include trees having a calibre dimension of 5.0 cm (2") or more;
- (i) **"Rear Yard"** shall mean a yard extending the full width of any lot or parcel from the rear lot line to the wall of any building or structure nearest to the front lot line;
- (j) **"Corner Lot"** shall mean a lot or parcel which is situated at the intersection of and abutting upon two or more streets or parts of the same street provided that the angle contained by two of such lots' or parcels' adjacent lot lines that abut the street or streets is not more than 135 degrees. It does not include a property abutting a Laneway.
- (k) **"Interior Lot"** shall mean a lot or parcel other than a corner lot;
- (l) **"Through Lot"** shall mean an interior lot that abuts more than one street;
- (m) **"Lot Line"** shall mean any boundary of a lot or parcel;
- (n) **"Front Lot Line"** shall mean, in the case of an interior lot, the line dividing the lot or parcel from the street; where the lot or parcel is a corner lot, the shorter lot line abutting a street shall be deemed to be the front lot line and the longer lot line abutting a street shall be deemed to be an exterior side lot line, provided that, where a corner lot has the same dimensions on the two streets upon which it abuts, the lot line abutting the street upon which the building or structure erected or to be erected has its principle entrance shall be deemed to be the front lot line; where the lot or parcel is a through lot, the lot line where the principal access to the lot or parcel is provided shall be deemed to be the front lot line;
- (o) **"Rear Lot Line"** shall mean the lot line farthest from and opposite to the front lot line;
- (p) **"Side Yard" Lot Line** shall mean the lot line other than a front lot line, rear lot line or Corner Side Yard Lot Line.
- (q) **"Corner Side Yard" Lot Line** Shall mean the side lot line that normally abuts a street and is other than a Front Lot Line. Rear Lot line, or Side Yard Lot Line on a Corner Lot.

2. Fences – Deemed to Comply

Notwithstanding the provisions of this by-law, any fence that is in existence prior to the date of the enactment of this by-law and in compliance with other applicable regulations including other Town of Pelham By-laws, shall be deemed to comply with this by-law and may be maintained with the same material, height and dimensions as previously existed including any repair work that may be done to such fence.

3. No person shall erect or cause to be erected or maintained or cause to be maintained any fence within the Town of Pelham unless such fence is a lawful fence.
4. No fence shall be maintained or caused to be maintained in a damaged or disrepair state of condition by reason of fire, decay or otherwise and all fences shall be constructed or caused to be constructed in a sound manner and shall be straight and true.
5. No fence of a greater height than 0.5 m (1.8 ft.) above the grade level of any adjacent roadway shall be erected or caused to be erected or maintained or caused to be maintained within 9.1 m (30'-0") of any roadway intersection.
6. No fence of a greater height than 1.22 m (4'-0") above the adjoining ground level shall be erected or caused to be erected or maintained or caused to be maintained in any front yard, provided, however, that the portion of any such fence erected or maintained along the side or rear lot line of the rear yard of any adjoining property may be of a height not greater than 1.82 m (6'-0"). Where a fence is erected on a terrace in a front yard, the height of such fence shall be calculated as the combined height of the fence and the terrace above the adjoining ground level.
7. No fence of a greater height than 1.82 m (6'-0") above the adjoining ground level shall be erected or caused to be erected or maintained or caused to be maintained in any rear yard, provided, however, that the portion of any such fence erected or maintained along the side lot line of the front yard of any adjoining lot shall not be of a greater height than 1.22 m (4'-0") and it should be primarily open which permit, at best, partially unobstructed views rather than solid structures or walls unless such fence is erected or maintained in the rear yard of a corner lot along the side lot line of the front yard of an adjoining property in which case the fence may be erected or maintained to a height not greater than 1.82 m (6'-0").

8. CORNER LOTS

Notwithstanding the provisions of any other section of this by-law, the following criteria shall apply to all corner lot fencing;

- 8.1 Where Corner Side Yard fencing occurs, the fence should

meet the side of the house at a minimum distance of 1.5m (5.0 ft.) – 2.0m (6.6 ft.) from the rear corner of the unit, and may extend up to $\frac{1}{4}$ (one quarter) of the length of the house or to a change of plane (ie. bump-out, bay window, etc.);

- 8.2 fencing around front and/or Corner Side Yards should not block the view of the sidewalk from the house; Its height shall be limited to 1.2m (4.0 ft.) starting at the point $\frac{1}{4}$ (one quarter) of the length of the house measured from the rear corner of the unit, or from the change in plane (ie. bump-out, bay window, etc.) and it should be primarily open which permit, at best, partially unobstructed views rather than solid structures or walls;
- 8.3 No fence of a greater height than 0.5 m (1'-8") above the grade level of any adjacent roadway shall be erected or caused to be erected or maintained or caused to be maintained within 9.1 m (30'-0") of any roadway intersection.
- 8.4 Fencing will be designed to incorporate a gate on the portion of the fence that returns from the Corner Side Yard lot line to the side wall; and,
- 8.5 The exact location and design of Corner Lot Fencing will be determined as described in a subdivision agreement if such description exists.
9. A fence may be erected or caused to be erected or maintained or caused to be maintained to a height no greater than 2.43m (8.0 ft) in any rear or side yard where a rear or side lot line abuts a commercial or industrial zoned property, provided however, that the portion of such fence erected or maintained along the side lot line of the front yard of any adjoining lot shall not be of a greater height than 1.22m (4.0 ft).
10. A fence not exceeding 2.44m (8.0 ft.) in height above the adjoining ground level shall be permitted around the perimeter of any parcel of land used for Commercial, Agricultural or Industrial purposes wherever such parcel does not abut a residential use. Where such parcel does abut a residential use, Section 8 of this By-law shall apply.

11. BARBED WIRE & RAZOR WIRE

No fence composed wholly or partly of barbed wire, razor wire or other barbed material, shall be erected or caused to be erected or maintained or caused to be maintained, within the Town of Pelham; however, barbed wire or other barbed material may be permitted along the top of any fence of a greater height than 2.14 m (7'-0") enclosing land used for commercial or industrial purposes,

wherever such land does not abut land used for residential purposes, and the manner of affixing such barbed wire or other barbed material is approved by the Enforcement Officer. This section shall not apply to barbed wire fences erected in agricultural areas for the purpose of confining livestock or on properties where provincial or federal regulations apply.

12. ELECTRIFIED FENCES

Electrified fences are prohibited within the Town of Pelham except when used in the following situations:

- a) For the containment of livestock on Agricultural Zoned properties. Such fencing is to be clearly marked with warning signs indicating the fence is electrified. Signs are to be spaced a maximum 30.5m (100 ft.) apart and are subject to approval from the By-law Enforcement Officer.
- b) For properties where Provincial or Federal Regulations apply Electrified Fences are to be clearly marked with warning signs indicating the fence is electrified. Signs are to be spaced a maximum 30.5m (100 ft.) apart and are subject to approval from the By-law Officer. Should Provincial or Federal regulations mandate signage requirements for electrified fences, the strictest regulation shall apply.
- c) In all circumstances it is an offence for an Electrified Fence to produce an electrical charge or field greater than 120 volts at .04 amps.

13. INSPECTIONS

13.1 Officer-enter on land; an Officer, and anyone under the Officer's direction, may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether this by-law is being complied with.

13.2 Inspection- documentation for the purposes of an inspection, the Officer may:

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

13.3 Inspection- receipt; A receipt shall be provided for any document or thing removed during an inspection and the document or thing shall be promptly returned after the copies or extracts are made.

14. All fences erected along a highway or any part thereof shall be maintained and kept in a proper state of repair and condition in accordance with the provisions of this by-law.

15. Schedule "A" attached hereto shall form part of this by-law.

16. EXEMPTIONS

The provisions of this by-law shall not apply to any fence or other barrier wholly or partially enclosing lands owned and in use by the Corporation of the Town of Pelham or any Boards, Commissions or companies providing telephone, electric, water or gas service to the inhabitants of the Town of Pelham. It shall also not apply to a fence that complies with a municipal permit or with a site plan agreement, subdivision agreement or other development agreement to which the Town is a party.

17. ORDERS

17.1 Order to Discontinue Activity If an Officer is satisfied that this by-law has been contravened, the Officer may make an order, known as an Order to Discontinue Activity, requiring the person who contravened the by-law, or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to discontinue the contravention.

17.2 Order to Discontinue Activity - particulars an Order to Discontinue Activity shall set out:

- (a) the municipal address of the property on which the contravention occurred;
- (b) the date of the contravention;
- (c) the reasonable particulars of the contravention of the by-law;
- (d) the date by which there must be compliance with the order; and
- (e) the date on which the order expires.

17.3 Order to Discontinue Activity - service The Order to Discontinue Activity may be served personally on the person to whom it is directed or by regular mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed. Service on a corporation can be effected by registered mail to the corporate mailing address.

17.4 Work Order – contravention of by-law If an Officer is satisfied that a contravention of the by-law has occurred, the Officer may

make an order, known as a Work Order, requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do the work to correct the contravention.

17.5 Work Order – Contents; The Work Order shall set out:

- (a) the municipal address or the legal description of the land;
- (b) reasonable particulars of the contravention and of the work to be done;
- (c) a deadline, being a specific date, for compliance with the Work Order; and
- (d) a notice that if the work is not done in compliance with the Work Order by the deadline, the municipality may have the work done at the expense of the owner and the cost of the work may be recovered by adding the amount to the owner's tax roll.

17.6 Work Order – Service

The Work Order may be served personally on the person to whom it is directed or by regular mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed. Service on a corporation can be effected by registered mail to the corporate mailing address.

17.7 Work Order – Unable to effect service

If the Town is unable to affect service on the owner under section 17.6, it shall place a placard containing the terms of the Work Order in a conspicuous place on the land and may enter on the land for this purpose. The placing of the placard shall be deemed to be sufficient service of the Work Order.

18. REMEDIAL ACTION

18.1 Remedial Action – Every person who has, erects, constructs, maintains, or permits to be erected, constructed or maintained any fence that does not comply with the provisions of this by-law shall forthwith take any necessary action to ensure that the fence complies with the provisions of this By-law.

18.2 Remedial Action – Work done by Town

In default of the work required by this By-law or by a Work Order not being done by the person directed or required to do it, the Town in addition to all other remedies it may have, may do the work or cause the work to be done at the person's expense and may enter upon land, at any reasonable time, for this purpose.

18.3 Remedial Action – Recover costs

The Town may recover the costs incurred by it in doing the work or causing it to be done from the person directed or required to do it by action or by adding the costs to the tax roll

and collecting them in the same manner as property taxes. Costs include interest calculated at a rate of fifteen (15) per cent, calculated for the period commencing on the day the Town incurs the costs and ending on the day the costs, including interest, are paid in full.

18.4 Remedial Action – Lien

The amount of the costs, including interest, constitutes a lien on the land upon the registration in the proper Land Registry Office of a notice of lien. The lien is in respect of all costs that are payable at the time the notice is registered plus interest accrued at fifteen (15) per cent to the date payment is made. Upon receiving payment of all costs payable plus interest accrued to the date of payment, the Town shall register a discharge of the lien in the proper Land Registry Office.

19. ENFORCEMENT

19.1 Fine

Enforcement if this by-law is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the By-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make 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.

20. SEVERABILITY

It is hereby declared that each and every of the foregoing provision of this by-law is severable and that, if any provision of this by-law should for any reason be declared invalid by any Court, it is the intention and desire of this Council that each and every of the then remaining provisions hereof shall remain in full force and effect.

21. PENALTY

Every person who contravenes any of the provisions of this by-law is guilty of an offence and upon conviction is liable to a penalty as prescribed by the *Provincial Offences Act*, R.S.O. 1990 c. P. 33 as amended.

22. BY-LAWS REPEALED

By-law No. 1034(1995), 1958(1997), 2192(2000), 2597(2004), 2712(2005), 2809(2006), 2843(2007), 3033(2009), 4028(2018), and 3214(2011) are hereby repealed.

23. SHORT TITLE

This by-law shall be known as the “Fence By-law”

24. EFFECTIVE DATE

That this by-law shall become effective on the date of third reading as set out below.

READ A FIRST, SECOND AND THIRD TIME

AND FINALLY PASSED BY COUNCIL THIS

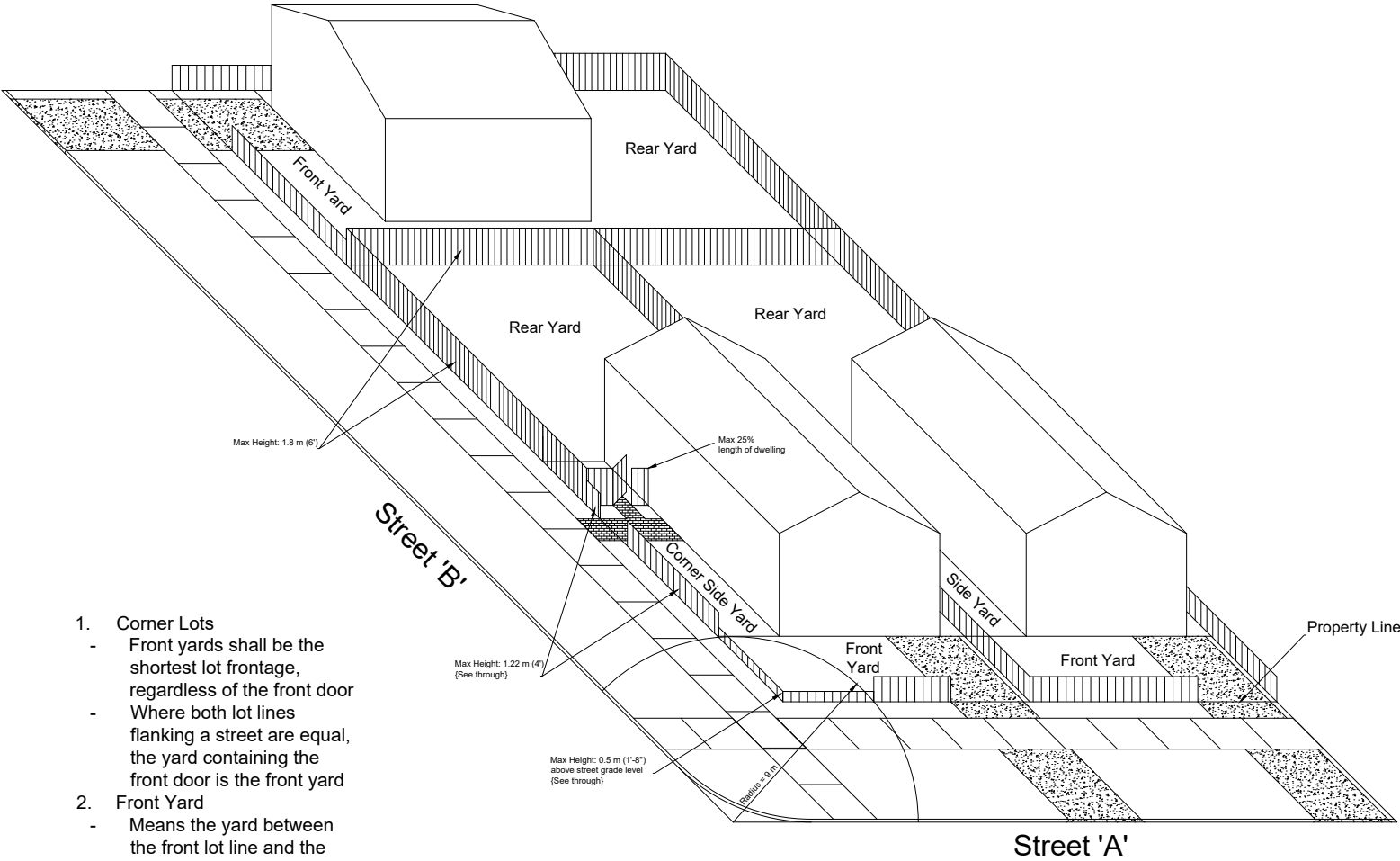
_____ DAY OF _____, 2019

Mayor

Town Clerk

Schedule 'A'

By-law _____ (2019)



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

**Being a by-law to regulate the fortification of
and protective elements applied to land**

WHEREAS Council deems it appropriate to enact a by-law to regulate the fortification of land and protective elements applied to land and to prohibit excessive fortification of land and excessive protective elements being applied to land in relation to the use of land within the Town of Pelham pursuant to Section 133 of the *Municipal Act, 2001*, S.O. 2001, Chapter 25, as amended;

AND WHEREAS Part XIV of the *Municipal Act, 2001*, S.O. 2001, Chapter 25, as amended, including Sections 425, 429, 435 through 440 and 444 through 446, provides for enforcement of by-laws including provisions for the creation of offences and fines for contravention, inspections, powers of entry, work orders to bring properties into compliance, orders to discontinue contravening activities, warrants regarding inspection or search of properties, the carrying out of matters or things required under by-law and the collection of costs of such work;

AND WHEREAS Council deems it appropriate for the health and safety of the inhabitants of the Town of Pelham to enact a by-law providing for the regulation of fortification of land and protective elements being applied to land and to prohibit the excessive fortification of land and excessive protective elements being applied to land in relation to the use of land within the Town of Pelham;

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

DEFINITIONS

1. In this By-Law unless contrary intention appears:
 - (a) “Apply” or “Application” means the erection, installation, extension or material alteration or repair of or application of land and includes to construct;
 - (b) “Chief Building Official” means the officer appointed by Council as the Chief Building Official pursuant to the *Building Code Act, 1992*, S.O. 1992, Chapter 23, as amended, and includes a Building Inspector.
 - (c) “Construction” or “Construct” includes doing anything in the erection,

installation, extension, or material alteration or repair of a building or structure;

- (d) “Corporation” means The Corporation of the Town of Pelham;
- (e) “Council” means the Council of the Corporation;
- (f) “Emergency Personal” includes any individual employed by a police service, fire service (including volunteer firefighters) and ambulance service in Ontario who is acting in accordance with the obligations imposed upon them (whether by statutory or common law duty) by their position and includes any person who is directed by any emergency services personnel to do or refrain from doing anything and to act on those directions;
- (g) “Excessive Fortification” and “Excessively Fortified” means fortification that is excessive and includes but is not limited to:
 - i. protection plaques or plates made of metal or any other material installed inside or outside a building;
 - ii. an observation tower, whether integrated or not, to a building;
 - iii. laminated glass or any other type of glass or material that is bullet-proof or difficult to break in the event of a fire, installed in windows or doors, including protection shutters;
 - iv. armored or specially reinforced doors designed to resist the impact of firearms, battering rams, explosives or vehicle contact;
 - v. grills or bars made of metal or any other material installed on doors, windows and other openings that limit the rapid exit from a building or structure in an emergency situation, except for those installed at the basement or cellar level;
 - vi. masonry, including brick and concrete block over windows or doorways;
 - vii. secondary walls or other obstructions in front of landings, doors or windows;
 - viii. concrete, metal or other material installed as pillars or barriers designed to prohibit, restrict, obstruct or impede access to any land through conventional means or modes of transportation;
 - ix. any fence or gate constructed, installed, or maintained or reinforced with metal or similar materials in excess of 3 millimeters in thickness; and
 - x. landscaping, including but not limited to berms and aggregate walls.

- (h) “Excessive Protective Elements” means protective elements that are excessive and includes but is not limited to:
- i. perimeter warning devices such as “laser eyes” or other types of advanced warning systems be it electronic or otherwise designed to forewarn of the entry onto the perimeter of land from adjoining lands or roadways but excluding similar applications to forewarn of entry into a structure located on land;
 - ii. electrified fencing or any similar barrier including hidden traps, electrified doors, or windows, land mines or other explosive devices or any weapon or thing that may become a weapon when triggered or activated on entry to land whether designed to, or by application in such manner is, likely to cause death or serious injury; and
 - iii. visual surveillance equipment, including video cameras, night vision systems, or electronic surveillance devices capable of permitting either stationary or scanned viewing or listening, beyond the perimeter of the land.
- (i) “Fire Chief” means the chief of the fire department appointed by Council pursuant to the *Fire Protection and Prevention Act*, 1997, S.O. 1997 Chapter 4, as amended, or his or her designate;
- (j) “Fortification” includes the installation, application, or maintenance of devices, barriers, or materials in a manner designed to restrict, obstruct or impede, or having the effect of, restricting, obstructing or impeding, access to or from land, and “fortify” has a corresponding meaning;
- (k) “Land” means land including buildings, mobile homes, mobile buildings, mobile structures, outbuildings, fences, erections, physical barriers and any other structure on the land or on or in any structure on the land;
- (l) “Law Enforcement Officer” includes:
- i. a Police Officer as defined in the *Police Services Act*, R.S.O. 1990 Chapter P 15, as amended;
 - ii. a Municipal Law Enforcement Officer appointed pursuant to the *Police Services Act*, R.S.O. 1990 Chapter P 15, as amended;
 - iii. the Chief Building Official, or designates;
 - iv. an Inspector appointed pursuant to the *Building Code Act*, 1992, as amended;
 - v. a Fire Inspector, the Fire Marshal, an assistant to the Fire Marshal, or the Fire Chief appointed under the *Fire Protection and Prevention Act*, 1997, S.O. 1997, Chapter 4, as amended;
 - vi. an Officer appointed pursuant to section 15.1 of the *Building Code Act*, 1992, as amended;

- vii. a “member” as defined in subsection 2(1) of the *Royal Canadian Mounted Police Act*, R.S.C. 1985, Chapter R-10.
- (m) “Maintain” means to allow the continued existence of a device, barrier, structure, or material whether or not repairs are undertaken, and “maintenance” has a corresponding meaning;
- (n) “Person” means a natural person, a corporation, partnership or association and their heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law; and
- (o) “Protective Elements” includes any object, material component or any contrivance designed for surveillance or to restrict, obstruct, or impede, or having the effect of surveillance or restricting, obstructing, or impeding, access to and exit from land.

PROHIBITED MATTERS

2. No person shall:

- (a) Excessively fortify any Land so as to restrict, obstruct or impede municipal and law enforcement officials and/or emergency personnel from accessing or exiting any Land; or
- (b) Apply excessive protective elements to Land or maintain excessive protective elements applied to Land so as to restrict, obstruct or impede municipal and law enforcement officials and/or emergency personnel from accessing or exiting any Land.
- (c) Fail to perform remedial work as required by this by-law or by an order

EXEMPTIONS

3. Section 2 of this by-law does not apply to:

- (a) financial institutions as identified and listed in Schedule I, II, and III of the *Bank Act S.C. 1991, Chapter.46*, as amended, that is zoned for such use or otherwise lawfully permitted;
- (b) detention centres operated by or on behalf of the Government of Canada or Ontario, zoned for such use, or otherwise lawfully permitted;

- (c) lands owned or occupied by the Ontario Provincial Police or the Niagara Regional Police Service in accordance with the Ontario Police Service Act;
- (d) lands, wherever situated, owned or occupied by the Federal or Provincial Government or their agents, or a property that is licensed Federally or Provincially and is required by provincial or federal law or provincial or federal license to fortify its' Land;
- (e) lands owned or occupied by the Royal Canadian Mounted Police;
- (f) lands owned and occupied by the Town or the Regionally Municipality of Niagara;
- (g) Electrified fencing used by agricultural operations which have livestock for the purpose of controlling movement of the livestock;
- (h) Electrified fencing used for the purpose of controlling the movement of residential household pets;
- (i) the use or application of commercially marketed security devices designed and applied to provide reasonable protection from theft or other criminal activity against a Person or property of a Person;
- (j) the reasonable use of Protective Elements such as a "laser eye" or other advance warning devices on windows or doors of a dwelling for the purpose of providing a warning to an occupant of the dwelling or of dispatching emergency services personal where an entry into a dwelling has occurred;
- (k) warning or protective devices to detect smoke, carbon dioxide gas, carbon monoxide gas and fire required by the Building Code or Fire Code, or installed in premises to give early notice or response to smoke, gas or fire conditions, or to alert Emergency Services Personnel of such condition; and
- (l) the securing of openings in vacant buildings, or the closing of fire or other accidental structural damage to buildings as required by an order issued under either the *Fire Protection and Prevention Act*, 1997, S.O. 1997 Chapter 4, as amended, or the *Building Code Act*, 1992, S.O. 1992, Chapter 23, as amended.

APPLICATION FOR PARTIAL OR COMPLETE EXEMPTION

4. Any person wishing to make application for partial or complete exemption from the provisions of this by-law shall file with the Chief Building Official the following:
 - (a) a completed application as set out in Schedule "A" to this By-law for partial or complete exemption from any provision(s) of this by-law that is signed and in writing and directed to the Chief Building Official;
 - (b) complete details of the location of the land, including municipal address, legal description, the existing use and nature (residential, commercial, farm), and a scaled drawing showing the Land and the structures on the property;
 - (c) a detailed explanation of the exemption(s) requested and the rationale

for requesting such an exemption(s). This should include details of the proposed fortification or application of protective elements being considered along with an explanation of how that fortification or application of protective elements is rationally connected to the purpose for which the exemption is being sought; and

- (d) a non-refundable application processing fee as set out in by-law 3728(2016), as amended (the Fees By-law).

5. All applications will be reviewed by the Chief Building Official who may require the provision of any additional information at the expense of the applicant, including, but not limited to:

- (a) Proof of ownership of the Land or proof of authorization by the owner of the Land;
- (b) any further or other documents considered by the Chief Building Official to be necessary or relevant to the investigation of the application, from the applicant or other parties;
- (c) information or input from any department of local, Provincial or Federal Government considered necessary and/or relevant to the investigation of the application, and
- (d) information or input from local Police, Fire, and Ambulance Services, or any other department that may have an interest, issue, or concern with the application.

GROUND'S FOR EXEMPTION

6. Upon review of documentation and information obtained, and based upon the input from parties consulted, the Chief Building Official may issue a complete or partial exemption from the provisions of this by-law if:

- (a) the applicant is a person;
- (b) there is, in the opinion of the Chief Building Official, a bona fide reason, need and rationale for the exemption;
- (c) there is, in the opinion of the Chief Building Official, a reasonable connection between the reason, need and rationale for the exemption and the nature and extent of the specific exemption requested;
- (d) in the opinion of the Chief Building Official, the nature and extent of the exemption request does not exceed that which is reasonable necessary; and
- (e) the ability to access the land by emergency services personnel and law enforcement officers is not unreasonably interfered with or limited considering the need and rationale provided for in the exemption.

7. Upon completion of the investigation and review of the application for

exemption the Chief Building Official shall issue a written decision that:

- (a) approved the application;
 - (b) approved the application in part, with restrictions, conditions or modifications as deemed appropriate by the Chief Building Official;
or
 - (c) denies the application.
8. A true copy of any decision issued under Section 7 shall be forwarded by the Chief Building Official to the attention of the appropriate Emergency Services Personnel.
9. The Chief Building Official may revoke a permit issued under this by-law:
- (a) if it was issued on mistaken, false or incorrect information;
 - (b) if it was issued in error;
 - (c) if the applicant is found to have contravened the by-law or is not in compliance with the permit issued;
 - (d) if the holder requests in writing that it be revoked, or
 - (e) if the explanation provided in the application for partial/complete exemption is found to be no longer applicable.

APPEAL FOR REFUSAL EXEMPTION OR CONDITIONS ADDED

10. Where the Chief Building Official refuses to grant an exemption applied for under Section 4, or adds conditions to the exemption granted, the applicant may either appeal the refusal or appeal the conditions added by the Chief Building Official and have a hearing held as an appeal under this section.
11. The request for an appeal under Section 10 above, shall be filed with the Town's Building Department within fifteen (15) days of the applicant being notified of the decision of the Chief Building Official under Section 7, shall include the grounds for the appeal, as set out in by-law 3728(2016), as amended (the Fees By-law).
12. Where there has been a request for an appeal filed in compliance with the requirements of this section, the shall cause notice of the appeal hearing to

be sent to the parties, being the applicant and the representative of the Building Department of the Town, and such notice shall be either delivered personally, sent by electronic transmission or by a facsimile transmission, or sent by regular or registered mail to the applicant at the address provided, and service by electronic or facsimile means shall be deemed received on the day after it was sent, or if a holiday the next day which is not a holiday, and if sent by mail shall be deemed to have taken place five (5) days after the date of mailing, which such dates of service on the applicant to be at least fifteen (15) days prior to the date of the scheduled hearing.

13. Council shall conduct the appeal hearing.
14. Council at the appeal hearing shall consider whether the applicant meets all of the requirements of this By-law and whether the applicant should be granted the exemption or modification in accordance with the provisions of this By-law on the basis provided for an exemption herein particularly Section 6, with or without additional conditions including any time limit, and make a decision at the conclusion of the appeal whether to allow the appeal and grant an exemption or to modify or remove the conditions added to the exemption by the Chief Building Official, or whether to impose additional conditions, or whether to deny the application for exemption or modification, and may impose such terms and conditions to such decision in accordance with the provisions of this by-law as Council in their sole discretion considers proper in the circumstances.
15. If no appeal is filed under this by-law within the time limits imposed by Section 11, the decision of the Chief Building Official is final and binding on the applicant, or where the appeal is decided by Council at a hearing under Sections 13 and 14 the decision of Council is final and binding upon the applicant, and there is no further appeal from such decision.

POWER OF ENTRY

16. A Law Enforcement Officer may, at any reasonable time, enter and inspect any land to determine whether this by-law, or an order under this by-law, is being complied with.
17. No person shall exercise a power of entry under this by-law to enter a place, or a part of a place, that is being used as a dwelling unless:
- (a) the occupier of the dwelling consents to entry, having first been informed of his or her right to refuse consent; or
 - (b) if the occupier refuses to consent, a warrant issued pursuant to Section 158 of the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended, is obtained.

REMEDIAL WORK

17. An owner of Land shall, at the owner's expense, perform remedial work in respect of the Land so that the Land is in conformity with this by-law even though the Fortification or Protective Elements were present on the Land before this by-law came in effect

ORDERS, FAILURE TO COMPLY AND COST RECOVERY

18. Where a Law Enforcement Officer is satisfied that a contravention of this by-law has occurred, the officer may make an order requiring work to be done to correct the contravention and the order shall set out:
- (a) the name of the owner and/or occupier of the land;
 - (b) the municipal address or the legal description of the land;
 - (c) reasonable particulars of the contravention and the work to be done and the period within which there must be compliance with the order; and
 - (d) a notice stating that if the work is not done in compliance with the order within the period it specifies, the work done may be at the expense of the owner.
19. If the work required by an order is not completed within the specified period,

a Law Enforcement Officer may, at any reasonable time, enter upon the land or may make arrangements for municipal employees or a contractor or agent retained for that purpose, to enter upon the land to do the work and the cost of such work shall be recoverable from the owner by the Town in like manner as municipal taxes, and such costs shall include an interest at an annual rate of 15 per cent.

20. The period described in Section 18 (c) shall not be less than ninety (90) days from the date of the issuance of the order if the excessive fortification or excessive protective elements were present on the land on the day this by-law is passed.
21. The amount of the Town's costs incurred plus interest to the date payment is made in full, constitutes a lien upon the land, upon the registration of a notice of lien upon the land.
22. Any and all damage to municipal property will be billed at full cost recovery in accordance with the by-law 3728(2016), as amended (the Fees By-law).

PENALTY AND ENFORCEMENT

23. Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to the penalties specified in accordance with the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended.
24. Subject to Section 25 any person who contravenes a provision of this by-law, or an officer or director of a corporation who knowingly concurs in such a contravention by the corporation, is guilty of an offence and upon conviction is liable to a fine or penalty as follows:
 - (a) for a first offence, a maximum of \$10,000.00; or
 - (b) a second offence, a maximum of \$25,000.00; and
 - (c) for a third or subsequent offence, a maximum of \$100,000.00.

25. Any person who contravenes any order made under this by-law, or an officer or director of a corporation who knowingly concurs in such a contravention by the corporation, is guilty of a continuing offence and upon conviction is liable to a daily fine or penalty of a maximum of \$10,000 for each day or part of a day that the offence continues, and the total of all the daily fines imposed for an offence is not limited by the maximums listed in Section 24.
26. The Chief Building Official shall be responsible for the administration and enforcement of this by-law and persons who are employed or appointed as Law Enforcement Officers are all deemed appointed and entitled to enforce the provisions of this By-law.

PARAGRAPHS

27. Paragraph titles are for guidance in locating paragraphs only and are not to be relied on for interpretation of the By-Law.

TITLE

28. The short title of this By-Law is the "Fortification of Land By-Law".

SEVERABILITY

29. If any section or sections of this by-law or parts thereof be found by any court to be illegal or beyond the power of Council to enact, such section or sections or parts thereof shall be deemed to be severable and all other sections or parts of this By-Law shall be deemed to be separate and independent therefrom and continue in full force and effect unless and until similarly found and this By-Law shall be enacted as such.

REPEALS

30. This by-law supersedes any corresponding by-laws of the Corporation which, through inadvertence, might not have been repealed.

COMMENCEMENT

31. This By-law shall be effective as of the date it is passed by Council.

READ, ENACTED, SIGNED AND SEALED THIS 23rd DAY OF September, 2019

Mayor, Marvin Junkin

Nancy J. Bozzato, Town Clerk

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 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.
- 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.
- 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.

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 produced, packaged, labelled, stored, sampled and/or tested,

- use a system which filters air to prevent the escape of obnoxious odours;
- 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;
 - 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;

- 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
 - 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

DRAFT

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.

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

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.
- 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*.
- 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
 - 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.

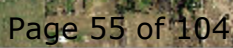
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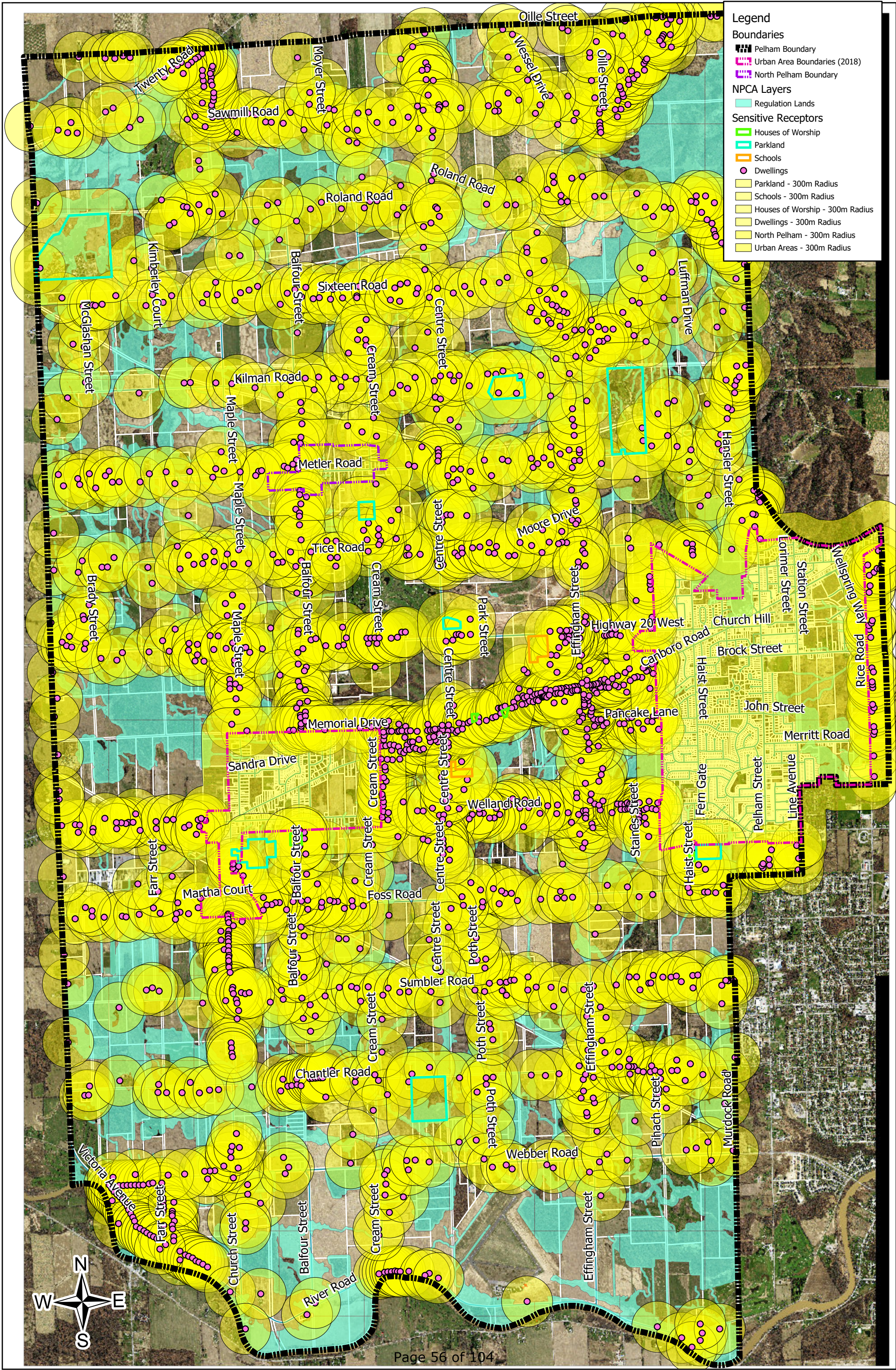
_____ DAY OF _____, 2019 A.D.

MAYOR MARVIN JUNKIN

CLERK NANCY J. BOZZATO









Vibrant • Creative • Caring

Public Meeting for Proposed Cannabis Regulations

Official Plan Amendment Application OP-AM-01-19
Zoning Amendment Application AM-07-19
September 10, 2019



20 Pelham Town Square P.O. Box 400 • Fonthill, ON L0S 1E0 p: 905.892.2607 f: 905.892.5055

pelham.ca
Page 57 of 104

Background

- Interim Control By-law 4046 (2018) approved by Council on October 15, 2018 for a period of one year.
- Prohibits the use of land, buildings or structures for cannabis purposes while the Town reviews it's policies and regulations.
- Since that time, Town staff have been conducting research on best practices, attending regular Cannabis Control Committee meetings in an effort to prepare draft regulations for public review and comment.



Proposed Cannabis Regulations

- draft Official Plan Amendment
- draft Zoning By-law Amendment
- draft amended Fence By-law
- draft Fortification By-law
- draft Cannabis Nuisance By-law
- draft Odour By-law



Draft Official Plan Amendment

Existing Policies	Proposed Policies
Outdoor & Indoor Cannabis Production permitted in the Good General Agricultural, Specialty Agricultural and Niagara Escarpment Plan Area.	Outdoor Cannabis Production requires approval of a Zoning By-law amendment and is prohibited in the Niagara Escarpment Plan Area. Indoor Cannabis Production permitted in the Good General Agricultural, Specialty Agricultural, Industrial and Niagara Escarpment Plan Area.
Greenhouses with: <ul style="list-style-type: none">• Lot are less than 3 hectares;• Lot coverage greater than 30%;• Retail component (accessory);• >10,000 L/water/day require approval of a Zoning By-law amendment.	No change. This would apply to greenhouses for cannabis production.



Draft Official Plan Amendment

Existing Policies	Proposed Policies
Greenhouses and Hoophouses require Site Plan Control addressing lighting, traffic, landscaping and other planning and design matters.	<p>No change. In addition, Greenhouses and Hoophouses for cannabis production would also require:</p> <ul style="list-style-type: none">• Installation and operation of odour and light mitigation systems;• Preparation of odour and light control, maintenance and monitoring plans;• Maintaining appropriate setbacks from sensitive receptors as detailed in the Zoning By-law;• Preparation of a Waste Management Plan.



Draft Official Plan Amendment

Existing Policies	Proposed Policies
<p>Complete Application Requirements – <i>Planning Act</i> applications require at the time of application submission information to rationalize the proposal including:</p> <ul style="list-style-type: none">• Traffic impact studies• Servicing and stormwater reports• Tree preservation plans• Hydrogeological assessments• Geotechnical assessments• Environmental site assessment• Planning justification report• Archaeological assessment• Contaminant management plan• Noise and vibration study• Any other technical study deemed necessary	<p>No change. Qualified professional to peer review such studies at the applicant's expense - no change.</p>



Draft Zoning By-law Amendment

Existing Regulations	Proposed Regulations
Cannabis production is an “agricultural use”.	Cannabis production is a separate use.
Indoor and outdoor cannabis production is permitted in the Agricultural zone.	Indoor cannabis production is permitted in the Agricultural and Light Industrial zones. Outdoor cannabis production is prohibited.
<p>Regulations for Greenhouses:</p> <p>Minimum lot area of 2 hectares</p> <p>Maximum Lot Coverage</p> <p>Greenhouses 60%</p> <p>Greenhouses and other uses 70%</p>	<p>Regulations for Greenhouses:</p> <p>Minimum lot area of 3 hectares</p> <p>Maximum Lot Coverage</p> <p>Greenhouses 30%</p> <p>Greenhouses and other uses 40%</p> <p>No retail store accessory to a greenhouse.</p> <p>Greenhouses requiring >10,000 L/day not permitted.</p>



Draft Zoning By-law Amendment

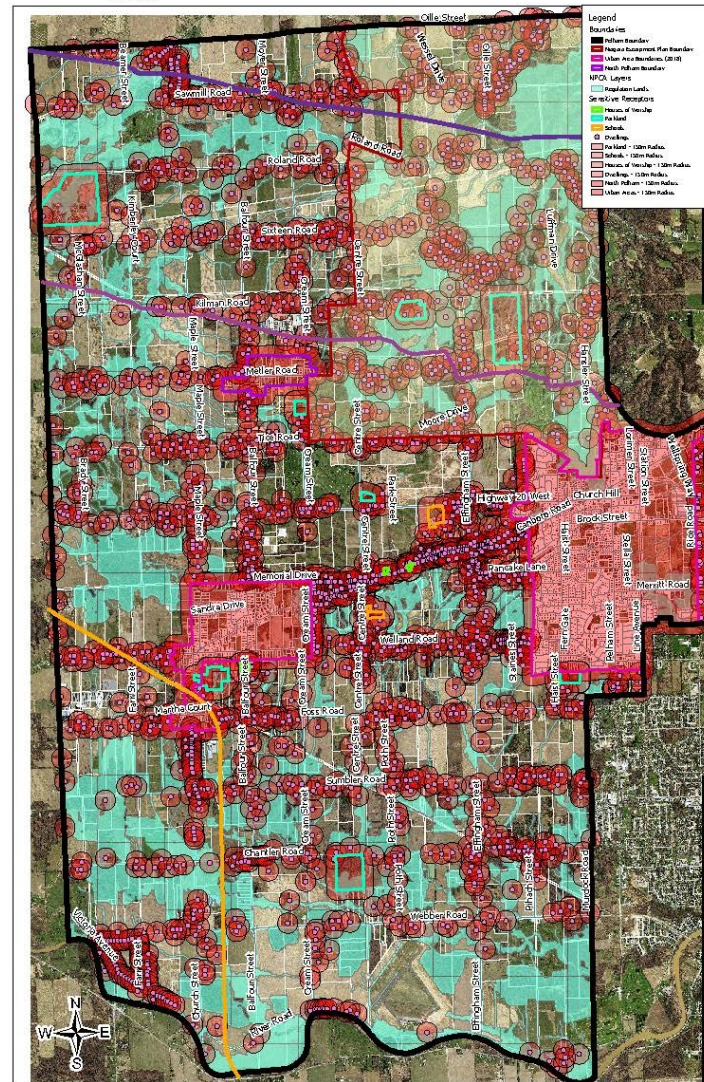
Existing Regulations	Proposed Regulations
No specific regulations for greenhouses or structures for cannabis production.	<p>Minimum setback to a sensitive land use of the greater of 150 metres or the distance recommended by an odour impact analysis.</p> <p>Sensitive land use includes a grade school, secondary school, playground, daycare, sporting venue, residential use, place of worship or community centre.</p> <p>Minimum planting strip of 3.0 metres</p> <p>Maximum parking area coverage 25%</p> <p>Minimum separation distance between cannabis production greenhouse operations of 500 metres.</p> <p>Parking requirement of 1 space per employee on the largest shift.</p>



A word on setbacks...



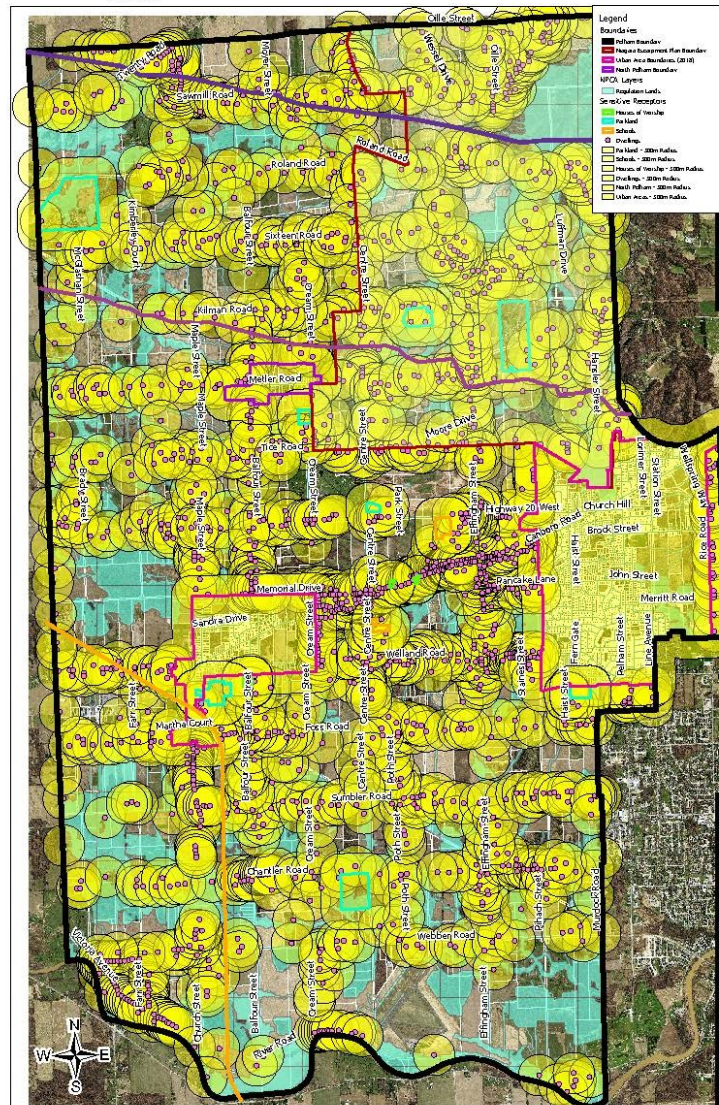
Sensitive Receptors - 150m Radius (Dwellings, Schools, Parks, Houses of Worship)



A word on setbacks...



Sensitive Receptors - 300m Radius (Dwellings, Schools, Parks, Houses of Worship)



Draft Amended Fence By-law

- Prohibits barbed and razor wire fencing where abutting residential properties except where required by provincial or federal regulations.
- Prohibits electrified fences except for containment of livestock and where required by provincial or federal regulations and requires warning signs at specified intervals.
- Housekeeping items including updated definitions (i.e. exterior side to corner side) and modifications to ensure the by-law is consistent with approved urban design guidelines.



Draft Fortification By-law

- Town currently does not have a Fortification By-law.
- Prohibits excessive protection of land and buildings in an effort to address the safety of emergency personnel, occupants of buildings and nearby properties.
- Examples include electric fencing, bullet-proof glass, armored doors and masonry over windows and doorways.



Draft Cannabis Nuisance By-law

- By-law is in response to Council direction on April 15, 2019 to prepare an amendment to the Town's nuisance by-law or a standalone cannabis by-law which would allow the Town to issue fines and take legal action against licensed cannabis producers relating to odour and light.
- By-law would apply to existing and future cannabis producers who produce obnoxious odours and light trespass which impacts neighbouring properties.



Draft Odour By-law

- Permits the Town to generally deal with excessive and obnoxious odours in the Town and take legal action where required.
- Not specific to cannabis.



Site Plan Control

- Required for all greenhouses, farm-related commercial and industrial uses as of May 21, 2019.
- Legal agreement with the Town that controls how a property develops and allows the Town to hold financial security to ensure that development takes place as outlined in the agreement.
- Requires Council approval.
- Town may take legal action if the agreement is contravened.



Development Charges By-law

- An amendment to the Development Charges By-law was considered by Council on September 3, 2019
- New cannabis production facilities to be subject to payment of development charges



Comments



Conclusion

- This presentation has provided information on the draft Cannabis regulations.
- The purpose of this meeting and the release of draft regulations is to receive information from the public. The regulations may be revised after receiving comments from the public and commenting agencies.
- No recommendations or decisions concerning these applications have been or will be made at this meeting.



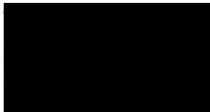
Questions and Comments

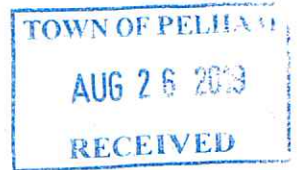
Thank-you for attending
this evening's meeting.

Following tonight's meeting, questions and
comments on these files may be directed
to:

Shannon Larocque, Senior Planner
905-892-2607 ext. 319
slarocque@pelham.ca




August 21, 2019



Town Clerk
Nancy J. Bozzato
Town of Pelham
P.O. Box 400
20 Pelham Town Square
Fonthill, Ontario
L0S 1E0

Dear Ms. Bozzato

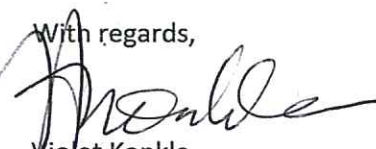
I am writing this memo in response to the notice of the public meeting for proposed Cannabis Regulations to be held on Tuesday, September 10th. While I would ideally have the opportunity to review the amendments, I note that the materials are not available until noon on September 4th, which is after the required submission date for written submissions (August 30). I will be out of town on the September 10th meeting date so wish to submit this written submission.

We moved to Fenwick in 2014 with a view to building our "forever home" and enjoying the remarkable beauty and lifestyle in our retirement that Pelham affords its citizens. So we have been quite disappointed to encounter the odours surrounding the production sites on Foss Road and Balfour St. My sympathies to the neighbours who have to tolerate this odour and who have subsequently seen the value of their homes deteriorate.

I would submit that, before ANY further permits be issued, the **current** operators be required to demonstrate that they - and therefore subsequent applicants - can **operate without odour that offends**. Also, given that CannTrust has been found to operate in an unscrupulous manner - with no apparent regard for the community around them - there will also need to be robust local enforcement to ensure that these operators comply with requirements. The burden of these expenses should rest on the Cannabis operators, given that they have not demonstrated an ability to operate within the approved regulatory guidelines.

Recognizing that there are many jobs associated with these operations, there is nonetheless an obligation to protect the communities and neighbours and their enjoyment of their homes and retention of the value of this important investment.

With regards,


Violet Konkle

Cc: Mike Ciolfi

Dear Mayor Junkin and Councillors

August 29, 2019

I am writing this letter as a member of the public, not as a member of the Cannabis Control Committee.

Over the past several months, I have reviewed the by-laws for cannabis production of as many municipalities as I could gain access to. The by-laws varied dramatically. There were municipalities that zoned cannabis production as agricultural, industrial or both. Set-back distances varied from 70 metres for Fort Erie to 300 metres for the City of Ottawa. In fact, Ottawa will not permit cannabis production in greenhouses, to avoid the loss of prime agricultural land. I have contacted a number of town planners regarding the development of by-laws with respect to cannabis production facilities. The following is a review of my communication with three town planners, each having a different approach.

When I talked to one town planner, he described the details of the by-law that they had put in place. I commented that it seemed the same as Burlington and Toronto. He laughed and said that he used their by-laws as a model. This approach is the same as that taken by the Town of Pelham, in recommending a set-back for cannabis producers of 150 metres from sensitive areas. They looked at other municipalities and used the mode, or value that occurred most frequently, as the set-back distance for cannabis growers from sensitive areas. There was no rationale or town planning involved.

On June 12, 2019, the City of Ottawa amended their zoning by-law for cannabis production facilities. They created 5 classes of licences for cannabis production; Cultivator, Processor, Micro-Cultivator, Micro-Processor and Cannabis Nursery. They removed the separation distance for cannabis production facility uses that take place completely within a building that is not a greenhouse, provided that they do not become a nuisance for odour or noise.

The supporting document states, "Flowering cannabis emits an intense odour that can negatively affect nearby residents. To mitigate this impact, while permitting outdoor cultivation, crops grown outdoors or in greenhouses must be at least 300 metres away from residential uses and institutional zones.

Rural planning staff expressed concern that permitting cannabis cultivation in greenhouses, as of right, would lead to loss of prime agricultural land to other uses. Therefore, cannabis production facilities will be limited to outdoor cultivation. A minor variance can be sought to permit cannabis cultivation in greenhouses in appropriate planning contexts."

The document also states, "This separation distance is suitable because, at a distance of 300 metres, the odour from outdoor cannabis cultivation should be sufficiently diminished that it is not a nuisance. This separation distance is based on Norfolk County's Zoning By-law, which included the 300 metre distance separation standard after inspections of cannabis cultivation in outdoor areas."

I followed up on the last statement by sending an email to Norfolk County, to ask about the methodology used in determining the 150 and 300 metre set-backs. The planner phoned me and told me the following:

- No guidelines exist for minimum separation distances for cannabis production, so they used comparators.
- He said that they took the average of the Minister of Agriculture's Minimum Separation Distance of 325 metres for egg, chicken and cattle farms and the Ministry of Environment's separation distance for industry of 300 metres, under D-6 Class II.
- They assessed odour at 300 metres from the average size cannabis production facility and the odour was not overwhelming.
- There was no consideration for temperature, humidity or wind speed.
- The 150 metre value was simply, quote, "pulled out of the hat".

- He is more concerned with the unlicensed growers than the licensed ones and he said that there were 60 unlicensed growers.
- Motor cycle gangs are buying up property.

From personal observations from our house on Foss Road, the comparator of cannabis production to a chicken barn does not seem valid. For many years there were 2 large chicken barns 500 metres west of us. The only time we noticed any odour was when they cleaned out the barns, 3 or 4 times a year. We rarely get any odour from CannTrust, but we do notice it when there is a north wind. CannTrust is 3 kilometres north of our house.

Comparators from the industrial perspective are found in the document, "D-6 Compatibility between Industrial Facilities".

A brief overview follows.

"The guideline is intended to be applied in the land use planning process to prevent or minimize future land use problems due to encroachment of sensitive land uses and industrial land uses on one another. — — — — The Ministry shall not be held liable for municipal planning decisions that disregard Ministry policies and guidelines."

"Changing industrial uses (4.4.6)

Where an influence area (i.e. area within which adverse effects may be experienced) has been established based upon existing industrial land uses, it will be the responsibility of the local municipality to restrict, through zoning or any other available means, the types of future industrial uses that can occur, so that they are compatible with the influence area used."

"Separation distance greater than the potential influence area (4.5.2)

In exceptional circumstances, the Ministry shall recommend separation distances greater than the outer limit of the potential influence areas identified in Section 4.1.1 of this guideline. In such cases , the Ministry shall demonstrate the need for greater distance, such as historical data for similar facilities."

"Irreconcilable incompatibilities (4.5.3)

When impacts from industrial activities cannot be mitigated or prevented to the level of trivial impact (i.e. no adverse effects), new development, whether it be industrial facility or a sensitive land use, shall not be permitted.

"D-6-1 Industrial Categorization Criteria

A guide for land use planning authorities on the appropriate distances between industrial areas and sensitive land uses like people's homes and workplaces."

There are 3 Classes that are compared as to; Outputs, Scale, Process and Operation/Intensity. I have noted the criteria for each class that relate to cannabis production.

Class I - odour infrequent and not intense

- small scale plant
- low probability of fugitive emissions
- infrequent movement of products or heavy trucks, daytime operations only

Class II - odour frequent and occasionally intense

- medium level of production
- periodic outputs of minor annoyance, low probability of fugitive emissions
- frequent movement of products and/or heavy trucks, shift operations

Class III - odour persistent and/or intense

- large production levels
- frequent outputs of major annoyances, high probability of fugitive emissions
- continuous movement of products and employees, daily shift operations

"The criteria for categorizing industries into Class I, II or III are derived from Ministry experience and the investigation of complaints related to industrial facilities" (Updated: May 24, 2019)

"The Ministry has identified, through case studies and past experience, the following potential influence areas for industrial land uses."

Class I - 70 metres

Class II - 300 metres

Class III - 1000 metres

"Odour (4.6.3)

Odorous contaminants are particularly difficult to control on-site. Although the contaminants emitted may meet the Ministry's standards and interim standards, experience indicates that complaints may still be received by residents living in proximity to the industry, for reasons set out in Section 4.6.2 (i.e. the standards, which are based on acceptable risk with regard to health, odour and vegetation, are based on half hour averages, and at some point in the half hour there may be a high level of emissions) Emissions of odorous contaminants may result in off-site odour problems which could constitute an "adverse effect". An "adverse effect" is a violation of Section 14 of the Environmental Protection Act. Stack testing under a worst case scenario, odour panel tests and odour control equipment may be required to minimize odour concerns."

Item 4.4.6 stated that, "it will be the responsibility of the local municipality to restrict, through zoning or any other available means, the types of future industrial uses that can occur, so they are compatible with the influence area used".

I have shown the different approaches used by 3 municipalities in determining set-back distances for cannabis production. The decision on which approach best serves the residents of Pelham is in the hands of you, the Councillors.

Respectfully,



Jim Jeffs

August 28, 2019

Dear Ms. Nancy Bozzato, Town of Pelham Clerk

Re: Cannabis Growing Facilities in the Town of Pelham, Public Meeting

As a resident of the North Pelham area, I would like to respectfully submit concerns I have regarding the cannabis growing facilities operating in the Town of Pelham. I have read the information provided on your website.

Cannabis growing should be deemed as pharmaceutical operations, commercial operations or industrial operations, thereby having to comply with the regulations which govern these types of operations. It is a controlled product.

Concerns about the air quality and obnoxious odor, can be rectified significantly by known methods, need to be put in place immediately. In the circular "Being a by-law to regulate certain matters related to cannabis production facilities", under "Cannabis Production Facilities", section 4e, "...use a system which filters air to prevent the escape of obnoxious odours", is limiting. There are methods which are not "filters" which would be beneficial alone or in conjunction with filters. The by law may be perceived as limiting. Also, please see notes from Public Health Ontario below. It has been demonstrated in the literature that facilities in other countries are expected to treat the exhausting air so there are no perceptible odours outside the exterior of the building. This must be an absolute, with no subjectivity in the language.

Concerns regarding water issues need to be addressed. Many of us in rural areas rely on a well for our water. There are concerns regarding the removal of large quantities of water by cannabis growing facilities. There are concerns regarding contamination of the water table and soil from effluents produced by the facilities.

We have located the Balfour Road facility while travelling over the Burlington Skyway and we have seen the light in the night sky from our home, which is near Effingham road. There is little doubt that this light was visible from space! In the circular "Being a by-law to regulate certain matters related to cannabis production facilities", under 1h "Light Trespass" means the shining of a light by a luminaire beyond the boundaries of a property on which it is located "and 1g "Glare" means light emitting from a luminaire with intensity great enough to reduce a viewer's ability to see, or produce a sensation of discomfort." The light emission needs to be controlled and it should not be subjective.

Concerns regarding the pesticides used, the disposal of the material and reporting obligations need to be addressed.

A license to grow cannabis, or a license(permit) to expand a grow operation should include the absolute compliance of the above issues as well as the full compliance with Federal, Provincial and Municipal laws/bylaws being demonstrated as well as other issues which may be brought forward by the community.

Any violation of the Federal, Provincial or Municipal laws and by laws governing cannabis growing facilities and the license (permit) to run these facilities needs to be dealt with decisively. Currently we have a local facility which allegedly was growing part of the cannabis crop without proper licensing in place and with a clear attempt to cover up this transgression.

There is no going back in the cannabis issue, but we can expect the best possible situation if all levels of government would participate in enacting the required laws and by laws which are absolute, not subjective, and fully expect the cooperation of the cannabis growers to demonstrate respect and responsibility to the community (Town of Pelham, Region of Niagara) in which they operate.

Sincerely

Josephine Pignataro

[REDACTED]
[REDACTED]

From Government of Ontario site –

Health Canada's proposed cannabis regulations do not specifically address energy use or water consumption. The rules would require that legal cannabis products meet quality standards, be produced in sanitary environments and be tested for contaminants and the presence of unauthorized pesticides.

In a statement, Health Canada said cannabis facilities, like all industrial facilities, will be subject to Environment and Climate Change Canada rules including pollutant release reporting obligations, water pollutant prohibitions and carbon pollution pricing.

"At this time, however, Environment and Climate Change Canada is not planning any new regulations specifically focused on this sector," it said.

From Public Health Ontario site -

The city of Denver, Colorado has released a Best Management Practices document for commercial medical cannabis producers, wherein a number of odour control technologies are described. Carbon filtration has been recommended as the best control technology for cannabis cultivation facilities and producers of cannabis-infused products. Other recommended technologies include negative ion generators/electrostatic precipitators, air scrubbers, masking agents, and the use of negative pressure to keep odours within the facility. Regardless of which technologies are used to control odour, it is important that these systems are properly maintained according to specifications to provide optimal performance.

Applications for cannabis cultivation facilities in Alaska must submit an operating plan that includes odour control to ensure that cultivated cannabis does not emit odour detectable by the public from outside the facility. Similarly, regulatory permit applications for medical cannabis facilities in Hollister, California are evaluated based on an adequate odour management plan which must include a detailed description of the ventilation system that will be used in the facility. In Sacramento, California, permitted cannabis producers are required to prevent all odours generated from the cultivation and storage of cannabis from escaping from the buildings on the cultivation site, such that the odour cannot be detected by a reasonable person of normal sensitivity outside the buildings.

The upcoming legalization of cannabis in Canada is expected to result in an increase in cannabis production or cultivation in both large- and small-scale commercial facilities, and private residences. There is a potential that operation of these facilities will result in the release of odour and odorous compounds into the surrounding environment. However, environmental odours are regularly encountered from agricultural and industrial operations and odour control technologies are both readily available and widely used in these industries.

Although regulations and guidelines are still being developed for the province of Ontario, other jurisdictions have already legalized cannabis production and developed best practices and procedures to address odour issues. In general, cannabis production facilities can implement and maintain appropriate ventilation and filtration systems to satisfy applicable local odour nuisance standards. A formal system for residents to document and report nuisance odours can facilitate the enforcement of these standards or municipal bylaws. As part of the permitting process, odour control plans can be reviewed to determine whether emissions are adequately treated such that cannabis odours are not perceptible outside the exterior of the building.

Please see comment (in red) below

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 amend Zoning By-law 1136 (1987), as amended, with respect to Cannabis Production in the Town of Pelham

Town of Pelham

File No. AM-07-19

WHEREAS, Section 34 of the Planning Act, RSO 1990, as amended provides that the governing body of a municipal corporation may pass by-laws to regulate the use of lands and the character, location and use of buildings and structures;

WHEREAS, the Council of the Town of Pelham considers it to desirable to amend Zoning By-law 1136 (1987) to implement the policies of Official Plan Amendment No. XX with respect to cannabis production in the Town of Pelham;

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

1. **THAT** By-law 1136 (1987), as amended, is hereby amended by the addition of Section 6.18(a) (xxiv) to Section 6.18(a) Prohibited Uses as follows:

(xxiv) outdoor storage, growing and production of cannabis.

2. **THAT** By-law 1136 (1987), as amended, is hereby amended by the addition of Section 7.1(i) to Section 7.1 as follows:

(i) Cannabis production **(and processing?)** within a Greenhouse or Structure;

3. **THAT** By-law 1136 (1987), as amended, is hereby amended by the addition of Section 7.8 as follows:

7.8 REQUIREMENTS FOR CANNABIS PRODUCTION

The regulations of Section 7.3 shall apply to greenhouses and structures used for cannabis production. In addition, greenhouses and structures used for cannabis production shall be subject to the following regulations:

(a) Minimum Setback to a Sensitive Land Use

the greater of 150 metres or the distance recommended by an odour impact analysis

Comment: The Ministry of the Environment, Conservation and Parks (MECP) has guidance on setbacks. For example, the D-6 Land Use Planning guides categorizes industries into classes and based on those designations, recommends minimum separation distances between the industrial use and sensitive receptors. Following D-6, a facility with persistent and/or intense odour emissions, with frequent outputs of major annoyance (like a cannabis facility) would be designated Class 3 and require a minimum setback of 300m and the MECP acknowledges that the potential influence area can be 1000m or larger. D-6 also requires the proponent to prepare a study (odour, noise, dust) that documents how the emissions can be effectively reduced to a level of trivial impact (i.e. no adverse effect).

The MECP also has Environmental Compliance Approval (ECA) and Environmental Activity and Sector Registry (EASR) that provides setback guidance and associated permit requirements. Perhaps the Town should review and incorporate some of these requirements into this odour bylaw.

The Town should provide guidance on the requirements of the odour impact study and the objectives should be clearly identified (e.g. shall not cause adverse effect).

Suggested wording:

(a) Minimum Setback to a Sensitive Land Use

the greater of 150 metres or the distance recommended by an odour impact analysis, **prepared and sealed by a Licensed Engineering Practitioner, that documents how odour impact can be reduced to a level of trivial impact (i.e. no adverse effect).**

(b) Minimum Planting Strip 3.0 metres where abutting a sensitive land use.

(c) Maximum Parking Area Coverage 25 percent

(d) Minimum Separation Distance Between Cannabis Production Greenhouse Operations
500 meters

Comment: If two cannabis operations are in proximity to one another, 500m may be inadequate even if each facility on its own has an odour mitigation plan that reduces their off-property impact to a level of trivial impact, because, the neighbourhood odour impact will be cumulative.

4. **THAT** By-law 1136 (1987), as amended, is hereby amended by inserting the following alphabetically to Section 22.1(a):

“cannabis production within a Greenhouse or Structure”

5. **THAT** By-law 1136 (1987), as amended, is hereby amended by replacing Section 7.3 (b) with the following:

(b) Minimum Lot Area 3 hectares (7.4 acres)

6. **THAT** By-law 1136 (1987), as amended, is hereby amended by replacing Section 7.3 (c) with the following:

(i) Greenhouse only 30 percent

(ii) Greenhouse in conjunction with use permitted in 7.1
40 percent

7. **THAT** By-law 1136 (1987), as amended, is hereby amended by inserting the following in Section 7.3:

(h) A retail store is not permitted as an accessory use to a greenhouse.

(i) Greenhouses requiring more than 10,000 litres of water per day are not permitted.

8. **THAT** By-law 1136 (1987), as amended, is hereby amended by inserting the following in Section 22:

22.3 REGULATIONS FOR CANNABIS PRODUCTION

The regulations of Section 22.2 shall apply to greenhouses and structures used for cannabis production. In addition, greenhouses and structures for cannabis production shall be subject to the following regulations:

(a) Minimum Setback to a Sensitive Land Use

the greater of 150 metres or the distance recommended by an odour impact analysis

Comment: see 7.8 above

(b) Minimum Planting Strip 3.0 metres where abutting a sensitive land use

(c) Maximum Parking Area Coverage 25 percent

(d) Minimum Separation Distance Between Cannabis Production Greenhouse Operations 500 meters

Comment: see above

9. **THAT** By-law 1136 (1987), as amended, is hereby amended by adding the following to Section 6.16(a) Parking Requirements:

Greenhouses and Structures for Cannabis Production 1 parking space per employee on the largest shift

10. **THAT** By-law 1136 (1987), as amended, is hereby amended by deleting the definition of “Agricultural Use” from Section 5.5 and replacing it with the following:

“Agricultural Use” means a use of land, building or structure for the purpose of animal husbandry, bee-keeping, dairying, fallow, field crops, forestry, fruit farming, horticulture, market gardening, pasturage, nursery, poultry-keeping, greenhouses, or any other farming use and includes the growing, raising, packing, treating, storing or sale of farm products produced on the farm and other similar uses customarily carried on in the field of general agriculture and which are not obnoxious, but does not include cannabis production.

11. **THAT** By-law 1136 (1987), as amended, is hereby amended by adding and alphabetically inserting new definitions into Section 5 as follows:

“Cannabis Production” means lands, buildings or structures used for the commercial cultivation of marihuana (or alternative names including marijuana) and/or the processing, testing, destruction, packaging and/or shipping of marihuana.

“Sensitive Land Use” means a grade school, secondary school, day care, playground, sporting venue, residential use, place of worship or a community centre.

Comment: This definition is not consistent through your bylaws. This particular one seems too specific on school types 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).

NOTE: A sensitive receptor could also include land that is zoned for sensitive uses.

12. **THAT** this Bylaw shall come into effect and force from and after the date of passing thereof, pursuant to Section 34(21) and 34(30) of the Planning Act, RSO 1990, as amended.

ENACTED, SIGNED AND SEALED THIS
XXth DAY OF XXXXXXXXXX, 2019 A.D.

MAYOR MARVIN JUNKIN

CLERK NANCY J. BOZZATO

Please see Part B comments (in red) below

**AMENDMENT NO. XX
TO THE
OFFICIAL PLAN (2014)
FOR THE
CORPORATION OF THE TOWN OF PELHAM**

CONTENTS

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PART “A” – THE PREAMBE

SECTION 1

TITLE AND COMPONENTS

This document was approved in accordance with Section 17 and 21 of the Planning Act, R.S.O. 1990, as amended and shall be known as Amendment No. XX to the Official Plan adopted by By-law No. 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014, for the Town of Pelham Planning Area.

Part “A”, the Preamble does not constitute part of this amendment.

Part “B”, the Amendment, consisting of the following text constitutes Amendment No. XX to the Official Plan adopted by By-law 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014 for the Town of Pelham Planning Area.

SECTION 2

PURPOSE OF THIS AMENDMENT

The purpose of this Amendment is to amend Sections B2.1.3.12, B2.2.8, B2.3.4 and B3.1.1 of the Town of Pelham Official Plan to implement recommendations on cannabis production in the Town with the goal of promoting land use compatibility.

SECTION 3

LOCATION OF THE AMENDMENT

The lands that are subject to this Amendment are all lands within the Town of Pelham.

SECTION 4

BASIS OF THE AMENDMENT

The Planning Act, R.S.O. 1990, as amended, provides that amendments may be made to the Official Plan. Policies of the Official Plan have been considered in the preparation of this Amendment and the following factors:

1. The policies will ensure compatibility with the surrounding land uses.
2. This Amendment is consistent with the Provincial Policy Statement and conforms to the Growth Plan for the Greater Golden Horseshoe and the Region of Niagara Official Plan.

SECTION 5

IMPLEMENTATION AND INTERPRETATION

The relevant policies of the Official Plan adopted by By-law No. 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014, of the Town of Pelham Planning Area shall apply to the implementation and interpretation of this Amendment.

PART “B” – THE AMENDMENT

1. The Official Plan adopted by By-law No. 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014, for the Pelham Planning Area is hereby amended by adding the following to Section B2.1.2.:

l) Outdoor storage, growing and production of cannabis subject to a Zoning By-law amendment.

2. The Official Plan adopted by By-law No. 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014, for the Pelham Planning Area is hereby amended by adding the following to Section B2.1.3.12:

In addition to these requirements, greenhouses for cannabis production will be required to ensure compatibility with neighbouring land uses through:

a) Installation and operation of odour and light mitigation systems;

Comment: Installation and operation of an odour and light mitigation system does not by itself prevent adverse effect. Targets or objectives should be clearly defined.

Suggested Wording: Installation and operation of odour and light mitigation systems that reduce the off-property impact at sensitive receptors to a level of trivial impact (i.e. no adverse effects);

b) Odour and light control, maintenance and monitoring plans;

Comment:

- I. The Town should provide guidance on the contents and goals of these plans.
- II. The Operator of the Cannabis Facility (Operator) should be required to prepare contingency odour and light mitigation plans in the event of substantiated complaints so that the plans can be immediately implemented as necessary.
- III. The odour and light control and monitoring plans should be signed and sealed by a Licensed Engineering Practitioner (LEP) which is consistent with Ministry of the Environment, Conservation and Parks (MECP) requirements.
- IV. The Town should have the ability to peer review the Plans at the Operators expense.
- V. The Operator should be required to document, and report complaints received from neighbours to the Town and detail the corrective action that will be implemented to prevent further adverse impacts.
- VI. Ongoing odour monitoring should be at the Operators expense and conducted by trained and competent odour practitioners.
- VII. The odour monitoring results, conducted by the trained and competent odour practitioner, should be simultaneously delivered to the Town and Operator and the Operator should be required to post the report to their website for public access.
- VIII. The Town should have the ability to review and provide input into the monitoring plans.

c) Maintaining appropriate setbacks from sensitive receptors as detailed in the Zoning By-law;

Comment: The Ministry of the Environment, Conservation and Parks has guidance on setbacks. For example, the D-6 Land Use Planning guides categorizes industries into classes and based on those designations, recommends minimum separation distances between the industrial use and sensitive receptors. A facility with persistent and/or intense odour emissions, with frequent outputs of major annoyance (like a cannabis facility) would be designated Class 3 and, based on D-6, require a minimum setback of 300m and the MECP acknowledges that the potential influence area can be 1000m or larger. D-6 also requires the proponent to prepare a study (odour, noise, dust) that documents how the emissions can be effectively reduced to a level of trivial impact (i.e. no adverse effect).

Regarding this OPA and the proposed by-laws, minimum setbacks should be based on science and combined with control requirements (targets) to prevent adverse impact with contingency plans in the event of complaints.

d) A waste management plan.

3. The Official Plan adopted by By-law No. 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014, for the Pelham Planning Area is hereby amended by adding the following to Section B2.2.2:

k) Outdoor storage, growing and production of cannabis subject to a Zoning By-law amendment.

4. The Official Plan adopted by By-law No. 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014, for the Pelham Planning Area is hereby amended by adding the following to Section B2.2.8:

In addition to these requirements, greenhouses for cannabis production will be required to ensure compatibility with neighbouring land uses through:

a) Installation and operation of odour and light mitigation systems;

Comment: See 2a above

b) Odour and light control, maintenance and monitoring plans;

Comments: See 2b above

c) Maintaining appropriate setbacks from sensitive receptors as detailed in the Zoning By-law;

Comment: See 2c above

d) A waste management plan.

5. The Official Plan adopted by By-law No. 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014, for the Pelham Planning Area is hereby amended

by adding the following to Section B2.3.2:

k) Outdoor storage, growing and production of cannabis subject to a Zoning By-law amendment.

6. The Official Plan adopted by By-law No. 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014, for the Pelham Planning Area is hereby amended by adding the following to Section B2.3.4(h):

In addition to these requirements, greenhouses for cannabis production will be required to ensure compatibility with neighbouring land uses through installation and operation of odour and light mitigation systems;

Comment: consider adding to the sentence above “.... and light mitigation systems that reduces the off-property impact at sensitive receptors to a level of trivial impact (i.e. no adverse effect)”

odour and light control, maintenance and monitoring plans; maintaining appropriate setbacks from sensitive receptors as detailed in the Zoning By-law; and a waste management plan.

7. The Official Plan adopted by By-law No. 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014, for the Pelham Planning Area is hereby amended by adding the following to Section B3.1:

Outdoor storage, growing and production of cannabis is not supported within the Niagara Escarpment Plan Area. Cannabis production within a greenhouse or structure is supported subject to the requirements of policies B2.1.3.12 and B2.2.8.

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

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.

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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;

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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.

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MAYOR MARVIN JUNKIN

CLERK NANCY J. BOZZATO