

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 odour.

WHEREAS, Section 129(a) of the *Municipal Act 2001*, R.S.O. 2001, .c25 provides that a local municipality may prohibit and regulate with respect to odour; and prohibit these matters unless a permit is obtained from the municipality and may impose conditions for obtaining, continuing to hold and renewing the permit, including requiring the submission of plans;

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 Cannabis production facilities are a new industry for municipalities, and federal and provincial regulations, policies and legislation serve as a guide to municipalities on how they should regulate certain matters related to cannabis production facilities;

AND WHEREAS the *Environmental Protection Act* R.S.O. 1990, Chapter E.19, Section 14 requires that no person shall discharge or cause or permit the discharge of a contaminant, including an odour, into the natural environment, if the discharge causes or may cause an adverse effect;

AND WHEREAS Ontario Provincial Policy Statement 2014, 1.2.6.1 requires that major facilities and sensitive land uses should be planned to ensure they are appropriately designed, buffered and/or separated from each other to prevent or mitigate adverse effects from odour, noise and other contaminants, and minimize risk to public health and safety;

AND WHEREAS *The Planning Act* R.S.O. 1990, Chapter P.13 requires that a municipality's Official Plan and Zoning By-laws are consistent with Provincial policy statements;

AND WHEREAS The Town of Pelham's Pelham Zoning Bylaw 1136 (1987) Section 6.19 requires that no land shall be used and no building or structure erected, altered or used for any purpose which is obnoxious, for any purpose that creates or is likely to become a nuisance or offensive, or both by reason of the emission of objectionable odour;

AND WHEREAS The residents of the Town of Pelham have clearly indicated their strong dislike of odour, such as Cannabis odour and treatments including odour masking agents, that they have been subjected to and the adverse effects it is having on them;

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

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

Interpretation

1. In this By-law:

- a) "Adverse Effect" means an effect that has greater than a trivial impact, including effects such as (i) loss of the ordinary enjoyment of one's property including for Sensitive Uses; (ii) loss in property value; and (iii) a negative health impact on a resident.
- b) "Council" means the Municipal Council of the Municipality.
- c) "Enforcement Officer" means 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.
- 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.
- f) "Obnoxious Odour" means an odour that:
 - i. emanates from a premise and disperses or is likely to disperse to one or more properties in the vicinity of the premise; and
 - ii. is of such strength that it causes or is likely to cause an adverse effect.
- g) "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.
- h) "Public Nuisance" means a nuisance as defined in Section 128(1) of the *Municipal Act 2001*, R.S.O. 2001, .c25.

Prohibitions

- 2. No person shall conduct or permit any activity that causes an 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, except in cases where said Act does not have jurisdiction such as those indicated in Section 2(3) of said Act.
 - b) An activity carried on in compliance with an order of the Normal Farm Practices Protection Board.
 - c) An activity carried on by the municipality or any other level of government.

- d) An activity carried on in compliance with an approved nutrient management plan pursuant to *the Nutrient Management Act, 2002*, S.O. 2002 c.4.

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.

Penalty

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

- a) any contravention of a provision of this By-law can be 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 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) notwithstanding paragraph (c) above, every Person who is a 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

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

Enforcement

7. 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 property in the vicinity of the premises; and
 - c) the owner or occupants of the premises or part of the premises 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 premises or property has been entered, and the conviction is not currently under appeal.

Powers of Entry

8. 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

9. The Municipality may do any of the following for the purpose of an inspection under Section 8:

- 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;
- d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection, and where warranted, require the operator to hire and pay for an independent third party (odour practitioner) who would report simultaneously to the Town and the operator; and
- e) conduct a lawful inspection under this By-law by an Enforcement Officer without interference, obstruction or hinderance by any person.

Severability

10. 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.

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