



POLICY AND PRIORITIES COMMITTEE AGENDA

P&P-01/2020

February 3, 2020

Town of Pelham Municipal Office - Council Chambers

20 Pelham Town Square, Fonthill

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6. Adjournment	



*Submitted at
Po Meeting
Feb. 3, 2020.*

**2nd DRAFT
RECOMMENDATION REPORT
ON
MANAGING CANNABIS NUISANCES
IN THE
TOWN OF PELHAM**

Cannabis Control Committee
Town of Pelham

29 January 2020

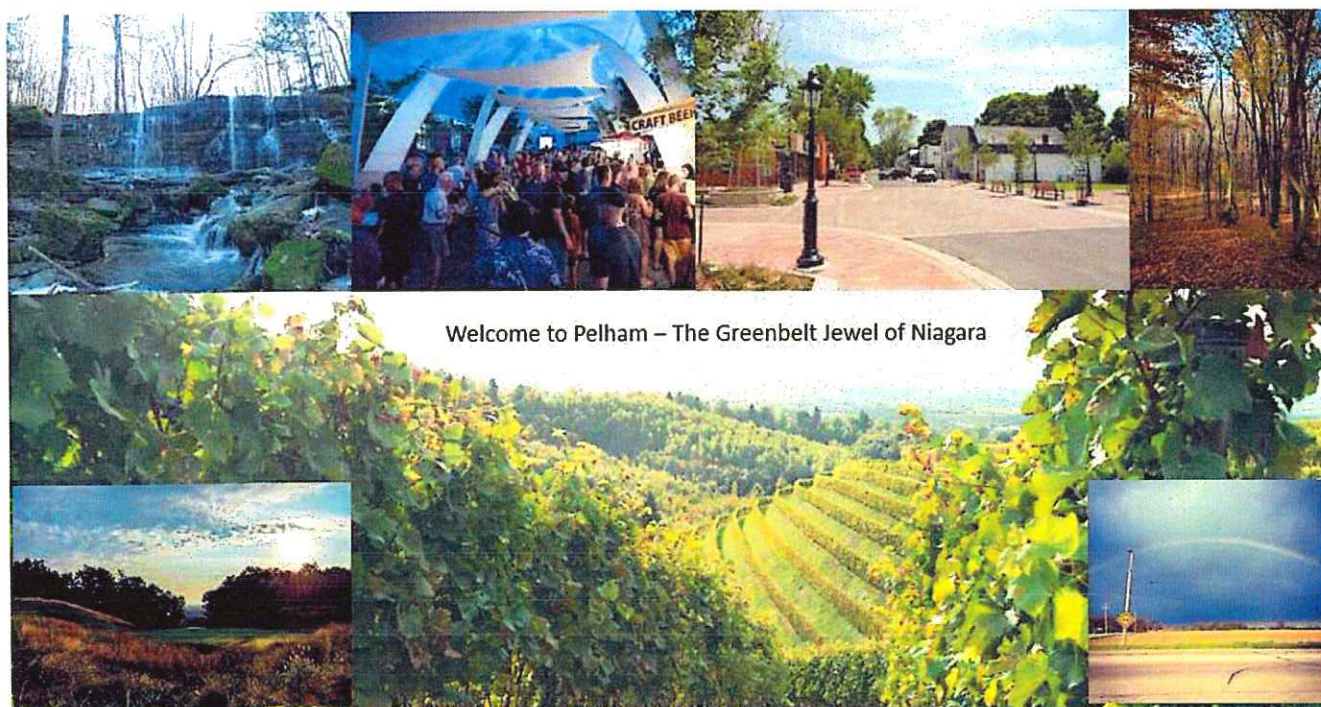
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EXECUTIVE SUMMARY

The Cannabis Control Committee (CCC) of the Town of Pelham was created by Council in May 2019 to provide advice to Council on opportunities to mitigate against adverse land use impacts of cannabis production facilities in the Town.



Pelham is a unique and charming rural community with a natural heritage, tender fruit belt, and wholesome living that requires great care to protect for future generations. Because of its small town size and feel where everyone knows each other, Pelham has been a complaints-based community without the depth and breadth of by-laws and policies to manage unexpected, sudden growth in its rural areas.

With the final approval of the legalization of recreational marijuana in October 2018, Pelham suddenly found itself home to two major cannabis facilities and others looking to set up their expansive operations in Pelham. Within twelve months, numerous residents had experienced unanticipated adverse effects which resulted in an interim control bylaw and the creation of the CCC to address concerns.

For a little over seven months, the CCC has been busy researching the issues in order to recommend appropriate policies and bylaws to manage the existing cannabis facilities and to ensure the same adverse impacts are mitigated with respect to new cannabis facilities interested in establishing their operations in Pelham.

This Recommendation Report is the CCC's first installment to Council. It discusses the adverse impacts residents have experienced, examines the planning context that serves as a background for developing regulations to manage cannabis and other odourous industries in our Town, makes recommendations regarding the approach to co-exist with cannabis, and finally proposes an Odourous Industries Nuisance Bylaw for Council review and approval. This bylaw applies to existing as well as new cannabis operations and represents the last line of defence. Proposed Official Plan and Zoning By-Law amendments will follow soon and will serve as the first line of defence for compatible land use.

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1. INTRODUCTION

1.1. IDENTIFICATION

This document, the Recommendation Report on Managing Cannabis Nuisances in the Town of Pelham (the "Report"), was prepared by the Cannabis Control Committee (the "CCC") of the Town of Pelham.

The CCC is a Committee of the Town of Pelham created by Council as an advisory committee to provide advice to Council on opportunities to mitigate against adverse land use impacts of cannabis production facilities in the Town. The CCC began its work on 29 May 2019. The first priority of the CCC is the recommendation of control measures including policies, by-laws, regulations and standards that can be implemented prior to the expiry of Interim Control By-law 4046(2018) on 15 July 2020. The CCC reports directly to the Town Council and provides recommendations for Council in resolution form, under the signature of the Chair, in accordance with its Terms of Reference.

This Report provides rationale and justification for an Odorous Industries Nuisance Bylaw being recommended to Council by the CCC to address adverse effects experienced by many residents in Pelham from existing cannabis facilities. The draft Odorous Industries Nuisance Bylaw is found in the Appendices of this Report.

1.2. POINTS OF CONTACT

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1.3. ACKNOWLEDGEMENTS

The CCC acknowledges the contributions of Mike Ciolfi, it's Council representative, planning staff members Barbara Wiens, Shannon Larocque, Jodi Legros, and CAO David Cribbs which have informed this Report.

The CCC also acknowledges its community members Carla Baxter, Jim Jeffs, James Steele, Louis Damm, Bill Heska, John Langendoen and Tim Nohara for their effort, knowledge and expertise which have been instrumental to this work. This knowledge & expertise includes Pelham's agricultural and greenhouse operations, cannabis internal operations, professional engineering, research, and direct linkage to residents affected by the adverse impacts of existing cannabis operations.

We also wish to acknowledge Phil Girard, P.Eng, an odour expert who resides in Pelham, for his exceptional contribution to our work.

2. REGULATORY CONSIDERATIONS

The purpose of this section is to describe the matters of concern that Pelham should consider in the development of its cannabis regulations. These regulatory considerations are based on direct complaints and comments provided by members of the Pelham community, as well as research carried out by the CCC.

2.1. UNPLANNED CANNABIS OPERATIONS IN PELHAM

Following the legalization of recreational marijuana in October 2018, major cannabis operations appeared in the Town of Pelham, catching residents completely off guard as there was no requirement for public meeting. Town staff were also unprepared as there was no guidance provided to municipalities on how to manage this new dynamic industry.



The Redecan operation is located at 182 Foss Rd in Pelham, in the eastern part of the Town very close to the border with the City of Welland. It is estimated that this high-security facility employs at least 100 people with operations in excess of 200,000 square feet. After the completion of its initial plan, Redecan expanded its operation by an estimated 100%, and it purchased additional adjacent lands, presumably for further expansion to the east.

A second, much smaller facility, is owned by Redecan and is located at 1760 Effingham St. near Moore Street.



The CannTrust operation set up at 1396 Balfour Street at the corner of Hwy 20 West in Pelham. This operation employs an estimated 350 people (before its operations were suspended due to violations) and is estimated to grow to almost 500,000 square feet with its Phase III expansions.

A third large scale operator, Leviathan, has been planning to build a cannabis operation at 770 Foss Rd. Leviathan must wait until the conclusion of the interim control bylaw before it will be able to consider proceeding.

2.2. PUBLIC CONCERNS

This section provides a summary of public concerns, making reference to public comments received by way of petitions and public meetings.

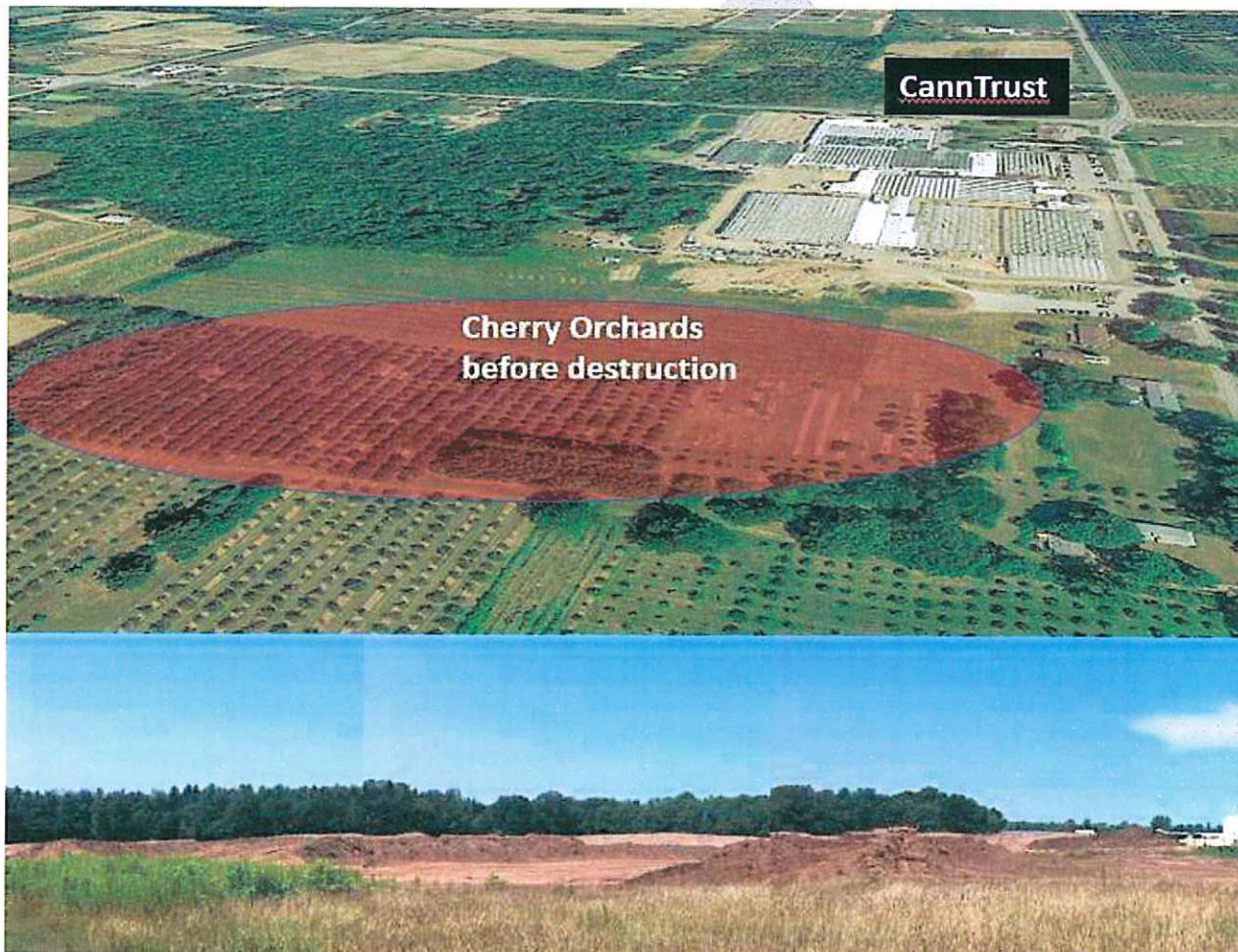
The adverse impacts from the CannTrust and Redecan operations began to be felt by many residents in early summer 2018. By September 2018, residents were organizing and meeting to share concerns, and on October 15th, 2018, resident David Ireland made a presentation to Council on behalf of some 150 residents with a petition of 127 signatures to pass an interim control bylaw (ICBL) so the problems could be properly studied and addressed. The ICBL was passed on 15 October 2018.

Residents' complaints have continued and include all of the following:

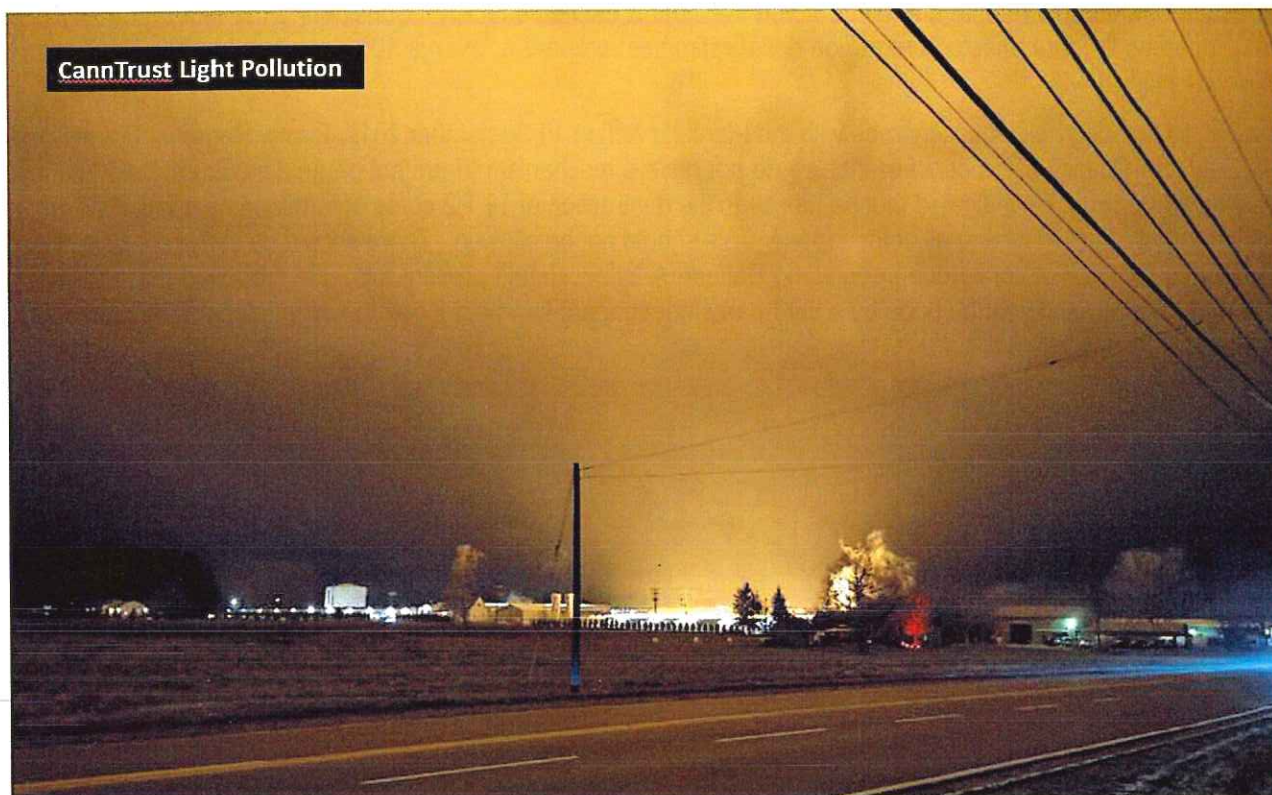
- Loss of precious specialty crop agricultural lands
- Skyglow causing severe light pollution
- Skunk-like odour
- Heavy traffic and noise disrupting their quiet country streets and neighbourhoods
- Industrial-like facilities disrupting their picturesque country street and neighbourhoods

As a result of the aforementioned adverse effects, residents are extremely concerned about loss of property value. Real estate agents now require disclosure if you live near a cannabis facility. Considering the fact that many of these properties that are affected are million-dollar retirement properties, even a 10% loss in value has significant economic ramifications.

At the Public Meeting held in accordance with the Planning Act on 10 September 2019, former Regional Councillor Brian Baty told Council of his concern that we do not have a mechanism to protect prime agricultural land and in particular, tender fruit. He indicated that he has seen the destruction of 19 1/2 acres of farmland next to CannTrust with big earth movers removing all of the topsoil. This should not be allowed. There should be some controls. He also saw the removal of coniferous trees along Balfour. A bylaw should prevent this. He proposed that external monitoring of odour and light be done by a third-party independent firm paid for by the proprietors of the cannabis operations.



The cherry orchard that Mr. Baty was referring to is shown above, along with the removal of the topsoil after the cherry trees were destroyed. The upper figure is a Google Earth annotated image showing the cherry orchard before it was destroyed; the lower photo shows what remains after the destruction. CannTrust has received a building permit from the Town to expand its facility on these lands.



The severe light pollution caused by these cannabis facilities is shown above. This is a regular occurrence, especially for CannTrust. The skyglow can be seen many kilometres away, and it not only disrupts the neighbours who have lost complete enjoyment of their sunsets and evening walks with star-filled skies, but it also disrupts the rich animal life that Pelham is known for.

Pelham was one of the few places in the Niagara Region where you could watch stars and satellites pass overhead at night, because of its naturally dark sky. Cannabis has changed that for residents.

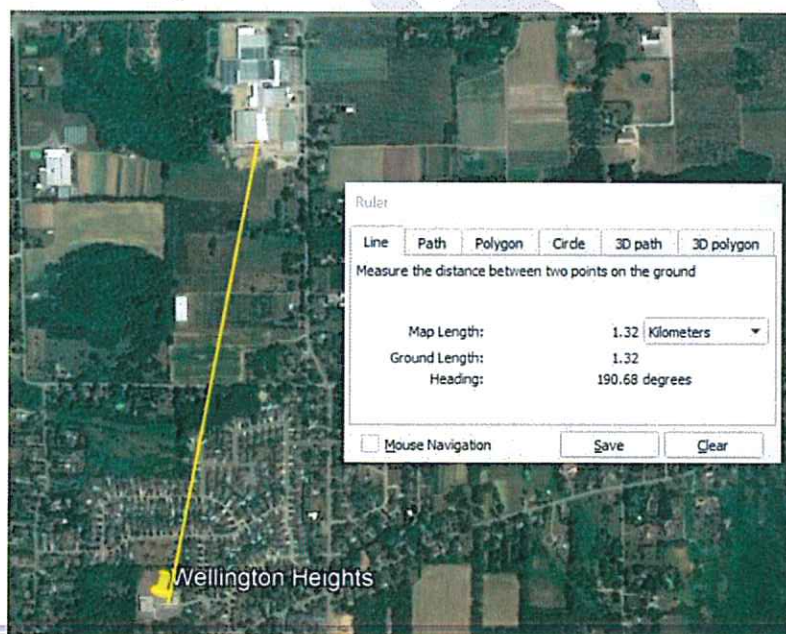
There is no doubt that the skunk-like odour that travels far distances from these cannabis facilities is a regularly occurring nuisance that impacts many people and results in loss of enjoyment of their properties, especially in the spring, summer and fall when they want to be outdoors.



A Grade 8 Student at Wellington Heights School spoke at the Public Meeting 10 Sep 2019

At the Public Meeting held on September 10th, 2019 which an estimated 350 residents attended with standing room only, a grade 8 student and others spoke of their concerns.

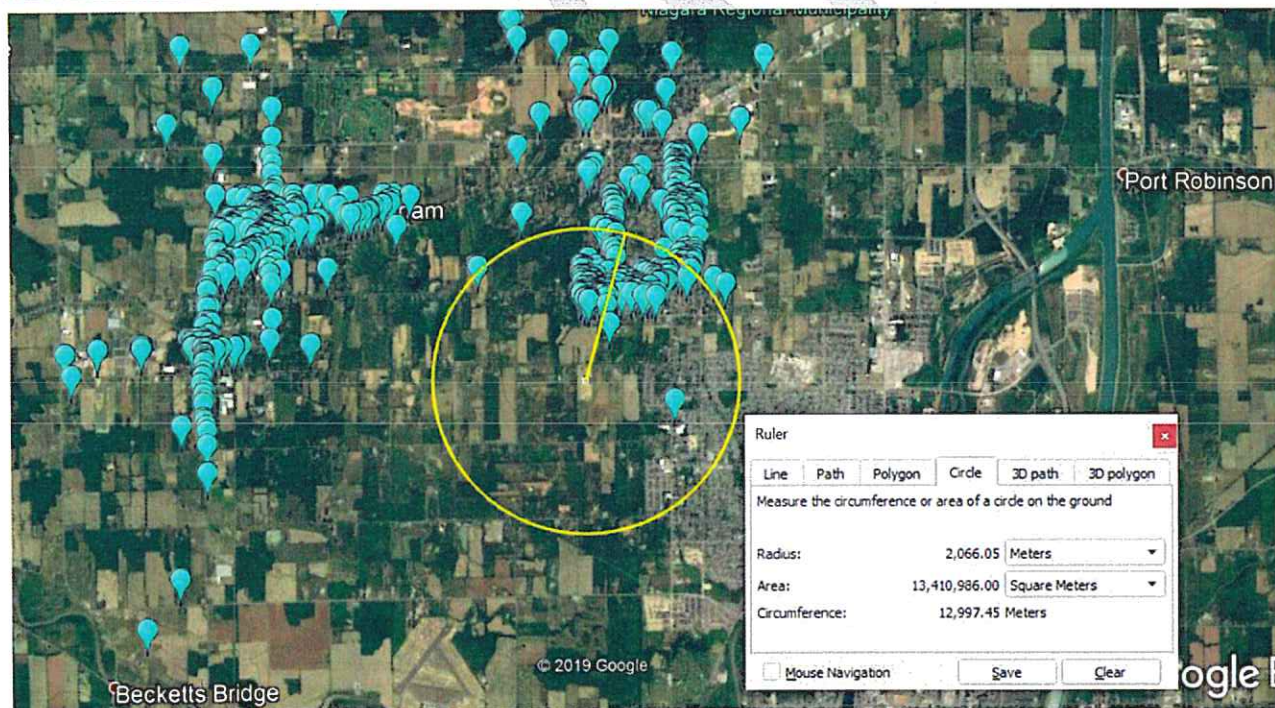
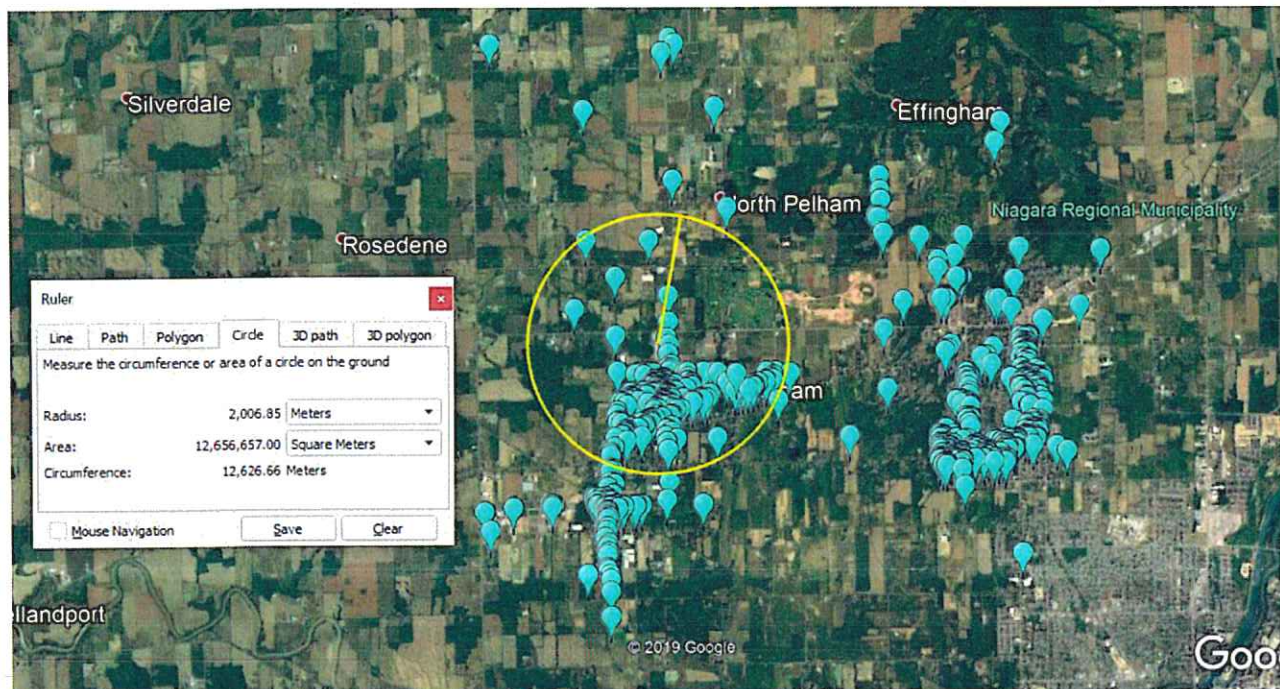
The young lad's school is over 1 km away from the Balfour Street facility (see the map below). He informed Council that school children were called inside from the playground due to the strong odour from the plant. He suggested that rules and guidelines should be in place so that schools are not affected by the odours.



The student's father made an impact statement. He lives within 1 km of CannTrust. He and his wife have four children and they are appalled that their children have to endure that smell.

John VanVliet lives on Foss Rd. Redecan is down from him and he can see the planned Leviathan facility from his house. He says the traffic on this road "is brutal, it's extreme, it's fast, it's dangerous and his kids are not allowed to ride down a country road in Fenwick because they are going to get killed".

Over 800 residents signed a petition for Council to address their concerns, and many have spoken directly to Council at the Public Meeting on September 10th. Please see the Appendices for this information.



The above figures plot the addresses of the people who signed the petition, with the upper figure showing a circle with an approximate 2 km radius around the CannTrust facility and the lower figure showing a circle with an approximate 2 km radius around the Redecan facility.

Those who signed the petitions by and large experienced the odour issues with these two facilities. As a result, the distribution of their addresses is a strong indicator of the odour dispersion pattern experienced. As can easily be seen, a 2 km radius is far too small a radius to represent the area of influence; it is more like 4.5 km.

It should be noted that in the case of Redecan, petitions were only gathered for residents of Pelham, notwithstanding the numerous complaints that are coming out of Welland to the East and South-East of the Redecan facility. Residents from Welland indicate they are most affected when the winds are from the North or North West. If Welland was surveyed, one can imagine that the populated residential areas to the East and South-East of Redecan would be filled with blue balloons as well.

2.3. SUMMARY OF ISSUES AND ADVERSE EFFECTS TO REGULATE

The public comments and concerns raised in Section 2.2 are supplemented with additional issues and concerns that have arisen through the research carried out by the CCC. The collection of adverse effects or impacts are listed in the table below.

Odour	Light	Traffic, Noise	Loss of Property Value	Loss of Precious Agricultural Lands	Adverse impacts including stormwater flow & contamination of ground (drinking) water and septic	Environmental Impacts including endangered species, habitat loss, agricultural co-existence & other ecological harm	Human Safety & Security (fire, police, ambulance)	Financial Costs to Community
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The CCC has investigated and seeks to recommend regulatory solutions for these, where feasible and justifiable.

2.3.1. Consideration of Other Odourous Industries

During its research on the obnoxious cannabis odour, the CCC has learned that other odourous industries produce similar undesirable odours; however, such industries are regulated to avoid adverse effects on their neighbours.

These *heavy odour* industries include landfills, slaughter houses, and rendering operations.

In light of this, the particular controls that the CCC proposes to mitigate cannabis odour will also be proactively proposed for these heavy odour industries. This broadening of our proposed odour controls will hopefully serve the Town better in the future, should one of these operations decide to locate in Pelham.

3. PLANNING CONTEXT

This section reviews the planning context that guides our approach to developing recommendations, given the regulatory considerations presented in Section **Error! Reference source not found.**

3.1. FEDERAL CANNABIS ACT

Cannabis Regulations SOR/2018-144, Section 85 Filtration of Air requires the following:

The building where cannabis is produced must be equipped with a system that filters air to prevent the escape of odours.

A description of the relevant information including the types of cultivation and processing licences will be added here.

3.2. CANNABIS INDUSTRY – INDUSTRIAL OR AGRICULTURAL?

There is plenty of confusion around whether the operations of the cannabis industry should be considered industrial or agricultural since it involves industrial processes as well as cultivation. The truth is that it is a hybrid industry, which makes it complex to manage and requires care in land use planning, or unintended harm and consequences will be the result for neighbouring land uses.

The North American Industry Classification System (NAICS) Canada 2017 Version 3.0 provides a variety of NAICS codes for the cannabis industry, depending on the precise nature of the operation. This includes the following NAICS codes:

- 111412 Growing cannabis under glass
- 111995 Growing cannabis in open fields
- 3123xx Making products from cannabis plants
- 4134xx Wholesaler of unprocessed cannabis and cannabis products
- 453993 Retail cannabis

These codes cover the spectrum from agricultural to commercial to industrial operations.

The Ontario Municipal Property Assessment Corporation (MPAC) has studied the cannabis classification issue and has concluded that it is both industrial and agricultural [MPAC Webinar 6 November 2019]. MPAC will use a Hybrid Classification System which it believes presents the least risk. The fundamental question is, "What is it, industrial

or agricultural?”. In Ontario, MPAC thinks the answer is BOTH. MPAC put the earlier medical cannabis in the industrial class because of Ontario Regulation 28298 Industry Class.

Original Medical Cannabis was put in Industrial. MPAC will assess each Cannabis facility case by case depending on its use in accordance with the Assessment Act (Section 19.5) and Regulation 28298. MPAC is required to classify land used in connection with manufacturing or producing or processing anything essentially in the industrial class). Section 19.5 only land and buildings used solely for farm purposes are entitled to beneficial farm treatment. Section 44 Land, not buildings are eligible for 19.5 treatment. Industrial property class is for buildings. If the operator holds a licence for processing, it will be classed industrial.

If the cannabis facility only holds a cultivation licence (most major cannabis players hold both cultivation and processing licences), it will likely be treated as farm class assuming it qualifies by obtaining a designation from Agrincorp. Otherwise it will be treated like residential class. A “Value Added Farm” is a property with both a cultivation and a processing licence. In this case, the land could be valued as farm class, and the building(s) would be valued on a cost approach on the basis of what it is (i.e. a greenhouse, a manufacturing building, et cetera).

3.3. ENVIRONMENTAL PROTECTION ACT & PROVINCIAL GUIDELINES AND REGULATIONS

The *Environmental Protection Act* R.S.O. 1990, Chapter E.19, Section 14 Prohibition on discharge of a contaminant states:

Subject to subsection (2) but despite any other provision of this Act or the regulations, a person shall not discharge [leak or emit] a contaminant [odour] or cause or permit the discharge of a contaminant into the natural environment, if the discharge causes or may cause an adverse effect [1(g) loss of enjoyment of normal use of property]. 2005, c. 12, s. 1 (5).

The MECP D-6 Guidelines on compatibility between Industrial Facilities and Sensitive Land Uses, including O. Reg. 419/05 Odour and NPC-300 Guidelines Noise Regulation Guidelines are relevant [Forristal et al].

These guidelines are applicable where an impacting land use is proposed where an existing sensitive land use would be within the impacting land use area of influence or potential influence.

The D-Series Guidelines are also intended to inform municipalities when drafting and implementing planning policies and documents such as its official plans and zoning by-laws.

NPC-300 calls for a Noise Impact Study to assess the impact of all noise sources and identify noise mitigation measures required to ensure compatibility. Sound levels must be determined for all points of reception (e.g. bedroom window) at all times of the day and must be below defined thresholds. O.Reg. 419/05 compliance requires an Emission Summary and Dispersion Modelling ("ESDM") Report which provides for the use of specified and approved atmospheric dispersion models to predict the concentration of contaminants that can be expected at a POI. These models consider all pertinent information such as discharge rates of contaminants, distance to buildings and property lines and meteorological data.

MECP also provides methods and procedures for the measurement of odours measured in odour units per cubic meter of air (OU/m³). MECP typically requires facilities to meet a standard of 1 OU/m³ and this standard may be imposed as a condition under a Section 9 Environmental Compliance Approval "ECA".

In response to an inquiry from the CCC's Dr. Jim Jeffs, MPP Sam Oosterhoff's Office forwarded a response from the Ministry of Environment, Conservation and Parks (MECP) on 15 October 2019 by e-mail re Cannabis Zoning which stated:

While cannabis production facilities are subject to provincial environmental legislation, MECP does not prescribe separation distances for industrial or agricultural facilities. Municipalities have tools (e.g., zoning by-laws, site plan agreements, building permits, etc.) that can be used to mitigate nuisance disturbances that may arise from land use incompatibility, such as cannabis production odour complaints. The development and implementation of set-backs that apply to cannabis production facilities are a municipality's prerogative.

3.4. PROVINCIAL POLICY STATEMENT (PPS)

Ontario Provincial Policy Statement 2014, 1.2.6.1 – Land Use Compatibility states:

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, minimize risk to public health and safety, and to ensure the long-term viability of major facilities.

3.5. THE PLANNING ACT

The *Planning Act*, R.S.O. 1990, CHAPTER P.13, 26(1)(c) requires that the Official Plan is consistent with the PPS and states:

If an official plan is in effect in a municipality, the council of the municipality shall revise the official plan as required to ensure that it is consistent with policy statements issued under subsection 3 (1).

3.6. GREENBELT PLAN 2017

To be completed.

3.7. NIAGARA PLANS

To be completed.

3.7.1. Niagara Escarpment Plan, 2017

To be completed.

3.7.2. Growth Plan for the Greater Golden Horseshoe, 2019

To be completed.

3.7.3. Regional Official Plan, consolidated August 2015

To be completed.

3.8. TOWN OF PELHAM OFFICIAL PLAN (2014)

To be completed.

3.8.1. Draft Amendment to Official Plan 10 Sep 2019

To be completed.

3.9. ZONING BY-LAW 1136 (1987)

Pelham Zoning Bylaw 1136 (1987) provides as follows. Section 6.19 Obnoxious Uses states:

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.

To be completed.

3.9.1. Draft Amendment to Zoning By-Law 1136 (1987) 10 Sep 2019

To be completed.

3.10. REGULATING NUISANCES

The aforementioned Federal, Provincial, Regional and Municipal laws, guidance, regulations and policy inform a standard of behaviour, compatible land use and co-existence between the new cannabis industry and existing residents and businesses in Pelham. Furthermore, municipalities also have specific authority under the Municipal Act to regulate nuisances including odour, light and noise.

Section 129(a) of the *Municipal Act 2001*, R.S.O. 2001, c.25 provides that municipalities can prohibit and regulate with respect to odour, light and noise and specifically states:

A municipality may prohibit and regulate with respect to noise, vibration, odour, dust and outdoor illumination, including indoor lighting that can be seen outdoors; 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 Section 128 of the *Municipal Act 2001*, R.S.O. 2001, c. 25 – provides that municipalities can prohibit and regulate with respect to public nuisances, and specifically states:

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.

Finally, Section 447.1 of Municipal Act indicates that a municipality has jurisdiction to regulate where:

(b) the public nuisance has a detrimental impact on the use and enjoyment of property in the vicinity of the premises including, but not limited to, impacts such as,

- (i) trespass to property,*
 - (ii) interference with the use of highways and other public places,*
 - (iii) an increase in garbage, noise or traffic or the creation of unusual traffic patterns,*
 - (iv) activities that have a significant impact on property values,*
 - (v) an increase in harassment or intimidation, or*
 - (vi) the presence of graffiti*
-

Based on the above, it is clear that municipalities have the authorities they need to regulate cannabis operations to mitigate the adverse effects on residents and other existing neighboring land uses. It is no wonder that Health Canada requires cannabis facilities to comply with municipal regulations, and why the Federal and Provincial governments have both consistently indicated that municipalities have the tools to regulate at a local level.

4. RECOMMENDED APPROACH TO REGULATIONS

The CCC's recommended approach to implementing regulations that address the Cannabis concerns raised in Section 2 is presented here. The proposed regulations are in accordance with the planning context presented in Section 3.

4.1. OVERVIEW OF RECOMMENDED APPROACH

The CCC's recommended approach to developing the required regulations is two-pronged:

- The first line of defence is achieved through amendments to the Town's Official Plan and Zoning Bylaw. These amendments will pro-actively define and implement new policy to ensure that new cannabis operations that wish to locate in Pelham in the future will likely not cause significant adverse effects like those presented in Section 2. Further details are provided in Section 4.1.2.
- The second or last line of defence is a nuisance bylaw that applies to both existing and new cannabis operations and it attempts to motivate cannabis operators to comply with the expected regulations through enforcement, consisting of fines as well as an application to the Provincial Offences Court, if necessary, for a temporary shutdown order. With odour being one of the key adverse effects, this bylaw will extend to other odorous industries as described in Section 2.3.1. Hence, the proposed name for this bylaw is the Odorous Industries Nuisance Bylaw. Further details are described in Section 4.1.1.

4.1.1. Odorous Industries Nuisance Bylaw

The recommended Odorous Industries Nuisance Bylaw was developed through extensive research, including expert guidance to inform the odour regulations from Mr. Phil Girard, P.Eng, who spent his career in this field. See the briefing Mr. Girard provided to the CCC on 30 October 2019 [Girard, 2019]. The recommended bylaw follows the MECP guidelines and regulations described in Section 3.3.

The bylaw closely follows the overview presented to Council on September 23rd, 2019 as illustrated in Table 1, which accounts for comments received from the Public Meeting held on 10 September 2019. The deviations are highlighted in red.

The draft Odorous Industries Nuisance Bylaw is presented in Appendix C.

Table 1: Overview of Nuisance Regulations Presented at Council Meeting of 23 Sep 2019

Item	The Cannabis Nuisance Bylaw CCC-Proposed Regulations (23 Sep 2019)
Odour & Light Mitigation and Enforcement	<ul style="list-style-type: none"> Existing and new CPFs require 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). Existing and new CPFs must prepare contingency odour and light mitigation plans in the event of substantiated complaints so that the plans can be immediately implemented as necessary. The odour and light control and monitoring plans should be signed/sealed by a Licensed Engineering Practitioner (LEP) consistent with Ministry of the Environment, Conservation and Parks (MECP) requirements. The Town will have the Plans peer reviewed at the CPF's expense. If odour and/or light violations continue to cause more than a level of trivial impact to off-property sensitive receptors, fines of \$5,000 per day will apply and a Court Order may be sought to shut-down the CPF if necessary, to resolve the adverse impact including loss of enjoyment of neighbours.
Proof for Enforcement & Transparency	<ul style="list-style-type: none"> Existing and new CPFs will 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. Ongoing odour ambient neighbourhood monitoring will be conducted at CPF(s) expense by independent trained and competent odour practitioners with results simultaneously delivered to the Town and CPF(s) and posted on website for public access.
Mitigation of other adverse impacts	<ul style="list-style-type: none"> CPF's will be required to conduct other professional studies (traffic, waste management, etc) and be subject to development charges. CPFs will comply with a variety of regulations (e.g. Health Canada, fortification and fence regulations, odour & light emissions) and be subject to enforcement. CPF's will be subject to regulations (to be developed by CCC) to address infrastructure, human safety, environmental, biological and ecological concerns, and to ensure measures are put in place and maintained to mitigate hazards and adverse impacts. CPF's will manage noise in accordance with provincial standards (e.g. generators used for primary power)

4.1.2. Official Plan and Zoning Bylaw Amendments

To be completed.

The preliminary overview presented to Council on September 23rd, 2019 is illustrated in Table 2, and is a starting point for the resulting amendments which will be presented here in a future release of this Report.

Table 2: Preliminary Overview of Proposed OP/ZBL Regulations Presented at Council Meeting of 23 Sep 2019

Item	CCC-Proposed Regulations (Preliminary findings - need to complete research, investigate unintended consequences through consultation with stakeholders, and draft resolutions)
What is allowed & Notice	<ul style="list-style-type: none"> Outdoor grow-ops will be prohibited because there is no practical way to stop obnoxious odours from escaping to neighbouring properties All new CPFs will require a Zoning Bylaw amendment to ensure residents are notified and have a chance to voice concerns before permits are granted
Where	<ul style="list-style-type: none"> If new CPFs are allowed to locate anywhere in Rural Pelham (Agricultural A and Industrial M1 and M2) they cannot locate within 1,000? m of the Greenbelt Natural Heritage Overlay, the Niagara Escarpment Plan Area and rural/urban settlements. Alternatively, we can confine them to Industrial areas and/or along major regional roads. (The point is location is important to avoid major adverse impacts. Our research will inform location constraints.)
Setbacks	New CPF setbacks will be a minimum of 300 m and up to 1,000 m measured between lot lines as per Ministry of Environment, Conservation and Parks (MECP) setback guidance (D-6 Land Use Planning Guide for Industry Class III), as determined case by case. The actual setback requirement will be determined based on odour, noise and dust study that demonstrates how the emissions can be effectively reduced to a level of trivial impact (i.e. no adverse effect).

Note: The 300 m and 1,000 m minimum setbacks noted above were preliminary. As a result of the Committee's research, the actual minimum setbacks and locations that will be proposed can be expected to differ from the preliminary information in the above table.

4.2. JUSTIFICATION AND RATIONALE FOR ODOUROUS INDUSTRIES NUISANCE BYLAW

Justification and rationale for the recommended approach and proposed Odourous Industries Nuisance Bylaw is provided in this section.

4.2.1. Justification for an Odourous Industries Nuisance Bylaw

The justification for establishing an Odourous Industries Nuisance Bylaw is clearly established in Section 2.2 and Section 2.3 of this report. The proposed bylaw is reactive, not proactive, and is based on direct experience with the existing cannabis producers discussed in Section 2.1.

Pelham's adverse effects, especially with respect to odour and light which the proposed bylaw addresses, are severe. We have studied the problem and Pelham's *rolling hills* geography and its high, sensitive-receptor density in its rural areas are unlike other jurisdictions, which are flat, open and low density. With reference to Section 4.2.5, neither Health Canada nor the Ontario Government has shown the initiative to implement the required odour monitoring programs. Rather, they have left it for municipalities to deal with.

Perhaps the greatest indicator that this bylaw is urgently needed is the fact that Cannabis producers have not remediated the problem and are still in non-compliance with the Health Canada Regulations note in Section 3.1, notwithstanding that it has been over fifteen (15) months since the Interim Control Bylaw was put in place and Cannabis grow operations were legalized.

4.2.2. Approach Taken with the Odourous Industries Nuisance Bylaw

The approach we are recommending with respect to the Odourous Industries Nuisance Bylaw is summarized in Table 3.

Table 3: Structure & Approach of Proposed Odourous Industries Nuisance Bylaw

Section	Description	Approach Taken
Recitals	The "WHEREAS" recitals that provided the background for the Bylaw	We make reference to the Planning Context in Section 3 and the key public concerns in Section 2.2.
1. Interpretation	Definitions are provided here	To remove ambiguities and provide consistency throughout the bylaw, we define all key definitions here. These have been informed by our research as well as legal advice.
2. Prohibitions	Describes what is prohibited in Pelham	Every Odourous Industrial Facility, which includes a Cannabis facility, must follow the Bylaw, not release a substance or contaminant that may be harmful to the public or environment, and must not cause an Adverse Effect. Unauthorized Cannabis facilities are not allowed in Pelham.
3. Licences	Licences, registrations and other forms of authorization.	These must be produced for inspection by the Town.
4. Regulations	This section provides the regulations which the Town is imposing.	Regulations include the following at no cost to the Town: <ul style="list-style-type: none"> • Inform the Town promptly of lapses or changes in licences • Prepare a Contingency Odour Mitigation Plan to be used promptly to enhance odour mitigation if off-property odour is affecting neighbours – standards are provided in accordance with MECP guidelines and includes an Emission Summary and Dispersion Modelling (ESDM) Report with odour threshold of two Odour Units (OUs).

Section	Description	Approach Taken
		<ul style="list-style-type: none"> • Prepare a Contingency Light Mitigation Plan to be used promptly in the face of complaints. • Enter into Site Plan Control and Site Plan Approval prior to issuance of a building permit, and carry out requested studies first. • Employ air filtration systems to prevent the escape of Obnoxious Odours • Ensure that lighting does not cause a Light Trespass or Glare. Prevent sky glow at night so as not to be a nuisance to neighbours • Noise should not exceed the limits set out in MECP's NPC-300 guidelines • Document and report to the Town all complaints received • Report to the Town any corrective action taken • Pay for an ongoing neighbourhood, ambient odour monitoring program conducted by an independent odour practitioner selected by the Town with results simultaneously delivered to the Town and the facility operator and posted online for public access
5. Penalty	Fines for Contraventions	<ul style="list-style-type: none"> • Any contravention of a provision of the Bylaw can be designated as a continuing offence under the Municipal Act • A Person who contravenes is guilty of an offence and liable to a fine under the Provincial Offences Act. • For a person the maximum fine is \$5,000 per day the offence continues • For a corporation the maximum fine is \$10,000 per day the offence continues
6. Continuing Offence	Each calendar day is considered a separate offence	Applies to Section 2, 3 or 4 contraventions
7. Enforcement	Facility Shutdown	Can apply to the Superior Court of Justice to close the facility for up to two years under certain conditions
8. Powers of Entry	Powers of Entry	The Town can enter the facility under certain conditions

Section	Description	Approach Taken
9. Powers of Inspection	Powers of Inspection	The Town can require and inspect documents, request information, make examinations or conduct tests, and inspect for the purpose of a Section 8 Inspection.

4.2.3. Managing Cannabis Nuisances Does Not Conflict with Normal Farm Practices

Notwithstanding the strong regulatory authorities provided in Section 3.3 and Section 3.10, the question often arises as to whether we can regulate nuisances with respect to cannabis operations, given the protections provided for normal farm practices under the Farming and Food Production Protection Act, 1998 (FFPPA). We have examined that question, and our conclusion is yes, Pelham can regulate cannabis nuisances.

The relevant exceptions in the FFPPA are noted below:

1. Section 2 (1.1) A practice that is inconsistent with a regulation made under the Nutrient Management Act, 2002 is not a normal farm practice. 2002, c. 4, s. 63 (1).
2. Section 2 (3) Subsections (1) and (2) do not apply to preclude an injunction or order, in respect of a nuisance or disturbance, against a farmer who has a charge pending related to that nuisance or disturbance under the,
 - (a) Environmental Protection Act;
 - (b) Pesticides Act;
 - (c) Health Protection and Promotion Act; or
 - (d) Ontario Water Resources Act. 1998, c. 1, s. 2 (3).
3. Section 2 (5) This Act is subject to the Environmental Protection Act, the Pesticides Act and the Ontario Water Resources Act. 1998, c. 1, s. 2 (5).

The regulation of nuisances recommended in the Odourous Industries Nuisance Bylaw relies on the Environmental Protection Act which takes precedence over the FFPPA.

Furthermore, the cannabis industry is new and changing and what constitutes a normal farm practice is yet to be established and proven. [Reference].

4.2.4. Agency Comments and Cannabis Producer Comments Regarding Cannabis Nuisance By-law

The Niagara Region only provided comments with respect to the draft Official Plan Amendment (OPA) and Zoning Bylaw Amendment (ZBA) presented at the 10 September 2019 Public Meeting. The Niagara Region did not provide any comments with respect to the proposed Cannabis Odour bylaw presented at the Public Meeting. See [4].

The Solicitors for CannTrust provided the following general comments:

- Municipal by-laws cannot conflict with federal legislation/regulations.
- Municipal by-laws cannot frustrate the purpose of a federal enactment.
- The proposed prohibition section creates the potential for direct conflict with federal approvals.
- Both light and odour are dealt with in the Cannabis Regulations.
- How does the Town justify targeting cannabis? The by-law is discriminatory.

The CCC has considered these comments and done its best to address them. The CCC believes the proposed by-law is consistent with federal legislation and has taken care with legal advice to not frustrate the purpose of the Federal Cannabis Act.

The Solicitors for RedeCan provided the following comments:

- The regulations as currently drafted do not set out the requirements in a clear and objective manner. Several specific ambiguities were identified.
- It also appears that certain portions of the Regulations may overstep the Town's authority and conflict with provincial and federal legislation.
- It is suggested that the consequence be tailored to the type or nature of the offence.
- It is felt that it is an extremely broad provision to force a closure of a facility for up to two years.
- Any enforcement access rights to their facilities should be consistent with the licensee's federal obligations.
- Any removal of documents need to be limited to copies.

These comments have been considered by the CCC and by staff and efforts have been made to address them where appropriate.

Leviathan did not attend the Public Meeting and did not provide any comments on the draft by-laws, OPA, and ZBA.

4.2.5. Managing Odour

Pelham is fortunate to have a local odour expert, Mr. Phil Girard, P.Eng, who is a resident of Pelham. Mr. Girard spent his career at Pinchin Ltd working with odourous industries and the MECP in Ontario, to help stinky industries mitigate the adverse effects of odour and comply with MECP regulations. He started the Air/Nose Group at Pinchin Environmental in 1996 and has provided training to staff at the former Ministry of the Environment.

Mr. Girard has volunteered countless hours of his time to assist the CCC in understanding odour and how to use practices established for stinky industries by the MECP to develop bylaw provisions to manage cannabis odour in Pelham.

As he indicated below [Girard, 2019, pg.56/57] the Town does not have to re-invent the wheel, and so we didn't.

Odour can be quantitatively measured so that it can be managed. The "type" of smell is irrelevant.

- Ambient programs can be used to evaluate ongoing compliance.*
 - Industry is already required to prepare emission summary and dispersion modelling reports that demonstrate compliance with provincial limits.*
 - If a complaint arises, industry is required to develop an abatement plan.*
 - There are MECP protocols for contaminant reporting, odour sampling, analysis and modelling. The Town does not have to re-invent the wheel.*
-

Odour problems can be predicted by conducting an odour study that produces an Emission Summary and Dispersion Modelling Report (ESDM) in accordance with Ministry Guidelines. The CCC recommends that new cannabis industry applicants or existing cannabis facilities seeking an expansion or site alteration are required to prepare an ESDM using a licenced engineering practitioner (LEP), prior to the granting of site plan approval or a building permit. Cannabis applicants would be wise to do this anyway, as Pelham's *rolling hills* geography can cause odour to disperse long distances in comparison to other flat geographies.

The ESDM in Ontario typically uses AERMOD modelling software to predict odour dispersion and odour strength levels measured in odour units (OUs) at sensitive receptors such as residents and schools in the vicinity of a proposed cannabis facility. AERMOD takes into account five years of meteorological data and incorporates local terrain topography to predict how odour will travel from the proposed facility.

The ESDM allows a cannabis facility operator to determine the extent of their odour mitigation systems needed to ensure that odour remains at the detection threshold at sensitive receptors, which is 2 OUs.

The Contingency Odour Mitigation Plan that is incorporated in the regulations of the recommended bylaw (See Table 3 Section 4) provides for additional odour mitigation at the facility should the facility be determined to not be in compliance with the odour thresholds established by the Bylaw.

If you don't measure it, you can't manage it. In accordance with our proposed Bylaw and following MECP established guidelines and industry practices, two different methods are proposed to measure the odour that

escapes cannabis facilities and other stinky industrial facilities that may wish to locate to Pelham in the future:

1. An ambient neighbourhood monitoring program that measures odour at many different locations in the vicinity of a facility (upwind and downwind) and at unannounced or random times, so that the actual odour dispersion and odour strength can be monitored and assessed over time at sufficient frequency to quantitatively characterize the escaping odour. These data are invaluable as they can be used to quantitatively assess compliance, validate complaints at sensitive receptors, and monitor improvements made by cannabis operators with the addition of further odour mitigation technologies.
2. Odour measurement at the property line(s) of a facility in response to complaints and randomly.

We recommend that the Ambient Neighbourhood Odour Monitoring Program be conducted by a third-party professional paid for by the cannabis facilities, with data published on-line to share with the cannabis industry, the Town and the public.

We recommend that odour measurement at the property line(s) of a facility be conducted by enforcement staff.

Because cannabis odour is not continuous from a facility, arises in the flowering stage, will vary depending on how a facility is venting air, and will vary with meteorological conditions, only an ambient monitoring program can capture the necessary data.

The ambient neighbourhood monitoring data will be invaluable for research, and will also assist with relations with neighbouring Towns.

For example, residents of Welland in the Balsam Street area who are downwind from RedeCan have made numerous complaints regarding the excessive odour they regularly face with prevailing westerly winds. Because odour from cannabis facilities in Pelham travels distances in excess of 2 km, Pelham should be neighbourly with Welland by ensuring that the ambient monitoring program includes neighbourhoods in Welland. The tables could be turned quite quickly on Pelham residents if new cannabis facilities locate in bordering Welland, Thorold, Wainfleet and West Lincoln.

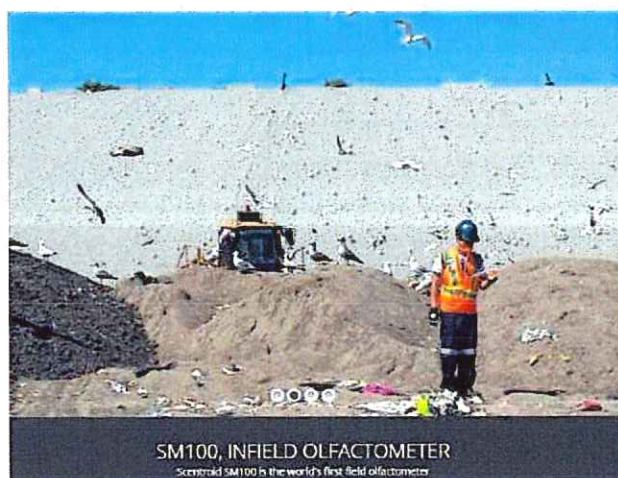
Measuring odour is done most practically using a field olfactometer, which is a device that costs approximately \$5,000. The Nasal Ranger or the Scentroid SM100 are examples of such field olfactometers. The CCC recommends that the Town's enforcement staff purchase and use one of these devices for the property line measurements.

FIELD OLFACTOMETERS

- Portable devices that measure odour in the community
- Examples: Nasal Ranger
Scentroid SM100



NASAL RANGER
field olfactometer



[Girard, 2019, pg. 34/57]

4.2.6. Managing Noise

The source for the CCC's recommendation of MECP's NPC-300 Guideline for managing noise is [Forristal et al, 2013], where the following is provided:

In October 2013 the MOE released the new Environmental Noise Guideline, Stationary and Transportation Sources - Approval and Planning – Publication NPC-300 (the “NPC-300 Guidelines”), replacing older guidelines including Publication LU-131 – Noise Assessment Criteria in Land Use Planning and Publication NPC-205 – Sound Level Limits for Stationary Sources in Class 1 and 2 Areas (Urban). The NPC-300 Guidelines are intended to address the control of sources of noise emissions to the environment by providing sound level limits for stationary sources such as industrial establishments. Compliance with the NPC-300 Guidelines must be demonstrated by applicants for ECAs under the EPA. The sound level limits may also be applied when noise complaints are made to the MOE and an investigation is undertaken to determine if such noise constitutes an adverse effect contrary to section 14 of the EPA.

The NPC-300 Guidelines also provide advice, sound level limits and guidance that may be used in the land use planning process.

NPC-300 itself [NPC-300] notes the following in Section A6.4 Municipal Act¹:

The Municipal Act empowers municipalities to enact noise by-laws to control sound (noise). The NPC guidelines are included by municipalities in many municipal noise by-laws enacted under the Municipal Act.

4.2.7. Managing Light

The light pollution in Pelham associated with the sky glow emanating from the cannabis facilities in Pelham is severe and continues to plague Pelham and neighbouring residents unabated, where it can be seen at great distances (see Section 2.2). Hence regulations and enforcement are required.

The Planning Context presented in Section 3 certainly supports Pelham regulating to mitigate this nuisance. The sky glow can be eliminated by the cannabis operators and it should be eliminated to restore Pelham to the picturesque, dark sky community that it was.

The Royal Astronomical Society of Canada (RASC) has been promoting Dark-Sky Protection Program to protect people and wildlife from the harmful effects of light pollution, including sky glow, light trespass and glare [RASC, 2018].

¹ It should be noted that the NPC guidelines do not apply to noise sources from agricultural operations during the course of normal farm practice, which are subject to the Farming and Food Production Protection Act, 1998.

The goal of the RASC Dark-Sky Protection Program is to promote the reduction in light pollution, demonstrate good ecologically sound night-time lighting practices, improve the nocturnal environment of wildlife, protect and expand dark observing sites for astronomy, and provide accessible locations for the general public to experience the naturally dark night sky.

Communities in North America have begun to react to the harmful effects of light pollution and are adopting Dark Sky policies to reduce light pollution and its effects on their communities.

4.3. JUSTIFICATION AND RATIONALE FOR OP AND ZBL AMENDMENTS

Justification and rationale for the recommended approach and proposed Official Plan (OP) and Zoning Bylaw (ZBL) amendments are provided in this section.

To be completed.

5. REFERENCES

References will be provided here.

1. AM-07-19 OP-AM-01-19 September 10 Public Meeting minutes.pdf
2. [Forristal et al, 2013], Land Use Compatibility – Noise & Odour, Annik Forristal, Mary Flynn-Guglietti & Henry Krupa, McMillan LLP
3. MPAC Webinar 6 November 2019 Regarding Classification Treatment of Cannabis Licenced Facilities:
<https://www.youtube.com/watch?v=C-7zudPJPsg&feature=youtu.be>
4. AM-07-19 OP-AM-01-19 Regional Comments.pdf
5. AM-07-19 OP-AM-01-19 Public Comments as of December 9 19. Pdf
6. [Girard, 2019] P Girard Cannabis Control Committee Odour Briefing Oct 30 2019.Pdf
7. [NPC-300] NPC-300_Final-Approved_011-0597.Pdf
8. [RASC, 2018] RASC-GOL_2018_1.Pdf

6. APPENDICES

Appendices will be provided here.

Appendices

- a. Public Concerns
- b. Public Meeting Comments 10 September 2019
- c. Odourous Industries Nuisance Bylaw
- d. Site Plan Control Bylaw Amendment
- e. Official Plan Amendment
- f. Zoning Bylaw Amendment
- g. Research Reports

APPENDIX C: Odourous Industries Nuisance Bylaw

The draft, recommended bylaw follows.

THE CORPORATION OF THE
TOWN OF PELHAM

BY-LAW NO. (2019)

Odourous Industries Nuisance By-Law

Being a by-law to regulate certain matters and nuisances related to odourous industrial facilities.

WHEREAS, Section 128 of the *Municipal Act, 2001*, R.S.O. 2001, c.25 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;

AND WHEREAS Section 129(a) of the *Municipal Act, 2001*, R.S.O. 2001, c.25 provides that a local municipality may prohibit and regulate with respect to noise, vibration, odour, dust and outdoor illumination, including indoor lighting that can be seen outdoors; 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 facilities are a new industry requiring municipalities to look to federal and provincial regulations, policies and legislation as a guide for how to regulate certain matters related to Cannabis production facilities;

AND WHEREAS Cannabis Regulations SOR/2018-144, Section 85 requires the building where Cannabis is produced to be equipped with a system that filters air to prevent the escape of odours;

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 The Ministry of the Environment, Conservation and Parks D-6 Guidelines, O. Reg. 419/05 Odour Regulation and NPC-300 Noise Regulation provide a framework, standards and methods for assessing whether adverse effects are likely, whether proposed mitigations are likely to be adequate, and how to measure compliance;

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 in order 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 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 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 residents of the Town of Pelham have filed numerous complaints which clearly indicate their strong dislike of the Cannabis odour they have been subjected to and the adverse effects it and other Cannabis nuisances are having on them;

AND WHEREAS The aforementioned complaints have highlighted the need to update by-laws to address the negative impacts of Cannabis and other odorous industrial facilities that may wish to locate in Pelham;

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) "Adverse Effect" means an effect that has greater than a trivial impact, including effects such as (i) loss of the ordinary enjoyment or use of one's property including for Sensitive Uses; (ii) loss in property value; (iii) a negative health impact on a resident; (iv) a negative impact on the environment including soil, ground water and septic system contamination; (v) loss of ~~precious~~ agricultural lands and hazards to sensitive nearby crops; (vi) a negative ecological impact including habitat loss; and (vii) increase in ~~garbage~~, noise or traffic or the creation of unusual traffic patterns.
- b) "Authorized Cannabis Operation" means a Cannabis Operation authorized by an issued license or registration by the federal Minister of Health, pursuant to the Cannabis Regulations SOR/2018-144 or the Access to Cannabis for Medical Purposes Regulations SOR/2016-230, and in compliance with the *Cannabis Act* S.C. 2018, C.16 and the *Controlled Drugs and Substances Act*, SC 1996, c 19, as amended from time to time, or any successors thereto, and operating in accordance with relevant provincial regulations and all municipal bylaws and regulations including this bylaw.
- c) "Cannabis" shall have the same meaning as cannabis as defined in the *Cannabis Act* (Canada) S.C.2018, c.16 as

amended from time to time, or any successors thereto.

- d) "Cannabis Cultivation Operation" means the growing of Cannabis for medical or recreational purposes, subject to regulations under the *Cannabis Act*, as amended.
- e) "Cannabis Operation" means any of the following: a Cannabis Cultivation Operation, a Cannabis Processing Operation, a Cannabis research operation, a Cannabis analytical testing operation, or a Cannabis drug production operation, each which is subject to regulations under the *Cannabis Act*, as amended.
- f) "Cannabis Processing Operation" means the extraction of Cannabis oil for the purpose of producing or manufacturing Cannabis oils, gels or other edibles, carried out subject to regulations under the *Cannabis Act*, as amended.
- g) "Council" means the Council of the Municipality.
- h) "Enforcement Officer" means the By-law Enforcement Officer appointed by the Council of the Municipality 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.
- i) "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.
- j) "Heavy Odour Operation" means a landfill operation, slaughter house operation, or rendering operation.
- k) "LEP" means a licensed engineering practitioner who is a person who holds a licence, limited licence or temporary licence under the *Professional Engineers Act Ontario*.
- l) "Light Trespass" means the shining of light by a luminaire beyond the boundaries of a property on which it is located.
- m) "Luminaire" means a complete lighting system including a lamp or lamps enclosed in a housing complete with reflectors or refractors.
- n) "MECP" means the Ministry of the Environment, Conservation and Parks, Ontario.
- o) "Municipality" means The Corporation of the Town of Pelham.
- p) "Obnoxious Odour" means an odour of Cannabis or an odour from an Odourous Industrial Facility that:

- a. emanates from a property and disperses or is likely to disperse to one or more other properties; and

- b. is of such strength that it causes or is likely to cause an Adverse Effect.
- q) "Odour Unit" or "Odour Threshold Value" is a measure of the number of dilutions required to render a sample to the detection threshold, commonly expressed as an odour concentration (OU/m³). One odour unit is defined as the point where 50% of a normal population could just detect that an odour is present. Measurement of the strength of an odour in odour units is facilitated using a laboratory or field olfactometer.
- r) "Odorous Industrial Facility" means the property, including all its lands, buildings, structures and improvements on the lands, associated with:
 - a) a Cannabis Operation, including an Authorized Cannabis Operation, but shall not mean any property ~~on which Cannabis is grown~~ used exclusively for the legal use solely by the registered owner personal cultivation of up to four Cannabis plants per household in accordance with the ~~property~~ Cannabis Act (Canada) S.C.2018, c.16; or
 - b) a Heavy Odour Operation.
- s) "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.
- t) "Public Nuisance" means a nuisance as defined in Section 128 and 129 of the *Municipal Act, 2001*, R.S.O. 2001, c.25.
- u) "Sensitive Use" or "Sensitive Receptor" means a school, day care, playground, sporting venue, park, recreational area, residence, place of worship, community centre or any other place where people regularly gather or sleep.
- v) "Vicinity" means the region formed between the inner polygon defined by the property lines of an Odorous Industrial Facility and an outer polygon separated by 2 km from the inner polygon, wherein every point in the region is a distance of no more than 2 km from the nearest point on the inner polygon.
- w) "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 an Odorous Industrial Facility except in accordance with the provisions of this By-Law;
- b) operate an Odorous Industrial Facility that releases a substance or contaminant that may be harmful to the public or the environment;
- c) operate an Odorous Industrial Facility that causes an Adverse Effect; or
- d) operate an Odorous Industrial Facility, in the case of a Cannabis Operation, except as one maintained as an Authorized Cannabis Operation.

Licences

- 3. The owner, occupier and/ or operator of an Odorous Industrial Facility shall produce for inspection all licences, registrations and other forms of authorization which permit the Authorized Cannabis Operation or the Heavy Odour Operation, as the case may be, on the property.

Odorous Industrial Facility Regulations

- 4. An Odorous Industrial Facility shall:
 - a) promptly inform the Municipality of any lapses, non-compliances, changes or proposed changes to its licences and operating authorities from Canadian governments and agencies including Health Canada and Canada Revenue Agency, the Province of Ontario including the MECP, the Municipality and any other competent authority;
 - b) operate indoors except with Council approval where it can be demonstrated that the regulations of this by-law will be satisfied;
 - c) prepare at no cost to the Municipality a contingency odour mitigation plan signed/sealed by an LEP, for use in the event of substantiated complaints so that the plans can be immediately implemented as necessary. The odour mitigation plan shall be in the form of an MECP Emission Summary and Dispersion Modelling report detailing the odour inventory and mitigation that will be employed, off-property odour impact predictions, implementation timelines, and a signed/sealed statement by the LEP that (i) the off-property odour impact will not cause an adverse effect at any sensitive use in the Vicinity, and (ii) the odour strength will not exceed two odour units at any sensitive use in the Vicinity (where the standard of compliance is that two odour units will only be exceeded at any given sensitive use up to 0.5% of the time on an annual basis as per MECP Technical Bulletin "Methodology for Modelling Assessment of Contaminants with 10-Minute Average

- d) prepare at no cost to the Municipality a contingency light mitigation plan with implementation timelines signed/sealed by an LEP, for use in the event of substantiated complaints so that the plan can be immediately implemented as necessary;
- e) prior to the issuance of any building permit for new construction or alteration, or if no construction or alteration is required then prior to commencing operation associated with any change in land use, obtain site plan approval and enter into a Site Plan Agreement with the Municipality pursuant to Section 41 of the *Planning Act, R.S.O. 1990, c.P.13*. Site plan approval will require, at no cost to the Municipality with independent peer review on behalf of the Municipality, site plans and designated Section 41(7) studies, and may include additional studies if requested in support of a zoning bylaw amendment application such as on-site monitoring plans and contingency mitigation plans signed/sealed by an LEP which demonstrate that the odour, noise and light requirements of this by-law will be met;
- f) operate only in a Zone designated for such use or in accordance with a zoning by-law amendment approved by the Council of the Municipality;
- g) employ systems, including air filtration systems, throughout the Odorous Industrial Facility where Cannabis or other odour is present to prevent the escape of obnoxious odours and to ensure that:
 - i. at all sensitive uses within the Vicinity, the odour strength measured from the Odorous Industrial Facility never exceeds two odour units more than 44 times per year; and
 - ii. at all sensitive uses within the Vicinity, the odour strength measured from the Odorous Industrial Facility never exceeds four odour units; and
 - ii-iii. the odour strength measured at any point on any property line of the Odorous Industrial Facility never exceeds six odour units;
- h) ensure that all security and parking lot lighting are shielded, directed downward and do not spill over onto adjacent properties or create a Light Trespass or Glare so as to cause a nuisance to any adjacent property;
- i) ensure that structures that require interior supplemental lighting for the growing of Cannabis or for another purpose employ a light control plan and light blocking systems to prevent skyglow at night so as to not cause a nuisance to neighbours and the general public;

- j) ensure that noise generated by the Odourous Industrial Facility, including noise from the use of power generators as a primary power source, does not result in sound levels that exceed the limits set out in MECP's NPC-300 guidelines;
- k) operate in a manner to avoid becoming a public nuisance, including implementing pro-active measures to mitigate potential Adverse Effects, and acting quickly and in good faith by implementing contingency measures and additional mitigation measures as needed if complaints arise;
- l) document, and report to the Municipality all complaints received from neighbours and residents and detail the corrective action that will be implemented, including a timeline to prevent further adverse impacts;
- m) report to the Municipality any corrective action taken within five days of commencement of such action and again within five days following completion of such action;
- n) pay for an ongoing neighbourhood, ambient odour monitoring program conducted by independently trained and competent odour practitioner(s) selected by the Municipality with results simultaneously delivered to the Municipality and the Odourous Industrial Facility operator and posted online for public access; and
- o) in the case of a Cannabis Operation, cultivate and process Cannabis solely for the Health Canada licence holder associated with the Odourous Industrial Facility.

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 (a) and (c) above, every Person who is a corporation that contravenes any provision of this By-law is guilty of an offence and upon 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, Section 3 or Section 4 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 an Odourous Industrial 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 an Odourous Industrial Facility constitute a public nuisance or cause or contribute to activities or circumstances constituting a public nuisance in the Vicinity;
 - b) the public nuisance has a detrimental impact on the use and enjoyment of property in the Vicinity;
 - c) the owner, operator or occupants of the Odourous Industrial 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 Odourous Industrial Facility 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 an Odourous Industrial 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; 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) 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 _____, 2020

MAYOR MARVIN JUNKIN

CLERK NANCY J. BOZZATO

Subject: Funding for New Pelham Initiatives**Recommendation:**

THAT COMMITTEE receive Report #2020-0013 and recommend to Council:

THAT Council approve a net expenditure of \$8,942 in spending authority, to engage in the five separate initiatives as outlined herein.

Background:

Recently several opportunities for knowledge enhancement, Cannabis advocacy and/or potential savings have arisen. These are unbudgeted items. The purpose of this report is to seek \$8,942 net in spending authority to engage in five separate initiatives. At time of writing it is unclear where the monies to pay for these initiatives would come from. Staff is prepared to attempt to identify potential savings over the course of the year to fund these initiatives, failing which a report with recommendations will be presented to Council for consideration at that time.

Analysis:**Proposed (non-budgeted) Expenditure #1: Mohawk College Training Program in How to Manage in a Unionized Environment**

As Council is aware, Town staff in the Public Works Department voted to join and be represented by the Canadian Union of Public Employees ("CUPE"). The first collective agreement is expected sometime during the spring or summer of 2020. This will create significant changes to the employer-employee relationship in this Department, and potentially in other Departments. To help ensure a smooth transition and to support the maintenance of positive relationships, a one-day training session in Union-Management relations, provided by Mohawk College, is seen as an ideal and cost-effective tool. At time of writing, the Town has received an expression of interest from Township of Wainfleet administration in having some of its managers also attend the session, which would likely be held at the MCC in late April or early May. Participation by Wainfleet may serve to reduce the average cost per participant. At time of writing \$8,000 is required to host this session.

Proposed (non-budgeted) Expenditure #2: Corporate Subscription to the Municipal Information Network

For roughly \$1,800 per year all Town staff and elected officials can be provided with access to the “Municipal Information Network” (“MIN”), which is a private sector, for profit enterprise that serves as a central repository for all significant municipal news stories, five days per week. The MIN is also a major forum for job advertisements in the municipal world. The \$1,800 fee would allow the Town to post an unlimited number of job advertisements to the site. This is a cost effective method to increase the visibility of Town jobs and also access news stories and best practices from other municipalities.

Proposed (non-budgeted) Expenditure #3: WSIB Excellence Program

Staff are seeking \$10,200 to participate in the new “WSIB Excellence Program”. This cost includes program registration, salary for a three-month temporary hire, and administrative costs. If the program is successfully completed, the Town will qualify for \$18,558 in premium rebates, for a net financial gain of \$8,338, plus potential future WSIB premium savings.

The WSIB Excellence program is a new initiative intended for all types of organizations. The purpose of the program is to assist organizations in building health and safety practices and systems that not only meet minimum requirements, but reach a standard of excellence. The Town can select up to 5 health and safety topics they would like to create or build upon and submit an action plan to the WSIB. With guidance and resources from a WSIB approved provider, staff must complete the topics and submit evidence that demonstrates the topic has been created and implemented.

For every completed topic, the Town will earn a rebate. The rebate per topic is 2% of the WSIB premiums for the previous year. Based on the 2019 premium amount of \$185,580, the Town will earn \$3,712 per completed topic, for a maximum rebate amount of \$18,558. In addition to this direct monetary benefit, the Town has the potential to save additional dollars by creating a safer workplace and reducing the risk of WSIB claims and possibly lowering premium rates in the future through an improved claims experience. Further, the Town will receive public recognition on the WSIB Compass website and be given a digital badge. Most importantly, this will demonstrate that the Town is committed to improving our health and safety culture and ensuring the wellbeing of our staff.

Costs involved include a sign-up fee of \$1,000 plus all applicable taxes. This is paid to the WSIB approved provider who will be tasked with supporting the Town through this process and providing the resources necessary to complete each topic successfully. The request also includes \$9,200 which covers all employment costs of having a Health and Safety Co-op intern complete these topics over a 3-month period.

Proposed (non-budgeted) Expenditure #4: Contribution to CAO Niagara CAO Group Service Sharing & Integration

The twelve Niagara Region municipal CAOs have agreed that for the various sharing/ collaborating initiatives being investigated (legal costs, purchasing, drainage inspection, building inspection and potentially library services), it would be most beneficial to have a devoted person to champion and lead the initiatives. The Region is drafting a report in which the Region's Interim CAO will endorse the Region paying half the cost, with the remainder to be split, on a per-capita basis. Pelham's per-capita share of this cost is \$2,500. If these initial monies are supported, the group intends to apply for provincial funding to offset and possibly reverse this expenditure.

Proposed (non-budgeted) Expenditure #5: Participation in the Cannabis Host Communities Network ("CHCN")

The inaugural meeting of the CHCN was held in Toronto at the end of the ROMA conference, on Tuesday, January 21, 2020. Thirty-five (35) municipalities and/or First Nations groups indicated an interest and roughly twenty (20) attended the meeting. Discussion revolved around creating Terms of Reference, future meetings, advocacy with both the Province and Federal Governments, areas of focus, and financial considerations. It was suggested that the Town of Pelham would be open to providing some seed money in the ball park of \$5,000 to give the group some initial working capital, ahead of any formal decision to levy dues/contributions, given the importance of the topic and the need to find like-minded allies. At present the staff support to this initiative will primarily come from the Municipality of Clarington, which is one of the larger municipalities involved in the initiative.

Financial Considerations:

The net increase budget request of \$8,942 will be covered by expenditure savings or new additional revenue throughout the upcoming year.

Alternatives Reviewed:

Council may support all or some of the initiatives outlined in the report.

Strategic Plan Relationship: Strong Organization

Proposed expenditures #3 and #4 are ultimately intended to save tax payer money. Expenditure #5 pertains to the Town's dominant social issue, while proposed expenditures #1 and #2 are anticipated to increase staff and institutional capacity.

Consultation:

Most of SLT has been consulted on proposed expenditures 1-4. Proposed expenditure #5 has been discussed with Councillor Ciolfi and Mayor Junkin as they were in the room at the inaugural meeting of the CHCN and heard and participated in the same discussion.

Other Pertinent Reports/Attachments:

Union Management Relations Course Description
CHCN Meeting Description Document

Prepared and Submitted by:

David Cribbs, BA, MA, JD, MPA
Chief Administrative Officer

Course: Union Management Relations

Duration: 1 day

Overview:

This one-day course will provide participants with an understanding of the history of union/management relations and management rights and processes. Participants will learn how to build effective relationships between union and management and move from confrontation to collaboration. In addition, dealing with grievances and why grievances may go to arbitration will be examined.

Learning Outcomes:

Upon successful completion of this course, participants will be able to;

1. Identify management rights in a union environment.
2. Recognize how to build effective relationships between union and management.
3. Utilize effective negotiation skills.

Content:

- History of union/management relations
 - Why unions evolved
 - Why the relationship between unions and management tends to be controversial
- Management rights & processes
 - Union management relations terminology
 - Impact on performance management
 - Common management mistakes
 - Exploring the collective agreement
 - Management challenges implementing their rights
- Avoiding & dealing with grievances
 - Confrontation to collaboration
 - Building a positive and collaborative relationship
 - Effective grievance management
 - Examine a case study
- Arbitration
 - Purpose and steps of the process
- Negotiation Process
 - Value of negotiation skills
 - Become a better negotiator

Methodology:

- Instructor-led, Power Point presentation
- Individual and group activities
- Case studies

Cannabis Host Communities Network (CHCN)

Embracing a New Industry Together

Purpose

1. To bring municipal leaders and cannabis industry experts together to build common goals around community safety, public health, economic development, and community growth.
2. To provide municipal perspective to the Federal and Provincial government as it pertains to cannabis legislation and the industry at large.
3. To work closely with Licensed Producers and other industry stakeholders to understand the evolving space and provide input from a municipal perspective.

Overview

The Cannabis Host Communities Network (CHCN) has been formed by two municipalities who act as host communities to Licensed Production facilities. Building upon these experiences, many unique benefits and challenges have emerged.

It is vitally important that marijuana producers and host communities work closely together as the Federal and Provincial governments continue to shape public policy. Some of the key issues may include community safety, education and training (workforce capacity), economic development, retail roll-out and odour control.

Membership

Host municipality - Mayor or designate from municipalities that house a Licensed Producer (full member with one vote per municipality).

Ex-officio – Leadership from cannabis businesses, cannabis trade associations, and other related entities (Non-voting member – ineligible for Board of Director positions).

Founding Members

Town of Smiths Falls (Mayor Shawn Pankow – Co-Chair)

Municipality of Clarington (Mayor Adrian Foster – Co-Chair)

Board of Directors

Co-Chairs (x2)

Secretary (x1)

Treasurer (x1)

Members (x3)

Governance

- One vote per municipality
- Elected Board of Directors
- Roberts Rules of Order

Benefits of Membership

- Coordinated lobbying of cannabis related community issues to senior levels of government
- An awareness network to advise members of significant developments in the cannabis industry
- Expertise development through the sharing of experiences between members
- Support for elected officials and staff in development of cannabis related bylaws and policies
- Greater overall protection of local community interests

Responsibilities

Members are chosen by their respective municipal councils to serve on the CHCN. Each community may select designated alternates to participate in the absence of their member assigned to the Network. The alternate may act in all capacities of the member for whom he/she is replacing.

In the event of closed sessions, only voting members are entitled to participate.