

THE CORPORATION OF THE  
T O W N O F P E L H A M

BY-LAW NO. 4202(2020)

**Odourous Industries Nuisance By-Law**

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

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**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 agricultural lands and hazards to sensitive nearby crops; (vi) a negative ecological impact including habitat loss; and (vii) increase in 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/m<sup>3</sup>). 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) "Odourous 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 used exclusively for the legal personal cultivation of up to four Cannabis plants per household in accordance with the *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 Odourous 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 Odourous Industrial Facility except in accordance with the provisions of this By-Law;

- b) operate an Odourous Industrial Facility that releases a substance or contaminant that may be harmful to the public or the environment;
- c) operate an Odourous Industrial Facility that causes an Adverse Effect; or
- d) operate an Odourous 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 Odourous 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.

#### Odourous Industrial Facility Regulations

- 4. An Odourous 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 Standards and Guidelines”, September 2016);
  - 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 Odourous 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 Odourous Industrial Facility never exceeds two odour units more than 44 times per year;
  - ii. at all sensitive uses within the Vicinity, the odour strength measured from the Odourous Industrial Facility never exceeds four odour units; and
  - iii. the odour strength measured at any point on any property line of the Odourous 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 Odorous 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 Odorous 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

18<sup>th</sup> DAY OF FEBRUARY, 2020

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MAYOR MARVIN JUNKIN

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CLERK NANCY J. BOZZATO