

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

BY-LAW NO. 4202(2020)

Odorous Industries Nuisance By-law

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

WHEREAS subsection 8(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25 provides that the powers of a municipality under the statute or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

AND WHEREAS section 128 of the *Municipal Act, 2001* 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 subsection 129(1) of the *Municipal Act, 2001* provides that a local municipality may prohibit and regulate with respect to odour;

AND WHEREAS subsection 425(1) of the *Municipal Act, 2001* provides that a municipality may pass by-laws providing that a Person who contravenes a by-law of the municipality passed under the statute is guilty of an offence;

AND WHEREAS section 429 of the *Municipal Act, 2001* provides a municipality with the authority to impose fines for offences of a by-law passed under the statute;

AND WHEREAS subsection 436(1) of the *Municipal Act, 2001* provides that a municipality has the power to pass by-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not certain matters set out in the statute are being complied with;

AND WHEREAS section 447.1 of the *Municipal Act, 2001* provides that upon application of a municipality, the Superior Court of Justice may issue an order for all or part of a premises to close if activities on the premises constitute a Public Nuisance which has a detrimental impact on the use and enjoyment of nearby property and the owner or occupants of the premises or part of the premises knew or ought to have known of the Public Nuisance and did not take adequate steps to eliminate it;

AND WHEREAS Health Canada has recognized that licensed producers of Cannabis are expected to obey all applicable municipal by-laws;

AND WHEREAS municipalities may refer to provincial legislation, regulations and guidelines for guidance in determining how to mitigate potential Adverse Effects and Public Nuisances related to Cannabis Operations because such operations are an emerging land use;

AND WHEREAS clause 85(1)(a) of the Cannabis Regulations SOR/2018-144, provides that any building or part of a building where cannabis or anything that will be used as an ingredient is produced, packaged, labelled, stored or tested must be

equipped with a system that filters air to prevent the escape of odours associated with cannabis plant material to the outdoors;

AND WHEREAS subsection 14(1) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, provides that a person shall not discharge a contaminant or cause or permit the discharge of a contaminant into the natural environment, if the discharge causes or may cause an Adverse Effect;

AND WHEREAS pursuant to subsection 1(1) of the *Environmental Protection Act*, “contaminant” includes any odour resulting directly or indirectly from human activities that causes or may cause an Adverse Effect;

AND WHEREAS landfill operations, slaughter house operations or rendering operations may also create Adverse Effects and Public Nuisances by the escape of odours from such operations;

AND WHEREAS the standards and methods set out in the Ministry of the Environment, Conservation and Parks D-6 Guideline and O. Reg. 419/05 have guided the Town in the development of the regulations contained in this By-law;

AND WHEREAS without regulation and enforcement at the municipal level, Odorous Industrial Facilities could become or cause Public Nuisances;

AND WHEREAS the Town has received numerous complaints from residents with respect to Adverse Effects and Public Nuisances caused by Cannabis Operations;

AND WHEREAS complaints from residents have established the need for the Town to regulate, control and prohibit existing and potential Adverse Effects and Public Nuisances caused by Odorous Industrial Facilities;

AND WHEREAS the Council of the Town has deemed it to be in the public interest that this By-law be enacted to regulate, control and prohibit Adverse Effects and Public Nuisances caused by Odorous Industrial Facilities;

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

INTERPRETATION

1. For the purpose of this By-law, the following terms shall have the corresponding meanings:
 - (a) “Adverse Effect” means one or more of,
 - (i) impairment of the quality of the natural environment for any use that can be made of it,
 - (ii) injury or damage to property or plant or animal life,
 - (iii) harm or material discomfort to any Person,
 - (iv) an adverse effect on the health of any Person,
 - (v) impairment of the safety of any Person,
 - (vi) rendering any property or plant or animal life unfit for human use,
 - (vii) loss of enjoyment of normal use of property, and

- (viii) interference with the normal conduct of business;
- (b) "By-law" means this Odorous Industries Nuisance By-law;
- (c) "Cannabis Operation" means any cannabis-related activity that is authorized pursuant to and in accordance with the *Cannabis Act*, S.C. 2018, c. 16 or the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, and pursuant to any regulations made under the *Cannabis Act* or the *Controlled Drugs and Substances Act* but does not include the production of up to four (4) cannabis plants at any one time in a dwelling house as authorized by the *Cannabis Act*;
- (d) "Cannabis" shall have the same meaning as defined in the *Cannabis Act*;
- (e) "Council" means the Council of the Town of Pelham;
- (f) "day" means a calendar day;
- (g) "Enforcement Officer" means a by-law enforcement officer appointed by Council for the purpose of the enforcement of Town by-laws or any police officer as defined by the *Police Services Act*, R.S.O. 1990 c. P.15;
- (h) "Heavy Odour Operation" means a landfill operation, slaughter house operation, or rendering operation;
- (i) "LEP" means a licensed engineering practitioner who holds a licence, limited licence or temporary licence under the *Professional Engineers Act*, R.S.O. 1990, c. P.28;
- (j) "MECP" means the Ontario Ministry of the Environment, Conservation and Parks;
- (k) "Multiple Offence" means an offence in respect of two or more acts or omissions each of which separately constitutes an offence under this By-law and is a contravention of the same provision of this By-law;
- (l) "Obnoxious Odour" means an odour from an Odorous Industrial Facility that:
 - (i) emanates from a property and disperses or is likely to disperse to one or more other properties, and
 - (ii) is of such strength that it causes or is likely to cause an Adverse Effect;
- (m) "Odour Unit" 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) and one (1) 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;
- (n) "Odorous Industrial Facility" means any land, building, structure or other improvement used in connection with:
 - (i) a Cannabis Operation, or
 - (ii) a Heavy Odour Operation;

- (o) “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;
- (p) “Public Nuisance” means a public nuisance as determined by Council pursuant to section 128 of the *Municipal Act, 2001*;
- (q) “Sensitive Use” 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;
- (r) “Town” means The Corporation of the Town of Pelham;
- (s) “Vicinity” means the area formed between the inner polygon defined by the property lines of an Odorous Industrial Facility and an outer polygon separated by two (2) kilometers from the inner polygon, wherein every point in the area is a distance of no more than two (2) kilometers from the nearest point on the inner polygon; and
- (t) “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 operate an Odorous Industrial Facility:
 - (a) that causes an Adverse Effect or Public Nuisance; or
 - (b) except in accordance with the provisions of this By-law.

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 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 Town of any lapses, non-compliances, changes or proposed changes to its licences, registrations and operating authorities issued by the Government of Canada and its agencies including Health Canada and Canada Revenue Agency, the Province of Ontario including the MECP, the Town and any other competent authority;
 - (b) operate only in a Zone designated for such use or in accordance with a zoning by-law amendment approved by Council;
 - (c) 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;
 - (d) ensure that at all Sensitive Uses within the Vicinity, the odour strength measured from the Odorous Industrial Facility never exceeds two (2) Odour

Units more than forty-four (44) times per year, where measurements can be taken anywhere on the property of a Sensitive Use with any successive measurements to be taken at least one hour apart;

- (e) ensure that the odour strength of the Odorous Industrial Facility never exceeds four (4) Odour Units as measured anywhere on the property of any Sensitive Use within the Vicinity;
 - (f) ensure that the odour strength measured at any point on any property line of the Odorous Industrial Facility never exceeds six (6) Odour Units; and
 - (g) document, and report to the Town all complaints received from neighbours and residents and detail the corrective action that will be implemented, including a timeline to prevent further Adverse Effects; and report to the Town any corrective action taken within five (5) days of commencement of such action and again within five (5) days following completion of such action.
5. In addition to the requirements set out in Section 4, an Odorous Industrial Facility that is over fifty (50) square metres in size shall:
- (a) pay for an ongoing neighbourhood, ambient odour monitoring program conducted by independently trained and competent odour practitioner(s) selected by the Town with results simultaneously delivered to the Town and the Odorous Industrial Facility operator and posted online at a website managed on behalf of the Town for public access; and
 - (b) prepare at no cost to the Town a contingency odour mitigation plan signed/sealed by an LEP which 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 the odour strength will not exceed two (2) Odour Units at any Sensitive Use in the Vicinity more than 0.5% of the time on an annual basis as per MECP Technical Bulletin "Methodology for Modeling Assessment of Contaminants with 10 Minute Average Standards and Guidelines", September 2016.
6. In the event that an Enforcement Officer finds that an Odorous Industrial Facility has contravened Section 4(d), 4(e) or 4(f) of this By-law,, the Enforcement Officer shall provide written notice to the owner of the Odorous Industrial Facility whereupon, the Enforcement Officer is entitled to take any enforcement action he or she deems reasonable under this By-law.

PENALTIES

7. Any Person who contravenes any provision of this By-law is guilty of an offence and on conviction, is liable to the following fines:
- (a) in the case of a first conviction, a minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$50,000;
 - (b) in the case of a second or subsequent conviction, a minimum fine shall not exceed \$1,000 and a maximum fine shall not exceed \$100,000;
 - (c) in the case of a conviction for a continuing offence, for each day or part of a day that the offence continues, a minimum fine shall not exceed \$500 and

a maximum fine shall not exceed \$10,000, and the total of all of the daily fines for the offence is not limited to \$100,000; and

- (d) in the case of a conviction for a multiple offence, for each offence included in the multiple offence, a minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$10,000, and the total of all fines for each included offence is not limited to \$100,000.
- 8. On conviction of an second or subsequent offence under this By-law a Person is also liable to a special fine, in addition to any fine provided for in Section 7, in an amount equal to the fair market value of the economic advantage or economic gain so obtained from the contravention of this By-law, and which amount may exceed \$100,000.
- 9. A director or officer of a corporation who knowingly concurs in a contravention of this By-law is guilty of an offence and, upon conviction, is liable to the penalties set out in Section 7.

ENFORCEMENT

- 10. For the purpose of enforcing this By-law, an Enforcement Officer may exercise any power, authority or remedy granted to the Town pursuant to the *Municipal Act, 2001*.

POWERS OF ENTRY

- 11. Pursuant to section 436 of the *Municipal Act, 2001* and in addition to any other powers of entry granted to the Town, the Town, by its employees or agents, may enter on the premises of an Odorous 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 Town;
 - (b) any direction or order of the Town made under the *Municipal Act, 2001* or this By-law; or
 - (c) 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

- 12. The Town may do any of the following for the purpose of an inspection under Section 11:
 - (a) require the production for inspection of documents or things relevant to the enforcement of this By-law;
 - (b) inspect and remove documents or things relevant to the enforcement of this By-law for the purpose of making copies or extracts;
 - (c) require information from any Person concerning the matter relevant to the enforcement of this By-law;
 - (d) alone or in conjunction with a Person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection; and

- (e) conduct a lawful inspection under this By-law by an Enforcement Officer without interference, obstruction or hinderance by any Person.

SEVERABILITY

- 13. 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.

LEGISLATION

- 14. Reference to any legislation (statutes, regulations, by-laws, technical bulletins, etc.) in this By-law includes an amendment, replacement, subsequent enactment or consolidation of such legislation.

EFFECT

- 15. This By-law shall take effect and be in force ninety (90) days following its enactment.

ENACTED, SIGNED AND SEALED THIS

<*> DAY OF <*>, 2020

MAYOR MARVIN JUNKIN

CLERK NANCY J. BOZZATO