



## The Corporation of the Town of Pelham

By-law No. XX-2024

### **Being a By-law to regulate odour in the Town of Pelham and repeal By-law No. 4202(2020).**

**WHEREAS** section 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25 (“*Municipal Act, 2001*” or “the statute”) 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 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the statute or any other Act;

**AND WHEREAS** section 11 of the *Municipal Act, 2001* provides that a lower-tier municipality has the authority to pass by-laws respecting the economic, social and environmental well-being of the municipality, the health, safety and well-being of persons and the protection of persons and property;

**AND WHEREAS** section 128 of the *Municipal Act, 2001* provides that a local municipality may prohibit and regulate with respect to public nuisances;

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

**AND WHEREAS** sections 425 and 429 of the *Municipal Act, 2001* authorize a municipality to create offences for the contravention of its by-laws and to establish a system of fines for offences under its by-laws;

**AND WHEREAS** section 434.1 of the *Municipal Act, 2001* authorizes a municipality to establish a system of administrative monetary penalties to assist the municipality in promoting compliance with its by-laws;

**AND WHEREAS** section 436 of the *Municipal Act, 2001* provides that a municipality may 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 compliance with a by-law, direction or order of the municipality;

**AND WHEREAS** section 444 of the *Municipal Act, 2001* provides that where a municipality is satisfied that a by-law contravention has occurred, it may make an order requiring the person who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity;

**AND WHEREAS** section 447.1 of the *Municipal Act, 2001* provides that upon application of a municipality, the Superior Court of Justice may make an order requiring the closure of premises where activities thereon constitute a public nuisance that has a detrimental impact on nearby properties and the owners or occupants of the premises knew or ought to have known of the activities and did not take adequate steps to eliminate the public nuisance;

**AND WHEREAS** odours emitted by commercial and industrial operations in the Town may, without regulation, cause an adverse effect or constitute a public nuisance;

**AND WHEREAS** the Council of the Corporation of the Town of Pelham deems it necessary and desirable to regulate with respect to management of odours emitted by industrial operations and to enact this By-law for that purpose;

**NOW THEREFORE** the Council of the Corporation of the Town of Pelham enacts as follows:

## **1. Purpose**

- 1.1. The purpose of this By-law is to regulate odour emitted by various commercial and industrial operations in the Town of Pelham in order to mitigate odour impacts and promote the well-being of the Town and its inhabitants.

## **2. Definitions**

2.1. In this By-law:

**“Administrative Penalty”** means an Administrative Penalty issued pursuant to Town of Pelham Administrative Penalty Process By-law for Non-Parking By-laws No. 68-2023, as amended from time to time.

**“Adverse Effect”** means one or more of the following:

- 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.

**“Agricultural Operation”** means an agricultural operation as defined in the *Farming and Food Production Protection Act, 1998*, S.O. 1998, c. C.1.

**“Applicable Law”** means all applicable by-laws of the Town and Niagara Region and all applicable provincial and federal statutes and regulations.

**“By-law Enforcement Officer”** means a by-law enforcement officer of the Town and includes the Director.

**“Cannabis Operation”** means a commercial or industrial operation that is engaged in activities authorized under the federal *Cannabis Regulations*, SOR/2018-144.

**“Council”** means the Council of the Town.

**"Enforcement Authority"** means a By-law Enforcement Officer and any Person appointed or otherwise delegated the authority to administer and enforce this By-law.

**"Fees and Charges By-law"** means Town of Pelham By-law No. 4411 (2022), as updated or amended from time to time.

**"Industrial Hemp Operation"** means a commercial or industrial operation that is engaged in activities authorized under the federal *Industrial Hemp Regulations*, SOR/2018-145.

**"Niagara Region"** means the Regional Municipality of Niagara.

**"Objectionable Odour"** means odour emitted by an Odorous Facility that is detectable at the Property line of the Odorous Facility, disperses or is likely to disperse to one or more other Properties, and is of such strength that it causes a nuisance to a reasonable person of normal sensitivity.

**"Odorous Facility"** means any land, building or structure used to carry on a commercial or industrial operation, other than an Agricultural Operation, from which odour is produced or emitted. Odorous Facilities may include but are not limited to Cannabis Operations, Industrial Hemp Operations, landfills, slaughterhouses, and rendering operations.

**"Odour Management Protocol"** means a combination of methods, practices, equipment and technologies designed for the purpose of eliminating the emission and emanation of Objectionable Odour or odour that causes an Adverse Effect.

**"Operator"** means a Person that owns or operates an Odorous Facility.

**"Order"** means an Order issued to a Person under this By-law.

**"Owner"** means the registered owner of Property.

**"Person"** means an individual, corporation, partnership or association.

**"Private Property"** means Property Owned by a Person other than the Town, Niagara Region, the Province of Ontario or Canada.

**"Public Property"** means Property under the ownership or jurisdiction of the Town, Niagara Region, the Province of Ontario or Canada.

**"Sensitive Land Use"** means a school, daycare, playground, sporting venue, park, recreational area, residence, place of worship, community centre or any other place where people regularly gather or sleep.

**"Substantiated Complaint"** means a complaint received by the Town or an Enforcement Authority about odour produced or emitted by an Odorous Facility in relation to which the Enforcement Authority confirms that the Odorous Facility is the source of the odour and is satisfied that the odour constitutes Objectionable Odour or odour that causes or is likely to cause an Adverse Effect.

**"Town"** means the Corporation of the Town of Pelham or the geographic area of the municipality, as the context requires.

**"Zoning By-law"** means Town of Pelham Comprehensive Zoning By-law No. 4481(2022), as enacted and amended from time to time.

### **3. General Prohibition**

- 3.1. No Person shall establish or operate an Odorous Facility except in accordance with this By-law and all Applicable Law.

### **4. Location and Authorization**

- 4.1. No Person shall establish or operate an Odorous Facility except as permitted under the Zoning By-law.
- 4.2. Without limiting the generality of section 4.1, no Person shall establish or operate an Odorous Facility except in a zone designated for such use under the Zoning By-law or in accordance with a Zoning By-law amendment approved by Council.
- 4.3. No Cannabis Operation engaged in activities that involve the growing and harvesting of cannabis outdoors shall be established or operated within three hundred (300) metres of a Sensitive Land Use.
- 4.4. No Industrial Hemp Operation engaged in activities that involve the growing and harvesting of hemp outdoors shall be established or operated within three hundred (300) metres of a Sensitive Land Use.
- 4.5. No Person shall establish or operate an Odorous Facility in the Town without first obtaining any and all licenses, registrations, permissions and/or authorizations required by all Applicable Law.
- 4.6. An Odorous Facility shall produce for inspection any and all licences, registrations, permissions and/or authorizations at the request of the Town or an Enforcement Authority.
- 4.7. The Operator of an Odorous Facility shall maintain in good standing all required licenses, registrations, permissions and authorizations and shall update or renew them as required by all Applicable Law.
- 4.8. The Operator of an Odorous Facility shall promptly notify the Town of any changes or proposed changes to any of its licenses, registrations, permissions or authorizations, including changes or proposed changes initiated by the Operator and/or imposed by any level of government, government agency, regulatory authority, court, or tribunal.
- 4.9. The Operator of an Odorous Facility shall promptly notify the Town of any lapses or incidents of non-compliance with any of its licenses, registrations, permissions or authorizations and the action required or taken by the Odorous Facility to remedy the lapse or non-compliance.
- 4.10. An Odorous Facility shall operate in accordance with the conditions of all required licences, registrations, permissions and/or authorizations and any other requirements of any level of government, government agency, or regulatory authority.

### **5. Odour Management Protocol**

- 5.1. An Odorous Facility shall develop, implement and operate with an Odour Management Protocol.

- 5.2. The Operator of an Odorous Facility shall ensure that the Odour Management Protocol is consistent with any relevant standards, guidelines and/or best practices.
- 5.3. An Odorous Facility shall produce for inspection any documentation pertaining to or maintained under the Odour Management Protocol at the request of the Town or an Enforcement Authority.

## **6. Cannabis Operations and Industrial Hemp Operations**

- 6.1. Without limiting the generality of section 5, the Odour Management Protocol for all Cannabis Operations or Industrial Hemp Operations shall include:
  - (a) equipping all buildings where cannabis is produced with a system that filters air to prevent the escape of odours associated with cannabis plant material to the outdoors as required by the federal *Cannabis Regulations* SOR/2018-144;
  - (b) documenting odour complaints received by the Odorous Facility and reporting all such complaints to the Town within twenty-four (24) hours of receipt; and
  - (c) maintaining a complaint log that details the time of complaint, the location of the complainant if known, wind direction, and any abnormal operating conditions existing at the time of complaint.
- 6.2. A Cannabis Operation or Industrial Hemp Operation shall produce for inspection the documentation described in paragraphs 6.1(b) and 6.1(c) at the request of the Town or an Enforcement Authority.

## **7. Prohibited Odour Levels**

- 7.1. No Person shall cause or permit an Odorous Facility to produce or emit Objectionable Odour.
- 7.2. No Person shall cause or permit an Odorous Facility to produce or emit odour that causes or is likely to cause an Adverse Effect.

## **8. Additional Odour Mitigation Measures**

- 8.1. Where there are five (5) Substantiated Complaints about an Odorous Facility within a period of ninety (90) calendar days, the Town shall provide written notice to the Odorous Facility of the Substantiated Complaints and that the Odorous Facility is required to comply with the additional odour mitigation measures prescribed in this section.
- 8.2. Within ten (10) calendar days of a notice given under section 8.1, the Odorous Facility shall, at no cost and to the full satisfaction of the Town, provide:
  - (a) a baseline source summary table consisting of:
    - i. a listing of all odour emission sources in operation at the Odorous Facility, including emission sources identification numbers;
    - ii. odour emission rates if available;
    - iii. exhaust parameters (flow rate, dimensions, release height above grade, etc.); and

- (b) site plans consisting of:
    - i. PDF and electronic copies (AutoCAD) of floor plans;
    - ii. site and elevation drawings showing Property lines, building locations, building identifications, and building heights; and
    - iii. drawings showing odour emission sources with identification numbers that match the source summary table.
- 8.3. Within ninety (90) calendar days of a notice given under section 8.1, the Odorous Facility shall, at no cost and to the full satisfaction of the Town, provide:
- (a) a contingency odour management plan prepared, signed and stamped by a licensed engineering practitioner with experience in air dispersion modelling versions adopted by the Ministry of the Environment, Conservation and Parks ("MECP");
  - (b) a baseline source summary table that includes odour emission rates from each odour source before abatement;
  - (c) a baseline emission summary table showing the aggregate maximum off-Property odour impact before abatement;
  - (d) baseline Atmospheric Dispersion Modelling Files (electronic copy) showing predicted odour impacts before abatement with a radius of at least five (5) kilometres from the Odorous Facility, which shall use at least five (5) years of site-specific meteorological data or MECP regional data if site-specific data cannot be secured in a timely manner, and MECP terrain data;
  - (e) baseline odour concentration maps showing the location of the Odorous Facility, Sensitive Uses in the surrounding area, and the odour concentration lines (isopleths) before additional odour abatement is in place;
  - (f) an abated source summary table consisting of:
    - i. a listing of all odour emission sources in operation at the Odorous Facility, including emission sources identification numbers;
    - ii. odour emission rates;
    - iii. exhaust parameters (flow rate, dimensions, release height above grade, etc.);
  - (g) an abated emission summary table showing the aggregate maximum off-Property odour impact with the proposed abatement in place;
  - (h) abated Atmospheric Dispersion Modelling Files (electronic copy) showing the predicted abated odour impacts with a radius of at least five (5) kilometres from the Odorous Facility;
  - (i) odour concentration maps showing the location of the Odorous Facility, Sensitive Uses in the surrounding area, and the odour concentration lines (isopleths) before and after the odour abatement is in place; and
  - (j) a Sensitive Use odour concentration frequency analysis setting out the before and after odour abatement odour impact in five (5) locations with the highest odour impact over the five (5) year modelling period described herein; and

- (k) if the Odorous Facility is a Cannabis Operation or an Industrial Hemp Operation, particulars of how the Odorous Facility will comply with the odour mitigation requirements of the federal *Cannabis Regulations*, SOR/2018-144, including but not limited to implementation timelines.

## **9. Enforcement**

- 9.1. This By-law shall be administered and enforced by the Town and Enforcement Authorities.
- 9.2. An Enforcement Authority may, for the purpose of enforcing this By-law, exercise any power, authority or remedy granted to the Town pursuant to the *Municipal Act, 2001* or the *Provincial Offences Act*, R.S.O. 1990, c. P.33 ("*Provincial Offences Act*").
- 9.3. An Enforcement Authority may, at all reasonable times, enter upon and inspect any Property to determine if this By-law or any Order made hereunder is being complied with.
- 9.4. For the purposes of an inspection under section 9.3, an Enforcement Authority may require the production for inspection of documents or things relevant to the inspection, remove documents or things for the purpose of making copies or extracts, require information from any Person concerning a matter related to the inspection, and/or make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
- 9.5. An Enforcement Authority who is satisfied that a contravention of this By-law has occurred may make an Order requiring the Person who contravened the By-law, the Person who caused or permitted the contravention to occur, and/or the Owner of the Property where the contravention occurred to discontinue the contravening activity.
- 9.6. No Person shall obstruct or hinder, or attempt to obstruct or hinder, any Enforcement Authority in the exercise of a power or the performance of a duty under this By-law.

## **10. Penalty**

- 10.1. Every Person who contravenes any provision of this By-law or an Order made hereunder is guilty of an offence and upon conviction is liable to such penalties as are provided for in the *Municipal Act, 2001* and the *Provincial Offences Act*.
- 10.2. Administrative Penalty Process By-law for Non-Parking By-laws No. 68-2023 applies to each Administrative Penalty issued pursuant to this By-law.
- 10.3. Every Person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law for Non-Parking By-laws No. 68-2023, be liable to pay to the Town an Administrative Penalty in accordance with that By-law.

## **11. General**

- 11.1. The short title of this By-law is the "Odour Management By-law".

- 11.2. If any provision of this By-law is found by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, the balance of the By-law shall not be affected and shall remain in full force and effect.
- 11.3. If there is a conflict between a provision of this By-law and a provision of any other By-law of the Town, the provision that establishes the higher standard shall prevail.
- 11.4. This By-law shall be read with all changes in number or gender as are required by context.
- 11.5. Any reference to legislation in this By-law includes the legislation and any amendment, replacement, subsequent enactment or consolidation of such legislation.
- 11.6. The Town Clerk is hereby authorized to effect any minor modifications or corrections of an administrative, clerical, numerical, grammatical, semantical or descriptive nature or kind to this By-law as are determined to be necessary.

**12. Repeal and Enactment**

- 12.1. By-law No. 4202(2020) is hereby repealed and replaced.

**13. Effective Date**

- 13.1. This By-law shall come into force on the date that it is enacted.

Read, enacted, signed and sealed this XXst day of XXXX, 20XX.

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Marvin Junkin, Mayor

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Sarah Leach, Town Clerk