



Policy Development and Strategic Direction Committee Report

To: To the Chair and Members of the Policy Development and Strategic Direction Committee

From: Greg Bergeron, Manager of Enforcement and Regulatory Services

Date: September 13, 2022

Report #: RPT-298-22

Subject: Nuisance Odour and Lighting By-law

Purpose: For Approval

Recommendation

WHEREAS, at the County of Brant Council meeting on January 28, 2020, Council carried the following resolution: "That staff be directed to prepare a report on a proposed By-law to address concerns related to zoning, odour, and noise etc., associated with cannabis operations under registration;"

AND WHEREAS, specific amendments were incorporated to the County of Brant Zoning By-law #61-16 on or about November 3, 2020 to address mitigation measures connected to cannabis facilities;

AND WHEREAS, at the Administration and Operations Committee meeting on April 20, 2021, an in-camera report was presented to the Committee in relation to an Odour Nuisance By-law;

AND WHEREAS, at the County of Brant Policy Development and Strategic Direction Committee meeting on July 13, 2021, the Committee carried the following resolution: "That staff be authorized to conduct a 4-6 month pilot project to proactively gather necessary data to determine odour concentration levels emanating from problematic properties by using specialized equipment and to report these findings to the Policy Development and Strategic Direction Committee upon completion of the pilot project to determine if a Nuisance By-law is warranted and next steps; And that the appropriate equipment and staff resources be allocated to complete the pilot project;"

AND WHEREAS at the Policy Development and Strategic Direction the Committee meeting on January 11, 2022, the County of Brant determined that a By-law is warranted and desirable based on the outcome of the pilot project and authorized staff to hire a consultant to assist with the development of a draft By-law for Council review and consideration;

AND WHEREAS, staff did engage the services of a consultant who has provided the County with quantifiable methods and parameters to identify when an odour would be in violation of the proposed By-law;

THAT the Committee approve, in principle, the attached draft By-law as it relates to nuisance odours and lighting emanating from Cannabis Production Facilities operating under

registration certificates issued under the Access to Cannabis for Medical Purposes Regulations.

AND THAT, the proposed By-law come into force and effect on January 1, 2023 subject to final revisions and to allow for Officer training and calibration of equipment.

Executive Summary

Odour from indoor Cannabis Production facilities operating under the Access to Cannabis for Medical Purposes (ACMPR) program has been an on-going issue for residents living near these facilities.

The ACMPR is governed by the Federal Cannabis Act and Cannabis Regulation SOR/2018-144. The Regulation has no requirements for lighting or odour mitigation for individuals who hold registration certificates under the ACMPR.

The County of Brant has Cannabis Production Facilities which have generated repeated odour complaints over the years. Staff have had some success in dealing with some of these locations through the Zoning By-law but recognize that some of these locations currently hold legal non-conforming status.

The development of a Nuisance Odour and Lighting By-law pursuant to the Municipal Act, 2001, is to effectively deal with these locations by regulating lighting and odour. The By-law will require testing and potential mitigation once quantifiable violations have been identified with the intent to achieve an acceptable level of compliance. Due to the type of product being grown in these indoor facilities and the character of the odour, the potential for negative effects from odour is significant and the avoidance of these effects the preferred. If avoidance is not possible, negative effects are to be minimized and appropriately mitigated.

Strategic Plan Priority

Strategic Priority 5 - Healthy, Safe, and Engaged Citizens

Impacts and Mitigation

Social Impacts

Cannabis Production Facilities operating under the ACMPR has triggered odour complaints from residents in the area of these indoor facilities. Residents have complained that the odour emanating from these facilities has impacted the reasonable enjoyment of their properties. On the other hand, Canadians continue to depend on the reasonable access to medical cannabis to manage a variety of medical conditions and have a protected right to that access. Health Canada recognizes that having contact with unpleasant odours can bother people and influence their quality of life.

Environmental Impacts

An evidence brief from Public Health Ontario (2018) revealed that “No studies on health effects associated with exposure to cannabis odours were identified in the scientific or grey literature.”

The Health Canada website speaks to the effect of cannabis odours in that many substances that can be smelled outside are not present at high enough levels to cause long-term health effects. The terpenes that cause cannabis related odours are not known to be directly harmful to human health.

Residents have complained about their ability to enjoy their property due to the strong odour of cannabis plants being grown in proximity to their residences.

Economic Impacts

The Economic Impact to the Corporation of the County of Brant is unknown as the status of future enforcement action is unknown. Staff are currently aware of locations in the County who are not subject to the additional zoning provisions which were enacted in November of 2020. Costs associated to bringing locations into compliance may vary and on-going services of a consultant may be required to review technical reports as the County does not employ a licensed engineering practitioner specializing in odour emissions.

Report

Background

Generally speaking, the Federal Cannabis Act and Regulations permits the production of cannabis under the authority of:

1. A Cannabis License (Commercial Production)
2. A Registration Certificate to produce cannabis for personal medical use under the Access to Cannabis for Medical Purpose Regulations (ACMPR)

The ACMPR allows Canadian patients to register and obtain their medical cannabis from Health Canada approved Licensed Producers. It also allows Canadians the option to grow a specified amount of cannabis for their own medical purposes or designate someone to grow/produce their medical cannabis for them.

A review of the enforcement database revealed that approximately (17) seventeen odour complaints involving approximately (25) twenty-five complainants were lodged from area residents since 2019. All complaints were related to ACMPR facilities.

From March 8 to May 7, 2021, Health Canada conducted a 60-day public consultation on the Draft Guidance on Personal Production of Cannabis for Medical Purposes. The public was invited to review the guidance document and respond to questions relating to factors that may be considered by Health Canada when refusing to issue or revoking a registration on public health and public safety grounds. Additional factors suggested for consideration included regulation of health care practitioners, odour control, and limiting the location of sites where cannabis is grown. Health Canada indicated that “These factors are outside of Health Canada’s responsibility (notably, regulation of health care practitioners) or are beyond the scope of the guidance document and would require regulatory changes to enact (for example, odour and location of the site where cannabis is grown)”

Analysis

Provincial and Federal Regulations currently exist to deal with odours and lighting from commercial, industrial and agricultural activities.

The Environmental Protection Act, R.S.O. 1990, Chapter E. 19 provides the Ministry of the Environment, Conservation and Parks (MECP) the authority to respond to odour concerns under section 14 of the Act and for discharges released in the air from industrial, commercial and other sources that exceed a standard under regulation. The MECP appoints Provincial Officers to investigate and enforce provisions of the Act and regulations.

The Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) provides investigative responsibilities and conflict resolution for nuisance odour complaints and light from greenhouses at night.

The Normal Farm Practices Protection Board, established under the Farming and Food Production Protection Act, 1998, S.O. 1998, c.1, provides that if conflict resolution is not successful, a party may apply for a hearing with the Normal Farm Practices Protection Board for remedy. To date, there have been no rulings specific to ACMPR Cannabis Production Facilities.

Federal Regulation SOR/2018-144 of the Cannabis Act requires that a building or any part of a building used for Cannabis Production and Processing Facilities licensed by Health Canada are subject to Good Production Practices requiring “appropriate lighting” and “a system that filters air to prevent the escape of odours associated with cannabis plant materials to the outdoors.”

Cannabis Production Facilities operating under ACMPR (registration certificates) are not subject to odour or lighting mitigation under the Federal Regulations.

Registration certificates issued under SOR/2018-144 authorizes up to (4) four registrations per site which can often result in the growing of over 1000 cannabis plants thereby negatively impacting nearby properties.

Health Canada is clear in their messaging that “anyone who is growing or producing cannabis under the ACMPR needs to be aware of and comply with local By-laws that apply to them. Municipalities can take enforcement actions against a cannabis producer if they don’t follow their By-laws.” Investigation and enforcement of the proposed By-law would be reactive and in response to public complaints from sensitive receptors, as defined.

The proposed By-law is scoped to include Cannabis Production Facilities operating under the ACMPR as they are currently operating in a vacuum and absent of regulations to mitigate the effects on residents. Sections 128 and 129 of the Municipal Act, 2001 clearly permits municipalities to enact by-laws to prohibit and regulate with respect nuisances, including odour and outdoor illumination and indoor lighting that can be seen outdoors.

In order to effectively deal with the issues, the draft By-law is subject to Orders and requirements on the owners/growers to conduct Odour Emissions Testing, Odour Assessments and supply Light Mitigation Plans.

In the interest of fair and procedural justice, an appeal process has been incorporated into the By-law to provide an avenue for facilities who are the subject to Orders pursuant to the Municipal Act, 2001. Staff are recommending that Council serve as the appeal body, with the option to delegate their authority to a Committee of either Council or Citizen appointees as may be appropriate. Staff will undertake a review of the process related to this appeals body,

including preparing Rules of Procedure and ensuring processes are in compliance with the Statutory Powers Procedure Act.

Conclusion

Cannabis Production Facilities operating under the ACMPR are or may become a nuisance if the proper regulations to deal with lighting and odour are not in place. In the absence of Federal or Provincial regulations for growing under the ACMPR, a By-law pursuant to the Municipal Act, 2001 may be implemented to ensure that area residents are protected from the negative effects from these facilities based on the balanced objective parameters as outlined by the external consultant engaged by the County and having expert knowledge in this area.

Other odorous industries and farming practices are subject to conflict resolution, hearings, provincial and federal regulations and enforcement bodies who have specialized staff and equipment to deal with these industries.

Attachments

None

Reviewed By

Jyoti Zuidema, Solicitor & Corporate Counsel
Heather Boyd, General Manager of Corporate Services

Copied To

Michael Bradley, CAO
Amanda Paine, Supervisor of Enforcement and Regulatory Services (A)

By-law Required	No
Agreement(s) or other documents to be signed by Mayor and /or Clerk	No