

## **BY-LAW NUMBER 132-22**

- of -

### **THE CORPORATION OF THE COUNTY OF BRANT**

Being a by-law to regulate nuisance odours and lighting related to cannabis production facilities operating under the Access to Cannabis for Medical Purposes Regulation

**WHEREAS** section 8 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate, and to enhance their ability to respond to municipal issues;

**AND WHEREAS** subsection 10(1) of the Municipal Act, 2001, S.O. 2001, c. 25, provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

**AND WHEREAS** section 10(2) of the Municipal Act, 2001 provides that a municipality may pass by-laws respecting: social and environmental well-being of the municipality; Health, safety and well-being of persons; Protection of persons and property; Structures, including fences and signs;

**AND WHEREAS** section 128 of the Municipal Act, 2001, provides that, without limiting sections 9 and 10, 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 of the Municipal Act, 2001, provides that, without limiting sections 9 and 10, a local municipality may:

- (a) prohibit and regulate with respect to noise, odour, and outdoor illumination, including indoor lighting that can be seen outdoors; and
- (b) prohibit the matters described in clause (a) unless a permit is obtained from the municipality for those matters and may impose conditions for obtaining, continuing to hold and renewing the permit, including requiring the submission of plans.

**AND WHEREAS** section 425 of the Municipal Act, 2001 provides that any person who contravenes any by-law of the municipality 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 of the municipality passed under the Municipal Act, 2001.

**AND WHEREAS** section 444 of the Municipal Act, 2001 provides that a municipality may make an order requiring a person who contravened a by-law or 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 445 of the Municipal Act, 2001 provides that a municipality may make an order requiring a person who contravened a by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention;

**AND WHEREAS** section 446 of the Municipal Act, 2001 provides that a municipality who has the authority under this By-law or under any Act to direct or require a Person to do a matter or thing, in default of it being done by the Person directed or required to do it, the County may enter upon land at any reasonable time, to perform the work at the Person's expense and may recover the costs from the Person directed or required to do it, by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes;

**AND WHEREAS** the Environmental Protection Act, R.S.O. 1990, Chapter E. 19 provides that the Ministry of the Environment and Climate Change 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 regulatory standard set out in Ontario Regulation 419/05 – Local Air Quality and other applicable regulations;

**AND WHEREAS**, the Ontario Ministry of Agriculture, Food and Rural Affairs provides investigative responsibilities and conflict resolution for nuisance odour and lighting complaints from agricultural activities;

**AND WHEREAS**, 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 Production Protection Act for remedy;

**AND WHEREAS**, a building or any part of a building used Cannabis Production and Processing Facilities licensed by Health Canada are subject to Good Production Practices under the Regulation SOR/2018-144 of the Cannabis Act, S.C. 2018, c. 16, as amended, requiring appropriate lighting and a system that filters air to prevent the escape of odours associated with cannabis plant materials to the outdoors.

**AND WHEREAS**, Cannabis Production Facilities operating the registration certificates under the Access to Cannabis for Medical Purposes Regulation are not subject to light or odour mitigation;

**AND WHEREAS**, registration certificates issued under the Access to Cannabis for Medical Purposes Regulation, SOR/2018-144 of the Cannabis Act as amended authorizes up to (4) four registrations per site;

**AND WHEREAS**, Cannabis Production Facilities operating under the Access to Cannabis for Medical Purposes Regulation, SOR/2018-144 of the Cannabis Act remains largely unregulated;

**AND WHEREAS** it is the opinion of Council, odour surrounding the production of cannabis plants in Cannabis Production Facilities operating under the Access to Cannabis for Medical Purposes Regulation are or may become public nuisance;

**AND WHEREAS** in the opinion of the Council, lighting associated the production of cannabis in Cannabis Production Facilities operating under the Access to Cannabis for Medical Purposes Regulation are or may become a public nuisance;

**AND WHEREAS**, Council deems it appropriate to prohibit or regulate matters that are, or could become or cause public nuisances;

**NOW THEREFORE** the Council for The Corporation of the County of Brant **ENACTS** as follows:

**PART I – DEFINITIONS**

1.1 For the purposes of this By-law:

**“Adverse Effect”** means one or more of,

- (a) impairment of the quality of the natural environment for any use that can be made of it;
- (b) injury or damage to property or to plant or animal life;
- (c) harm or material discomfort to any person;
- (d) an adverse effect on the health of any person;
- (e) impairment of the safety of any person;
- (f) rendering any property or plant or animal life unfit for human use;
- (g) loss of enjoyment of normal use of property;
- (h) interference with the normal conduct of business.

**“Appellant”** means a person that is appealing an Order issued under this By-law;

**“Best Management Practices Plan for Odour”** means a written Management Plan as approved by the *County*, designed to prevent *nuisance odours* or *strong odours*, following the Ontario Ministry of the Environment, Conservation and Parks methodology for Best Management Practices Plan for Odour;

**“Building”** means any permanent structure consisting of a roof supported by walls or columns that is used or intended to be used for the shelter, accommodation or enclosure of persons, animals, goods, chattels or equipment;

**“By-Law”** means this By-law;

**“Cannabis”** Shall mean a genus of flowering plants in the family Cannabaceae. Synonyms include, but are not limited to, marijuana and marihuana. This definition does not include the industrial or agricultural production of hemp (a source of foodstuffs (hemp milk, hemp seed, hemp oil), fiber and biofuels).

**“Cannabis Production Facility”** means buildings or structures used for the production, cultivation, propagation and harvesting of cannabis authorized by a registration certificate by the federal Minister of Health, pursuant to the Access to Cannabis for Medical Purposes Regulation, SOR/2018-144 and the Cannabis Act, S.C.2018, c. 16, as amended from time to time, or any successors thereto.

**“Clerk”** means the Clerk for County of Brant or their designate.

**“Council”** shall mean the Council of the Corporation of the County of Brant.

**“County”** means The Corporation of the County of Brant and includes the geographic areas contained within the County of Brant;

**“Designated person”** means a person who is designated by a *registered* person, pursuant to the Access to Cannabis for Medical Purposes Regulations, SOR/2018-144 and the Cannabis Act, S.C. 2018, c. 16, as amended from time to time, or any successors thereto in accordance with the Cannabis Act and regulations as amended, to produce cannabis for the medical purposes of the *registered* person.

**“Hearing and Appeal Hearing”** means a proceeding held in person, by conference telephone, or by some other *County* approved form of communication using Electronic Technology Devices allowing persons to communicate with one another;

**“Licensed Engineering Practitioner”** means a person who holds a licence, limited licence or temporary licence under the Professional Engineers Act;

**“Municipal Act”** means the Municipal Act, 2001, S.O. 2001, c. 25, as amended.

**“Municipality”** means the land within the geographic limit of the County of Brant and includes the Corporation of the County of Brant;

**“Nuisance Odour”** means an odour that:

- (a) is detectable and may cause odour complaints at a *sensitive receptor* but does not cause an *adverse effect*;
- (b) is slightly intense and unpleasant as determined by a Municipal Law Enforcement Officer or independent contractor based on ambient air odour monitoring during an odour detection event for three 10-minute monitoring events over a minimum period of sixty (60) minutes;
- (c) has a concentration which does not exceed eight (8) OUS on four (4) occasions in any 30-day period as determined by a Municipal Law Enforcement *Officer* or independent contractor using a portable field olfactometer at a *sensitive receptor* during an odour detection event to obtain at least three odour concentration measurements over a period of at least sixty (60) minutes.

**“Odour Unit”** means the 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>) and one (1) Odour Unit is defined as the point where fifty percent (50%) of the normal population could detect that an odour is present. Measurement of the strength of an odour in Odour Units is facilitated by using a laboratory or field olfactometer.

**“OU”** mean odour unit(s).

**“Officer”** means a Municipal Law Enforcement Officer appointed to enforce the By-laws of the *County*.

**“Owner”** means a Person who is in the registered owner of premises; a Person who is in physical possession of premises; a Person who has responsibility for and control over the condition of premises or the activities there carried on, or control over persons allowed to enter the premises; or a Person occupying premises;

**“Person”** means an individual, firm, corporation, partnership, association or organization, including a charitable organization and includes an *owner, registered person or designated person*.

**“Registered person”** means an individual who is registered with the Minister under subsection 313(1)(2) of SOR/2018-144 of the Cannabis Act, S.C. 2018, c.16, as amended.

**“Registration certificate”** means a certificate issued by the Minister under subsection 313(1) of SOR/2018-144 of the Cannabis Act, S.C. 2018, c.16, as amended.

**“Sensitive Receptors”** means a health care facility, a senior citizens’ residence or long-term care facility, a childcare facility, an educational facility, a dwelling, camping grounds, community centres, day care centres, public playgrounds, recreational centres and sports facilities, outdoor public recreational areas and places of worship and other places where people may be present.

**“Strong Odour”** means an odour that:

- (a) causes odour complaints and at least one (1) verifiable *adverse effect* at a *sensitive receptor*;
- (b) is intense and unpleasant as determined by a Municipal Law Enforcement *Officer* or independent contractor based on ambient air odour monitoring for three 10-minute monitoring events over a period of at least sixty (60) minutes;
- (c) has at least three (3) odour concentration measurements over a minimum period of sixty (60) minutes which exceed eight (8) OU as determined by a Municipal Law Enforcement *Officer* or independent contractor using a portable field olfactometer at a sensitive receptor.

## PART II – EXEMPTIONS

2.1 This By-law does not apply to:

- (a) Normal Farm Practice as defined under the Farming and Food Production Protection Act, 1998, S.O. 1998, c.1.
- (b) The Corporation of the County of Brant.
- (c) The Government of Ontario.
- (d) The Government of Canada.

## PART III – GENERAL PROHIBITIONS

- 3.1 (a) No *person* shall cause, create or permit the emission of a *nuisance odour* or *strong odour* from a *Cannabis Production Facility*.
- (b) No *person* shall cause, create or permit the emission of light from a *Cannabis Production Facility* to shine so as to be or to cause an *adverse effect* to any *person* or to the general public.
- (c) No *person* shall fail to comply with the requirements, practices or procedures in accordance with a *Best Management Practices Plan for Odour*;
- (d) No *person* shall fail to comply with the requirements, practices and procedures contained in a Light Mitigation Plan.
- (e) No *person* shall contravene an order issued pursuant to this By-law.
- (f) No *person* shall prevent, hinder or obstruct, or attempt to hinder or obstruct, an *Officer* who is exercising a power or performing a duty under this By-law, including refusing to identify themselves when requested to do so by an *Officer*.

## PART IV – POWERS OF ENTRY

4.1 Pursuant to Section 435 and 436 of the *Municipal Act* 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 a property or 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* or this By-law;
- (c) a condition of a license issued by the *municipality*; or
- (d) an order made under section 431 of the *Municipal Act*.

## PART V – INSPECTION POWERS

5.1 Pursuant to section 436 of the *Municipal Act*, any employee, officer or agent of the County carrying out an inspection pursuant to this By-law may:

- (a) require the production for inspection of documents or things relevant to the inspection;
- (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- (c) require information from any *person* concerning a matter related to the inspection; and
- (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.

## PART VI – ORDER TO DISCONTINUE

6.1 Pursuant to section 444 of the *Municipal Act*, where the *County* is satisfied that a contravention of this By-law has occurred, the *County* may make an order requiring the *person* who contravened the by-law or who caused or permitted the contravention or the *Owner* or Occupant of the land on which the contravention occurred to discontinue the contravening activity. The order shall set out:

- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred;
- (b) the date by which there must be compliance with the order. An order under this section may be given verbally or in writing.
- (c) An order in writing shall be served personally to the *person* to whom it is directed or served by registered mail to a *person* or *owner* which will be deemed to be served on the fifth (5<sup>th</sup>) day after mailing.

## PART VII – WORK ORDER

7.1 Pursuant to section 445 of the *Municipal Act*, where the *County* is satisfied that a contravention of this By-law has occurred, the *County* may make an order requiring the *person* who contravened the by-law or who caused or permitted the contravention or the *Owner* or Occupant of the land on which the contravention occurred to do work to correct the contravention.

7.2 An order may require work to be done even though the facts which constitute the contravention of the by-law were present before the By-law making them a contravention came into force. The order shall set out:

- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and
- (b) the work to be done and the date by which the work must be done.
- (c) An order in writing shall be served personally to the *person* to whom it is directed or served by registered mail to a *person* or *owner* which will be deemed to be served on the fifth (5<sup>th</sup>) day after mailing.

7.3 For the purpose of this part, an *Officer* may request that a detailed odour assessment be required from a *Cannabis Production Facility*, signed and sealed by a *Licensed Engineering Practitioner*, which may include any of the following:

- (a) Odour Emission Testing at the *Cannabis Production Facility or sensitive receptor*, in accordance with the normal Ontario Ministry of the Environment, Conservation and Parks protocols;
- (b) Atmospheric Dispersion Modelling of the Odour Emission Testing data using the AERMOD Model in accordance with the normal Ontario Ministry of The Environment, Conservation and Parks protocols;
- (c) Odour Impact Assessment Report known as an Emission Summary and Dispersion Modelling (ESDM) following Ontario Ministry of The Environment, Conservation and Parks protocols;
- (d) A *Best Management Practices Plan* for Odour containing odour control systems, practices, procedures and other mitigation measures that will be used to effectively manage and prevent *nuisance odours* and *strong odours*;
- (e) The *County* may request additional odour mitigation plans, control measures and air quality studies, including odour emissions testing and dispersion modelling and revised *Best Management Practices Plans for Odour* should the current control measures contained in a *Best Management Practices Plan for Odour* be insufficient to prevent *nuisance odours or strong odours*;
- (f) A plan for adjusting the number of plants, grow cycle and movement of plants in the grow rooms to minimize odour emissions from the *Cannabis Production and Processing Facility*.

7.4 For the purpose of this part, an *Officer* may request that a signed and sealed detailed light mitigation plan be provided by a *Licensed Engineering Practitioner*. The proposed Light Mitigation Plan and measures shall demonstrate that the facility will not cause light pollution, including sky glow or light trespass on neighbouring properties.

7.5 For the purpose of section 7.3, and 7.4, all odour emissions testing, dispersion modelling and light mitigations plans may be subject to peer review as determined by the *County*.

## PART VIII – REMEDIAL ACTION

8.1 Pursuant to section 446 of the *Municipal Act*, where the *County* has the authority under this By-law or under any Act to direct or require a *person* to do a matter or thing, in default of it being done by the *person* directed or required to do it, the *County* may enter upon land at any reasonable time, to perform the work at the *person's* expense and may recover the costs from the *person* directed or required to do it, by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.

8.2 The cost outlined in section 8.1 of this by-law shall include interest calculated at a rate of 15 percent per annum, calculated for the period commencing on the day the *County* incurs the costs and ending on the day the costs, including interest, are paid in full.

8.3 The amount of the costs, including interest, constitutes a lien on the land upon registration in the proper land registry office or a notice of lien. The lien is in respect of all costs that are payable at the time the notice is registered, plus accrued interest, to the date the payment is made. Upon receiving payment, the *County* shall register a discharge of the lien in the proper land registry office.

## PART IX – APPEAL

9.1 Where a *person* has been served with an Order under Part VI or Part VII of this By-law, the *person* may appeal the Order by sending a request for appeal to the *Clerk* within fourteen (14) days after service of the original order.

9.2 Where a notice of appeal is not received within the time indicated in subsection 9.1, no further opportunity to file an appeal will be granted.

9.3 The *Clerk*, upon receipt of a notice of appeal, shall determine and give notice in writing to all parties including:

- (a) the place, date and time of the hearing;
- (b) the purpose of the hearing; and
- (c) a statement that if the party notified does not attend at the hearing, *Council* may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding.

9.4 An appeal made under this section does not act as a stay of any Order issued, which shall take effect on the day it is served or deemed served and shall continue to be effective until *Council* renders a decision indicating otherwise.

9.5 The powers and authority to hear appeals to an Order pursuant to Part VI and VII is hereby delegated to *Council* or a Committee appointed by *Council*.

9.6 The provisions of the Statutory Powers Procedure Act, R.S.O. 1990, c. S.22, as amended, apply to the *appeal hearing* by the *Council* under this By-law.

9.7 At a hearing, the onus shall be upon the *appellant* to show cause why the Order is being appealed.

9.8 The *Clerk*, may dismiss a proceeding without a hearing if the proceeding is frivolous, vexatious or is commenced in bad faith.

9.9 When the *appellant* who has been given written notice of the hearing does not attend at the appointed time and place, *Council* may proceed with the hearing in the *appellant's* absence and the *appellant* shall not be entitled to any further notice of the proceedings.

9.10 A hearing shall be open to the public except where the *Clerk* is of the opinion that:

- (a) matters involving the public security may be disclosed; or
- (b) intimate financial or personal or other matters may be disclosed at the hearing that are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any *person* affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; in which case the Council may hold the Hearing, or portion thereof, in the absence of the public; or
- (c) as excepted under Subsection 239 (2) of the of the *Municipal Act* as amended.



9.11 *Council* shall have regards to the following matters where relevant, as may be raised at a hearing:

- (a) this By-law and other applicable law;
- (b) circumstances and facts raised by the evidence of the parties;

9.12 *Council* has the power to:

- (a) uphold, rescind, modify; or
- (b) extend the time for complying with the Order.

9.13 At the conclusion of a hearing, *Council* may give its decision orally or reserve its decision, but in any case, shall provide its decision in writing, with reasons, within fourteen (14) days of the hearing to each party to a hearing, or to the *person* who represented the party by:

- (a) registered mail; or
- (b) email or facsimile.

9.14 A decision that has been upheld, modified or rescinded by *Council*, as the case may be, shall be final and binding upon the *appellant* who shall comply with the decision within the time specified and, in the manner specified in the decision where applicable.

## **PART X – OFFENCES**

10.1 The provisions of this By-law may be enforced by an *Officer*.

10.2 No *person* shall contravene any provision of this By-law.

## **PART XI - CLOSING PREMISES**

11.1 In addition to any other penalty or remedy available to the *municipality*, pursuant to section 447.1 of the *Municipal Act*, *Council* may, on behalf of the *Municipality* with the consent of the local detachment commander with the Ontario Provincial Police and with notice to the Attorney-General of Ontario, and with notice to the Attorney-General of Ontario, apply to the Superior Court of Justice for an order requiring all or part of a premises 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 constitute a public nuisance or cause or contribute to activities or circumstances constituting a public nuisance in the vicinity of the premises;
- (b) The public nuisance has a detrimental impact on the use and enjoyment of property in the vicinity of the premises;
- (c) The owner or occupants of the premises or part of the premises 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 premises has been entered and is not under appeal.

## **PART XII - PENALTIES**

- 12.1 Every person who contravenes any provision of this By-law, including failing to comply with an order made under this By-law, is guilty of an offence and is liable to a fine, and such other penalties, as provided for in the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended and *the Municipal Act*.
- 12.2 A director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation is guilty of an offence and is liable to a fine, and such other penalties, as provided for in the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended and *the Municipal Act*.
- 12.3 Any *person* who is charged with an offence under this By-law by the laying of an information under Part III of the Provincial Offences Act and is found guilty of the offence is liable, pursuant to the *Municipal Act*, to the following fines:
- (a) the minimum fine for an offence is \$500 and the maximum fine for an offence is \$100,000;
  - (b) in the case of a continuing offence, for each day or part of a day that the offence continues, the minimum fine shall be \$500 and the maximum fine shall be \$10,000 and the total of all daily fines for the offence is not limited to \$100,000; and
  - (c) in the case of a multiple offence, for each offence included in the multiple offence, the minimum fine shall be \$500 and the maximum fine shall be \$10,000 and the total of all fines for each included offence is not limited to \$100,000.
- 12.4 If a *person* is convicted of an offence under this By-law, in addition to any other remedy or any penalty imposed, the court in which the conviction has been entered, and any court of competent jurisdiction, may make an order:
- (a) prohibiting the continuation or repetition of the offence by the *person* convicted; and
  - (b) requiring the *person* convicted to correct the contravention in the manner and within the period that the court considers appropriate.

### **PART XIII – TITLE, INTERPRETATION AND SEVERABILITY**

- 13.1 This By-law may be referred to as the “Nuisance Odour and Lighting By-law”.
- 13.2 Wherever a word is used in this By-law with its first letter capitalized, the term is being used as it is defined in Part I of this By-law. Where any word appears in ordinary case, the commonly applied English language meaning is intended.
- 13.3 Wherever a word defined in Part I of this By-law is used in the form of a noun, verb, adverb or adjective, it shall be interpreted as having a corresponding defined meaning even if it is in ordinary case. All words importing the singular shall include the plural, and words importing the masculine gender shall include the feminine, and the converse of the foregoing also applies, unless the context of the By-law requires otherwise.
- 13.4 If a court of competent jurisdiction declares any provision or part of a provision of this By-law to be invalid or to be of no force and effect, it is the intention of Council in enacting this By-law that the remainder of this By-law shall continue in force and be applied and enforced in accordance with its terms to the fullest extent possible according to law.

**PART XIV – FORCE AND EFFECT**

14.1 This By-law shall come into force and effect on January 1, 2023.

**READ** a first and second time, this 20<sup>th</sup> day of December 2022.

**READ** a third time and finally passed in Council, this 20<sup>th</sup> day of December 2022.

**THE CORPORATION OF THE COUNTY OF BRANT**

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David Bailey, Mayor

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Alysha Dyjach, Clerk