

August 09, 2022

To: Mayor Marvin Junkin
 Councillors: Lisa Haun, Marianne Stewart, Bob Hildebrandt, Ron Kore, Wayne Olson, John Wink

Dear Mayor and Councillors,

Subject: Closing Memo from the Cannabis Control Committee & Recommendations for Next Council

The Cannabis Control Committee (CCC), established by this Council in the Spring of 2019, will complete its mandate with this Closing Memo on August 22, 2022, as a result of the Fall municipal elections.

This Closing Memo is intended to succinctly report to this Council and the next a summary of the *Pelham Cannabis Regulations* we have developed for and with the Town, along with recommendations and guiding principles we believe the next Council should adopt to complete this pioneering work.

This Closing Memo and the Pelham Cannabis Regulations have been informed by literally thousands of hours of work by the CCC members Carla Baxter, Louis Damm, Bill Heska, Jim Jeffs, John Langendoen, James Steele and myself, countless hours from staff led by Barbara Wiens and David Cribbs and supported by Bob Lymburner, Jennifer Stirton, Shannon Larocque, Jodi Legros, & Craig Genesse, countless hours from councillor Bob Hildebrandt and the late councillor Mike Ciolfi, and the full support of Council who provided us with outside professional experts including legal (Aird & Berlis LLP: Laura Dean, John Mascarin and Patrick Harrington), planning (Meridian Planning Consultants: Nick McDonald), and odour (PG Compliance Management Inc: Phil Girard). It has been a pleasure working with such a committed, focused, intelligent and diverse group of individuals where occasional disagreements and the openness to debate them led to better work product. I thank them for their efforts, I have learned so much from them, and I am honored to have had a part in leading this team to fulfil the CCC’s mandate.

Summary of the Pelham Cannabis Regulations as of this date

The CCC developed these municipal/planning tools to mitigate adverse effects from cannabis facilities:

Municipal & Planning Tools	Approved by Council	Legally Challenged by Redecan, CannTrust (now called Phoena) and/or Woodstock Biomed
Official Plan Amendment (OPA)	Bylaw 4251 (2020) adopted OPA No.9 on July 13, 2020 https://www.pelham.ca/en/town-hall/resources/Documents/cannabis/4251-2020_Complete.pdf	The OPA/ZBA were appealed to the Ontario Land Tribunal (OLT). Hearings were held January 24-26, 2022 and July 25, 2022.
Zoning Bylaw Amendment (ZBA)	Bylaw 4252 (2020) amended the Town’s Zoning Bylaw 1136 (1987) on July 13, 2020 https://www.pelham.ca/en/town-hall/resources/Documents/By-law-4252-2020-Zoning-By-law-Amendment-for-Cannabis.pdf	Hearing results: The hearings are complete. Redecan settled with the Town and CannTrust withdrew their appeal. Woodstock remained. The OLT Decision is expected in the Fall 2022.
Odorous Industries Nuisance Bylaw (OINBL)	Bylaw 4202 (2020) was approved on March 23, 2020 and amended by Bylaw 4263 (2020) on July 27, 2020 https://www.pelham.ca/en/town-hall/resources/Documents/bylaws/4202-2020.pdf https://www.pelham.ca/en/town-hall/resources/Documents/bylaws/4263-2020.pdf	The OINBL was appealed to the Ontario Superior Court. Hearings will likely not occur until 2023.
Site Plan Control Bylaw	Bylaw 4262 (2020) was approved on July 27, 2020 to amend the Site Plan Control Bylaw 1118 (1987)	The bylaw is in effect. There are no legal challenges.
Light Bylaw	A light bylaw was drafted but deferred pending legal challenges of a similar bylaw in Leamington	Pelham can proceed as the Leamington bylaw was enacted and settled on June 14, 2022.

The purpose and summary of each of these regulations, along with links to the regulations themselves as approved by Council can be found at https://www.pelham.ca/en/town-hall/resources/Documents/cannabis/CCC-TwoPager-CannabisRegulations_22020605.pdf¹.

Recommendations

OPA/ZBA

The cannabis OPA and ZBA are the Town's first line of defence to ensure that adverse effects (especially odour) from new or expanding indoor cannabis and industrial hemp facilities are avoided completely or suitably mitigated.

The purpose of the OPA is to establish permissions for indoor cannabis and industrial hemp cultivation, subject to a zoning by-law amendment, and to establish approval criteria. Outdoor cultivation in agricultural areas is allowed. New facility approval requires adverse effects to be avoided or appropriately mitigated with setbacks determined on a case-by-case basis through peer reviewed odour and light studies and contingency mitigation plans, and subject to Site Plan Control in accordance with Section E1.4 of the Plan.

The purpose of the ZBA is to add two specific Agricultural-Cannabis and General-Industrial-Cannabis zones to regulate newly approved indoor and outdoor cannabis facilities. The ZBA sets a 300m setback for outdoor uses and lot area, coverage, frontage, front yard, rear yard and side yard standards for indoor uses, as well as parking standards.

Once the MOS (see item 3 below), OPA and ZBA are approved by the OLT, we recommend the following:

1. Staff publish the OPA and ZBA on the Town website: <https://www.pelham.ca/en/town-hall/cannabis.aspx>
2. Staff create a one-page report explaining the typical process the public can expect for new applications for indoor cannabis or industrial hemp and publish the same at <https://www.pelham.ca/en/town-hall/cannabis.aspx>
3. The next Council direct staff to implement the Community Liaison Committee (CLC) for the Redecan facility at 182 Foss Rd. as soon as possible in early 2023, in accordance with the Minutes of Settlement (MOS) agreed between Redecan and the Town as reported at the OLT Hearing on July 25, 2022. A senior staff member should be tasked with reporting to Council at a public Council Meeting at least semi-annually on the progress of the Redecan CLC.
4. Considerable care was taken in the OPA and ZBA to organize their contents into separate sections so there is no conflict with our existing Official Plan and Zoning By-law. It is critical that this separation be maintained in future amendments to our Official Plan and Zoning By-law. Council to

¹ There may be some modest changes to the OPA, ZBA or the OINBL as a result of the legal actions described in the table above. We have every confidence to believe we will be successful in defending these as Aird & Berlis LLP, Meridian Planning Consultants, and PG Compliance Management Inc. advised in their development and the bylaw drafting to be defensible to legal challenges.

direct staff to ensure the provisions of our OLT-approved cannabis OPA/ZBA are maintained precisely in their approved form in future revisions to our Town's Official Plan and Zoning By-law(s).

OINBL

The Odorous Industries Nuisance Bylaw (OINBL) is the Town's second line of defence and is designed to encourage indoor cannabis and industrial hemp facilities to eliminate the release of nuisance odours into their neighboring community. The OINBL is an enforcement tool that provides for small AMPS (Administrative Monetary Penalty System) fines as well as larger fines/offences under the Municipal Act including seeking a Court order to shutdown a facility which continues to be non-compliant and causing adverse odour impacts in the community.

The purpose of the OINBL is to regulate certain matters related to odorous industrial facilities including cannabis, landfill, slaughter house and rendering operations. In order to avoid adverse effects (such as material discomfort or loss of enjoyment of one's property) from obnoxious odours, facilities are required to employ air filtration systems and take corrective action to prevent the escape of obnoxious odours. A professional odour contractor regularly measures and publishes odour levels in accordance with an ambient neighbourhood odour monitoring program (ANOMP) to be paid for by the cannabis facilities; and Bylaw Enforcement takes random or spot measurements in response to complaints to ensure odour levels are within specified limits.

The OINBL uses the same air quality tools found in our OPA and in the Redecan MOS as recommended by the Town's odour expert. The Town competed and was ready to award the ANOMP in summer 2021 when it pulled back as a result of CannTrust and Redecan filing an "order to quash" lawsuit with the Ontario Superior Court against the OINBL. It is critical that Council removes this unwarranted lawsuit brought over a year after the OINBL was passed by Council, in order to ensure the ANOMP's full implementation proceeds. We believe we have a strong case for our day in Court against these parties².

We recommend the following:

1. The next Council instruct Aird & Berlis LLP to expedite the legal action brought against the OINBL so that it is either withdrawn by the applicants, dismissed, or ruled upon by the Court as soon as possible.
2. The next Council contract the Town's Odour Expert, Mr. Phil Girard, P.Eng, to revise the ANOMP design so that it is appropriate for the indoor cannabis facilities operating at the time and causing odour-based adverse effects in their respective local communities. For example, the ANOMP will likely be needed for the Phoena (formerly called CannTrust) facility on Balfour St., but may not be needed to the same extent or at all for the Redecan facility on 182 Foss Rd. if its CLC is functioning well in accordance with the Redecan MOS.

² An order to quash requires the litigants to prove that Pelham acted in bad faith in approving the OINBL. This allegation couldn't be further from the truth, and Pelham can easily defend against this allegation. No municipality has worked harder, been more transparent, brought in more experts and sought more feedback from stakeholders to develop this bylaw. Furthermore, Woodstock Biomed, Redecan and CannTrust (now called Phoena) have already accepted the merits of the odour measurement methods employed in the OINBL as they are also found in the OPA odour management policies and the Redecan MOS which the relevant parties agreed to at the OLT on July 25, 2022.

3. Update the Fees and Services Bylaw or introduce a cannabis licencing framework to charge the cost of the ANOMP to the respective indoor cannabis facilities. The CCC, through the initiative of the Town's solicitor and a review by Aird & Berlis, drafted such a licencing framework to support the implementation of the OINBL. This draft OINBL amendment is ready for Council's review and approval, and provides an excellent starting point for the next Council.
4. Council to direct Bylaw Enforcement to fully enforce the OINBL.
5. Once the new PSR system that the Town is developing is operational, Council to direct staff to communicate to the public how to file odour nuisance complaints on the new system.
6. Council to direct staff to quantify the cost burden of mitigating the adverse impact of the unintended cannabis odour on the community and to draft resolutions which Council could endorse to seek the means for requesting financial support from the Provincial and/or Federal governments for municipalities with indoor cannabis facilities in their jurisdictions that are experiencing the impacts of unintended cannabis odour in their communities. These costs include the added costs to Bylaw Enforcement, outside experts, and third-party contractors.
7. Council to direct staff to report regularly to the public on progress with respect to the above, and on how the public can assist the Town with odour nuisance awareness and enforcement.

Site Plan Control By-law

The purpose of the Site Plan Control By-law is to ensure that indoor cannabis and industrial hemp facilities are subject to site plan control. The prior exemption for cannabis and industrial hemp agricultural uses was removed. We have no further recommendations to make here.

Light Bylaw

A dark skies bylaw was drafted by staff and the CCC reviewed it but deferred it pending legal challenges of another light abatement bylaw in Leamington. Leamington adopted a new light bylaw being Bylaw 41-22 on June 14, 2022 which resolved the disputes and court challenge with the original light bylaw and has been accepted by the local greenhouse industry. This bylaw is specifically a light abatement bylaw for greenhouses and requires sidewall curtains fully closed, and ceiling curtains which are to be closed 90% or more.

Based on the above, we recommend that:

1. Council develop a light bylaw for greenhouse light abatement patterned after the Leamington Light Bylaw as those goal posts (i.e., a collection of requirements with legal precedent) have now been set.

Guiding Principles

Pelham has been a pioneer in developing planning and municipal instruments to guide how new cannabis and industrial hemp facilities can establish in the Town, while proactively and reactively mitigating their adverse effects on the neighbouring community. Some key guiding principles have supported our successful work and should continue to guide the future completion of this work.

1. The expert advice we have sought and obtained and incorporated into our work product is necessary and money well spent, and should continue to complete any future cannabis bylaws. This approach ensures that:
 - a. We will have instruments that will stand up in Court;
 - b. While these instruments will be challenged, we can be confident that the challengers will either withdraw their challenges on the eve of the hearing or trial, or come to an agreed and equitable settlement with the Town.
 - c. Once tested through a judicial process, we can have confidence that the goal posts have been set once and for all, which allows all parties to move forward with better collaboration. The Redecan CLC is an example of this.
 - d. We will have reduced the burden on staff who have too many other responsibilities competing for their time.

2. Reducing and eliminating odour emissions from indoor cannabis facilities is the single most important challenge. This challenge arises because of the failure of the federal government to enforce their licencing requirements related to the *no odour off site requirement* of the Cannabis Regulations (see Section 85 of the Cannabis Regulations SOR/2018-144). In Pelham where our variable terrain makes odour dispersion especially challenging, the key to co-existence is separation. For this reason, the OPA we developed requires odour studies to determine the appropriate separation on a case-by-case basis, with peer review by the Town's odour expert. Our work has settled on a 300m separation for outdoor cultivation, where strong odour periods are seasonal as compared to indoor operations; and this separation is reflected in the ZBA we developed.

The CCC recommends that Council should continue to lobby the federal government to enforce their (licencing) air filtration requirements to prevent the escape of odours and the provincial government to develop standards for commercial cannabis growing operations that relate to odour and light pollution with appropriate emission standards. Any progress in this direction can only help municipalities like us better address odour and light pollution from indoor cannabis facilities to the satisfaction of the community.

Closing Remarks

In closing, we ask Council to receive this Closing Memo as the CCC's final work product, and to endorse and recommend it to the incoming Council as a starting point and guide for them to safely see these Pelham Cannabis Regulations through to completion for the benefit of our community.

Sincerely,

A handwritten signature in cursive script that reads "Tim J. Nohara".

Tim J. Nohara, Chair
Cannabis Control Committee
Town of Pelham

Cc: Carla Baxter, Louis Damm, Bill Heska, Jim Jeffs, John Langendoen, James Steele, Barbara Wiens, David Cribbs, Bob Hildebrandt