

THE CORPORATION OF THE
TOWN OF PELHAM
BY-LAW NO. 4251(2020)

**Being a by-law to adopt an Amendment to the Official Plan for the
Town of Pelham Planning Area.**

Amendment No. 09

Provision for Indoor Cannabis and Industrial Hemp Cultivation

THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWN
OF PELHAM IN ACCORDANCE WITH THE PROVISIONS OF SECTION
17 OF THE PLANNING ACT, R.S.O. 1990, AS AMENDED, HEREBY
ENACTS AS FOLLOWS:

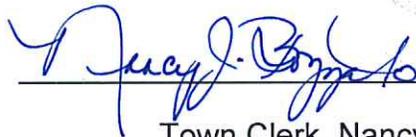
1. **THAT** Amendment No. 09 to the Official Plan of the Town of Pelham consisting of the attached explanatory text and schedules is adopted.
2. **AND THAT** the Clerk of the Town is authorized to effect any minor modifications or correction solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after passage of this by-law

ENACTED, SIGNED AND SEALED THIS

13TH Day of July, 2020.



Mayor Marvin Junkin



Town Clerk, Nancy J. Bozzato

AMENDMENT NO. 09
TO THE OFFICIAL PLAN (2014)
FOR THE
CORPORATION FOR THE TOWN OF PELHAM

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PART “A” – THE PREAMBLE

SECTION 1 – TITLE AND COMPONENTS

This document was approved in accordance with sections 17 and 21 of the *Planning Act*, R.S.O. 1990, c.P.13, as amended and shall be known as Amendment No. 09 to the Official Plan adopted by By-law No. 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014, for the Town of Pelham Planning Area.

Part “A”, the Preamble, does not constitute part of this Amendment.

Part “B”, the Amendment, consisting of the following text constitutes Amendment No. 09 to the Official Plan adopted by By-law 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014 for the Town of Pelham Planning Area.

SECTION 2 – PURPOSE OF THIS AMENDMENT

The purpose of the Amendment is to establish permissions for indoor cannabis and industrial hemp cultivation in the agricultural area, subject to a zoning by-law amendment, and to establish the criteria to be relied upon when considering such applications. This Amendment does not deal with the outdoor cultivation of cannabis or industrial hemp as this is already permitted in the agricultural area.

SECTION 3 – LOCATION OF THE AMENDMENT

This Amendment applies to the Good General Agricultural, Specialty Agricultural and Industrial designations and the Niagara Escarpment Plan Area as identified on Schedule A: Town of Pelham Land Use Plan.

SECTION 4 – BASIS OF THE AMENDMENT

On April 13, 2017, the Government of Canada introduced Bill C-45 (the *Cannabis Act*) in the House of Commons. Based in large part on the advice provided by the Task Force on Cannabis Legalization and Regulation, Bill C-45 proposed to create the foundation for a comprehensive national framework to provide restricted access to regulated cannabis, and to control its production, distribution, sale, importation, exportation, and possession. Following parliamentary review, the *Cannabis Act* received royal assent on June 21, 2018 and it became law on October 17, 2018.

The Federal Cannabis Regulation SOR-2018-144 and the Federal Industrial Hemp Regulation SOR-2018-145 also came into effect on October 17, 2018. These two regulations implement the *Cannabis Act*.

The indoor cultivation of cannabis and industrial hemp is anticipated to occur within greenhouse or industrial type buildings that can in some cases be larger than other similar buildings used for other purposes. As a consequence of the type of product being grown in these indoor facilities and the character of the odour, the potential for adverse effects from odour is significant.

As a first principle the avoidance of adverse effects is preferred, however, if avoidance is not possible, adverse effects shall be minimized and appropriately mitigated. In order to minimize and mitigate adverse effects, it is anticipated that new indoor cannabis and industrial hemp cultivation facilities will be required to be set back an appropriate distance from sensitive uses and from each other to minimize and mitigate against potential adverse effects. In this regard, appropriate setbacks will be dictated by process specific odour emission rates and the effectiveness of the proposed odour controls.

This Amendment recognizes that the cultivation of cannabis is an agricultural use and is permitted in agricultural areas by the Provincial Policy Statement (2020), which indicates that all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with Provincial standards. However, in the absence of Provincial standards on the adverse effects of odour from indoor cannabis and industrial hemp cultivation facilities, this Amendment also recognizes that there is a need to control the siting of such uses in relation to sensitive uses as a result of the known adverse effects from the cultivation of cannabis.

There is already a precedent for the establishment of setbacks from sensitive uses for odour reasons in agricultural areas in the form of the Minimum Distance Separation (MDS) guidelines established by the Province. The MDS guidelines are intended to provide the minimum distance separation between proposed new development and any existing livestock barns, manure storages and/or anaerobic digesters (MDS1) and provide the minimum distance separation between proposed new, expanding or remodelled livestock barns, manure storages and/or anaerobic digesters and existing or approved development (MDS2). Compliance with the MDS guidelines is also required by the Provincial Policy Statement (2020) when new land uses including the creation of lots or expanding livestock facilities are proposed.

The application of the MDS2 guidelines result in the establishment of setbacks that are intended to minimize the impacts of odour from livestock barns, manure storages and/or anaerobic digesters and have the effect of restricting the location of these facilities.

However, the MDS2 guidelines do not apply to cannabis and in the absence of Provincial guidance on this matter, it is up to local municipalities to establish a policy framework to avoid adverse effects, and if avoidance is not possible, to minimize and mitigate adverse

effects through setbacks for indoor cannabis and industrial hemp cultivation from sensitive uses.

In this regard, the purpose of this Amendment is to establish the study requirements to determine whether the avoidance of adverse effects is possible and if not, how adverse effects can be minimized and appropriately mitigated through the use of setbacks and other measures on a case-by-case basis. Given the known adverse effects from these facilities in the Town, this Amendment is an appropriate response to community concerns about this type of use, represents good planning and is in the public interest.

Given the above, this Amendment does the following:

1. This Amendment identifies the studies that are required to support the establishment of an indoor cannabis and industrial hemp cultivation facility to ensure that all potential adverse effects are studied in advance.

In this regard, required studies include an Emission Summary and Dispersion Modelling Report, Contingency Odour Mitigation Plan, Light Mitigation Plan, Contingency Light Mitigation Plan and Traffic Impact Study. These studies would be in addition to all other required studies typically submitted as part of an application for re-zoning.

The results of these studies are intended to establish the minimum setback from sensitive land uses to be included, if necessary, in the required site-specific zoning by-law amendment and may establish a maximum size for the facility, if it has been determined that the siting of the facility can be supported. These studies may also establish minimum separation distances between a proposed facility and any existing indoor cannabis or industrial hemp cultivation facilities, as required, to mitigate adverse effects.

2. This Amendment also sets out guidelines on the range of setbacks that will be considered if indoor cannabis and/or industrial hemp cultivation is proposed through a zoning by-law amendment. These setbacks are based on best practices and knowledge of the adverse effects currently experienced by residents in the Town. Given that these setbacks are guidelines, they can be increased or decreased based on the merits of an individual application.

A supporting zoning by-law amendment has been prepared to implement this Amendment.

PART B – THE AMENDMENT

All of this Part of the document entitled Part B - The Amendment consisting of the following text constitutes Amendment No. 09 to the Official Plan of the Town of Pelham.

Details of the Amendment

The Town of Pelham Official Plan is hereby amended as follows:

1. That Section B2.1.2 (**Permitted Uses - Good General Agricultural Designation**) be amended to include a new sub-section l) as follows:
 - l) Indoor cannabis and industrial hemp cultivation in accordance with Section B2.1.5.
2. That Section B2.1 – (Good General Agricultural Designation), be amended by including a new Section B2.1.5 and re-numbering the remaining sections accordingly:

B2.1.5 Indoor Cannabis and Industrial Hemp Cultivation

B2.1.5.1 Development Criteria

- a) Indoor cannabis and industrial hemp cultivation facilities that are authorized by the Federal Government may be permitted in the Good General Agricultural designation subject to the passage of an amendment to the implementing zoning by-law and will, if approved through such a process, be subject to Site Plan Control in accordance with Section E1.4 of this Plan. Prior to considering the approval of a zoning by-law amendment, Council shall be satisfied that:
 - i) The proposed greenhouse or other type of building will be designed and sited to blend in with surrounding land uses such that the existing agricultural and rural character of the area is maintained;
 - ii) The adverse effects of the noise, dust, odour and light from the proposed facility on sensitive land uses in the area can be avoided and if avoidance is not possible, minimized and appropriately mitigated, as demonstrated by the required studies identified in Section B2.1.5.2 of this Plan;
 - iii) Sensitive surface water features and sensitive ground water features in the area will be protected, improved or restored with consideration given to the taking of water and the generation of effluent;

- iv) Adequate parking facilities are available on the lot for the proposed facility and the traffic generated by the proposed facility can be accommodated on area roads;
 - v) The proposed facility can be serviced with an appropriate water supply and an appropriate means of sewage disposal;
 - vi) Stormwater management needs can be met on site;
 - vii) The waste generated from the facility can be appropriately managed; and
 - viii) The proposed setback, as determined by the required studies in Section B2.1.5.2 of this Plan, from sensitive land uses in the area is appropriate to avoid, and if avoidance is not possible, minimize and appropriately mitigate any adverse effects.
- b) In addition to sub-section a), and if a component(s) of the proposed facility includes value-added components that would make this component of the facility an agricultural-related use, it must be demonstrated that this component of the facility:
- i) Shall be compatible with and shall not hinder surrounding agricultural operations;
 - ii) Is directly related to farm operations in the area;
 - iii) Supports agriculture;
 - iv) Benefits from being in close proximity to farm operations; and,
 - v) Provides direct products and/or services to farm operations as a primary activity.

In order to assist with the consideration of a proposed agricultural-related use involving cannabis or industrial hemp, regard should be had to the Guidelines on Permitted Uses in Ontario's Prime Agricultural Area. An Amendment to this Plan is not required for a proposed agricultural-related use involving cannabis or industrial hemp.

B2.1.5.2 Specific Required Studies

The studies listed in this Section shall be required to satisfy the development criteria set out in Section B2.1.5.1 a) of this Plan and peer reviews of these studies may be carried out by the Town at no cost to the Town. The studies listed in this section would be in addition to any of the other studies required by Section E3 of this Plan.

- a) Emission Summary and Dispersion Modelling (ESDM) Report
 - i) At no cost to the Town, the proponent will submit an Emission Summary and Dispersion Modelling (ESDM) Report that is prepared by a Licensed Engineering Practitioner (which means that they must be licensed by Professional Engineers Ontario) in accordance with Ministry of Environment, Conservation & Parks guidance. This report will deal with contaminants including odour, chemicals and particulate matter constituents.
 - ii) The ESDM Report shall include a detailed odour inventory and mitigation plan fully describing the proposed air filtration systems and other mitigation measures as well as off-property odour impact predictions that include a review of the impacts of other cannabis and industrial hemp facilities within the area to determine the extent of the potential cumulative adverse effects. In this regard, it would be the role of the Licensed Engineering Practitioner to demonstrate that the impact of the proposed use and other cannabis and industrial hemp facilities within the area will not, or is not likely to, cause adverse effects.
 - iii) In addition to sub-section ii) above, the ESDM Report must demonstrate that the proposed facility can achieve a standard of compliance following approval and that two odour units will only be exceeded at any given sensitive use up to 0.5% of the time on an annual basis as per the MECP Technical Bulletin 'Methodology for Modeling Assessment of Contaminants with 10-Minute Standards and Guidelines, September 2016'.
 - iv) The ESDM Report must consider co-existence adverse effects associated with drift of cannabis emissions on existing farming operations in the area and provide recommendations on an appropriate greenspace separation distance to ensure that spray drift is minimized.
 - v) In addition to the above, the proponent of the proposed facility will submit a Contingency Odour Mitigation Plan, prepared by a Licensed Engineering Practitioner that considers additional air filtration systems

or other mitigation measures for use in the event of substantiated future complaints after the use has been established. Agreement on the appropriate triggers for additional mitigation will be made in advance.

- b) Light Mitigation Plan
 - i) At no cost to the Town, the proponent will submit a Light Mitigation Plan, prepared by a Licensed Engineering Practitioner that fully describes the proposed light mitigation measures and demonstrates that the proposed facility will not cause light pollution, including sky glow or light trespass, onto neighbouring properties.
 - ii) In addition to sub-section i), the proponent will also submit a Contingency Light Pollution Mitigation Plan, prepared by a Licensed Engineering Practitioner that considers additional mitigation measures and implementation timelines for use in the event of substantiated future complaints after the use has been established. Agreement on the appropriate triggers for additional mitigation will be made in advance.

- c) Traffic Impact Study
 - i) At no cost to the Town, the proponent will submit a Traffic Impact Study, to the satisfaction of the Town and/or the Region that demonstrates that the proposed facility will not cause any traffic hazards or an unacceptable level of congestion on roads in the area.

B2.1.5.3 Scope of Required Studies

In accordance with Section E3.1 of this Plan, the Town will determine what supporting information (i.e. reports and studies) are required as part of the complete application submission and inform the proponent of these requirements, following the holding of a pre-consultation meeting.

B2.1.5.4 Need for Setbacks

- a) In recognition of the known adverse effects of odour, the avoidance of adverse effects shall be a first principle. If adverse effects cannot be avoided, the minimization and mitigation of adverse effects has to be considered. One of the ways to avoid, minimize and mitigate adverse effects is through the separation of incompatible uses through the use of setbacks. In this regard,

the following setback guidelines will be considered when an application for a new indoor cannabis and/or industrial hemp cultivation facility is proposed and can be refined based on the unique characteristics of each proposal without requiring an amendment to this Plan:

- i) Minimum setback to a sensitive use - 300 to 500 metres with the setback being measured from the edge of the cultivation/processing area to the sensitive use.
 - ii) Minimum separation distance between separate indoor cannabis standard cultivation and/or standard processing facilities and/or indoor industrial hemp facilities from each other - 4,000 metres.
 - iii) Minimum separation distance between separate indoor cannabis standard cultivation and/or standard processing facilities and/or indoor industrial hemp facilities from indoor micro processing/micro cultivation facilities - 3,000 metres.
 - iv) Minimum separation distance between separate indoor cannabis micro cultivation/micro processing facilities from indoor cannabis micro/processing/micro cultivation facilities - 2,000 metres.
- b) The setback guidelines established in sub-section a) will be considered during the review of an application and can be lower or higher, depending on:
- i) Whether the facility is a greenhouse or an industrial-type building and if a greenhouse is proposed, whether the proposed greenhouse is purpose built for cannabis or industrial hemp or already exists;
 - ii) The size and scale of the proposed facility;
 - iii) The proximity and number of sensitive uses in the area including the potential for additional sensitive uses on vacant lots that are zoned to permit a sensitive use;
 - iv) The location of the proposed facility in relation to prevailing winds;
 - v) The nature of the adverse effects that exist at the time in relation to existing indoor cannabis cultivation facilities; and
 - vi) The impact of topography on the dispersion of odour.

B2.1.5.5 Implementing Zoning By-law

Only lands that have satisfied the requirements of this Section of the Plan shall be placed in a zone that permits indoor cannabis and industrial hemp cultivation facilities

in the implementing Zoning By-law.

3. That Section B2.2.2 (**Permitted Uses - Specialty Agricultural Designation**) be amended to include a new sub-section k) as follows:

k) Indoor cannabis and industrial hemp cultivation in accordance with Section B2.2.9.

4. That Section B2.2 – (**Specialty Agricultural Designation**), be amended by including a new Section B2.2.9 and re-numbering the remaining sections accordingly:

B2.2.9 Indoor Cannabis and Industrial Hemp Cultivation

Indoor cannabis and industrial hemp cultivation facilities that are authorized by the Federal Government may be permitted in the Specialty Agricultural designation subject to the passage of an amendment to the implementing zoning by-law in accordance with Section B2.1.5 of this Plan and will, if approved through such a process, be subject to Site Plan Control in accordance with Section E1.4 of this Plan.

Given the rolling topography of this area and the resultant creation of numerous microclimates, it is anticipated that it will be more difficult to avoid adverse effects in this area when compared to the Good General Agricultural designation if an indoor cannabis or industrial hemp cultivation facility was proposed.

Only lands that have satisfied the requirements of Section B2.1.5 of the Plan shall be placed in a zone that permits indoor cannabis and industrial hemp cultivation facilities in the implementing Zoning By-law.

5. That Section B2.3.2 (**Permitted Uses - Industrial Designation**) be amended to include a new sub-section k) as follows:

k) Indoor cannabis and industrial hemp cultivation in accordance with Section B2.1.5.

6. That Section B3.1.1 (**Conflict and Conformity - Niagara Escarpment Plan Area**) be amended to include a new fourth paragraph as follows:

Section B2.1.5 of this Plan shall apply to the consideration of a Development Permit application to establish a new indoor cannabis or industrial hemp cultivation facility.

7. That Section E1.4 (**Site Plan Control**), be amended by including a new paragraph at the end of the section as follows:

It is the intent of this Plan that Site Plan Approval will be required for all proposed indoor cannabis and industrial hemp cultivation facilities that may be permitted in accordance with Policies B2.1.5, B2.2.9 or B2.3.2 k) to the maximum extent afforded under the *Planning Act*, in order to proactively mitigate adverse effects where possible and to maximize compatibility with land uses in the area.

Any construction of a building or structure associated with a proposed indoor cannabis or industrial hemp cultivation facility is subject to the Ontario Building Code and will require the submission of Mechanical and Electrical Design Specifications and Drawings for review prior to the issuance of a building permit. Final as-built drawings will also be required. These specifications and drawings include those associated with air/odour filtration systems and equipment for light pollution mitigation.