

The Corporation of the City of Kawartha Lakes

Committee of the Whole Report

Report Number LGL2020-011

Meeting Date: November 3, 2020

Title: Regulation of Nuisance associated with Cannabis Cultivation and Processing Operations within the City of Kawartha Lakes

Description: Proposed amendments to the Zoning By-law and Property Standards By-law to address odour and light pollution associated with Cannabis Cultivation and Processing Operations. Proposed amendments to the Fees and Charges By-law re seized cannabis.

Ward Number: All

Author and Title: Robyn Carlson – City Solicitor
Aaron Sloan – Manager of Municipal Law Enforcement
Jonathan Derworiz – Planner II

Recommendations:

That Report RS2020-011 Regulation of Nuisance associated with Cannabis Cultivation and Processing Operations within the City of Kawartha Lakes, be received;

That a by-law to amend the Property Standards By-law in the form attached as Appendix “A” be placed before the Agricultural Development Advisory Committee for review and comment;

That an amendment to the Fees and Charges By-law substantially in the form attached as Appendix “B” be forwarded to Council for adoption;

That a further report come forward from Development Services, to discuss potential by-law amendments to the various Zoning By-laws in force and effect throughout the municipality, following statutory public consultation; and

Department Head: _____

Legal/ Finance/ Other: _____

Chief Administrative Officer: _____

That these recommendations be forwarded to the agenda for the next Council meeting for adoption.

Background:

By way of Council Resolution CW2020-095, Council on June 23, 2020 passed the following resolution:

That the Memorandum from Councillor Richardson, regarding the Regulatory Considerations for Managing Cannabis Cultivation in the City of Kawartha Lakes, be received;

That Staff be directed to provide information and options for zoning by-law regulations for both personal medical and commercial cultivation operations;

That Staff be directed to provide information and options for enforcement measures when commercial or personal medical cultivation operations exceed Federal approvals, or when the impact of the operation exceeds lot coverage percentages and post production/ processing brings a commercial element to otherwise residential or farm dwellings; and

That staff report back to Council with their proposals by the end of Q3 2020.

This Report addresses that direction. This Report does not address retail Cannabis sales, which are permitted in the General Retail category of Commercial zones. This Report addresses cannabis cultivation and processing operations, either through a federal commercial license (allowing sale to the government) or for personal use as a medical license.

Rationale:

If a member of the public is concerned with the legality of a cannabis operation, they should contact the police. The City is not privy to personal medical licenses, nor is it privy to commercial production licenses, both of which are issued by the federal government.

The City is entitled to regulate cannabis cultivation and production to the extent that this regulation falls within the City's ability to regulate land use within Zoning By-laws, enacted for valid planning purposes, and Property Standards By-laws.

The City is entitled to draft and enforce these by-laws to regulate property development to minimize nuisance, such as odour and light pollution. However, it cannot be the intent of these by-laws to supplement the criminal framework set

out in the Criminal Code and Cannabis Act. Perceived increase in crime as a result of the land use is not something that can be regulated under the Planning Act. It is important that all levels of government work together to ensure that residents feel safe in both the rural and urban settings.

Medical Marijuana and Planning Regulation

Medical marijuana can only be accessory to a residential use if the person with the license lives on the property.

Licensing for Commercial Cultivation and Processing

Health Canada is the governing body responsible for reviewing licence applications of prospective commercial cannabis growers. There are two types of licenses available that have tiers based on cultivation area and output:

Cultivation licenses allow the growing of cannabis indoors or outdoors, and if authorized, the sale and distribution to other licence holders and licensed retailers.

- 1) Standard Cultivation – no maximum cultivation area. License can authorize produce fresh and dried cannabis, cannabis plants and seeds. Accessory uses include drying, trimming and milling.
- 2) Micro Cultivation – 200m² maximum cultivation area. Permitted uses are the same as the Standard Cultivation license.
- 3) Nursery – license can permit production of cannabis plants and plant seeds. Accessory uses include drying.

Processing licenses permit the processing of cannabis indoors, and if authorized, the sale and distribution to other license holders and licensed retailers. Processing activities include extraction and refinement to create topicals, extracts and edibles.

- 1) Standard Processing – no maximum processing amount per year.
- 2) Micro Processing – permitted to process up to 600kg of dried flower, or equivalent, per year.

Land Use Issues and Planning Implications

Under the Cannabis Act, interested cultivators or processors are not required to obtain support from a municipality prior to applying for a license. Successful proponents are required to notify the municipality, copying the Minister, when a license is issued. While the Cannabis Act does not require any consultation with the municipality, under the Planning Act, municipalities are granted the authority to regulate land uses. From a land use planning perspective, cannabis crops, grown either indoor or outdoor, have land use planning implications the same as

mainstream agricultural or industrial uses. Staff have identified the following issues and options that require further analyses in determining the most appropriate course of action for regulating cannabis cultivation and processing in the City of Kawartha Lakes. This list is not exhaustive and, as this is an emerging industry, additional issues may arise:

- Distinguishing cannabis cultivation from production by way of defining such uses in Zoning By-laws;
- Amending existing definitions (i.e., Agricultural) or carving out new use-specific definitions.
- Determining an appropriate definition for the uses;
- Determining appropriate separation distances from residential uses and other sensitive land uses;
- Requiring Dark Sky compliance to mitigate light pollution;
- Applying Site Plan Control to each cultivator or producer; and,
- How and when to require studies pertaining to odour, stormwater and noise to minimize potential concerns from neighbouring property owners.

There are various options to address the issues outlined above. Brock, Uxbridge, Clarington and Scugog were examined in a municipal scan and are all currently exploring regulatory options for cannabis cultivation and production. This includes determining appropriate zones and zone requirements, enforcement measures and licensing. Brock and Scugog have both implemented Interim Control By-laws prohibiting the uses in the meantime while regulations are developed. Staff has obtained studies on cannabis cultivation and production from Georgina and Ramara and will be considering findings as regulations are built out. Staff are monitoring the progress made in these municipalities.

Along with odour and servicing, Staff are aware of concerns pertaining to a potential increase in criminal activity as a result of the land use. With regard to any land use, enforcement of applicable laws and maintaining a generally comfortable perception of safety requires a multifaceted approach from the respective municipality.

Planning will be reviewing minimum lot sizes in the agricultural zone to see if it is sufficient for cannabis growing (both indoor and outdoor). Planning will be reviewing agricultural, light industrial and residential lot coverage maximums that currently exist in the zoning by-laws that are in force and effect throughout the municipality to determine if they are sufficient for indoor cannabis cultivation.

Proposed Amendments to the Property Standards By-law

The proposed amendments to the Property Standards By-law should address the odour and light pollution issues associated both with residential cultivation of cannabis pursuant to medical license, the commercial cultivation of cannabis in

the agricultural zone, and the commercial processing of the cannabis plant into product in the industrial zone. The proposed amendments consider regulation of the nuisance issues associated with cannabis cultivation, and maintaining the safety of those in residential buildings where cannabis cultivation is occurring pursuant to a medical license. Proposed additional definitions and sections amendments are as follows:

“Noxious Odour” mean odours from activities emanating from a property that is persistent or continuous and is likely to interfere with the normal and reasonable use of another property;

“Odour Abatement Protocol” means a combination of methods, practices, equipment and technologies designed for the purpose of eliminating the emission and emanation of Noxious Odours from a property.

Light Penetration: Every Owner shall provide and maintain effective barriers to prevent the light from lamp standards, signs, vehicle head-lamps and other sources from shining directly into a Dwelling Unit or onto a neighbouring property.

Cannabis Related Activity: Where a Cannabis Related Activity is permitted on a property which occurs in a green house or building or other structure, the Owner or Occupier shall ensure that a ventilation system is installed to filter and exhaust the Noxious Odours

Exhaust of Noxious and Other Substances: Where a system of mechanical ventilation or Odour Abatement Protocol which exhausts noxious fumes, odours, gases, dust or sawdust from a Building is installed, the Owner shall ensure that the discharge from the system terminates above the roof line of the Building, and not less than three (3) metres (equivalent to nine point eight (9.8') feet) clear of any skylight, window, ventilator or other opening into that or another Building, and is operated in a manner so as not to constitute a Nuisance.

See Appendix “A” for a full list of proposed amendments. These proposals will be put before the Agricultural Development Advisory Committee for its review and comment before returning to Council.

Proposed Amendments to the Fees and Charges By-law

Enforcement of the Criminal Code with respect to illegal cannabis cultivation can be expensive, as the Ontario Provincial Police and the Kawartha Lakes Police are currently subject to the City’s tipping fees when attempting to landfill cannabis plants that have been seized. The by-law amendments to the City’s Fees and Charges By-law proposed at Schedule B provide a waiver of these costs for the enforcement authorities.

Other Alternatives Considered:

No other alternatives have been considered.

Financial/Operation Impacts:

Additional operation impacts will be felt by the Municipal Law Enforcement Office, as the enforcement of these added Property Standards provisions will fall to them. No additional staff is being proposed for that Office, so will result in additional workload for existing staff. Staff in that department are currently at/over capacity, so this is intended to increase wait times for responses. That department currently has a wait time of 2 months for some investigative issues and response.

A waiver of tipping fees will result in reduced revenue by the City.

Relationship of Recommendations to the 2020-2023 Strategic Plan:

This report and recommended resolutions aligns with the Guiding Principle of service excellence. Moreover, this report and recommendations support the strategic priority of good government.

Review of Accessibility Implications of Any Development or Policy:

N/A

Consultations:

Director of Development Services
Manager of Municipal Law Enforcement
Manager of Planning

Attachments:



LGL2020-011
Appendix A - Proper

Appendix A – Proposed Amendments to the Property Standards By-law to Address Nuisance Associated with Cannabis Growth and Processing Operations



LGL2020-011
Appendix B - By-Law

Appendix B – Proposed Amendments to the Fees and Charges By-law to
Address costs associated with police enforcement of illegal cannabis cultivation

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The Corporation of the City of Kawartha Lakes

By-Law 2020-xxx

A By-Law To Amend By-Law 2016-112 Being a By-Law to Regulate and Govern The Standards For Maintaining And Occupying Property Within Kawartha Lakes.

Recitals

1. The federal Cannabis Act authorizes residents and commercial business to grow cannabis as regulated, on certain properties in the City of Kawartha Lakes.
2. The City of Kawartha Lakes' Municipal Law Enforcement Division and other enforcement agencies have seen an increase in farm and residential properties being used to grow Cannabis.
3. Council considers it advisable to amend Property Standards By-Law 2016-112 in order to regulate property use so that cannabis cultivation occurs in a manner that addresses public nuisance and health.
4. While the existing Property Standards By-Law provides amelioration of odours and light in industrial zones, it fails to address these concerns on residential and agricultural property.

Accordingly, the Council of The Corporation of the City of Kawartha Lakes enacts this By-law 2020-xxx.

Section 1.00: Definitions and Interpretation

1.01 **Definitions:** Section 1.01 will be amended to include the following definitions:

- (a) **"Cannabis"** shall have the same meaning as Cannabis as defined in the Cannabis Act.
- (b) **"Cannabis Processing"** means an operation that includes the application of manual, mechanical or chemical methods, it is transformed into another form.
- (c) **"Cannabis Related Activity"** means growing, harvesting, processing, extracting, packaging, or otherwise making ready for sale, testing, destroying, storing, shipping, permitting consumption or sale of cannabis or cannabis products.
- (d) **"Noxious Odour"** mean odours from activities emanating from a property that is persistent or continuous and is likely to interfere with the normal and reasonable use of another property

- (e) **“Odour Abatement Protocol”** means a combination of methods, practices, equipment and technologies designed for the purpose of eliminating the emission and emanation of Noxious Odours from a property,

Section 2.00: Amendments to the Standards for All Properties

2.01: Section 3.28 **“Light Penetration”** which reads:

“Every Owner shall provide and maintain effective barriers to prevent the light from lamp standards, signs, vehicle head-lamps and other sources from shining directly into a Dwelling Unit” will be amended by adding the word “or” following the word “Unit”, by replacing “on” with “onto a”, so that it reads as follows: “Every Owner shall provide and maintain effective barriers to prevent the light from lamp standards, signs, vehicle head-lamps and other sources from shining directly into a Dwelling Unit or onto a neighbouring property.”

2.02 Section 5.04, “Ventilation Requirement”, will be removed from section 5, which applies only to non-residential and mixed-use buildings, and placed in new section 3.28, as section 3 applies to all buildings. The paragraph will be amended so that it reads as follows: “Every Owner of a Residential, Non-residential or Mixed Use Building shall ensure that it is adequately ventilated by natural or mechanical means and with regard to the operations carried on within the Building, to ensure that persons within the Building are not exposed to conditions harmful to their health or safety.”

2.03 Section 5.06 **“Ventilation Equipment”**, will be removed from section 5 and placed in new section 3.29. The paragraph will be amended so that it reads as follows: “Every Owner of a Residential, Non-residential or Mixed Use Building shall ensure that all of the mechanical ventilating equipment and the supports for that equipment are maintained in good repair and in a safe mechanical condition.”

2.04 A new section 3.30 will be added: **“Cannabis Related Activity:** Where a Cannabis Related Activity is permitted on a property which occurs in a green house or building or other structure, the Owner or Occupier shall ensure that a ventilation system is installed to filter and exhaust the Noxious Odours.”

2.05 Section 5.07 will be removed from section 5 and placed in new section 3.31, with amendments so that it reads as follows: **“Exhaust of Noxious and Other Substances:** Where a system of mechanical ventilation or Odour Abatement Protocol which exhausts noxious fumes, odours, gases, dust or sawdust from a Building is installed, the Owner shall ensure that the discharge from the system terminates above the roof line of the Building, and not less than three (3) metres (equivalent to nine point eight (9.8’) feet) clear of any skylight, window, ventilator or other opening into

that or another Building, and is operated in a manner so as not to constitute a Nuisance.”

Section 3.00: Administration and Effective Date

3.03 **Effective Date:** This By-law shall come into force and take effect on the date it is passed.

By-law read a first, second and third time, and finally passed, this xx day of xxx, 2020.

Andy Letham, Mayor

Cathie Ritchie, City Clerk

The Corporation of the City of Kawartha Lakes

By-Law 2020-

A By-law to Amend By-Law 2018-234, Being a By-law to Establish and Require Payment of Fees for Information, Services, Activities and Use of City Property in The City of Kawartha Lakes (known as the Consolidated Fees By-law)

Recitals

1. By-laws may be passed to establish and require the payment of fees for information, services, activities and use of municipal property.
2. Section 391 of the Municipal Act 2001, S.O. 2001, as amended, provides for a municipality to pass by-laws imposing fees or charges on persons for services and activities provided or done by or on behalf of it, for cost payable by it for services or activities provided or done by or on behalf of any other municipality or local board, and for the use of its property including property under its control.
3. By-law 2018-234 consolidates all fees charged by the municipality into one by-law.
4. Waiver of landfill tipping fees for cannabis plants seized by the Ontario Provincial Police or the Kawartha Lakes Police will aid in law enforcement efforts relating to illegal cannabis cultivation by reducing the costs of such enforcement.

Accordingly, the Council of The Corporation of the City of Kawartha Lakes enacts this By-law 2020- .

Section 1.00: Amendments to By-Law 2018-234

1.01 Amendment: A new row will be added to Schedule F – Waste Management Fees in By-law 2018-34, stating that “Cannabis plants seized by the Ontario Provincial Police or the Kawartha Lakes Police” will not be subject to tipping fees.

Section 3.00: Effective Date

3.01 Effective Date: This By-law shall come into force on the date it is finally passed.

By-law read a first, second and third time, and finally passed, this ___ day of _____, 2020.

Andy Letham, Mayor

Cathie Ritchie, City Clerk