



Planning Advisory Committee Report

Report Number:	PLAN2021-008
Meeting Date:	March 10, 2021
Title:	Zoning By-law Amendment for Cannabis Cultivation and Processing
Description:	To incorporate regulations for cannabis cultivation and processing operations into all 18 of the City's Zoning By-laws
Type of Report:	Statutory Public Meeting
Author and Title:	Jonathan Derworiz, Planner II

Recommendation:

That Report PLAN2021-008, **Zoning By-law Amendment for Cannabis Cultivation and Processing**, be received for information; and

That Report PLAN2021-008, **Zoning By-law Amendment for cultivation and processing operations**, be referred back to staff to address issues raised through the public consultation process for further review until such time that all comments have been addressed.

Department Head: _____

Legal/Other: _____

Chief Administrative Officer: _____

Background:

During the November 3, 2020 Committee of a Whole Meeting, the following recommendations were adopted:

CW2020-179

Moved by Councillor Richardson

Seconded by Councillor Elmslie

That Report LGL2020-011, **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, by the end of Q1, 2021, to discuss potential by-law amendments to the various Zoning By-laws in force and effect throughout the municipality, following statutory public consultation; and

That these recommendations be forwarded to Council for consideration at the next Regular Council Meeting.

Carried

This report is in response to the third recommendation listed above.

Rationale:

The City of Kawartha Lakes has experienced a significant increase in enforcement matters and inquiries pertaining to cannabis operations with regard to both legitimate and illegitimate operations. Following the Federal Government's decriminalization of cannabis, Health Canada developed a Cannabis Licensing program for the cultivation and processing of the crop. Since then, municipalities across the country have been challenged with implementing cannabis regulations that do not exceed their municipal powers but also effectively regulate the use within their jurisdiction.

Proposal:

The proposed Zoning By-law Amendment is comprised of new definitions, amendments to existing definitions, and new general provisions and zone requirements. Staff is proposing to incorporate these amendments into all of the City's Zoning By-laws.

New Definitions

Air Filtration Control

This definition is intended to clarify measures that would mitigate odour concerns originating from a cannabis production facility. This definition also provides a distinction between indoor and outdoor facilities as the former would require an Air Filtration Control and the latter would not. This is realized further in the proposed General Provisions where facilities with Air Filtration Control are implied to be indoor and have a lesser separation from sensitive land uses. The proposed definition is as follows:

Air Filtration Control shall mean the functional use of industrial grade multi-stage carbon filtration systems or similar technology, to reduce and/or treat the emission of pollen, dust and odours expelled from a facility and sized accordingly in comparison to the facility it serves as designed by a qualified person.

Cannabis and Cannabis Production and Processing

Defining Cannabis Production and Processing formally introduces the uses into the Zoning By-law and allows further regulations to follow within the By-law. A key part of this definition is the explicit mention of Health Canada licensing as it automatically prohibits any unlicensed facilities and, in turn, provides additional grounds on which to issue enforcement orders for illegal cannabis operations within the municipality. Once defined, the use will be inserted into appropriate zones. A definition for Cannabis is also provided. Proposed definitions are as follows:

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 and Processing means lands, buildings or structures used for producing, processing, testing, destroying, packaging and /or shipping of cannabis authorized by an issued license or registration by the federal Minister of Health,

pursuant to the Access to Cannabis for Medical Purposes Regulations, SOR/2016-230, to the Controlled Drugs and Substances Act, SC 1996, c 19, as amended from time to time, or any successors thereto.

Sensitive Land Uses

In an effort to mitigate impacts of cannabis uses from neighbouring properties, separation distances from land uses that could be negatively impacted are proposed. Rather than listing what are considered Sensitive Land Uses, such as nursing homes or residences, a category for such is being proposed. This definition is currently within the Lindsay Zoning By-law and aligns with the usage of the term as per both Provincial Policy Statement, 2020, and the City of Kawartha Lakes Official Plan (Official Plan). The proposed definition is as follows:

Sensitive Land Use means buildings, amenity areas or outdoor spaces where routine or normal activities occurring at reasonably expected times would experience one or more adverse effects from contaminant discharges generated by a nearby major facility. Sensitive land uses may be part of the built or natural environment. Examples include, but are not limited to, residences, day care centres, and educational and health centres.

Amended Definitions:

To distinguish cannabis production and processing facilities from general agricultural and industrial uses large and minimize interpretive issues within Zoning By-laws, amendments to agriculture- and industrial-focused definitions such as Agricultural Use, Farm, Industry, Heavy and Industry, Medium are proposed. It is not the intent to imply that cannabis production and processing is not agricultural or industrial, but to ensure that potential for regulation misinterpretation is minimized and that cannabis uses are subject to separation distances and other agricultural uses are not. Examples of amended definitions are as follows:

Agricultural Use means a use of land, buildings or structures for the purpose of forestry, field crops, fruit farming, market gardening, dairying, animal husbandry, poultry or beekeeping, and such uses as are customarily and normally related to agriculture and includes accessory buildings and does not include cannabis production or processing facilities.

Farm, Specialized means any land on which the predominant economic activity consists of raising chickens, turkeys or other fowl, the raising of fur bearing animals, the raising

of swine, goats, horses, or cattle on feed lots or other intensive animal operations, the raising or boarding of dogs or cats or the growing of mushrooms and does not include a cannabis production or production facility.

Industry, Medium, means an industry, assembly, manufacturing or processing plant which is predominantly conducted within a wholly enclosed building but which may also involve a limited amount of open or unenclosed storage areas and the discharge of noise, odour, particulate matter or smoke, or vibration which is detectable beyond the property boundaries. Examples of such uses are sheet metal, plastic, fibre glass or wood fabricating operations; motor vehicle body repair shops; and food processing facilities. This use does not include cannabis production or processing facilities.

Manufacturing, Processing, Assembling or Fabricating Plant shall mean a plant in which the process of producing any product, by hand or mechanical power and machinery, is carried on systematically with division of labour and shall not include cannabis production or processing.

General Regulations

All Zoning By-laws contain a General Regulations, or General Provisions, section that includes regulations that apply across multiple zones and special regulations for specific uses. This section can also include interpretative and technical statements on how to apply certain Zoning By-law regulations. Creating new subsections within General Regulations specific to Cannabis Production and Processing is being proposed. Within this subsection, provisions regarding separation distances and a site plan requirement will be included.

Two separation distances from Sensitive Land Uses are being proposed:

- 70 metres from the site-boundary to site-boundary for Cannabis Production and Processing containing Air Filtration Control systems.
- 300 metres from the site-boundary to site-boundary, for Cannabis Production and Processing without Air Filtration Control systems.

Cannabis production and processing is considered an agricultural use by the Ontario Ministry of Agricultural, Food and Rural Affairs (OMAFRA) but still has industrial land use implications insofar as the potential for odours to surpass the boundaries of the site. Following review of best practices, the City of Kawartha Lakes Official Plan and Environmental Land Use Planning guides from the Ministry of the Environment,

Conservation and Parks, separation distances of 70 metres and 300 metres are being proposed.

Zones

The Ontario Ministry of Agriculture, Food and Rural Affairs has indicated that cannabis cultivation and processing are agricultural uses and, as such, staff are proposing that this use be inserted into Agricultural Zones. Staff are also proposing that this use be inserted into Industrial Zones as cannabis processing has industrial associations including oil extraction and research and development.

In-effect Zoning By-laws have varying industrial zones that differ in the degree of permitted uses. For instance, General Industrial as per the Ops Zoning By-law, permits light, medium and heavy industrial uses while the Woodville Zoning By-law permits light industrial uses in the Restricted Industrial Zone and light, medium, and heavy industrial uses in the General Industrial Zone. As part of regulation development, industrial zones were evaluated for suitability of cannabis processing uses.

Provincial Policy Conformity:

Provincial Policy Statement, 2020:

The Provincial Policy Statement, 2020 (PPS) sets the policy foundation for regulating development and land use planning in Ontario. A harmony among economic development, resources, public health and safety, and the quality of the natural and built environment is facilitated through the policies contained in this document. The proposed Zoning By-law amendments demonstrate conformity with the PPS in the following manner:

Cannabis Production and Processing is considered an agricultural use by OMAFRA but also has industrial use effects, as described above. As such, the proposed amendments overlap policies pertaining to both major facilities, as defined by the PPS, and agricultural uses.

Through consideration of the potential for odours and other nuisances to surpass the boundaries of a site containing a cannabis production or processing facility, separation distances are proposed. This notion aligns with Section 1.2.6, Land Use Compatibility, as it prescribes that, if avoidance between a major facility and a sensitive land use is not possible, any potential adverse effects from odour, noise and other contaminants,

are minimized and mitigated to minimize risk to public health and safety, and to ensure the long-term operational and economic viability of major facilities in accordance with provincial guidelines, standards and procedures. The proposed 70 metre and 300 metre separation distances align with a document prepared by the Ministry of the Environment, Conservation and Parks that pertains to compatibility between industrial land uses and sensitive land uses. These separation distances are also echoed in the Official Plan.

With regard to the agricultural nature of cannabis uses, the intent of the proposed amendments is to not stifle cannabis production and processing, as an agricultural use, through regulations, but encourage the use to be located and operated in a manner that minimizes and mitigates potential off-site effects like odour. With this in mind, staff is proposing to permit cannabis production and processing in agricultural zones, subject to the conditions outlined in the General Provisions. Through the site plan process, further vetting of a cannabis production and processing use would be undertaken to evaluate the impacts of the proposed operation on prime agricultural lands.

A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019:

To plan for growth and development in a manner that supports economic prosperity, protects the environment, and assists communities in achieving a high quality of life, the Ontario government prepared A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019 (Growth Plan).

As per section 1.2.1. of the Growth Plan, a guiding principle for planning in Ontario is providing flexibility for economic development and new employment opportunities as they emerge while providing certainty for traditional industries, including resource-based sectors. This principle echoes the direction of the PPS and is realized through the proposed amendment. Cannabis production and processing are not clearly permitted uses within the in-effect Zoning By-laws. By formally introducing this use in select zones, clarity as to where this use can operate is given to prospective operators and the general public. This has the potential to encourage operators to establish in the City.

Cannabis production and processing facilities have the potential to utilize substantial amounts of water. Through the Site Plan process, additional studies may be requested. This requirement allows for evaluation of an application for compliance with Section 3.2.6. of the Growth Plan, Water and Wastewater Systems. Requested studies could also analyze potential impacts to water supplies for adjacent property owners.

City of Kawartha Lakes Official Plan, 2012:

The City of Kawartha Lakes Official Plan, 2012 (Official Plan) provides policies and direction on the growth and development of the municipality. While echoing and supporting the policies within Provincial Plans, the Official Plan provides Kawartha Lakes-specific policy direction.

Section 2.2 of the Official Plan contains policy specific to the City's economy. As per 2.2.2, the City recognizes the importance of farming activities within the City and will continue to support and protect the continuation and growth of the agricultural industry. Introducing cannabis production and processing supports this policy given that producing cannabis is recognized as a form of agriculture and this inherently supports the growth of the agricultural industry.

Considering the industrial nature of cannabis production and processing, Section 3.8 Separation and Buffering of Uses, of the Official Plan was utilized to determine the proposed 70 and 300 metre separation distances between cannabis uses and sensitive land uses. Using the evaluation matrix within Section 3.8.3., staff concluded that cannabis production and processing would be considered a Medium Use which requires a 70 metre separation distance. Medium Uses also constitute a 300 metre area of influence. The 70 metre separation distance would be measured from the property line of the subject site and applies to operations equipped with air filtration control. The 300 metre separation applies to operations without air filtration control and is considered an area of influence which can be revised based on analysis during the Site Plan Agreement process. That is, if additional measures to mitigate potential nuisances are provided and considered acceptable by staff, the 300 metre area of influence can be decreased through a minor variance.

Introducing cannabis production and processing also aligns with the Agriculture objectives prescribed by the Economic Development section of the Official Plan. Namely, h) and i) which instruct as follows: identify and explore the development of new markets, crops, agricultural products, value-added processing and value-chain partnerships, locally, regionally and internationally; and, protect the right-to-farm without overly onerous restrictions. The former is noted inherently as the formal introduction of cannabis production to the City is anticipated to garner interest from prospective producers. With regard to i), Staff feel that the regulations proposed are reasonable given the agricultural and industrial overlap that the uses consist of.

Zoning By-laws:

This amendment proposes inserting cannabis production and processing into zones that currently permit related uses i.e., Agricultural, Rural General, and General Industrial. Given the nature of cannabis production and processing as described in previous sections of this report, Staff feel that this use meets the intent of these zones and is appropriately listed in the same zones as agricultural uses, and medium and heavy industry.

The proposed amendment will not create any situations of legal non-compliance.

Other Alternatives Considered:

No other alternatives have been considered.

Alignment to Strategic Priorities:

In line with the Strategic Priority of a Vibrant and Growing Economy, the proposed amendments provide prospective cannabis producers with clarity with regard to establishing in the City of Kawartha Lakes.

Practice of the Strategic Priority of Good Government is conducted through this application as Staff continue to evaluate applications diligently and promote continuous improvement in all steps of the land use planning process.

Financial/Operation Impacts:

There are no financial or operational impacts pertaining to the proposed amendments. Costs would be incurred in the event of an appeal to the decision made by Council.

Consultations:

Notice of this application was published in the Kawartha Lakes This Week and the Peterborough This Week.

At the time of report writing, the following comments have been received:

Public Comments:

At the time of report writing, no public comments have been received.

Agency Review Comments:

The regulations as outlined in this report were presented to the Agricultural Development Advisory Committee on February 11, 2021. At this meeting, the following motion was carried:

Motion by Adam Shea and seconded by Shawn Westland

That ADAC supports the Planning Division's proposed Zoning amendments as they pertain to the proposed production and processing of cannabis by Health Canada-authorized commercial entities with the following conditions:

1. The Planning Division investigate if the 300m proposed set back from outdoor growing operations could be taken from the edge of the outdoor crop instead of the edge of the property line;
2. The Planning Division investigate if the 70m proposed set back from indoor growing operations with full air filtration could be taken from the edge of the building instead of the edge of the property line; and
3. the Planning Division review the potential impact of cannabis operations on the development of adjacent properties.

Carried

Generally, Staff support this implementation. Changes to this report and attached By-law to reflect this have not yet been made and will not be incorporated until comments from the public and agencies have been received.

Staff are awaiting comments from the Ontario Ministry of Agriculture, Food and Rural Affairs, and the Ontario Federation of Agriculture.

Development Services – Planning Division Comments:

Staff feels that the proposed regulations are not overly onerous to prospective producers. Based on research conducted on how other municipalities are regulating cannabis processing and production, the approach put forward in this report generally aligns with common practices. This proposed amendment generally conforms with the PPS, the Growth Plan, and the Official Plan as it is providing the regulations necessary to facilitate cannabis production and processing within the City of Kawartha Lakes.

With regard to the Site Plan requirement, this mechanism is proposed to allow Staff to vet the proposed setbacks, determine if additional studies are required, such as a hydrogeological study, and to evaluate the fencing for the site.

Conclusion:

Staff recommends that this report for the proposed Cannabis Cultivation and Processing Regulations Zoning By-law amendment be referred back to staff for further review and consideration until comments from the public meeting and agencies have been reviewed.

Attachments:



Appendix A.pdf



Appendix B.pdf

Appendix 'A' – Report LGL2020-011 – Regulation of Nuisance Associated with Cannabis Cultivation and Processing Operations within the City of Kawartha Lakes

Appendix 'B' – Draft Zoning By-law Amendment

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Department Head: Chris Marshall

Department File: D06-2020-027