



Planning Advisory Committee Report

Report Number:	PLAN2021-019
Meeting Date:	May 5, 2021
Title:	Zoning By-law Amendment for Cannabis Cultivation and Processing
Description:	To incorporate regulations for cannabis cultivation and processing facilities into all 18 of the City's Zoning By-laws
Type of Report:	Regular Meeting
Author and Title:	Jonathan Derworiz, Planner II

Recommendations:

That Report PLAN2021-019, **Zoning By-law Amendment for Cannabis Cultivation and Processing**, be received;

That a Zoning By-law Amendment respecting application D06-2020-027, substantially in the form attached as Appendix B to Report PLAN2021-019, be approved and adopted by Council; and

That the Mayor and Clerk be authorized to execute any documents and agreements required by the approval of this application.

(Acting) Department Head: _____

Financial/Legal/HR/Other: _____

Chief Administrative Officer: _____

Background:

At the March 10, 2020, meeting of the Planning Advisory Committee, the following recommendations were adopted and the application was subsequently referred back to staff for further review.

PAC2021-013

Moved By Deputy Mayor O'Reilly

Seconded By M. Barkwell

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 Cannabis Cultivation and Processing, 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.

Carried

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 Facility

Defining Cannabis Production and Processing Facility 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 Facility 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 at 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 a cannabis production and processing facility 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 a cannabis production and processing facility.

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 and processing 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 a cannabis production and processing facility.

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 a cannabis production and processing facility.

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 Facilities is being proposed. Within this subsection, provisions regarding separation distances and a site plan requirement will be included.

Following further consultation with the Agricultural Development Advisory Committee (ADAC), the Ministry of Agriculture, Food and Rural Affairs (OMAFRA), and the Ontario Federation of Agriculture (OFA), Staff are revising the approach to separation distances as outlined in PLAN2021-008. Rather than measuring the setback from property line-to-property line, a building line or crop line-to-building line approach is being proposed:

- 70 metres from the building line of the sensitive land use-to-the building line or crop line of the Cannabis Production and Processing Facility containing Air Filtration Control systems.
- 300 metres from the building line of the sensitive land use-to-the building line or crop line of the Cannabis Production and Processing Facility without Air Filtration Control systems.

Consideration was given for amenity spaces and outdoor recreational areas, like playgrounds, related to sensitive land uses. Traditional agricultural uses are not setback from such recreational areas and given OFA's position that all levels of government and their agencies are to treat income, workers, and facilities in connection to the growing of cannabis consistent with the treatment applied to other farm activities, a setback considering these used would not be supported by OFA. Other farm activities and crop growth are not subject to such a setback.

Staff is also proposing that Cannabis Production and Processing Facilities complete a Site Plan Agreement. This planning tool will allow Staff to confirm the proposed setbacks, determine if additional studies are required, such as a noise study or hydrogeological study, and evaluate the fencing for the site. A proposed amendment to the Site Plan Control By-law is, therefore, also proposed.

Zones

The Ontario Ministry of Agriculture, Food and Rural Affairs has indicated that cannabis production 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 production and processing facilities.

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.

A Cannabis Production and Processing Facility 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 facilities 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 facility 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. A cannabis production and processing facility is 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 facilities 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 production and

processing facilities 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 building line or crop 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. If additional measures to mitigate potential nuisances are provided and considered acceptable by staff, the 300 metre setback could be decreased through a minor variance.

Introducing cannabis production and processing facilities 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 facilities into zones that currently permit related uses i.e., Agricultural, Rural General, and General Industrial. Given the nature of cannabis production and processing facilities 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. At this time, no amendment to Oak Ridges Moraine Zoning By-law 2005-133 is proposed.

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 LPAT appeal to the decision made by Council.

Consultations:

Public Comments:

Following the March 10, 2021 Public Meeting, questions and comments regarding the proposed amendments were received from Dan Vanderzwet that pertained to the implementation and definition of the proposed setbacks from sensitive land uses. Staff explained that the definition of Sensitive Land Uses is informed by the PPS and the City of Kawartha Lakes Official Plan and aligns with the existing application of the term. With regard to setbacks, Mr. Vanderzwet inquired if the setbacks account for outdoor amenity spaces like those found at schools or care facilities. Staff indicated that, following consultation with OFA and OMAFRA, this implementation could not be supported as it would constitute treating cannabis differently from other agricultural uses and normal farm practices.

Additional correspondence was received from Michelle Burke that contained questions pertaining the approval process for a Cannabis Production and Processing Facility and if any community consultation would occur as part of the use establishing. Cannabis Production and Processing Facilities are proposed to be a permitted use, subject to conditions, and would not require a public participation process. Additionally, a public consultation process for an agricultural use is not something that would be supported under normal farm practices. Michelle also posed questions about to request additional studies, like a hydrogeological study, during the process. Staff explained that the required studies would be determined during the Site Plan process.

Agency Review Comments:

This Report and proposed amendments were submitted to OMAFRA and OFA for further review. Generally, both agencies support the amendments put forward by Staff and are considered to align with the regulations they have reviewed from other municipalities and best practices.

The proposed amendments were also presented to the ADAC for information at the April 8, 2021 meeting. The following motion was made:

Motion: Moved by R. Bonis, and seconded by S. Westland:

That the presentation by Jonathan Derworiz regarding the progress to date on the new Cannabis Zoning By-law be received.

Carried

Development Services – Planning Division Comments:

Following consultation with the agencies as outlined above, Staff feels that the proposed regulations align with current best practices and applicable policies. Cannabis is an emerging industry and poses challenges for municipalities across the province. Based on current practices and in-effect policies, the proposed amendments are a step forward in the industry. The proposed amendments generally conform with the PPS, the Growth Plan, and the Official Plan provide the regulations necessary to facilitate cannabis production and processing within the City of Kawartha Lakes.

Conclusion:

Based on the comments contained in this report, Staff respectfully recommends that this report for the proposed Cannabis Cultivation and Processing Regulations Zoning By-law amendment be forwarded to Council for approval.

Attachments:



Appendix A.pdf



Appendix B.pdf



Appendix C.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

Appendix 'C' – Draft Amendment to Site Plan Control Delegation By-law 2016-069

Department Head email: rholy@kawarthalakes.ca

Department Head: Richard Holy, (Acting) Director of Development Services

Department File: D06-2020-027