



**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Planning Division**

<b>TO:</b>	Chair and Members Planning Committee
<b>COMMITTEE DATE:</b>	June 19, 2018
<b>SUBJECT/REPORT NO:</b>	Proposed Changes to the Official Plans and Zoning By-law No. 05-200 – Medical Marihuana Growing and Harvesting Facilities, Aquaponics and Greenhouses (PED18120) (City Wide) (CI-18-D)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Joanne Hickey Evans (905) 546-2424 Ext. 1282
<b>SUBMITTED BY:</b>	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That Report PED18120 (City Initiative CI-18-D) to amend the Rural Hamilton Official Plan, the Urban Hamilton Official Plan, and Zoning By-law No. 05-200, to modify the definition and associated regulations for a medical marihuana growing and harvesting facility, be received;
- (b) That Report PED18120, together with any written submissions and input from delegations received at Planning Committee, be referred to staff for consideration and incorporated into a further report and proposed changes to the Official Plan and Zoning By-laws to be presented to a future Planning Committee.
- (c) That prior to completion of the future Planning Committee Report, Planning staff present the proposed options for change to the Agricultural and Rural Affairs Committee and that staff report back on how the advice of the Agricultural and Rural Affairs Committee has been responded to in any proposed changes to the Official Plan and Zoning By-law.

**EXECUTIVE SUMMARY**

The purpose of this Report is to report back on the November, 2017 and March, 2018 direction from City Council directing staff to review Official Plan (OP) policies and

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Zoning Regulations for medical and recreational marijuana production, distribution and sales (November, 2017 direction) and remove said regulations (March, 2018 direction).

The original planning policies and regulations were introduced in 2014/2015. Since that time, there have been changes to the federal regulations to the *Access to Cannabis for Medical Purposes Regulations (ACMPR)* for medical marihuana. Subsequent to the adoption of the Official Plan Policies and Zoning By-law regulations, Health Canada has advised that applicants for federal permission to grow, produce and distribute medical marihuana are not required to demonstrate that the location of the proposed facility complies with zoning. Rather, Health Canada has advised that a local municipality may elect to develop planning regulations for these uses and that medical marihuana producers are required to comply with local zoning regulations. In addition, there have been changes in the type and size of buildings used for growing and harvesting medical marihuana. Further, the production of cannabis oil is permitted.

It is noted that Council may choose to:

- maintain the current planning regulations “as is”;
- reverse the regulations to treat a medical marihuana growing and harvesting facility as a greenhouse and the existing greenhouse regulations would apply; or,
- consider revising one of more of the current in force and effect Official Plan policies and Zoning Regulations applicable to the urban or rural areas or both the urban and rural areas.

Based on a review of existing and proposed legislation, site specific development applications and best practices, staff have identified potential options for change to both the Rural Hamilton and Urban Hamilton Official Plans and Zoning By-law No. 05-200 for consideration and public feedback. Specifically:

- Rural Hamilton (RHOP) and Urban Hamilton Official Plan (UHOP) Amendments for consideration:
  - Updating the definition of medical marihuana growing and harvesting facility to reflect the new name of the Federal regulation (both OP’s);
  - Requiring a 150 m setback from the medical marihuana facility to an existing sensitive land use or to a specific zone boundary (both OP’s);
  - Removing the 2,000 sq m cap for new buildings and replacing with a restriction of 90,000 sq m for all buildings on the site (RHOP) and applying a maximum lot coverage, whichever is the lesser;
  - Including a cross reference to the regulations for a medical marihuana growing and harvesting facility in the Mineral Extractive Industrial Resource Area policies;

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- Adding aquaponics, greenhouse and medical marihuana growing and harvesting facility to the Airport Business Park Designation and the Airport Prestige Industrial and Airport Light Industrial Designations (UHOP).
- Zoning By-law No. 05-200 amendments for consideration:
  - Updating the definition of medical marihuana growing and harvesting facility to reflect the new name of the Federal regulation;
  - Requiring a 150 m setback from the medical marihuana facility to an existing sensitive land use or to a specific zone boundary;
  - Adding medical marihuana growing and harvesting facility, aquaponics and greenhouses to two Airport Industrial Zones – the Light Industrial (M10) Zone and the Prestige Business Park (M11) Zone;
  - Delete the restriction of 2,000 sq m in the Extractive Industrial (M12) Zone, A1 (Agricultural) and A2 (Rural) Zones but place a cap of 90,000 sq m for the lands zoned A1 and/or A2 and apply the maximum lot coverage, whichever is the lesser;
  - amend the definition of lot coverage to exclude P7 and P8 lands from the calculation and to include all land (driveways, access, parking etc) as part of the lot coverage calculations;
  - Increase the setback from any lot line from 20 m to 30 m in the A1 (Agricultural) and A2 (Rural) Zones; and,
  - Add new regulations for the maximum size of accessory uses and screening of parking areas for lands in the rural area.

There are no proposed changes to the planning documents for recreational marihuana since the legislation has not been passed. Once this Act and regulations are in effect staff will modify the OP's and Zoning By-law No. 05-200. The Act is currently before the Senate awaiting Third Reading.

Staff are recommending a multi-step process to bring forward the proposed modifications to the Rural Hamilton Official Plan, Urban Hamilton Official Plan, and Zoning By-law No. 05-200 for consideration by Planning Committee and Council. The first step is a Public Meeting to receive Report PED18120 and to receive any public submissions. To assist the public in understanding the alternative Official Plan changes and Zoning By-law changes, draft Official Plan Amendments and Zoning By-law Amendments are attached for information purposes only as Appendices "A," "B," and "C" to Report PED18120. Once the Public Meeting is closed, staff will prepare a further report and amending by-law to present to Planning Committee. This process is intended to inform Planning Committee of the recommended changes to the definition and associated regulations for a medical marihuana growing and harvesting facility, and allows any public submissions received at the Public Meeting to be considered by staff before amending by-laws are subsequently brought before Planning Committee for

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consideration. Prior to the staff completing a future staff report on the matter, staff present the proposed options for changes to the Agricultural and Rural Affairs Committee.

The proposed options for change to the Official Plans and Zoning Regulations are contained in the Draft Official Plan Amendments to the Rural Hamilton Official Plan, Urban Hamilton Official Plan, and the proposed Draft By-law for Zoning By-law No. 05-200, are attached as Appendices “A” to “C” attached to Report PED18120.

***Alternatives for Consideration – See Page 26***

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: MPAC’s position was that medical marijuana grow operations are industrial and they were awaiting further clarification from the Ministry of Finance. To date, staff have not received any additional information.

Staffing: N/A

Legal: As required by the *Planning Act*, Council shall hold at least one Public Meeting to consider an application for an amendment to the Zoning By-law. The Public Meeting is being held to receive Report PED18120 and to receive any public submissions, which will be referred to staff for consideration and incorporated into a further report and amending the planning instruments (Official Plans and Zoning by-law No. 05-200) to be presented to Planning Committee for consideration.

**HISTORICAL BACKGROUND**

**1.0 Context – Federal Regulations**

**1.1 Marihuana for Medical Purposes Regulations (MMPR)**

In 2014, the ability for medical marihuana produced by commercial growers was introduced by the Federal government through Marihuana for Medical Purposes Regulations (MMPR).

In response to this new regulation, staff prepared several staff reports (PED14037, PED14037a, PED14037b and PED13167c) to address the land use planning matters related to medical marihuana facilities in both the urban and rural areas.

## 1.2 Access to Cannabis for Medical Purposes Regulations (ACMPR)

In February, 2017, the Federal Government introduced new regulations for medical marihuana - *Access to Cannabis for Medical Purposes Regulations (ACMPR)*. There were several changes; two of these changes relate to the City's planning documents. They include: deletion of the term medical marihuana facility and the replacement of the definition with a set of regulations for licenced producers and to allow for the production of cannabis oil.

In addition to the regulations, the Licencee must satisfy other federal land use related requirements. Specifically,

- The facility has to meet the applicable municipal by-laws (e.g. Official Plans and Zoning By-laws). Health Canada does not check to see if municipal by-laws are met but relies on the Licencee to determine compliance; and,
- 150 m separation distance between the facility and any residential use. The Federal government undertakes their own review of this requirement. This requirement is a "best protocol" by the Federal Government to achieve safety, protection, etc., and is not specifically articulated in the *Federal Act*.

## 2.0 Current Hamilton Official Plan and Zoning By-law Regulations

### 2.1 Urban Area

In June 2014, Council adopted Urban Hamilton Official Plan Amendment No.23 and Zoning By-law No 14-163 to amend Zoning By-law No.05-200, to define and permit medical marihuana facilities within several industrial areas of the City.

### 2.2 Rural Area

In September, 2014, City Council directed staff to consult with the rural community on proposed regulations associated with a medical marihuana facility as part of the larger rural zoning project. The definition and many of the regulations were similar to the Urban Area. There were additional regulations restricting the size and height of new buildings and allowing for the adaptive reuse on any existing building.

On July 10, 2015 adopted RHOPA No. 9 and Zoning By-law No. 15-273 to permit the use with restrictions in the rural areas.

### **3.0 Planning Committee/Council Directions**

#### *3.1 City Council, November 8, 2017*

Council, at its meeting of November 8, 2107, passed the following motion:

“WHEREAS in 2014 Council approved amendments to the City’s Official Plan and Zoning By-laws with respect to medical marijuana (cannabis) facilities;

WHEREAS since 2014 the Federal and Provincial regulatory framework regarding marijuana (cannabis) has changed;

WHEREAS the City’s vision for the rural area is a vibrant rural economy focusing on food production and sustainable stewardship of the land base, water resources and compatibility;

WHEREAS, the City encourages marijuana (cannabis) producers to reuse existing buildings within the urban area; and,

WHEREAS, the City has put in place Official Plan policies and zoning regulations to allow limited, small scale production in the rural area;

THEREFORE BE IT IS RESOLVED:

- (a) That Planning staff be directed to consult with Federal and Provincial departments and ministries regarding the regulatory and land use planning framework for the marijuana (cannabis) industry; and,
- (b) That staff review and report back to Planning Committee on the revisions to the Economic Development Strategy, Official Plan Policies and Zoning Regulations with respect to medical and recreational marijuana (cannabis) production, distribution and sales.”

#### *3.2 Agricultural and Rural Affairs Committee (AARAC) Option for Change*

On February 26, 2018, the AARAC adopted the following Option for Change:

“WHEREAS, licensed cannabis production, for medical and/or recreational-use purposes, should be considered a farming activity similar to those operating in green house structures,

THEREFORE BE IT RESOLVED:

That staff be directed to remove the restriction of a 2000 square meter maximum building size and apply appropriate set back requirements to new cannabis production facilities in order to limit the impact on current land uses in rural Hamilton.”

Planning Committee, at its March 20, 2018 meeting, referred this resolution to staff for their review.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

### **1.0 Federal Regulations for Medical Marihuana**

The Federal Government, under the ACMPR, requires producers to receive a licence prior to production. In addition to the ACMPR, the federal government also requires that all facilities are setback 150 m from any residential use. This “best practice” is part of the Federal Government’s review and not part of the Act. All facilities must comply with all provincial and municipal by-laws, including zoning. Municipalities are permitted to include policies/regulations in their planning documents to address land use impacts.

### **2.0 Provincial Policy**

#### *2.1 Greenbelt Plan, Growth Plan for the Greater Golden Horseshoe and Provincial Policy Statement*

The Greenbelt Plan 2017, Growth Plan 2017 and the Provincial Policy Statement (PPS) use the same term for agriculture which is from the PPS 2014. It defines agriculture to include the growing of crops. As such, a medical marihuana growing and harvesting facility is a permitted use within the rural area.

More specifically in the urban area, the Growth Plan definition of ‘employment area’ is “clusters of business and economic activities”. As such, medical marihuana growing and harvesting facilities would be considered as an economic activity.

#### *2.1.1 Comments from Ministry of Municipal Affairs and Ministry of Housing (MMAH)*

The Ministry of Municipal Affairs (MMA) in their letter dated, March 12, 2018 attached as Appendix “C” to Report PED18120, stated that:

### **“Agricultural Uses**

Related to growing crops, OMAFRA’s Guidelines explain that in order to qualify as an agricultural use, crops should generally produce a harvestable product (e.g. fruit, vegetables, field crops, biomass, nursery crops, medicinal herbs and seeds). These crops may be used for a variety of purposes beyond food production. As outlined in the Provincial Policy Statement, 2014 (PPS) and Greenbelt Plan definition, on-farm buildings and structures associated with growing these crops are also considered agricultural uses. This includes greenhouses or other structures used for growing plants.

Based on this, the growing of medical cannabis crops qualifies as an agricultural use as per the Greenbelt Plan, including the growing of this crop in greenhouses or other structures.”

Further, as noted in the letter from MMA, MMA has left the decision to the City to determine if cannabis oil and other associated uses are considered as accessory and/or agriculturally-related uses. With respect to recreational marihuana, MMA has advised that no decisions on conformity to provincial documents will be made until the *Federal Act* and regulations have been approved.

The PPS defines “Agricultural-Related Uses”:

“as farm-related commercial and farm-related industrial uses that are directly related to a farm operation in the area, support agriculture benefit from being in close proximity to farm operations and provide direct products and/or services to farm operations as a primary activity.”

Based on this definition the production of cannabis oil which is pressed from fresh marihuana is considered as an agricultural related use. It is noted that the Greenbelt Plan provides a similar definition as the PPS.

It should be noted that agricultural uses can be grown in any on-farm structures including greenhouses. As a result they may locate on any agricultural land, regardless of soil classification (i.e. Classes 1 to 7).

### **1.2 Niagara Escarpment Plan**

In February, 2014, the Niagara Escarpment Commission (NEC) identified that a medical marihuana growing and harvesting facility would not be permitted within the Niagara Escarpment Plan (NEP) since the NEC, in their opinion, does not consider this use as an agricultural or institutional use.

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At this time, it is Planning staff's understanding the NEC is reconsidering its position and will be dealing with applications on an individual basis. Based on the 2017 NEP, NEC staff will determine if guidance material is necessary. Timing of completion of this material is unknown at this time.

### **3.0 Urban Area Planning Policies and Regulations**

#### *3.1 Urban Hamilton Official Plan*

##### 3.1.1 Definitions and Permitted Uses

The definition in the glossary is:

*Medical Marihuana Growing and Harvesting Facility* shall mean a wholly enclosed building or structure used for growing, harvesting, testing, destroying, packaging and shipping of marihuana, for medical purposes as permitted under the Marihuana for Medical Purposes Regulations (MMPR) SOR/2013-119 made under the Controlled Substances Act as the MMPR read on March 31, 2014;

Policies E.5.3.2 and E.5.4.2 state:

“The following uses shall be permitted on lands designated Employment Area – Industrial Land on Schedule E-1 – Urban Land Use Designations:

d) limited agricultural uses including only a medical marihuana growing and harvesting facility, a greenhouse and an aquaponics facility;”

##### 3.1.2 Urban Land Use Designations

The use is defined and permitted (with restrictions) within the Employment Area – Industrial Land and Business Park designations. At the time, the amendments were introduced in 2014, the Airport Employment District Secondary Plan (AEGD) was under appeal. In Report PED14037(b), one of the Option for Changes was to include this use, greenhouses and aquaponics facilities within the AEGD once the appeal process has been concluded.

As a result, an amendment to permit this use, with restrictions, in the Airport Business Park and Prestige Industrial and Light Industrial designations in the AEGD Secondary Plan will be introduced as part of this project.

### 3.1.3 Regulations

Policies E.5.3.9 and E.5.4.9 also apply:

“In addition to the requirements of Section E.5-Employment Area Designations, the following conditions shall apply to a medical marihuana growing and harvesting facility:

- a) the appropriate locations within the Employment Area-Industrial Land Designation and regulations for medical marihuana growing and harvesting facility shall be determined in accordance with the Zoning By-law;
- b) it shall be located a minimum of 20 m from a sensitive land use within the Neighbourhoods, Institutional or Commercial Mixed Use designations;
- c) notwithstanding E.5.3.2, retail sales shall not be permitted; and,
- d) no outside storage shall be permitted.”

## *3.2 Zoning By-law No. 05-200*

The definition and regulations are listed below.

### 3.2.1 Definition

*Medical Marihuana Growing and Harvesting Facility* shall mean a wholly enclosed building or structure used for growing, harvesting, testing, destroying, packaging and shipping of marihuana, for medical purposes as permitted under the Marihuana for Medical Purposes Regulations (MMPR) SOR/2013-119 made under the Controlled Substances Act as the MMPR read on March 31, 2014. The testing, packaging, and shipping shall be accessory to the growing and harvesting of the marihuana for medical purposes.

### 3.2.2 Urban Zones where a Medical Marihuana Growing and Harvesting Facility is Permitted

The use, with restrictions, is permitted in the following four zones:

- General Business Park (“M2”);
- Prestige Business Park (“M3”) Zone;
- General Industrial (“M5”) Zone; and,
- Light Industrial (“M6”) Zone.

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### 3.2.3 Regulations

In addition to the definitions, there are specific regulations applicable to a Medical Marihuana Growing and Harvesting Facility:

- 20 m setback from property lines;
- No retail permitted; and,
- No outdoor storage.

Further modifications to the AEGD zoning regulations would be required to permit the use, aquaponics facilities and greenhouses in two Airport Industrial Zones – the Light Industrial (M10) Zone, located within the interior of the future AEGD; and the Prestige Business Park (M11) Zone, located on the periphery of the AEGD.

## **4.0 Rural Area Planning Policies and Regulations**

### *4.1 Rural Hamilton Official Plan (RHOP)*

#### 4.1.1 Definitions

In addition, to the specific medical marihuana growing and harvesting facility use definition (see Section 3.1.1. above), the following definitions apply to a Medical Marihuana Growing Facility and Harvesting Facility use:

- **Agriculture Use:** means the growing of crops, including nursery and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and *structures*, including accommodation for full-time farm labour when the size and nature of the operation requires additional employment (PPS, 2005).
- **Agricultural-related use:** means farm-related commercial and farm-related industrial uses that are *small scale*, producing products and services, wholly and directly related to a farming operation and which are required in close proximity to an *agricultural use*.

Based on the definitions above and in consultation with the Province and AARAC, the growing, harvesting and drying of fresh marihuana is considered to be an agriculture use. In this form the crop has not been transformed into another product. The shipping, testing, packaging, and destroying are accessory uses to the agricultural use. However, cannabis oil is a derivative of fresh marihuana and therefore is considered as agriculture processing (an agricultural-related use).

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#### 4.1.2 Land Use Designations

Medical marihuana growing and harvesting facilities, including accessory and agricultural-related uses, is permitted (with restrictions) within the Agriculture, Specialty Crop, Rural designations and Mineral Aggregate Resource Extraction Areas on Schedule “D” – Rural Land Use Designations.

#### 4.1.3 Regulations

There are specific Official Plan policies that apply to a medical marihuana facility. Policy D.2.1.1.4 states:

“Medical marihuana growing and harvesting facilities are permitted in accordance with the regulations set out in the Zoning By-law and provided that the following conditions are met:

- a) a medical marihuana growing and harvesting facility is permitted in buildings existing at the date of the passing of the Zoning By-law;
- b) The gross floor area for a new medical marihuana growing and harvesting facility shall not exceed 2,000 sq m;
- c) No retail sales are permitted;
- d) No outdoor storage is permitted; and,
- e) The establishment of a new medical marihuana growing and harvesting facility or the expansion of an existing facility shall be subject to Site Plan approval to address the appropriate building size and location, set-backs, drainage and any other matters.”

In reviewing the Mineral Aggregate Resource Extraction Area policies (Section D.6), staff note that there is no cross reference to the medical marihuana growing and harvesting facility policies in the Agriculture designation. An amendment would therefore be required to establish the cross reference to permit the use within this designation.

With respect to the existing in force Official Plan policies, the main concern of the Medical Marihuana industry is with the 2,000 sq m size restriction in that it does not meet their business plans which contemplate larger scale growing facilities and therefore requires the industry to seek relief from the current planning regulations by way of applications for an Official Plan Amendment and rezoning.

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## 4.2 Zoning By-law No. 05-200

### 4.2.1 Definitions

In addition to the specific definition (see Section 4.2 above) of a medical marihuana growing and harvesting facility, four other definitions are relevant:

- **Agriculture** - Shall mean the growing of crops, including Nursery and horticultural crops; raising of livestock; raising, boarding and training of horses; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; aquaponics; apiaries; agro-forestry; maple syrup production; greenhouse operations; Medical Marihuana Growing and Harvesting Facilities; hydroponics; and other such accessory uses as are customarily and normally associated with agriculture, including limited value retention uses required to make a commodity grown primarily as part of the farm operation salable, such as, but not limited to, grain drying, washing, sorting, grading, treating, storing, packing and packaging, feed mill, or grain mill, and selling of agricultural products primarily grown as part of the farm operation, and associated on-farm buildings and structures, including one Single Detached farm dwelling and a Farm Labour Residence.
- **Agricultural Processing Establishment – Secondary** - Shall mean a Secondary use to an Agricultural operation on the same lot, for a facility dedicated to the transformation of raw agricultural commodities, but shall not include an Abattoir or Agricultural Brewery/Cidery/Winery. Agricultural Processing - Secondary shall be limited to the processing of agricultural commodities grown primarily as part of the farm operation, and may include Accessory Retail.
- **Agricultural Processing Establishment – Stand Alone** - Shall mean the use of land, building or structure, or portion thereof, for a stand alone facility dedicated to the transformation of raw agricultural commodities and may include Accessory Retail, but shall not include an Abattoir, or Agricultural Brewery/Cidery/Winery.
- **Agricultural Research Operation** - Shall mean a Secondary use to an Agricultural operation on the same lot for the study and research of Agriculture.

The drying/growing of the medical marihuana is considered as an agriculture use. The production of cannabis oil using the marihuana grown on-site is considered as an agricultural processing establishment – secondary. An agricultural processing establishment – stand alone would allow the marihuana to be transported to another site for this processing, which is not the intent and therefore, an amendment is required. Within the A1 and A2 Zones which would include the production of cannabis oil, is restricted to 500 sq m.

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– Medical Marihuana Growing and Harvesting Facilities, Aquaponics  
and Greenhouses (PED18120) (City Wide) (CI-18-D) - Page 14 of 26**

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Any of the labs and testing areas are secondary uses based on the definition of agricultural research operation. Similar to the above, the area for testing and labs for medical marihuana is restricted to 500 sq m.

4.2.2 Rural Zones where a Medical Marihuana facility is Permitted

The use, with associated performance standards, is permitted in the following zones:

- Agriculture (A1) Zone;
- Rural (A2) Zone;
- Conservation /Hazard Lands (P6) Zone (existing buildings only); and,
- Extractive Industrial (M12) Zone.

4.2.3 Regulations – Rural Zones

In addition to the definitions, there are specific performance standards that a medical marihuana facility must comply with. The standards are:

- 20 m setback from all property lines;
- No retail permitted;
- No outdoor storage;
- Permitted to be located within any building existing as of July 10, 2015; and,
- New buildings are restricted to 2,000 sq m in size.

The regulations relating to building size allows a facility to locate within any existing building which permits the adaptive reuse of existing buildings; new buildings were restricted in size to 2,000 sq m. This building size restriction was established in recognition of the size of new facilities were generally in line with the requested building size of 2,000 sq m size (see Report PED14037(b)). The restriction was also introduced to minimize potential impacts from any large scale facilities which may be built predominately in concrete structures.

Based on discussions with Health Canada and the industry, the Federal Government has also applied a 150 m (500 ft) screening requirement whereby all new facilities should be located 150 m or greater from any existing residential uses. This is not a Zoning By-law regulation.

**4.3 Site Specific Exceptions**

There are two properties with site specific RHOP and zoning by-law exceptions:

- 1) 780 Concession 8 Road West

**Subject: Proposed Changes to the Official Plans and Zoning By-law No. 05-200  
– Medical Marihuana Growing and Harvesting Facilities, Aquaponics  
and Greenhouses (PED18120) (City Wide) (CI-18-D) - Page 15 of 26**

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- permits a medical marihuana facility of 21,500 sq m;
- 2) 97 Concession 5 Road East
- permits a medical marihuana facility of 10,000 sq m and a minimum side yard of 13 m.

## **RELEVANT CONSULTATION**

- Ministry of Municipal Affairs and Ministry of Housing;
- Corporate Services – Finance Department; and,
- Public Meeting – Site Plan for Butter Road West.

With respect to Butter Road West, the residents in the area convened a public meeting with the Ward Councillor, who invited staff from Planning and Hamilton Water Divisions, to discuss the site plan application for 240 Butter Road West. As part of that meeting issues were raised about medical marihuana growing and harvesting facilities. The concerns were:

- 1) the total overall number of buildings and the size of each building;
- 2) medical marihuana growing and harvesting facility and greenhouses being permitted on prime agricultural lands;
- 3) lot coverage and adequate setbacks;
- 4) storm water runoff from the facility into the creek based on more buildings and paved surfaces;
- 5) impact on adjacent wells;
- 6) light from greenhouses;
- 7) Number of parking spaces and increase in traffic,
- 8) 24 hour security measures;
- 9) Odour; and,
- 10) property values.

Concerns 1 to 3: They have been captured in this Report in terms of options for regulating size and location of said facilities.

Concerns 4 to 6: Site Plan Control would respond to these matters through the condition of approval.

Concern 7: There are no minimum parking requirements for agricultural uses in the rural area and no requirements for parking areas to be paved. Screening of parking areas has been captured in this Report as an option for consideration.

Concerns 8 and 9: as part of the Federal licence, the Licensee has to address security and odour.

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Concern 10: There is no documented evidence to suggest property values are affected in either a negative or positive fashion.

- **Agricultural and Rural Affairs Committee**

Since the AARAC has commented on the proposed approach, it would be appropriate for Planning staff to report back to AARAC on the proposed options for change, prior to the completion of a future staff Report

## **ANALYSIS AND RATIONALE FOR OPTION FOR CHANGE**

### **1.0 Purpose of the Report**

Since the introduction of OP policies and Zoning By-law regulations for medical marihuana facilities in 2014/2015, there have been changes in the industry and to the Federal legislation/regulations. More specifically:

- Medical marihuana facilities are being established in greenhouse structures which take advantage of the natural sunlight instead of concrete structures that rely on artificial lighting;
- Proposed facilities are larger in scale (approximately 13,000 sq m);
- The production of cannabis oil, in addition to dried and fresh marihuana, is permitted by the applicable federal regulation; and,
- The Federal government will be introducing new regulations for recreational marihuana.

The purpose of this Report is to address these matters. The proposed options for change are mainly focused on the rural area since there are more restrictions in this area and the new development is mainly occurring there.

### **2.0 Research From Other Municipalities**

As part of this project and the individual development applications, staff researched OP policy and Zoning By-law regulations for other municipalities within Canada. There were 25 municipalities surveyed in Canada, based on website information as well as email and telephone correspondence with some municipal planners. Of the 25 municipalities surveyed, the planning policy and regulations were included for 20 municipalities, all of which have a rural area. Details are included in Appendices “E” to “E-2”



There are four municipalities (Cobourg, Leamington, Nanaimo, B.C. and Port Colborne) updating their planning policies and Zoning By-law regulations for this use.

There are many different zoning approaches to regulate medical marihuana growing operations. Most commonly:

- The use is considered as an agricultural use in the rural area;
- The use can also be considered as an industrial use;
- Many of the municipalities include definitions of the use, most of which mirror the former federal definition; and,
- Municipalities include a setback from a sensitive land use.

### **3.0 Land Use Issues – Medical Marihuana**

#### *3.1 Definitions – OPs and Zoning (Rural and Urban Areas)*

##### 3.1.1 Medical Marihuana growing and Harvesting Facility Definition

The current definition, including the reference to the applicable legislation, in the OPs and Zoning By-law 05-200 was based on the previous MMPR regulation.

*Medical Marihuana Growing and Harvesting Facility* shall mean a wholly enclosed building or structure used for growing, harvesting, testing, destroying, packaging and shipping of marihuana, for medical purposes as permitted under the Marihuana for Medical Purposes Regulations (MMPR) SOR/2013-119 made under the Controlled Substances Act as the MMPR read on March 31, 2014.

The definition in the Zoning By-law is slightly different as it makes a direct reference to accessory uses.

*Medical Marihuana Growing and Harvesting Facility* shall mean a wholly enclosed building or structure used for growing, harvesting, testing, destroying, packaging and shipping of marihuana, for medical purposes as permitted under the Marihuana for Medical Purposes Regulations (MMPR) SOR/2013-119 made under the Controlled Substances Act as the MMPR read on March 31, 2014. The testing, packaging, and shipping shall be accessory to the growing and harvesting of the marihuana for medical purposes.

The current federal regulation (ACMPR) does not have a specific definition but it includes activities that a licensed producer can conduct – possess, produce, sell,

provide, ship, deliver, transport and destroy marihuana (fresh and dried) or cannabis oil. In vitro testing is also permitted.

The OP and Zoning definitions of medical marihuana growing and harvesting facility are partially outdated as a result of the passage of the ACMPR. Cannabis oil production is not included in the City's Official Plan and Zoning definition.

Any changes to this definition, including the reference to the legislation, must consider both the amended Federal regulation, as well as provincial policy. Based on the letter from MMA, the growing and harvesting is considered as an agricultural use.

Proposed Option for Change 1:

The definitions in the Urban Hamilton Official Plan, the Rural Hamilton Official Plan and Zoning By-law No. 05-200 could be updated to replace "Marihuana for Medical Purposes Regulations (MMPR) SOR/2013-119 made under the Controlled Substances Act as the MMPR read on March 31, 2014" with *Access to Cannabis for Medical Purposes Regulations (ACMPR)*.

Rationale:

The references to MMPR are outdated and have been replaced with ACMPR.

3.1.2 Agricultural Processing Establishment – Stand Alone (Zoning By-law)

MMA has advised that the City can and should determine if the other associated uses are considered as accessory or agriculturally related (Agricultural Processing). The Zoning By-law, under the definition of agricultural processing, allows for the transformation of raw agricultural products. Production of cannabis oil is considered as agricultural processing. This processing is permitted as part of the farm cluster (agricultural processing-secondary) or on a separate lot from the crop (agricultural processing-stand alone). To ensure the medical marihuana related products is on the same site as the crop, the definition of agricultural Processing Establishment – Stand Alone should be amended.

Proposed Option for Change 2:

The definition could be updated to delete the word "or" and add "or processing of cannabis products" after the words "Agricultural Brewery/Cidery/Winery".

**Agricultural Processing Establishment – Stand Alone** Shall mean the use of land, building or structure, or portion thereof, for a stand alone facility dedicated to the transformation of raw agricultural commodities and may include Accessory Retail, but shall not include an Abattoir, or **Agricultural Brewery/Cidery/Winery or processing of cannabis products.**

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### 3.2 *Type of Building Construction (Rural Area)*

Based on multiple discussions with industry operators, many operators have been purchasing existing greenhouses or building new greenhouses to grow the crop. These facilities capitalize on sunlight and considerably reduce electricity costs. Previously, these facilities were built in concrete or cinder block structures, similar to mushroom operations. Other operators are using structures similar to an implement shed or barn with corrugated steel siding.

#### Proposed Option for Change 3:

A definition of greenhouse could be added to the Zoning By-law as part of a housekeeping amendment since there are specific zoning regulations for greenhouse but there is no definition.

#### Rationale:

Crops, which are agricultural uses, are grown in many different building forms. It is difficult to regulate building type.

### 3.3 *Lot Coverage and Size of Buildings (Rural Area)*

Two regulations impact the extent of buildings and structures on a site: size of building and lot coverage. Under the current regulations, the size of medical marihuana growing and harvesting facility is restricted to 2,000 sq m. In addition, lot coverage requirements restrict greenhouses to 70% of the site; whereas other buildings and structures are limited to 20%.

#### 3.3.1 Lot Coverage

##### *Definition*

In addition, the total GFA of the buildings is governed by lot coverage. The Zoning By-law restricts the lot coverage for all buildings and structures for agricultural and secondary as well as dwellings and accessory structures. It does not include apply to areas for access, parking, and outside storage.

Lot coverage is defined as “the percentage of the lot covered by all buildings, but shall not include swimming pools and decks.”

It is calculated based on the entire lot area and not based on the zones that permit the use.

#### Proposed Option for Change 4:

The definition of lot coverage could be amended to exclude Conservation/Hazard Land (P7) and Conservation/Hazard Land (P8) Zones as part of the calculation of lot coverage.

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It could also include all areas that are used for parking, driveways, access or other lands required for the operation.

Rationale:

Since a medical marihuana growing and harvesting facility is not permitted in a P7 or P8 zone, these lands could be removed from the calculation of lot coverage.

A similar approach has been used, in Zoning By-law 05-200, which has a similar requirement that has regulations for lands that are zoned A1, A2 and P6 only with regards to Landscape Contracting Establishment – Secondary [Sections 12.1.3.2.i ii) and 12.2.3.2 h) ii)].

In addition, the lands required for the facility could include not only the buildings but all the area occupied or associated with use.

*Percentage*

The current Zoning By-law regulations permit a lot coverage of 20% for all buildings except for greenhouse which is 70%. For example, if the lot was 1 ha (10,000 sq m in size) in size, the total gross floor area of all buildings could range from 2,000 sq m (20%) to 7,000 sq m (70%). In many cases, greenhouses are located on smaller agricultural lots.

Although the maximum gross floor area per site is proposed to be changed to 90,000 sq m, the buildings are also governed by lot coverage. On a small site, the gross floor area of the site may not be achieved because of the lot coverage restriction. All farm buildings, houses or structures have a maximum lot coverage of 20% except for greenhouses which have a maximum lot coverage of 70%.

3.3.2 Size of buildings

At the time the 2014/2015 medical marihuana facility regulations were developed, the City had received several Letters of Intent from prospective licensees. Based on the information received about size and height of buildings and the construction type, the approach to the Zoning By-law regulations for the rural area included a 2,000 sq m cap on the size of new buildings (regardless of construction type) and a 11.5 m height restriction, among other regulations. It was staff's opinion that multiple smaller buildings would be more consistent with the character of the rural landscape than one large building, especially if the building had industrial characteristics, as opposed to traditional rural buildings such as greenhouses.

**Subject: Proposed Changes to the Official Plans and Zoning By-law No. 05-200  
– Medical Marihuana Growing and Harvesting Facilities, Aquaponics  
and Greenhouses (PED18120) (City Wide) (CI-18-D) - Page 21 of 26**

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The Zoning By-law does not restrict the size of farm buildings or greenhouses or type of crop (e.g. flowers versus tomatoes).

Facilities that have been or are being developed in recent years are larger, both as individual buildings as well as the construction of multiple buildings on one lot. The building(s) also include secondary/agricultural processing uses (production of cannabis oil), agricultural research operations (labs), as well as accessory uses (offices, vaults etc.). The current cap did not take into account these additional uses. In one of the recent Planning application, the facility included approximately 1,000 sq m for accessory uses, 40 sq m for testing and 40 sq m of processing.

Only one municipality, with as-of-right use permissions, have a building size restriction specific to the use (Squamish-Lillooet District, B.C).

There are no building size restrictions in the urban area since this type of use and construction is reflective of industrial buildings in an urban context. However, in some cases there are maximum lot coverages for industrial buildings where medical marihuana facilities are permitted.

The issue that has arisen most frequently is the 2,000 sq m for buildings on the site because it is too restrictive based on the industry changes from 2014/2015.

Proposed Option for Change 5:

The restriction of 2,000 sq m could be replaced with a maximum cap of 90,000 sq m total gross floor area (GFA) for all buildings and structures on that portion of the site zoned A1, A2, P6 and/or M-12, regardless of lot size.

The lot coverage requirements could apply and so whichever calculation is the lesser would apply (i.e. if the lot was 12 ha, the maximum size of the building would be 84,000 sq m at 70% lot coverage and 24,000 sq m at 20% lot coverage).

Rationale:

The type of buildings that are being used for marihuana production has changed in the last five years. More common building types include greenhouses which capitalize on the sunlight. Other recent building types include farm structure such as implement sheds or barns. The original reason for limiting the size of the buildings was the use of concrete structures.

In addition, these facilities are getting larger in size because of operational efficiencies.

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By combining the lot coverage with building size, to achieve 90,000 square metres building the lot size is slightly smaller than 13 ha. Any lot size over 13 ha would be restricted to a maximum building size.

### *3.4 Building Setbacks (Rural Area)*

In the rural area the setbacks from a lot line for any principal use ranges from 15 m (agricultural buildings) to 30 m (agricultural processing establishment). A medical marihuana facility is 20 m.

Proposed Option for Change 6: The setback could be increased from 20 m to 30 m from any lot line in the A1 (Agricultural) and A2 (Rural) Zones.

Rationale: As noted in Section 2.2 of the Analysis and Option for Change Section, the production of cannabis oil is considered as agriculturally-related use in the Rural Hamilton Official Plan and agricultural processing in Zoning By-law No. 05-200. Since cannabis oil is often located within the same building as the growing operation, the 20 m setback should be harmonized for all buildings and structures associated with this use.

To maintain consistency with the Urban Industrial Zone regulations, the 20 m setback in the industrial areas would remain unchanged since industrial buildings have a 20 m setback from property line to property line.

### *3.5 Separation Distances from Sensitive Land uses (Rural and Urban Areas)*

The most common sensitive land use in the rural area is residential. The urban area includes more uses such as schools, places of worship, long term care facilities, parks, etc.

The Federal government has applied a 150 m separation distance from existing residential uses, not just residential zones, as part of their requirements for a licence. In other words, they look at the location of houses regardless if the house was in an agricultural area or commercial areas. Based on a review of other municipalities, there are seven municipalities (Brant, Cowichan Valley, B.C., Capital regional District, B.C., Nanaimo, B.C., Norfolk, Ottawa, and Port Colborne) that require these facilities be separated between 50 to 300 m) from certain sensitive land uses; the most common restriction is between 70 and 150 m. The 70 m was applied in some urban areas (Norfolk). The 70 m setback was a recognition this use was considered as light industrial.

Proposed Option for Change 7: An additional requirement could be added that a medical marihuana growing and harvesting facility should not be located within

150 m of a sensitive land use (residential uses and some institutional uses). In the rural area, the separation distance would be measured from the marihuana facility to the lot line of an existing residential or sensitive institutional use of the zone boundary of the Settlement Zones (S1, S2 and S3). In the urban area, the medical marihuana facility building would not be permitted within 150 m of a residential, institutional and certain commercial mixed use zones and any lot of an existing residential use, measured between the building of the medical marihuana facility to the lot line of an existing residential use.

Rationale: As noted in the Policy Implications and Legislated Requirements Section, the federal government has a condition of issuing the licence that there are no residential uses within 150 of the medical marihuana growing and harvesting facility. These uses can either be on the property or on the adjacent property measured from building to building. The zoning by-law has setbacks from zone boundaries.

### 3.6 *Parking Requirements/Areas (Rural Area)*

There are no parking requirements for the majority of uses within the rural area. However, certain operations have a greater number of employees (e.g. landscape contracting, medical marihuana facilities).

Proposed Option for Change 8: A new regulation could be added that would require all unenclosed parking areas in the rural area associated with a medical marihuana growing and harvesting facility be screened using a wall, berm or fence.

Rationale: This regulation would be similar to one that is in place for Landscape Contracting Facilities where unenclosed parking areas are to be screened from view with a wall, berm, fence or some combination. The regulation was established to ensure the parking area for employees is buffered from the street and other properties. Based on the recent information from development applications, there will be several employees associated with this use.

### 3.7 *Accessory Uses*

The Zoning By-law permits accessory uses to a principal use to have a gross floor area of 49% of the total gross floor area of the principal use. Since these facilities are very large a maximum size should be placed on the accessory uses. The one recent facility has accessory uses (office, vault, shipping areas etc.) totalling approximately 900 sq m. There is a similar restriction in industrial areas for the percentage of accessory retail for products produced on the property.

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**Subject: Proposed Changes to the Official Plans and Zoning By-law No. 05-200 – Medical Marihuana Growing and Harvesting Facilities, Aquaponics and Greenhouses (PED18120) (City Wide) (CI-18-D) - Page 24 of 26**

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Proposed Option for Change 9: A new regulation could be added to restrict accessory uses such as (vaults, shipping areas, office spaces, employee spaces etc.) to 1,000 sq m for the site, not per building or 25% of the GFA, whichever is the lesser.

Rationale: At the present time, accessory uses may be permitted up to 49% of the gross floor area of the building(s). Given the potential growing area of these facilities, it is more appropriate to include a square metre cap for the use instead of a percentage. A percentage based on gross floor area can be very large. There are other zones within the Zoning By-law (e.g. industrial zones) which have a square metre cap on accessory uses instead of a percentage of gross floor area.

#### 4.0 Current Planning Act Applications

There are currently three *Planning Act* applications before the City for new facilities.

Address/Owner	Applications	Planning Committee Date	Nature of application
1915 Jerseyville Road West, Ancaster/Green Organic Dutchman	OPA/ZBA (Site specific)	June 5, 2018 (Tabled)	<ul style="list-style-type: none"> <li>- To allow the construction of a 13,000 sq m greenhouse</li> <li>- To allow new medical marihuana buildings of 2,000 sq m per building</li> </ul>
Hwy 6 North/Beleave	OPA/ZBA Site specific)	To be determined	<ul style="list-style-type: none"> <li>- To allow for the construction of a 10,000 sq m greenhouse</li> <li>- Applicant has not indicated whether they are going to produce cannabis oil or not. They have only asked for generally processing.</li> </ul>
240 Butter Road West, Ancaster	Site Plan	N/A	<ul style="list-style-type: none"> <li>- Site plan was conditionally approved on March 5, 2018 for a 2,000 sq m medical marihuana facility with 34 parking spaces.</li> </ul>

#### 5.0 Other Options for Change

One other potential option is to include different regulations for the A1 (Agricultural) A2 (Rural) Zones. The same regulations in the Rural Zone would also apply in the “M-12”

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(Mineral Aggregate Extraction) Zone. Alternatively, the existing by-law regulations could be retained and proposals for increased size would be assessed on an application by application basis, either through a rezoning or minor variance application.

## **6.0 Public Access to Medical Marihuana**

Under the current ACMPR regulations, users of medical marihuana are required to get a Option for Change from a doctor and then order their required dose on-line. No retailing is permitted. However, there a number of illegal marihuana dispensaries that operate in the City. This matter is being addressed by Hamilton Police Services and Municipal By-law Enforcement.

## **7.0 Recreational Marihuana**

### *7.1 Cannabis Act*

In April, 2017, the Federal Government introduced the proposed *Cannabis Act* which establishes “strict legal framework for controlling the production, distribution, sale and possession of cannabis across Canada.”

<https://www.canada.ca/en/services/health/campaigns/legalizing-strictly-regulating-cannabis-facts.html>

At the present time, the Standing Committee on Social Affairs, Science and Technology approved the Committee Report on May 30, 2018. It is before the Senate for consideration.

At this point there are no details for the growing requirements on a commercial scale. There is some thought that similar regulations respecting the growing, harvesting, production etc. to the ACMPR will be introduced.

### *7.2 Retailing*

The Province of Ontario is responsible for controlling the sale of recreational marihuana. The Province is proposing to have the Liquor Control Board of Ontario (LCBO) responsible for the sale and distribution of recreational cannabis because of their experience in the distribution of alcohol. Cannabis will be sold in stores, separate buildings from a LCBO store, which meet federal requirements for cannabis sales. In addition, cannabis can be purchased online and be delivered securely and safely across the Province. Based on Zoning By-law No. 05-200, this use would be considered as retail.

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7.3 *Changes to OP's and Zoning By-law No. 05-200.*

Changes to these documents should not be made until such time as more clarity has been provided by the Federal government in the Cannabis Act and future regulations. In addition, for a similar reason, MMAH cannot comment on this use would conform to Provincial land Use Planning documents.

**ALTERNATIVES FOR CONSIDERATION**

Planning Committee and City Council could add, delete or change any of the proposed regulations for medical marihuana growing and harvesting facilities in the urban or rural areas.

**ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

**Engagement & Participation**

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**Economic Prosperity and Growth**

*Hamilton* has a prosperous and diverse local economy where people have opportunities to grow and develop.

**APPENDICES AND SCHEDULES ATTACHED**

- Appendix “A” – Draft Amendment to the Urban Hamilton Official Plan (For Information Purposes Only)
- Appendix “B” – Draft Amendment to the Rural Hamilton Official Plan (For Information Purposes Only)
- Appendix “C” – Draft Amendment to Zoning By-law No. 05-200 (For Information Purposes Only)
- Appendix “D” – Letter dated March 12, 2018, from Ministry of Municipal Affairs and Ministry of Housing
- Appendix “E” – Summary of Other Municipal Policies and Regulations
- Appendix “E-1” – Summary of Other Municipalities with Urban and Rural Zoning By-law regulations
- Appendix “E-2” – Summary of Other Municipalities with Rural Zoning By-law regulations