




CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Licensing and By-law Services Division
and
Transportation Planning and Parking Division

TO:	Mayor and Members Committee of the Whole
COMMITTEE DATE:	April 22, 2020
SUBJECT/REPORT NO:	Repeal and Replace Public Nuisance By-law 09-110 and Amend Administrative Penalty By-law 17-225 (PED20076) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Ken Leendertse (905) 546-2424 Ext. 3059
SUBMITTED BY:	Ken Leendertse Director, Licensing and By-law Services Planning and Economic Development Department
SIGNATURE:	
SUBMITTED BY:	Brian Hollingworth Director, Transportation Planning and Parking Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That the draft by-law, attached as Appendix “A” to Report PED20076, which repeals and replaces By-law 09-110, being a By-law to Prohibit and Regulate Certain Public Nuisances within the City of Hamilton, and amends the Administrative Penalties By-law 17-225 which has been prepared in a form satisfactory to the City Solicitor, be approved and enacted by Council;
- (b) That the Mayor be directed, on behalf of the City of Hamilton, to write to the relevant federal and provincial governments to regulate and enforce odour and lighting nuisances related to the cultivation of cannabis plants.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

EXECUTIVE SUMMARY

The City of Hamilton has received numerous complaints regarding odour coming from the production of cannabis on certain properties within the City. It is staffs understanding that several individuals with medical cannabis licences have joined together to produce their allocated number of plants at various properties in the City, with each location growing approximately 2,000 plants.

This Report adds offences to the Public Nuisance By-law in relation to cannabis cultivation. The original offences of urinating and defecating in public and knocking over mailboxes and garbage bins will be added the Administrative Penalty process for enforcement efficiency.

The proposed by-law adds new offences directly related to cannabis cultivation such as:

- causing or permitting the light from the cultivation of cannabis plants to shine upon the land of others so as to be or to cause a nuisance to any person or to the public generally;
- causing or permitting an odour from the cultivation of cannabis plants so as to be or to cause a nuisance to any person or to the public generally.

These additional offences will assist Municipal Law Enforcement in addressing concerns from our citizens about quality of life issues and general nuisance.

Also, although this by-law may help in reducing public nuisance complaints, the regulation and control of cannabis growing is a federal and provincial responsibility, therefore the City should request their help in regulating the effects of nuisance odour and light from cannabis cultivation.

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: The enforcement of this by-law will be with existing staff.

Legal: Legal Services is satisfied with the form of the draft by-law attached as Appendix “A”.

HISTORICAL BACKGROUND

Health Canada has recognized a person's right to grow cannabis for personal medical use since 2001. Health Canada issues licences to individuals to grow a specific number of plants for personal medical use, which can be partnered with three other individuals to create a growing operation of over 2,000 plants.

Furthermore, as of October 17, 2008, it is legal in Canada to possess and grow cannabis for recreational use.

Cannabis plants have a strong odour when they are at the flowering stage of growth. The residents who live close to these properties have informed the City that the pungent odour from the cannabis plants has resulted in the loss of enjoyment of the normal use of their own properties.

These personal growing operations for medical and recreational use have no specific federal or provincial regulations regarding odour and light abatement. Municipalities, to date, are only regulating these types of operations through zoning, if applicable.

In 2009, the City of Hamilton passed the Public Nuisance By-law which included offences of urinating or defecating in a public place and the prohibition of knocking over mail or newspaper boxes. It did not include offences related to nuisance odours or lighting.

At its meeting on June 12, 2019, Council approved Item 11 of Planning Committee Report 19-009 directing staff to bring an amending by-law to the current By-law 09-110 to include the violations of; cause or permit any public nuisance; cause or permit any activity on one property which are obnoxious or which substantially reduce the enjoyment of another property, including without limiting the generality of activities such as the creation of vibration or the emission of smoke, dust, airborne particulate matter or objectionable odour and light that is broadcasted directly from one property onto another property.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The proposed draft by-law is within Council's authority under the *Municipal Act, 2001* to prohibit or regulate nuisances, including the express authority to prohibit or regulate with respect to lighting and odours.

RELEVANT CONSULTATION

Legal Services was consulted in the preparation of this report and the draft by-law attached as Appendix "A".

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

At its meeting on June 12, 2019, Council directed staff to amend the current nuisance by-law to include the violations of; cause or permit any public nuisance; cause or permit any activity on one property which are obnoxious or which substantially reduce the enjoyment of another property, including without limiting the generality of activities such as the creation of vibration or the emission of smoke, dust, airborne particulate matter or objectionable odour and light that is broadcasted directly from one property onto another property.

Council's direction was broad in nature and mirrored the City's authorities under the *Municipal Act, 2001* – specifically sections 128 and 129 which authorize the regulation of public nuisances with respect to noise, vibration, odour, dust and lighting that can be seen outdoors.

The proposed draft Public Nuisance By-law seeks only to remedy the adverse impacts of the odour and excessive light effects of personal cannabis production on the community, which are not currently being addressed by the federal and provincial governments.

Although the staff direction included the regulation of vibrations, smoke, dust and other airborne particulate matter, the complaints regarding cannabis have been exclusively regarding odour and lighting. If Council wishes to include vibrations, smoke, dust and airborne particulate matters in the new Public Nuisance By-law, a broader discussion and possibly more public consultation will need to occur to determine what types of vibrations, smoke, dust, and airborne particulate matter will be considered a nuisance. Staff will also need some direction to determine what time of day or in what locations some of these nuisances will be permitted and to determine who or what would be exempt from the by-law.

Recommendation (b)

In conjunction with passing this new by-law, Council may want to encourage the federal and provincial governments to address the issues of odour and lighting as it pertains to the cultivation of personal cannabis plants for medical and recreational use.

Cannabis is already heavily regulated by the federal and provincial governments.

Under the current federal legislative scheme, users of cannabis for medical or recreational purposes are permitted to produce cannabis for themselves on their own property but are not required to comply with the regulations over matters such as emission of odour and light suppression that other licensed producers are required to comply with.

Amendments could be made to the Federal *Cannabis Act*, S.C. 2018, c. 16, or the Provincial *Cannabis Control Act*, 2017, S.O. 2017 c. 26, Sched. 1, to require the cultivation of personal cannabis plants to be grown indoors and/or the requirements to have proper ventilation and lighting systems in place to address odour and light nuisances. Health Canada could also amend its regulations or licences to further reduce the number of medical plants permitted to be grown on any one given property.

The Ontario Ministry of the Environment also has the authority to regulate odours that cause an adverse effect under the *Environmental Protection Act*, R.S.O. 1990, c. E. 19. Council may want to consider seeking the Ministry's support in investigating complaints regarding noxious odours coming from the cultivation of cannabis plants, rather than trying to enforce it through a municipal by-law.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A": Draft By-law to Repeal and Replace Public Nuisance By-law 09-110 and Amend Administrative Penalties By-law 17-225

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