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**Date:** 2021-07-14

**From:** Jenn Burnett, Senior Planner

**Subject:** Addendum to PL.2021.17 Cannabis Policy

**Report:** PL.2021.30

### Recommendation

That report PL.2021.30, Addendum to PL.2021.17 Cannabis Policy, be received, and

That Committee support deferring the creation of policy related to Cannabis production and processing and a nuisance bylaw that addresses associated odor and lighting issues pending completion of the following:

- Provincial approval of the new Land Use Compatibility Guideline,
- Conclusion of the Health Canada consultation on Cannabis,
- The enforceability of Leamington Bylaw 35-18 is determined by the Ontario Superior Court of Justice, and
- A decision has been rendered on the appeals to the Leamington Light Abatement By-law 79-20.

### Background

At the February 24, 2021 Council meeting, staff were directed to investigate the implementation and creation of a cannabis nuisance by-law. This direction was provided by resolution RES2021-053:

“Whereas the Council of the Municipality of Georgian Bluffs deems it appropriate to enact a by-law to prohibit and regulate certain public nuisances within the municipality pursuant to sections 128 and 129 of the Municipal Act, S.O. 2001, c.25, as amended, (“Municipal Act, 2001”); and

Whereas municipalities to make orders requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity; and

Whereas Sections 445 and 446 of the Municipal Act, 2001 authorize municipalities to issue work orders and in default of a work order being completed by the person directed or required to do it, the work shall be done by the municipality at the person's expense by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes; and

Whereas in the opinion of the Council of the Municipality of Georgian Bluffs, the following is or could become a public nuisance: odours and lighting from the cultivation of cannabis plants;

Now Therefore the Council of the Township of Georgian Bluffs directs staff to develop a nuisance bylaw that addresses the odour and lighting issues associated with marijuana grow operations that may have a detrimental impact on the use and enjoyment of properties in the vicinity of such operations; and

That the Council of the Township of Georgian Bluffs directs staff to develop a report with recommendations for amendments to the existing zoning bylaw and official plan that aim to prohibit the development of new cannabis facilities within residential areas of the municipality.”

On Wednesday, April 7, 2021, Council considered report PL.2021.17 Official Plan Update – Cannabis Policy. This report provided an overview of the legislation and regulations that apply to cannabis production and cultivation, as well as an exploration of how other municipalities are regulating land use associated with cannabis operations. The report notes difficulty in implementing land use permissions in accordance with federal and provincial permissions and provides recommendations for the use of zoning provisions and site plan control to regulate cannabis related land use.

## Analysis

The update to the Township's Official Plan (OP) will commence in August and Cannabis regulations will be addressed in a new policy section. Municipalities in Ontario are creating official plan policies and zone provisions to address the conflicts associated with that specific land use, currently in operation in larger municipalities. The Township does not have any large-scale licenced cannabis greenhouses currently operating, but staff have received zoning information requests related to micro-cultivation operations in agricultural areas. Staff are aware that complaints have been received related to odor from cannabis plants grown for personal use in settlement areas.

At this time, there are policy and document reviews occurring at the federal and provincial levels that will impact regulations associated with Cannabis operations in Georgian Bluffs. There are also active appeals in progress related to by-laws regulating Cannabis operations as noted in the following paragraphs.

The Municipality of Leamington is known for its abundance of greenhouses occupying approximately 2000 acres of land and producing vegetables, flowers and cannabis

(<https://www.investwindsorsex.com/>). In 2018, Leamington Council passed By-law 35-18 to regulate matters related to cannabis. The enforceability of that by-law was challenged and is to be heard in the Superior Court of Justice in September, 2021. Municipalities in Ontario, including the City of Windsor, are deferring decisions on cannabis by-laws until a decision on the Leamington by-law has been given. A link to Leamington's Cannabis Regulation By-law 35-18 is included at the end of this report.

Leamington and the Town of Kingsville both passed light abatement by-laws to address concerns related to light pollution. The Leamington Light Abatement By-law 79-20 was appealed to the Normal Farm Practices Protection Board by two businesses impacted by the by-law. They are seeking a ruling on whether greenhouse lights are considered normal farm practice. The hearings for the appeals were held on June 7, 2021 and the ruling has not yet been posted. If the Board determines that greenhouse lights are considered normal farm practice, then the Township cannot pass a by-law to regulate their use. The ruling will provide more direction for staff in this regard. A link to the Leamington Light Abatement By-law 79-20 is included at the end of this report.

Health Canada recently conducted two public consultations related to Cannabis. One consultation opened December 12, 2020 to January 11, 2021, and focused on cannabis regulatory issues including micro-class and nursery licensing regime. The second was a consultation on guidance on personal production of cannabis for medical purposes and was open for comment March 8 to May 7, 2021. The Township provided comments as part of this consultation process. The summary report of the consultation has not yet been released, but staff are monitoring the website. Changes to licensing may impact what the Township can regulate in a Cannabis regulation by-law.

The Province of Ontario is updating the Land Use Compatibility Guideline and is in the process of consulting with all stakeholders with a comment period open from May 4, 2021 - August 6, 2021. The purpose of the Guideline is to reduce land use conflicts between sensitive land uses in proximity to major facilities.

"The proposed guideline will help ensure certain land uses can co-exist and thrive for the long-term within a community, including major industrial facilities and more sensitive residential land uses. It will help to prevent impacts from noise, dust, odour and other potential sources of adverse effects to sensitive land uses from industries which threaten their ability to operate, and would clarify when compatibility studies related to the assessment of potential noise, odour, dust and other impacts are needed." (<https://ero.ontario.ca/notice/019-2785>)

The draft Guideline speaks to Cannabis production and processing in Settlement areas, identifies the use as a Class 5 facility with the odor rated as being "persistent and/or usually offensive". This use is associated with a 2000m Area of Influence (AOI) and requires a 500m Minimum Separation Distance (MSD) to sensitive land uses. The draft Guideline defines an AOI as "an area surrounding the property boundary of an existing or planned major facility where adverse effects on surrounding sensitive land uses have a moderate likelihood of occurring." (Land Use Compatibility Guideline, pg. 20) It then

requires a compatibility study to assess impacts of the proposed new use and to recommend a MSD to the use.

The Guideline supports implementation of the PPS, 2020 and corresponding policies need to be included in the Township and County Official Plans. Once the Guideline has been approved the appropriate policies can be included in the OP update. Separation distances will inform where Cannabis production and processing uses can be located. A link to the draft Land Use Compatibility Guideline is included at the end of this report.

The new OP policy and any associated by-laws will consider any revised licensing, updated Guideline criteria and the decisions on the appeals to the Leamington Cannabis Regulation By-law and Light Abatement By-law. Staff would reiterate that Cannabis use and production is permitted at federal and provincial levels and while it cannot be prohibited across the entire Township, it can be directed to locations outside of settlement areas or densely populated areas to reduce land use conflicts associated with odor and light pollution.

### Financial Impact

There are no financial impacts associated with this report. There will be future legal costs associated with the review of by-laws authorized to regulate cannabis operations as well as costs associated with enforcing the by-laws.

### Strategic Priorities

The 2020-2024 Strategic plan encourages economic growth and balanced development. Creating policy and zone provisions in accordance with Provincial Policy and relevant legislation will create opportunities to minimize conflicts related to competing land uses while still fostering economic growth.

#### “2. Foster Economic Growth

The Township of Georgian Bluffs strives to retain, expand, and attract new businesses that support employment opportunities, promote a diversified economy, support value-added agriculture and capitalize on the Township’s strengths, defining natural resources, while protecting the natural environment.

#### **Objectives:**

2.1 Retain, expand and attract new commercial activities.

- (a) Review planning policies to encourage farm business operations.
- (b) Identify possible Employment Lands for Development.”

### Conclusion

There are policy and document reviews occurring at the federal and provincial levels that may impact the policy decisions made by Council with regard to Cannabis production and processing. Municipal by-laws addressing odor, light and the regulation of Cannabis have been challenged and appealed and are unresolved at this point. Staff

recommend that policy formulation and the creation of nuisance by-laws to address odor and light abatement be deferred until the above-noted consultations have concluded and rulings are issued with respect to the municipal by-laws.

### Supporting Documentation

Leamington Cannabis Regulation By-law 35-18

<https://www.learmington.ca/en/resources/035-18-Cannabis-Regulation.pdf>

Leamington Light Abatement By-law 79-20

<https://www.learmington.ca/en/municipal-services/resources/79-20-Greenhouse-Light-Abatement---with-in-force-provisions.pdf>

Normal Farm Practices Protection Board

<http://www.omafr.gov.on.ca/english/engineer/nfppb/nfppb.htm>

Normal Farm Practices Protection Board Appeals

<https://nfppb.ca/amco-farms-v-the-corporation-of-the-municipality-of-learmington-pre-hearing-conference-2/>

<https://nfppb.ca/nature-fresh-farms-v-the-corporation-of-the-municipality-of-learmington-pre-hearing-conference/>

Health Canada Consultation

<https://www.canada.ca/en/health-canada/programs/consultation-cannabis-regulatory-issues.html>

Ontario Draft Land use Compatibility Guideline

<https://prod-environmental-registry.s3.amazonaws.com/2021-03/Proposed%20Land%20Use%20Compatibility%20Guideline.pdf>

Respectfully Submitted:

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## Report Approval Details

Document Title:	PL.2021.30 Addendum to PL.2021.17 Cannabis Policy.docx
Attachments:	- PL.2021.17 Cannabis OP Update Report.pdf
Final Approval Date:	Jul 8, 2021

This report and all of its attachments were approved and signed as outlined below:

Tim Lewis, Chief Building Official

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Janet Hilts, HR Manager

Kassandra Rocca, Director of Finance

Brittany Drury, Clerk

Al Meneses, Chief Administrative Officer