



Subject: Medical Cannabis Grow Operations

To: Council

From: Planning and Development Department

Report Number: 2021-07

Meeting Date: January 11, 2021

Recommendation:

That Planning and Development Department Report 2021-07 be received; and

That Council support the correspondence received from the Regional Municipality of Niagara Police Services Board attached as Appendix A; and

That Council support the correspondence item attached as Appendix B from the Township of Blandford-Blenheim regarding Cannabis Production.

Purpose:

The purpose of this report is to provide Council with information regarding challenges faced with Medical Cannabis Facilities in Ontario and specifically, the City of Port Colborne.

Background:

At its November 9th meeting, the City of Port Colborne Council passed the following motion:

“That the Director of Planning and Development be directed to investigate the basis of the resolutions received from the Township of Asphodel–Norwood, Township of Blandford-Blenheim, Town of Lincoln, Norfolk County, Northumberland County, Re: Cannabis Grow Operations as well as the City of Clarence-Rockland Re: Cannabis Retail Stores and prepare a report to bring forward to Council that includes input from the letter received from the Town of East Gwillimbury and the letter the Mayor has written to the Niagara Regional Police Services Board.”

The above motion served as a response to the correspondence received from municipalities across Ontario and challenges faced with regards to the regulation of Medical Cannabis Facilities.

Planning and Development staff has reviewed the correspondence received from the municipalities and can confirm that the majority of the concerns raised have been witnessed first-hand by City Planning and By-law Enforcement staff.

As Council is aware, the former City of Port Colborne Zoning By-law 1150/97/81 was amended in 2014 to regulate and incorporate standards for the locating and situating of Medical Marihuana Production Facilities. The By-law permitted Medical Marihuana Production Facilities licensed under the Federal Government's Marihuana for Medical Purpose Regulations (MMPR) which were in place at the time. Facilities were permitted in Agricultural and Rural zones subject to conditions including lot size, lot coverage, separation distances, lighting, parking and servicing. Around the same time as the Zoning By-law Amendment, the City's Site Plan Control By-law was also amended to require new facilities to be taken through the Site Plan Control process to ensure the conditions included in the Zoning By-law were properly implemented.

Through the legalization of recreational cannabis in 2018, Federal cannabis regulations drastically changed. In response to this, Council passed an Interim Control By-law (ICBL) for a period of one year on November 26, 2018, to allow staff to review the new legislation and bring forward updated zoning regulations. The ICBL acted as a freeze for all marihuana/cannabis as it prevented the establishment of any new facilities in Port Colborne. After an extension to the ICBL, Council, along with staff's recommendation, amended the Zoning By-law and Official Plan on January 27, 2020, with the regulations that are currently in place today. The current By-law provides similar restrictions as the 2014 amendment; however, it has removed reference to "medical marihuana production facility" and replaced it with "cannabis production facility" which covers both medical and commercial cannabis facilities. It has also provided further opportunities for facilities to be established in Industrial zones, rather than just Agricultural and Rural zones.

Discussion:

Planning and By-law Enforcement staff have been tasked with the enforcement of the regulations passed under the Zoning By-law and have dealt with numerous complaints regarding cannabis facilities. Planning staff note that since the regulations were put in place, the City has received only one application for a new facility, which has since been abandoned. A reoccurring statement in the resolutions received by the fellow municipalities note that medical grow operations are constantly being established with approval from Health Canada but with little to no consultation with local municipalities. It is clear there is a significant disconnect between Health Canada and municipalities in Ontario. Complaints are consistently received for new facilities in Port Colborne that are established without any approvals or consultation with the City.

The City of Port Colborne is also in receipt of a letter from the Niagara Region Police Services Board, written by the Acting Board Chair, William C. Steele, and the Chief of Police, Bryan R. MacCulloch. With respect to the letter issued by the board, staff concur that there is a lack in difficulty that exists for properties to obtain approval from Health Canada. This allows these facilities to be established in plain sight under the protection of Health Canada and the Canadian Charter of Rights and Freedoms. Under the current legislation, other than Zoning By-law regulations, there is little the municipality or police can do to prevent or stop these facilities from obtaining their Health Canada approval. Commercial cannabis facilities in comparison have strict rules that must be followed prior to the issuance of their license. One of the first requirements for an applicant beginning the commercial license process is to obtain a letter from the municipality as confirmation that the selected site is suitable for a cannabis facility. Additionally, a site plan agreement must be in place between the City and proponent before the license is finally issued by the Federal Government.

As part of the November 9th motion by Councillor Wells, Councillor Bodner requested that staff investigate the basis of the court proceedings by the Town of East Gwillimbury. Staff has contacted the representative for the Town and have gathered the following information regarding their ongoing court proceedings:

1. Legal action was taken by the Town on July 8, 2020;
2. Contraventions of the *Municipal Act*, *Building Code Act*, and the Town's Zoning By-law;
3. Multiple cease and desist orders were sent to the property owner for the operation of a facility outside of a permitted zone in the Town's Zoning By-law, and for buildings and structures constructed without the benefit of a Building Permit;
4. An Interim Control By-law (ICBL) is currently in place which only allows new facilities to be established in Industrial zones, which the subject property is not;
5. The property owner's have failed to comply with stop work orders and cease the operation of their facility;
6. An application was made to the Ontario Superior Court of Justice;
7. No hearing date has been set for the case yet, however the Town is hopeful that it will be scheduled in January;
8. The case will be publicly accessible.

The East Gwillimbury case is another example of a cannabis facility with a medical license that received permission from Health Canada prior to the municipality having any input.

Internal Consultations:

Planning and By-law Enforcement have had numerous internal discussions regarding the issue of cannabis in the community. Planning and By-law staff have highlighted the

specific issues the City of Port Colborne has been having with existing facilities. Staff note that the majority of complaints are related to the following concerns:

1. The odours released from the facility;
2. Number of plants being grown at the property;
3. Concerns about increased crime in the area;
4. The property is not zoned correctly to permit cannabis growing operation;
5. Light trespassing on neighbouring properties throughout the night;
6. Properties are not required to enter into a site plan agreement with the municipality.

In staff's review of these complaints and concerns, the issues always come back to land use compatibility. The City's only mechanism to control land use compatibility issues between cannabis facilities and neighbouring properties is through the Zoning By-law. However, this mechanism is consistently overridden by the Federal Government and Health Canada when licenses are issued.

Financial Implications:

There are no financial implications at this time.

Conclusion:

Based on the correspondence from the fellow municipalities in Ontario and the issues faced in the City of Port Colborne, staff recommend that Council endorse the Police Services Board letter attached as Appendix A and the resolution received from the Township of Blandford-Blenheim attached as Appendix B.

Appendices:

- a. Regional Municipality of Niagara Police Services Board letter
- b. Township of Blandford-Blenheim resolution
- c. Other correspondence received from Ontario municipalities

Respectfully submitted,

David Schulz

Planner

(905) 835-2900 ext. 202

David.Schulz@portcolborne.ca

Report Approval:

All reports reviewed and approved by the Department Director and also the City Treasurer when relevant. Final approval is by the Chief Administrative Officer.