

**Committee of the Whole Meeting  
September 28, 2020**

**Report #PD-2020-30**

**Direction for an Interim Control By-law Regarding Cannabis Operations in the Town of New Tecumseth**

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**Recommendation**

That Report #PD-2020-30 be received;

And further that staff respectfully seek direction from Council as to the possibility of the introduction of an Interim Control By-law regarding cannabis operations in the Town of New Tecumseth.

**Objective**

The purpose of this report is to seek direction from Council as to the possibility of the introduction of an Interim Control By-law regarding cannabis operations in the Town of New Tecumseth

**Background**

Cultivation and production of cannabis is considered by the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) as a crop and are therefore not distinct at a Provincial level from all other crops in principle. Notwithstanding, as with other land uses, cannabis cultivation and production facilities may require specific measures to ensure compatibility and to mitigate nuisances such as noise, odour, light and security. New Tecumseth's agricultural and rural community is known for its vast amounts of prime agricultural land, rural residential homes and thriving agricultural community. Other than minimum distance separation from livestock facilities, there is not significant separation between these residences and farm operations.

On October 17, 2018, *The Cannabis Act* came into force. Since that date, new regulations (*Cannabis Regulations SOR/2018-144*) have replaced the *Access to Cannabis for Medical Purposes Regulations*. In the most recent Government of Canada Regulations that are enabled by the *Controlled Drugs and Substances Act*, the *Food and Drugs Act* and the *Cannabis Act*, it is possible to obtain licenses for micro-cultivation, standard cultivation and nursery. In deciding which license is appropriate, the difference comes down to the size of the canopy space. Each of these licenses allows the license holder to obtain dried cannabis, fresh cannabis, cannabis plants or cannabis plant seeds by cultivating, propagating and harvesting cannabis.

It is also legal for residents to grow up to four plants per residence for personal recreational use. It is illegal to grow more than four plants per residence. Other than the provision to allow four plants to be grown per residence, the only opportunity to obtain

Cannabis for recreation use is through the Ontario Cannabis Store website or a private cannabis retail store. These federal outlets only obtain Cannabis from producers licensed under Health Canada.

On January 14, 2019, Town of New Tecumseth Council resolved to opt-in to the one-time option to permit private retail locations within New Tecumseth, which qualified the Town for funding from the Ontario Cannabis Legalization Implementation Fund (OCLIF). While private retail cannabis stores are permitted in the Town, the current Town Official Plan does not speak directly to the production of Cannabis. However, the Town Zoning By-law 2014-126 does speak to Medical Marijuana Production Facilities being permitted on lands zoned Urban Industrial (UM) and Urban Industrial - Exception (UM-8, UM-9, UM-10). It can be noted that the definition for a Medical Marijuana Production Facility is excluded from the definition of Agriculture. Accordingly, a Cannabis Production Facility (medical or recreational) is not a permitted use on lands zoned Agriculture in the Town's Zoning By-law.

By opting in - retail operations can set up on appropriately zoned retail properties meeting specific criteria

On Monday September 14, 2020, Council adopted the following Member's motion:

*Whereas Health Canada is responsible for issuing licenses for the growing of cannabis;*

*And Whereas a number of municipalities, including the Town of New Tecumseth, are experiencing challenges with the growing of and/or operations associated with cannabis in their communities;*

*And Whereas municipalities, including the Town of New Tecumseth, are seeking more information and requesting further investigation and regulations from the Provincial and/or Federal Governments with regard to the growing of cannabis and associated operations, but to date none have been forthcoming;*

*Now Therefore Be It Resolved That staff be directed to investigate the possibility of the introduction of an Interim Control By-law regarding cannabis operations in the Town of New Tecumseth and provide a report to the next Committee of the Whole Meeting.*

## **Comments and Considerations**

### **What is an interim control by-law?**

An interim control by-law (ICBL) is a tool available to Ontario municipalities under Section 38 of the *Planning Act* to place a temporary freeze/hold a certain land use for up to a year, in order to allow a municipality to study/review, draft and implement policy regarding that land use. For the duration of the year, from the date of the passing of the

ICBL, no new planning applications can be submitted to the Town to permit that use. Only the Minister has the ability to appeal an ICBL. If at the end of one year, the Town is not ready to implement the new policy, the ICBL can be extended for another year. However, the extension could be appealed by the public or an agency.

The restrictions can only be imposed for one year, with a maximum extension of a second year. Once an ICBL expires, a subsequent ICBL may not be imposed on those same lands for a period of three years.

### **What are the requirements for enacting an ICBL?**

Town Council, by By-law or resolution, must direct that a study or review be undertaken in respect to certain land use planning policies. In this case, Council would pass a resolution to direct that a study be undertaken regarding cannabis operations in New Tecumseth. Through this study, New Tecumseth staff would then be in a position to draft and implement policies for regulating this land use. By passing the ICBL, this will put a hold on all new applications related to this land use. The Town will still be required to process applications submitted before the ICBL is passed. Ongoing planning applications presently in place prior to the ICBL being passed would still proceed through the appropriate Planning approvals processes. It can be further noted that this it would not stop a proponent from bringing a normal farm practice application to the Normal Farm Practices Protection Board (NFPPB).

### **Zoning By-law Update**

The Town has retained The Planning Partnership to undertake an update of its Zoning By-law. In July 2018, the new Town Official Plan was adopted by Council. To conform to the new Official Plan, the Town has initiated a comprehensive review of its Zoning By-law. The update will:

- Bring the Zoning By-law into conformity with the new Official Plan;
- Complete a detailed analysis of the Town's zoning provisions;
- Change zoning provisions to reflect urban design and architectural control principles and make recommendations regarding issues and/or problem areas; and,
- Consolidate all amendments into one comprehensive document.

The Zoning By-law update is being undertaken within the context of broad-based community consultation to ensure the voices of New Tecumseth landowners, business owners, community organizations, home builders/developers and residents of all ages are heard throughout the process. Working with the Town, the Project Team is now preparing the first draft of the new Zoning By-law. The Statutory Public Open House and Public Meeting will take place following the public release of the Draft Zoning By-law, which is anticipated in the first half of October, 2020.

Throughout the process, the Project Team has been made aware of the issues present in the Town with respect to cannabis operations. It can be noted that the Zoning By-law update cannot be implemented retroactively, meaning that cannabis operations in existence prior to the implementation of the Zoning By-law update will not be subject to new requirements. New Zoning By-law requirements for cannabis operations included in the update will apply on a go forward basis to all new development.

## **Options**

The provisions of the Town Zoning By-law with respect to cannabis were established in 2014 prior to the legalization of recreational cannabis production provided by the Federal government. Given the above information, staff provide the following options for Council's consideration.

### Option #1 - Interim Control By-law (ICBL)

Option #1 would require the establishment of an ICBL on cannabis production within specific zones and would require the Town to prepare a study reviewing cannabis operations. The study would provide specific recommendations that would be implemented through the new Comprehensive Zoning By-law, once finalized.

Staff note that the ongoing work related to cannabis through the Zoning By-law Update cannot be considered as the study required through the ICBL process. A separate standalone study would be required. Given this, should Council choose this option, staff recommend that a consultant be retained to prepare a standalone study regarding cannabis operations. The above mentioned study would be dependent on 2021 Budget implementation, the extent of consultation, scope of the review and whether the consultant is tasked with implementing the recommendations of the study.

Should Council choose Option #1 and an ICBL approved, the following steps would occur:

- The cannabis operations review process is initiated;
- Notification will be provided to stakeholders and members of the public to include opportunities to provide input throughout the review process;
- By-law Officers will enforce implementation and receive input pertaining to any potential contravention; and,
- Development applications for new cannabis operations will not be processed once the ICBL is passed.

### Option #2 - Wait for the completion of the Zoning By-law update

Option #2 is to wait for the completion of the Zoning By-law update. With the legalization of cannabis, it is legally available in the same manner as alcohol. As a result, the cultivation, production and distribution of cannabis is now permitted across Canada. However, there is an opportunity for the Town, through its Zoning By-law update

process to better regulate the production and cultivation of cannabis that will mitigate negative impacts on surrounding sensitive uses.

There may be other economic development or social reasons for not wanting certain types of uses in a community, however, the basis for prohibiting these uses and/or setting them back from other uses would have to be defensible. On this basis, Planning staff are of the opinion that all cannabis related proposals in any area of the Town would be evaluated on a case by case basis through the appropriate Planning and Development applications as deemed necessary. Accordingly, cannabis operations would continue to be permitted on lands zoned UM, UM-8, UM-9 and UM-10 subject to all other provisions of the current Zoning By-law.

In addition to the above, Planning staff are of the opinion that the Town consider requiring site plan approval for these types of operations, no matter their location, should one be proposed. This would require the Town to amend its existing Site Plan Control Areas By-law.

### **Conclusion**

Given the information and options presented above, Planning staff respectfully seek the direction of Council as to the possibility of the introduction of an ICBL regarding cannabis operations in the Town of New Tecumseth.

### **Financial Considerations**

There are no financial considerations as a result of this report.

Respectfully submitted:



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#### **Department:**

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#### **Status:**

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