

The Corporation of the Municipality of Leamington

By-law 41-22

Being a by-law requiring the
abatement of interior greenhouse light

Whereas, Section 128(1) of the Municipal Act, 2001, R.S.O. 2001, c. 25 (herein the “Act”) provides that a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances.

And Whereas without proper abatement of interior greenhouse light, the effects of such unabated light could become or cause a public nuisance.

Now Therefore by its Council The Municipality of Leamington Hereby Enacts as Follows:

Interpretation

1. In this By-Law:
 - a) “Council” means the Council of the Municipality.
 - b) “Curtains” shall mean a “blackout” curtain or shade that based upon the manufacturer’s specifications blocks ninety-nine percent (99%) of light from emitting from the Greenhouse.
 - b1.) “Director” shall mean the Director of Legal and Legislative Services or his or her designate.
 - c) “Greenhouse” means a structure made of plastic or glass that is used for growing plants including but not limited to fruits, vegetables, flowers or cannabis in regulated temperatures, humidity and ventilation.
 - d) “Lights” means any light that is used for the purpose of inducing plant growth including, but not limited to Incandescent, Halogen, Fluorescent, Metal halide, Induction, Light Emitting Diode or High Pressure Sodium lights.
 - e) “Municipality” means The Corporation of the Municipality of Leamington.
 - f) “Owner” means the registered owner, lessee or occupant of a Greenhouse.

Requirements for Greenhouse Curtains

2. An Owner of a Greenhouse that utilizes Lights shall install and maintain Curtains on the sidewalls and endwalls of the Greenhouse in accordance with section 4(a) and 4(b).

3. On or before October 1, 2023, an Owner of a Greenhouse that utilizes Lights shall install and maintain Curtains on the ceiling of the Greenhouse in accordance with section 4(c).
4. Curtains shall be installed and maintained as follows:
 - (a) to the height of the top of the sidewalls and endwalls;
 - (b) such that the Curtain covers the entirety of the sidewalls and endwalls; and
 - (c) such that the Curtain covers the entirety of the sidewalls, endwalls and ceiling, subject to section 5 of this By-law.
- 4.1 An Owner of a Greenhouse that utilizes Lights shall ensure that Curtains are closed completely on the sidewalls and endwalls from 5:00 p.m. until 8:00 a.m.
- 4.2 On or before October 1, 2022, an Owner of a Greenhouse that utilizes Lights but has not, by such date, installed Curtains on the ceiling of the Greenhouse in accordance with section 4(c), shall submit to the Director, in a form and in the manner as determined by the Director in his or her sole discretion, the following:
 - (a) evidence that Owner shall be in a position to install and maintain Curtains on the ceiling of the Greenhouse in accordance with section 4(c) on or before October 1, 2023; or
 - (b) a declaration that section 5 of this By-law shall not apply as the Lights in the Greenhouse shall be shut off and remain off.
5. On the earlier of October 1, 2023 or the date that an Owner of a Greenhouse has installed Curtains on the ceiling of the Greenhouse in accordance with section 4(c), an Owner of a Greenhouse that utilizes Lights shall ensure that Curtains are closed completely on a Greenhouse ceiling from 5:00 p.m. until 8:00 a.m.; except:
 - (a) between the hours of 5:00 p.m. and 10:00 p.m.; and
 - (b) between the hours of 2:00 a.m. and 8:00 a.m.,during which time ceiling Curtains must be at least ninety percent (90%) closed.
- 5.1 Until the earlier of October 1, 2023 or the date that an Owner of a Greenhouse has installed Curtains on the ceiling of the Greenhouse in accordance with section 4(c), the Owner of a Greenhouse that uses Lights shall, between the hours of 10:00 p.m. and 8:00 a.m. ensure that such Lights are shut off and remain off.
6. Sections 2, 3, 4(a), 4(b), 4(c), 4.1 and 5 respectively, shall not apply if Lights in a Greenhouse are shut off and remain off.

Severability

7. If a Court of competent jurisdiction should declare any section or part of a section of this By-law to be invalid, such section shall not be construed as having persuaded or influenced Council to pass the remainder of the By-law and it is hereby declared that the remainder of the By-law shall be remain in force.

Penalty

8. Every person who contravenes any provision of this By-law is guilty of an offence and upon conviction is subject to a fine pursuant to the Provincial Offences Act, R.S.O. 1990, c. P. 33, as amended from time to time.

Continuing Offence

9. Each calendar day a violation of section 2, 3, 4, 4.1, 5 or 5.1 continues is deemed to be a separate offence.

Enforcement

10. Pursuant to section 447.1 of the Act and in addition to any other penalty or remedy available to the Municipality, the Council may, on behalf of the Municipality with the consent of the local detachment commander of the Ontario Provincial Police or the chief of police of the municipal police force as the case may be, and with notice to the Attorney-General of Ontario, apply to the Superior Court of Justice for an order requiring all or part of a Greenhouse be closed for a period not exceeding two (2) years if it be proved on a balance of probabilities that:
 - (a) activities or circumstances on or in the Greenhouse constitute a public nuisance or cause or contribute to activities or circumstances constituting a public nuisance in the vicinity of the Greenhouse;
 - (b) the public nuisance has a detrimental impact on the use and enjoyment of property in the vicinity of the Greenhouse;
 - (c) the Owner of the Greenhouse or part of the Greenhouse knew or ought to have known that the activities or circumstances constituting the public nuisance were taking place or existed and did not take adequate steps to eliminate the public nuisance; or
 - (d) a conviction for a contravention of this By-law by a court of competent jurisdiction of a public nuisance in respect to the Greenhouse has been entered, and the conviction is not currently under appeal.

Powers of Entry

11. Pursuant to section 436 of the Act and in addition to any other powers of entry granted to the Municipality, the Municipality, by its employees or agents, may enter

into the Greenhouse at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- (a) this By-law or any other by-law passed by the Municipality;
- (b) any direction or order of the Municipality made under the Act or this By-law;
or
- (c) an order to discontinue or remedy a contravention of this By-law for which a conviction has been entered by a court of competent jurisdiction.

Powers of Inspection

- 12. The Municipality may do any of the following for the purposes of an inspection under section 12:
 - (a) require the production for inspection of documents or things relevant to the enforcement of this By-law;
 - (b) inspect and remove documents or things relevant to the enforcement of this By-law for the purpose of making copies or extracts;
 - (c) require information from any person concerning a matter relevant to the enforcement of this By-law; and
 - (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, sample or photographs necessary for the purposes of the inspection.

Effective Date and Repeal

- 13. Section 5.1 be and is hereby repealed on September 30, 2023.
- 14. By-law 79-20 be and is hereby repealed.

Read a first, second and third time and finally enacted this 14th day of June, 2022.

Hilda MacDonald, Mayor

Ruth Orton, Deputy Clerk