The Corporation of the Municipality of Leamington

By-law 35-18

Being a by-law to regulate certain
matters related to cannabis

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 the legislation and regulations permitting the production, sale and consumption of Medical Cannabis and Non-Medical Cannabis do not regulate certain matters of public interest in relation to health, safety, morality, comfort or convenience.

And Whereas without proper regulation the activities regulated by this By-Law, especially in the absence of sufficient regulation or enforcement by another level of government, could become or cause public nuisances.

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

Interpretation

1. In this By-Law:

   (a) "Cannabis" shall have the same meaning as cannabis as defined in the Cannabis Act (Canada).

   (b) "Cannabis Facility" means an indoor Premises on which Cannabis, Cannabis seed or Cannabis oil is grown, processed, extracted, packaged or otherwise made ready for sale, tested, destroyed, stored and/or shipped in accordance with the provisions of a licence issued by Health Canada, as may be amended from time to time, but shall not mean a Cannabis retail outlet operated by the Province of Ontario, Cannabis Lounge or Cannabis Retailer, and does not include any Property which is not licensed by Health Canada and on which Cannabis is grown exclusively for legal use by the registered owner of the Property.

   (c) "Cannabis Lounge" means a structure, which is not a residence, in which Cannabis Products, legally possessed by one or more persons, are consumed.

   (d) "Cannabis Products" means any product for which Cannabis is one of the principal ingredients, including Cannabis Derivatives.

(e) "Cannabis Related Activity" means growing, processing, extracting, packaging or otherwise making ready for sale, testing, destroying, storing, shipping, permitting consumption or sale of Cannabis or Cannabis Products.

(f) "Cannabis Retailer" means a premises from which Cannabis or Cannabis Products are sold to the general public on a retail basis and is authorized by law, but does not include a Cannabis retail outlet operated by the Province of Ontario.

(g) "Council" means the Council of the Municipality.

(h) "Medical Cannabis" means Cannabis for which a prescription has been issued by a medical practitioner in accordance with the Health Canada regulations for Medical Cannabis;

(i) "Municipality" means The Corporation of the Municipality of Leamington.

(j) "Non-Medical Cannabis" means Cannabis or Cannabis Products for which a prescription has not been issued by a medical practitioner in accordance with the Health Canada regulations for Medical Cannabis;

(k) "Noxious Odour" means an odour of Cannabis or from Cannabis Related Activities emanating from a Premises that is persistent or continuous and is likely to interfere with the ordinary enjoyment of other property in the vicinity of the Premises;

(l) "Odour Abatement Protocol" means the combination of methods, practices, equipment and technologies designed for the purpose of eliminating the emission and emanation of Noxious Odours from the Premises to any other property;

(m) "Part I Cannabis Facility" means a Cannabis Facility for which the Municipality has received notice as a term of the application to Health Canada;

(n) Part II Cannabis Facility" means a Cannabis Facility that is not a Part I Cannabis Facility including a designated grower, a micro-cultivator, a micro-processor or a premises on which Cannabis is grown for or on behalf of one or more other persons than the registered owner of the premises;

(o) "Premises" means a Cannabis Facility, Cannabis Lounge or Cannabis Retailer.

(p) "Process" means the operation whereby harvested Cannabis, is transformed by the application of manual, mechanical or chemical methods into another form, but does not include the application or use of a dangerous substance or method;

(q) "Sensitive Use" means a grade school, secondary school, day care, playground, sporting venue or any other place which has as its primary purpose of being a place where persons under the age of 18 years comprise the majority of persons present or intended to be present, a residential use within a Zone, a place of worship, or a community center.

(r) "Zone" means an area delineated on a zoning map schedule and established and designated by the Comprehensive Zoning By-law 890-09 for a specific use or group of uses.

Prohibitions

2. (a) No person shall operate a Cannabis Lounge, Cannabis Retailer or Cannabis Facility except in accordance with the provisions of this By-Law.

(b) No person shall operate a Cannabis Facility where Cannabis is grown outdoors.

(c) No person shall Process Cannabis using substances dangers or noxious to the public.

License

3. The owner, occupier and/or operator of a Cannabis Lounge, Cannabis Retailer or Cannabis Facility shall produce for inspection any license or other form of authorization which permits the Cannabis Related Activity on the Premises.

Cannabis Lounge or Cannabis Retailer

4. A Cannabis Lounge or a Cannabis Retailer shall not:

(a) operate except in accordance with the terms of its license or other form of authorization;

(b) operate unless it is the holder of a valid business license as issued by the Municipality under its Business Licensing By-Law;

(c) be closer than two hundred (200) metres from the property line of the nearest Sensitive Use;

(d) be in any Zone that is not designated for commercial use;

(e) permit the sale of Cannabis or Cannabis Products on the Premises, unless authorized by law;

(f) permit the consumption of Cannabis or Cannabis Products on the exterior of the Premises;

(g) permit the sale to or the consumption of Cannabis or Cannabis Products on the Premises by a person not legally entitled to purchase or consume Cannabis or Cannabis Products; and

(h) operate without an Odour Abatement Protocol sufficient to eliminate any Noxious Odour migrating off its Premises.

Part I Cannabis Facility

5. A Part I Cannabis Facility shall:

(a) operate in accordance with its license from Health Canada, and any other requirements of the Province of Ontario and any other competent authority;

(b) operate indoors;

(c) operate only in a Zone designated for agricultural use, where a greenhouse, but not a hobby greenhouse, is permitted;

(d) operate with an Odour Abatement Protocol to eliminate the migration of any Noxious Odour off its Premises; and

(e) be limited to the production, processing and packaging of Cannabis on behalf of the holder of the license for the Premises on which the Cannabis Facility is located and one other person.

Part II Cannabis Facility

6. A Part II Cannabis Facility shall:

(a) operate in accordance with its licence from Health Canada, and any other requirements of the Province of Ontario and any other competent authority;

(b) operate indoors;

(c) operate in a Zone designated for industrial use;

(d) obtain a business licence pursuant to the provisions of the Municipality's Business Licensing By-law 03-18;

(e) obtain, prior to commencing operation, a Change of Use Permit, issued pursuant to section 10 of the Building Code Act, 1992, S.O. 1992, c.23;

(f) obtain, prior to commencing operation, Site Plan Approval and enter into a Site Plan Agreement pursuant to section 41 of the Planning Act, R.S.O. 1990, c. P.13;

(g) operate with an Odour Abatement Protocol to eliminate the migration of any Noxious Odour off its Premises and provide satisfactory proof thereof to the Municipality;

(h) operate more than two hundred (200) metres from the property line of the nearest Sensitive Use;

(i) be limited to the production, processing and packaging of Cannabis on behalf of the registered owner of the Premises and one other person; and

(j) be inspected by the Municipality's Fire Department and comply with the provisions of the Fire Protection and Prevention Act, 1997, S.O. 1997, c.4.

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 continues is deemed to be a separate offence.

Enforcement

10. 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 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 Premises 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 Premises constitute a public nuisance or cause or contribute to activities or circumstances constituting a public nuisance in the vicinity of the Premises;

(b) the public nuisance has a detrimental impact on the use and enjoyment of property in the vicinity of the Premises;

(c) the owner or occupants of the Premises or part of the Premises 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 Premises 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 on the Premises 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;

(c) a condition of a licence issued by the Municipality; or

(d) 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 11:

(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.

Short Title

13. This By-law may be referred to as the Cannabis Regulation By-law, 2018.

Effective Date

14. This By-law will take effect and come into effect upon its enactment.

Read a first, second and third time and finally enacted this 28th day of May, 2018.

John Paterson, Mayor

Brenda M. Percy, Clerk