

# THE CORPORATION OF THE MUNICIPALITY OF LEAMINGTON

## BY-LAW 895-09

Being a by-law to regulate excessive and obnoxious odours.

WHEREAS, Section 129(1) of the Municipal Act, 2001, R.S.O. 2001, c.25 (herein the "Act") provides that a local municipality may enact by-laws that prohibit and regulate with respect to odours;

AND WHEREAS Section 429 of the Act authorizes a municipality to designate an offence as a continuing offence.

**NOW THEREFORE BY ITS COUNCIL THE MUNICIPALITY OF LEAMINGTON HEREBY ENACTS AS FOLLOWS:**

1. INTERPRETATION:

In this by-law,

- (a) "Council" means the Municipal Council of the Municipality.
- (b) "Designated Agricultural Land" means any agricultural land that has been specifically designated to permit a mushroom farm use in Leamington By-law No. 890-09 as may be amended from time to time or under any other by-law enacted pursuant to Section 34 of the Planning Act.
- (c) "Excessive and Obnoxious Odour" means an odour that;
  - (i) continues in duration for longer than four hours or occurs on a regular basis; and
  - (ii) is of such strength that the odour creates a nuisance.
- (d) "Industrial Area" means those areas of the municipality designated as industrial in Leamington By-law No. 890-09 as may be amended from time to time or designated as industrial pursuant to any other by-law enacted pursuant to Section 34 of the Planning Act, R.S.O. 1990 c.P.13.
- (e) "Municipality" means The Corporation of the Municipality of Leamington.

## 2. PROHIBITIONS

No person shall conduct or permit any activity that causes an excessive and obnoxious odour.

## 3. NON APPLICATION OF BY-LAW

Section 2 of this by-law does not apply to an odour created by any one of the following activities:

- (1) A normal farm practice as determined pursuant to the Farming and Food Production Protection Act, 1998 S.O. Chap. 1.
- (2) An activity carried on in compliance with an order of the Normal Farm Practices Protection Board.
- (3) An activity that is an essential part of an industrial process that is established on an industrial lot.
- (4) An activity performed on designated agricultural land.
- (5) An activity carried on in compliance with a certificate of approval or permit issued pursuant to the Environmental Protection Act, R.S.O. 1990, c.E19.
- (6) An activity carried on by the municipality or any other level of government.
- (7) An activity carried on in compliance with an approved nutrient management plan pursuant to the Nutrient Management Act, 2002, S.O. 2002 c. 4.

## 4. GRANT OF EXEMPTION BY COUNCIL

### (1) Application to Council

Notwithstanding anything contained in this By-law, any person may make application to Council to be granted an exemption from any of the provisions of this By-law with respect to any source of odour for which the person might be prosecuted and Council, by resolution, may grant or refuse to grant the exemption applied for and any exemption granted shall specify the time period, during which the exemption is effective and may contain such terms and conditions as Council deems appropriate.

(2) Adjournment

Council may adjourn consideration of the matter for any reason Council deems appropriate, provided that the reason for adjournment is stated and recorded in the minutes.

(3) Decision

In deciding whether to grant the exemption, Council shall give the applicant and any person opposed to the application, an opportunity to be heard and may consider such other matters as Council deems appropriate.

(4) Breach

A breach of any of the terms or conditions of any exemption granted by Council shall render the exemption null and void.

5. SEVERABILITY

If a Court of competent jurisdiction should declare any section or part of a section of this By-law to be invalid, such section or part of a 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 valid and shall remain in force.

6. PENALTY

Every person who contravenes any of the provisions 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. c. P.33, as amended.

7. CONTINUING OFFENCE

Each calendar day a violation of Section 2 continues is deemed to be a separate offence.

8. REPEAL OF BY-LAW

By-law 586-05, as amended, is hereby repealed.

9. SHORT TITLE

This By-law may be referred to as the odour regulation by-law.

10. EFFECT

This by-law will take effect and come into force upon its enactment.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY ENACTED THIS 9<sup>th</sup> DAY OF FEBRUARY, 2009.**

Signature on file

\_\_\_\_\_  
JOHN ADAMS, Mayor

Signature on file

\_\_\_\_\_  
BRIAN R. SWEET, Clerk

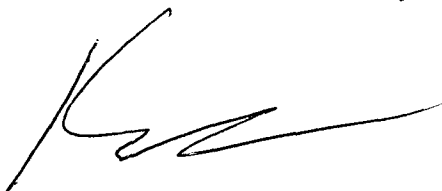
ONTARIO COURT OF JUSTICE

PROVINCIAL OFFENCES ACT

PART I

IT IS ORDERED pursuant to the provisions of the Provincial Offences Act and the rules for the Ontario Court of Justice that the amount set opposite each of the offences in the schedule of offences under the Provincial Statutes and Regulations thereunder and Municipal By-law No. 895-09, of the Municipality of Leamington, attached hereto are the set fines for those offences. This Order is to take effect April 6, 2009.

Dated at London this 6th day of April, 2009

A handwritten signature in black ink, appearing to read 'K. McGowan', written in a cursive style.

Kathleen E. McGowan  
Regional Senior Justice  
West Region

**Set Fine Schedule****THE CORPORATION OF THE MUNICIPALITY OF LEAMINGTON****Part 1 Provincial Offences Act**

**By-law 895-09 : Being a by-law to regulate excessive and obnoxious odours.**

<b>ITEM</b>	<b>COLUMN 1</b> Short Form Wording	<b>COLUMN 2</b> Provision Creating or Defining Offence	<b>COLUMN 3</b> Set Fine
1	Cause excessive and obnoxious odour	Section 2	\$175.00
2	Permit excessive and obnoxious odour	Section 2	\$175.00

Penalty Provision for the offences indicated above in Section 6 of By-law 895-09, a certified copy of which has been filed.