

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2022-095

Being a By-law to Prohibit and Regulate Public Nuisances related to odours and lighting from the cultivation of plants within the Town of Amherstburg

WHEREAS the Municipal Council of the Town of Amherstburg deems it appropriate to enact a by-law to prohibit and regulate certain public nuisances within the Town of Amherstburg pursuant to sections 128 and 129 of the *Municipal Act, 2001*, S.O. 2001, c. 25, ("*Municipal Act, 2001*") as amended;

AND WHEREAS section 444 of the *Municipal Act, 2001* authorizes municipalities to make orders requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity;

AND WHEREAS sections 445 and 446 of the *Municipal Act, 2001* authorize municipalities to issue work orders and in default of a work order being completed by the person directed or required to do it, the work shall be done by the Town at the person's expense by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes;

AND WHEREAS in the opinion of the Council for the Town of Amherstburg, the following are or could become a public nuisance:

- (a) odours from the cultivation of cannabis plants; or
- (b) lighting from the cultivation of plants of any kind.

AND WHEREAS Subsection 41(7) of the Planning Act, R.S.O., 1990, c.P. 13, states that as a condition to the approval of the plans and drawings referred to in Subsection 41(4), a municipality may require the owner of the land to:

41(7)(a) provide to the satisfaction of and at no expense to the municipality any or all of the following:

41(7)(a)(5)- Facilities for the lighting, including floodlighting, of the land or of any buildings or structures thereon.

41(7)(c) enter into one or more agreements with the municipality dealing with and ensuring the provision of any or all of the facilities, works or matters mentioned in clause (a) or (d) and the maintenance thereof as mentioned in clause (b) or with the provision and approval of the plans and drawings referred to in subsection (4)"

AND WHEREAS Section 129 of the *Municipal Act 2001*, S.O 2001, states that:

"A local municipality may,

- (a) prohibit and regulate with respect to noise, vibration, odour, dust and outdoor illumination, including indoor lighting that can be seen outdoors; and
- (b) prohibit the matters described in clause (a) unless a permit is obtained from the municipality for those matters and may impose conditions for obtaining, continuing to hold and renewing the permit, including requiring the submission of plans."

AND WHEREAS properly designed light fixtures do not emit undesirable or nuisance light into the night environment or emit light that causes glare, and thus protect the night environment and human health both on our roads and on the water;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF AMHERSTBURG ENACTS AS FOLLOWS:

PART I - INTERPRETATION

Definitions

1. In this By-law:

"By-law" means this by-law to prohibit and regulate certain nuisances related to odours and lighting from the cultivation of plants in the Town of Amherstburg;

"Cannabis Plant" means a plant that belongs to the genus Cannabis and, in the absence of evidence to the contrary, includes any plant described as cannabis or by a name that is commonly applied to cannabis;

"Council" means the Council of the Municipality;

"Cultivate, Cultivated, Cultivating or Cultivation" in respect of plants, means to grow, propagate, harvest plants, process, or maintain or operate a facility for these purposes;

"Curtains" means a "blackout" curtain or shade that blocks one hundred percent (100%) of light from emitting from the Greenhouse;

"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;

"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;

"Municipality" means The Corporation of the Town of Amherstburg;

"Nuisance" means anything that is injurious to health, indecent, offensive to any of the Senses, or results in the loss of enjoyment of normal use of property;

"Officer" means a Police Officer or a Municipal By-Law Enforcement Officer appointed under any federal or provincial statute or regulation or Town by-law or any other person assigned or appointed by the Town to administer or enforce this By-Law and includes a person employed by the Town whose duties are to enforce this By-Law;

"Owner" means the registered owner, lessee or occupant of a Greenhouse;

"Senses" means a faculty by which the human body perceives an external stimulus and includes one or more of the faculties of sight, smell, hearing, taste and touch; and

"Town" means the municipal corporation of the Town of Amherstburg.

Application

2. This By-law applies to all persons, lands and properties in the Town of Amherstburg.

PART II - RESTRICTIONS

Lighting from the Cultivation of Plants

3. No person shall cause, create or permit light from the Cultivation of plants of any kind to shine upon the land of others so as to be or to cause a Nuisance to any person or to the public generally.
4. Every owner or occupier of land shall ensure that no light from the Cultivation of plants of any kind shines upon the land of others, or shines into the dark night sky, so as to be or to cause a Nuisance to any person or to the public generally.
5. Outdoor lighting and indoor lighting from the Cultivation of plants of any kind that can be seen outdoors shall be operated, placed and maintained, or have a barrier placed and maintained, so as to prevent or block direct illumination of the interior of a building on adjoining land or lands regardless of whether such a building has or may have a barrier, shades, drapes or other interior window coverings.

Requirements for Greenhouse Curtains

6. 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 8(a) and 8(b).
7. An Owner of a Greenhouse that utilizes Lights shall install and maintain Curtains on the ceiling of the Greenhouse in accordance with section 4.
8. 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 seals between the sidewalls and endwalls ensuring that no light escapes; and
 - (c) such that the Curtain seals between the sidewalls, endwalls and ceiling ensuring that no light escapes.
9. An Owner of a Greenhouse shall ensure that:
 - (a) Curtains are closed completely on Greenhouse sidewalls and endwalls from one hour before sunset until one hour after sunrise, which times shall be determined by the National Research Council Canada's sunrise/sunset calculator; and
 - (b) Curtains are closed completely on a Greenhouse ceiling from one hour before sunset and until one hour after sunrise.

Odours from the Cultivation of Cannabis Plants

- 10.** No person shall cause, create or permit the emission of an odour from the Cultivation of Cannabis Plants so as to be or to cause a Nuisance to any person or to the public generally.
- 11.** Every owner or occupier of land shall ensure that no emission of an odour from the Cultivation of Cannabis Plants on his or her land is or causes a Nuisance to any person or to the public generally.

PART III - ENFORCEMENT

Enforcement

- 12.** The provisions of this By-law may be enforced by an Officer.
- 13.** If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred, to discontinue the contravening activity.
- 14.** An order under section 13 shall set out:
 - (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and
 - (b) the date or dates by which there must be compliance with the order.
- 15.** If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred, to do work to correct the contravention.
- 16.** An order under section 15 shall set out:
 - (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred;
 - (b) the work to be completed;
 - (c) and the date by which the work must be complete.
- 17.** An order under sections 13 or 15 may require work to be done even though the facts which constitute the contravention of the By-law were present before this By-law came into force.
- 18.** An order made under sections 13 or 15 may be served personally or by registered mail to the last known address of:
 - (a) the person who caused, created or permitted the offence; and
 - (b) the owner or occupier of the lands where the contravention occurred.

- 19.** Where an owner or occupier of the land on which the contravention occurred, who has been served with an order and fails to comply with the order, then an Officer, or any authorized agent on behalf of the Town may enter on the land at any reasonable time and complete the work required to bring the land into compliance with the provisions of this By-law as set out in the order.
- 20.** Where the work required to bring the land into compliance with the By-law has been performed by or for the Town, the costs incurred in doing the work may be collected by action or the costs may be added to the tax roll for the land and collected in the same manner as taxes.
- 21.** An Officer may enter on land, and into buildings, at any reasonable time for the purpose of carrying out an inspection to determine whether any provision of this By-law or an order made under this By-law is being complied with, although an Officer may not enter into a private residence or dwelling unit.
- 22.** For the purposes of conducting an inspection pursuant to this By-law, an Officer may:
- (a) require the production for inspection of documents or things relevant to the inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (c) require information from any person concerning a matter related to the inspection; and
 - (d) alone, or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of the inspection.
- 23.** No person shall prevent, hinder or obstruct, or attempt to hinder or obstruct an Officer who is exercising a power or performing a duty under this By-law.

Offence and Penalty

- 24.** Every person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for in the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended.
- 25.** Any person other than a corporation who contravenes any provision of this By-law or who fails to comply with an order made under this By-law or who obstructs or attempts to obstruct an Officer in carrying out his or her duties under this By-law is guilty of an offence and on conviction is liable to a maximum fine of \$5,000 for a first offence, and a maximum fine of \$10,000 for a subsequent offence.
- 26.** Any corporation which contravenes any provision of this By-law or who fails to comply with an order made under this By-law or who obstructs or attempts to obstruct an Officer in carrying out his or her duties under this By-law is guilty of an offence and on

conviction is liable to a maximum fine of \$50,000 for a first offence and \$100,000 for any subsequent offence.

Other Remedies

27. If a person or corporation is convicted of an offence under this By-law, in addition to any other remedy or any penalty imposed, the court in which the conviction has been entered, and any court of competent jurisdiction, may make an order prohibiting the continuation or repetition of the offence by the person convicted.

Continuing Offence

28. Each day or a part of a day that a contravention of this By-law continues is deemed to be a separate offence.

PART IV - MISCELLANEOUS

Severability

29. Where a court of competent jurisdiction declares any provision of this By-law invalid, or to be of no force or effect, the provision shall be deemed conclusively to be severable from the By-law and every other provision of this By-law shall be applied and enforced in accordance with its terms to the extent possible according to law.

Short Title

30. The short title of this By-law is the "Odours and Light Nuisance By-law".

Enactment

31. This By-law comes into force and effect on the day it is passed.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY
PASSED THIS DAY OF OCTOBER 25, 2022.**



MAYOR – Aldo DiCarlo



CLERK – Valerie Critchley