



SUBJECT: Cannabis Production Study

TO: Community Planning, Regulation & Mobility Cttee.-PM

FROM: Community Planning Department

Report Number: PL-06-21

Wards Affected: All

File Numbers: 505-02-72

Date to Committee: November 16, 2021

Date to Council: November 23, 2021

Recommendation:

Receive and file community planning department report PL-06-21 regarding the Cannabis Production Study; and

Direct the Director of Community Planning to report back to the Community Planning, Regulation and Mobility Committee in Q1 of 2022 with final recommendations.

PURPOSE:

To share the findings of the Stage 2 work plan for the Cannabis Production Study and to seek public input on a draft amendment to the Zoning By-law, 2020.

Vision to Focus Alignment:

- Increase economic prosperity and community responsive city growth
- Deliver customer centric services with a focus on efficiency and technology transformation

Executive Summary:

The purpose of the Cannabis Production Study is to review the City of Burlington's policies to identify changes required to align with the *Cannabis Act, 2018*, which repeals the Access to Cannabis for Medical Purposes Regulations informing the current Zoning By-law. Non-commercial cannabis production for personal use (including both recreational and medical) is not within the scope of the Cannabis Production Study.

Based on the existing federal and provincial framework which applies to cannabis production facilities, across both the urban and rural area, staff believe that all known community concerns and land use compatibility issues are sufficiently addressed and do not require additional measures at the local level, including Burlington-specific nuisance guidelines, and amendments to the Official Plan and Site Plan Control By-law. Instead, a simplified, policy option which relies on existing federal, provincial and municipal controls is recommended. To implement the findings of the study, City staff have prepared a draft Zoning By-law Amendment which proposes:

- removing the existing policies related to “Medical Marihuana Production Facilities” and adding new policies for “Cannabis Production Facilities”;
- recognizing Cannabis Production Facilities as either an industrial or agricultural use, depending on the context of the site, rather than a unique use with separate policies;
- removing the existing permissions for Medical Marihuana Production Facilities within the GE1 and GE2 Employment Zones (General Employment) and replacing them with permissions for Cannabis Production Facilities; and
- adding new permissions for Cannabis Production Facilities as an industrial use to also include the BC1 and BC2 Employment Zones (Business Corridor).

Staff recommend implementing the proposed Zoning By-law Amendment to ensure alignment with the *Cannabis Act, 2018* and the associated Cannabis Regulations. By leveraging the existing regulatory framework for industrial and agricultural uses to achieve land use compatibility, and by avoiding the introduction of redundant or indefensible policies, the City will be ideally positioned to embrace the economic potential of this emerging industry. This is in keeping with the feedback collected through preliminary public engagement, where economic development and job creation were highlighted as priority considerations.

To enable a fulsome public engagement process, a decision is not being requested at this time. Staff will consider the additional public input received during the fall engagement period and the Statutory Public Meeting on November 16, 2021 and will report back to Council with a final recommendation in Q1 of 2022.

Background and Discussion:

The Stage 2 work plan of the Cannabis Production Study was initiated on the basis of two previous staff directions:

December 17, 2018 - “*Direct the Director of City Building to undertake a zoning study, including public consultation, for the production of recreational cannabis land use.*”

November 9, 2019 - *“Direct the Director of City Building to proceed with the “Stage Two” work plan of the Cannabis Production Study, as outlined in department of city building report PB-68-19.”*

For background on the 2018 changes to the federal regulatory framework for cannabis, and Stage 1 of the Cannabis Production Study, please refer to report [PB-68-19: Cannabis Production Study – Stage 2 Work Plan](#). Please note that non-commercial cannabis production for personal use (including both recreational and medical) is not within the scope of the Cannabis Production Study.

The Stage 2 work plan approved by City Council in 2019 consisted of further study to develop and refine the preliminary recommendations, including formal internal and external engagement, to be summarized in a final recommendation report to Council containing:

- a) a set of cannabis production guidelines that address odour and light nuisance;
- b) an amendment to the Official Plan to enable the guidelines;
- c) an amendment to the Zoning By-law to incorporate updated language for cannabis; and
- d) an amendment to the Site Plan Control By-law to address cannabis production facilities.

At that time, staff committed to reporting back to Council at a Statutory Public Meeting with the proposed guidelines, the implementing Official Plan and Zoning By-law Amendments, and a summary of public feedback and how it shaped the recommendations, at the beginning of Q2, 2020.

During Stage 2 of the study, after further review of the existing policy framework, it was determined that Burlington-specific nuisance guidelines, and amendments to the Official Plan and Site Plan Control By-law are not necessary to address land use planning objectives and community concerns. Instead, a simplified, policy option which relies on existing federal, provincial and municipal controls was developed in collaboration with key internal departments.

In mid-2020 the Cannabis Production Study was placed on pause to enable the City to address other planning priorities, such as the Regional approval process for the new Burlington Official Plan and the Region’s Municipal Comprehensive Review (Regional Official Plan Review).

This pause also enabled staff to review and comment on the Province’s proposed new Land Use Compatibility Guideline (see report [PL-33-21: City of Burlington Submission - Land Use Compatibility Guidelines](#) and item 7 of the August 13, 2021 [Council Information Package](#) “Consultation on Strengthening Environmental Compliance Approach ERO Numbers 019-2785 / 019-2768 / 019-2972”).

In mid-2021, the Cannabis Production Study was resumed. The recommendations were developed and made available for public review on the City of Burlington’s cannabis webpage, and the public was notified of the opportunity to provide feedback via the November 16, 2021 Statutory Public Meeting.

Strategy/process

Municipalities have a variety of tools under the *Planning Act* that can be used to influence the location of cannabis production facilities, such as official plan policies and land use designations, zoning by-laws, site plan control, interim control by-laws, and holding provision by-laws. Under the *Municipal Act, 2001*, municipalities also have the tools and authority to make decisions regarding matters within their jurisdiction, including passing by-laws to prohibit and regulate matters related to noise, vibration, odour, dust and outdoor illumination.

Given Burlington's rural/urban split, it is important to consider cannabis production through the lens of both agricultural and industrial uses to determine the applicable provincial policies. For the purposes of this analysis, North Aldershot was considered as 'rural', as it does not meet the criteria for an urban area under the Provincial Policy Statement (PPS), 2020.

When the Stage 2 work plan was proposed by staff, preliminary research had determined that odour and lighting nuisance issues were the primary concerns with respect to land use compatibility. However, to determine the appropriate tools to address these concerns, it is necessary to establish the applicable land use classifications for cannabis production facilities, i.e. industrial, agricultural, or other. Given the breadth of cannabis production facility typologies, ranging from outdoor field cultivation, to indoor hydroponic cultivation, to indoor processing and manufacturing, it is not possible to assign a single land use category to cover all facilities.

During the Stage 1 background analysis, it was determined that the classification of cannabis production facilities was not entirely clear across the Provincial policy framework. The Stage 2 work plan was proposed on the basis that cannabis production facilities would likely require additional regulation at the local level to avoid land use compatibility issues that were not explicitly addressed by existing policy. However, through subsequent correspondence with applicable ministries, staff have since confirmed that cannabis production facilities are already addressed through the existing Provincial policy framework. This analysis is discussed in greater detail in the following section.

Options Considered

To determine the applicable provincial policy framework with respect to cannabis production facilities, Staff engaged with three key ministries, the Ministry of Municipal Affairs and Housing, the Ministry of Agriculture, Food and Rural Affairs, and the Ministry of Northern Development, Mines, Natural Resources and Forestry (specifically, the Niagara Escarpment Commission). The guidance offered by each ministry is summarized in the subsections below. It is important to note that these comments offer

a general policy overview only and do not represent a site-specific interpretation or position, or legal advice.

Ministry of Municipal Affairs and Housing (MMAH)

MMAH staff communicated that cannabis is considered an agricultural crop in Ontario, and noted that, on lands zoned for agriculture, provincial land use policies require that all types, sizes and intensities of agricultural uses and normal farm practices (including greenhouses) be permitted. While municipalities can zone the land for agricultural uses, the specific crops grown (including cannabis) or livestock raised are not uses that can be regulated under the *Planning Act*. MMAH staff further noted that cannabis production could be permitted by municipal zoning by-laws on agricultural and/or industrial zoned lands and this may depend on whether the production occurs in an enclosed facility/building, greenhouse or on cropland.

The PPS does not contain policies that explicitly speak to cannabis or other agricultural uses within an urban area. Therefore, MMAH staff highlighted the policies which speak to permitted uses in rural areas.

In prime agricultural areas within the rural area, policy 2.3.3.2 of the PPS states that all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards. Greenbelt Plan policy 3.1.3.1 further states that within these areas, a full range of agricultural uses, agriculture-related uses and on-farm diversified uses are permitted based on provincial Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas. Proposed agriculture-related uses and on-farm diversified uses shall be compatible with and shall not hinder surrounding agricultural operations.

PPS policy 1.1.5.2 d) states that on rural lands located in municipalities, permitted uses include agricultural uses, agriculture-related uses, on-farm diversified uses and normal farm practices, in accordance with provincial standards. Greenbelt Plan 3.1.4 further states that all agricultural uses, on-farm diversified uses and normal farm practices on rural lands of the Protected Countryside are supported and permitted, based on provincial guidelines for permitted uses.

MMAH staff flagged that limiting indoor cannabis production to locations that are only within industrial areas, including, for example, not permitting indoor facilities in an agricultural area or where other agricultural uses are permitted, could be contrary to the PPS and the Greenbelt Plan, 2017.

Ministry of Agriculture, Food and Rural Affairs (MAFRA)

MMAH staff's interpretation of cannabis production as an agricultural use was echoed by MAFRA staff. In Ontario, normal farm practices are protected under the *Farming and Food Production Protection Act (FFPPA)*, 1998. Through this Act:

- Farmers are protected from nuisance complaints (relating to odour, noise, dust, light, vibration smoke or flies) made by neighbours, provided they are following normal farm practices.
- No municipal by-law applies to restrict a normal farm practice carried on as part of an agricultural operation.

The FFPPA defines an “agricultural operation” as an agricultural, aquacultural, horticultural or silvicultural operation that is carried on in the expectation of gain or reward (among numerous other activities, this includes the production of agricultural crops, greenhouse crops, maple syrup, mushrooms, nursery stock, tobacco, tree and turf grass, and any additional agricultural crops prescribed by the Minister).

The FFPPA defines a “normal farm practice” as a practice that:

- is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances, or
- makes use of innovative technology in a manner consistent with proper advanced farm management practices.

What is normal, or not, varies depending on location, type of farm, method of operation, and timing of the farm practice. Normal is site-specific for a given set of circumstances and may change over time. Only the Normal Farm Practices Protection Board (NFPPB) can make the decision if a particular site meets the definition of an agricultural operation (as defined by the FFPPA).

The NFPPB was established to resolve disputes regarding agricultural operations and to determine what constitutes a normal farm practice. In performing this function, the board seeks to in balance the needs of the agricultural community with provincial health, safety and environmental concerns.

In addition, a farmer who feels that a municipal by-law is restricting a normal farm practice may apply to the NFPPB for a hearing. This provision of FFPPA is not limited to by-laws adopted under the *Municipal Act* (e.g. nuisance by-laws related to noise, odour, etc.). Consequently, the NFPPB may choose to rule on zoning by-laws adopted under the *Planning Act*, as well as nuisance by-laws adopted under the *Municipal Act*, if the matter is related to normal farm practices.

The NFPPB will determine if the practice restricted by the by-law is a normal farm practice. If it is, then, under the FFPPA, the by-law does not apply to that practice at that location. The board cannot strike down the by-law. It can only rule on whether or not the practice under consideration is a normal farm practice, at that location and under those particular circumstances. Therefore, excessive restrictions or prohibitions for cannabis production in an area where agricultural uses are otherwise permitted could be viewed

restricting a normal farm practice and may be overruled by the NFPPB on a site-specific basis.

Niagara Escarpment Commission (NEC)

Similar to MMAH and MAFRA staff, NEC staff conveyed that, within the Niagara Escarpment Area of Development Control, cannabis production is considered an agricultural use. The City of Burlington does not apply zoning within the Niagara Escarpment Area of Development Control because the NEC is the primary planning authority in this area. Agricultural uses are permitted in most Niagara Escarpment Plan (NEP) designations, except the Escarpment Natural Area, and are subject to both the NEP's Development Criteria and the Provincial Policy Statement.

NEC staff noted that, given the security/fencing requirements and processing facilities that may be associated with cannabis production (either field, greenhouse or other types of indoor grow facilities), staff would not consider such operations as general agricultural development in the context of Ontario Regulation 828/90 "Development Within the Development Control Area", as amended. Among other things, this regulation exempts certain types of general agricultural development from the requirement of obtaining a development permit from the NEC.

Therefore, a Niagara Escarpment Development Permit would be required for a cannabis production facility in most, if not all, cases (i.e. even for outdoor cannabis production, as the security fencing would trigger the need for a development permit). Even though local zoning does not apply, as part of reviewing a Development Permit Application, NEC staff would take the policies and position of the local/regional municipality into account when providing recommendations to the Commission.

Cannabis Production for Personal Medical Use

In addition to cannabis production for commercial purposes, the Cannabis Regulations contain permissions allowing non-commercial production for 'own medical purposes', where cultivation may be undertaken by a registered person or by a designated individual on their behalf. Cultivation for personal medical use may occur either indoors or outdoors and the odour control requirements of the Cannabis Regulations do not apply to this category of licence. However, the Regulations do note that:

326 (1) An individual who is authorized to produce cannabis plants under this Division must not cultivate, propagate or harvest them:

- (a) indoors and outdoors at the same time; or
- (b) outdoors if the production site is adjacent to a school, public playground, daycare facility or other public place frequented mainly by young persons.

This category of licence is limited to the amount of cannabis to be consumed by a single individual, based on a valid medical prescription. Cannabis produced cannot be shared or provided to anyone else. Due to its smaller scale and lower intensity, non-commercial

cannabis production for personal medical use is not within the scope of the Cannabis Production Study.

Planning Analysis

On the basis of the above Provincial guidance, it is the position of staff that cannabis production should be considered a permitted use within the rural area where agricultural uses are permitted, and that it should not be restricted in a manner that would conflict with or be inconsistent with the PPS, the *Food and Farming Production Protection Act*, the Greenbelt Plan, or the Niagara Escarpment Plan.

With respect to the rural area, staff is of the opinion that potential nuisance issues pertaining to odour and light are sufficiently addressed through the existing Provincial policy framework, which provides a means to address complaints in a manner that balances the needs of the agricultural community with provincial health, safety and environmental concerns.

With respect to the urban area, staff is of the opinion that all forms of cannabis production should be classified as an industrial use, subject to the Provincial D-series Land Use Compatibility Guideline. The relevant D-series guideline is discussed in the following section.

Ontario Guideline D-6: Compatibility between Industrial Facilities Guideline

[Ontario Guideline D-6](#) (the “Guideline”) is intended to be applied in the land use planning process to prevent or minimize future land use problems due to the encroachment of sensitive land uses and industrial land uses on one another.

For the purposes of the Guideline, sensitive land use may include:

- recreational uses which are deemed by the municipality or provincial agency to be sensitive; and/or
- any building or associated amenity area (i.e. may be indoor or outdoor space) which is not directly associated with the industrial use, where humans or the natural environment may be adversely affected by emissions generated by the operation of a nearby industrial facility. For example, the building or amenity area may be associated with residences, senior citizen homes, schools, day care facilities, hospitals, churches and other similar institutional uses, or campgrounds.

The Guideline applies to all types of proposed, committed and/or existing industrial land uses which have the potential to produce point source and/or fugitive air emissions such as noise, vibration, odour, dust and others, either through normal operations, procedures, maintenance or storage activities, and/or from associated traffic/transportation. Industrial uses are divided into classes according to the

objectionable nature of their emissions, their physical size/scale, production volumes and/or the intensity and scheduling of operations. The potential influence areas (i.e. area within which adverse effects may be experienced) and the corresponding minimum separation distances are as follows:

Type of Industrial Use	Influence Area	Minimum Separation Distance
Class I	70 metres	20 metres
Class II	300 metres	70 metres
Class III	1000 metres	300 metres

The actual influence area (i.e. overall range within which an adverse effect would be or is experienced, normally established through technical studies) for a particular facility is site-specific, and may be defined within, or in exceptional circumstances, beyond the potential influence area either before, or where applicable, after buffers have been used to reduce, eliminate or otherwise intercept adverse effects.

Proposed Ontario Land Use Compatibility Guideline 2020

On May 4, 2021 the Ministry of the Environment, Conservation and Parks (MECP) posted a notice on the Environmental Registry of Ontario (ERO) for information purposes to highlight a series of initiatives being proposed to strengthen enforcement tools that hold polluters accountable and create consistent guidelines to prevent and address noise and odour issues. One of the items included in this notice was [ERO posting # 019-2785: Land use compatibility guideline \(D-Series\)](#), which (among many other things) contained suggested guidance to address industrial cannabis production facilities.

However, on October 13, 2021 MECP posted a decision for ERO # 019-2785 indicating that, as a result of the extensive interest and nature of the comments received on the Guideline overall, the Ministry has decided not to proceed with the proposed version of the Land Use Compatibility Guideline at this time. With respect to cannabis, the Ministry stated “...many questions were asked on how the Guideline applies to cannabis facilities. There are concerns about cannabis facilities in agricultural areas and how the inconsistent approach may push these facilities to rural areas. Comments expressed a need for guidelines for outdoor operations, along with suggestions to modify how operations are addressed (e.g. a class for micro operations)”.

The decision states that the current D-Series guidelines will remain in effect and the Ministry will continue to review the D-Series land use compatibility guidelines based on stakeholder feedback received to date. Should the ministry decide to update the D-Series, any potential future update will be posted to the Environmental Registry as a proposal for consultation.

Public Health Ontario Evidence Brief: Odours from cannabis production

In April of 2018, Public Health Ontario prepared an evidence brief entitled “[Odours from cannabis production](#)”, based on a search of the scientific and grey literature to assess potential health effects related to odour producing emissions associated with cannabis production facilities. In the brief, it is stated that “*There is a potential that operation of [cannabis production] facilities will result in the release of odour and odorous compounds into the surrounding environment. However, environmental odours are regularly encountered from agricultural and industrial operations and odour control technologies are both readily available and widely used in these industries*” (p.4).

No studies linking health effects to neighbourhood exposure to emissions from cannabis production facilities were found through the literature review. Based on existing guidance from Health Canada and elsewhere, odour control technologies (e.g. H13 high-efficiency particle air (HEPA) filters) are available for cannabis production facilities to prevent the release of odours from site buildings, which are already applied to commercial medical cannabis production facilities in Canada.

In terms of implications for practice, the brief concludes that “*Following other jurisdictions, a system to report and track nuisance odours could be implemented in the event that the odour control at a cannabis production facility is not effective. Such a system can help to inform local authorities on timing and extent of the occurrence of odour and inform decisions through which authorities can intervene to remedy potential problems*” (p.5). Through the *Cannabis Act, 2018*, Health Canada has introduced a robust system for compliance and enforcement, as discussed in the following section.

Provincial and Federal Role in Regulating Cannabis Odour

The Cannabis Regulations (SOR/2018-144) under the federal *Cannabis Act, 2018*, contain detailed requirements for production practices, which are outlined in the Health Canada “[Good Production Practices Guide for Cannabis](#)”. Section 85 of the Cannabis Regulations state that “*any building or part of a building where cannabis or anything that will be used as an ingredient is produced, packaged, labelled, stored or tested must be equipped with a system that must be able to filter air to prevent the escape of cannabis odours associated with cannabis plant material to the outdoors*”. In addition, licence holders must have a maintenance program in place to ensure that:

- ventilation and air filtration are maintained in accordance with a schedule;
- the presence of odours surrounding the building or part of a building are monitored in accordance to a schedule and responded to if necessary; and
- inspection and repair activities occur when required.

Licence holders under the *Cannabis Act* who choose to grow cannabis outdoors must ensure that all activities associated with cannabis post-harvest (e.g., drying, trimming)

are conducted within a building or part of a building and are conducted in compliance with the above.

For the purposes of the Health Canada licencing process- which involves determining whether an operation is considered indoor or outdoor- greenhouses are generally considered as indoor and would therefore be subject to odour control requirements. However, there may be certain types of simple greenhouse structures (i.e. a hoop house structure with dirt floors and no foundation) which may be classified differently. Health Canada assigns this classification on a case-by-case basis and considers a variety of factors in terms of the licencing conditions and nuisance mitigation requirements, include the location, scale and intensity of the operation.

Health Canada is responsible for enforcing all provisions of the *Cannabis Act*, 2018, including the requirements prohibiting the escape of odours to the outside.

Complainants are able to raise any compliance issues directly with Health Canada through the online [Cannabis Reporting Form](#), which includes categories for complaints from a variety of stakeholders, including municipalities, across a range of issues (e.g. site-related issues such as odour, security etc.).

Proposed Zoning By-law Amendment

The proposed Zoning By-law Amendment attached as Appendix A, to this report, includes minor revisions to reflect the repeal of the former Access to Cannabis for Medical Purposes Regulations, and to align with the *Cannabis Act*, 2018. Specifically, the Zoning By-law Amendment proposes:

- Removing the existing policies related to “Medical Marihuana Production Facilities” and adding new policies for “Cannabis Production Facilities”;
- Recognizing Cannabis Production Facilities as either an industrial or agricultural use, depending on the context of the site, rather than a unique use with separate policies;
- Removing the existing permissions for Medical Marihuana Production Facilities within the GE1 and GE2 Employment Zones (General Employment); and replacing them with permissions for Cannabis Production Facilities.
- Adding new permissions for Cannabis Production Facilities as an industrial use to also include the BC1 and BC2 Employment Zones (Business Corridor).

There is no distinction between commercial recreational and medical cannabis production facilities, as the licenses issued for production facilities do not categorize the production based on the end-user. Under the *Cannabis Act*, 2018, this distinction is only made at the point of sale.

Accessory Uses to a Cannabis Production Facility

As outlined in Section 2 of Appendix B to this report, there is a range of production licence types available under the *Cannabis Act*. Various combinations of licence types may be permitted within a single site, subject to compliance with local requirements and approval by Health Canada. For example, a producer with a standard cultivation licence may also apply for a retail licence on the same site.

Based on the proposed approach recommended in this report, retail sales would be permitted as an accessory to a cannabis production facility, subject to the applicable regulations of the associated employment zone in Part 3 of the Zoning By-law. For the BC1 zone, Section 4.6; for the BC2 zone, Section 5.14; and for the GE1 and GE2 zones, Section 6.10. Among other criteria, these regulations generally require physical separation from the main use and a maximum total floor area of 15% of the main use, or 250 square meters (whichever is the lesser).

This means that cannabis retail stores would not be permitted anywhere that retail uses are not permitted within the Zoning By-law. As applicants must secure all municipal permits and approvals before submitting an application to Health Canada, it would not be possible for a producer to secure a licence for retail sales in an area where the City does not permit retail uses.

Outdoor Manufacturing

Health Canada cannabis processing licences require the production, packaging, labelling, storing, sampling and testing of cannabis to occur indoors. However, cultivation and nursery licences may allow licensees to conduct operations either inside or outdoors. An outdoor area could be for cultivation or for other purposes, including destruction and composting. Applicants for cultivation licences must specify in their application whether they intend to use an outdoor area. The odour control requirements outlined in the Cannabis Regulations do not apply to outdoor production but the City's policies would still apply, with respect to required setbacks between industrial and sensitive uses.

Based on the proposed approach recommended in this report, outdoor manufacturing (i.e. outdoor cultivation of cannabis) would be permitted as an accessory to a cannabis production facility subject to the applicable regulations of the associated employment zone in Part 3. For the BC1 zone, Section 4.11 (prohibited); for the BC2 zone, Section 5.12; and for the GE1 and GE2 zones, Section 6.7. Specifically, in the BC1 and BC2 zones, outdoor manufacturing is prohibited in a yard abutting a street and on lands abutting a residential zone. In a GE1 zone outdoor manufacturing is prohibited in a yard abutting a street and, in a GE2 zone, outdoor manufacturing is prohibited.

Agricultural Production in Rural Zones

No changes were required to rural zones to recognize cannabis production as a permitted use where agricultural uses are permitted, as it is generally captured by the current definition for agricultural use, which includes “*The growing of crops, including nursery and horticultural crops.*”

Based on various discussions with other municipalities, Health Canada, OMAFRA and cannabis producers, it is understood that odour emissions from outdoor cannabis cultivation are significantly lower than indoor production facilities, with peak odour levels being limited to specific points of the production cycle which occur infrequently on an annual basis. Health Canada has also provided statistical data confirming that indoor cultivation is by far the dominant production type, at this time. At the federal level, only about 19% of licensed cannabis production facilities contain an outdoor component and in Ontario it is only slightly lower at about 18% (data current as of October 2021).

In some municipalities where greenhouses are more prevalent (e.g. Essex County and Norfolk County), odour issues have been experienced in association with production facilities where an existing greenhouse has been improperly converted for cannabis production and lacks the appropriate air filtration systems to prevent the escape of odour, as required by the Cannabis Regulations.

However, greenhouse production is generally considered ‘indoor’ by Health Canada and producers are therefore responsible to remedy these issues in accordance with the requirements of their licence. Burlington has a limited number of existing greenhouses, with only 10 of its 66 farms being classified as “Greenhouse, Nursey, & Floriculture” under the 2016 Census of Agriculture. Greenhouse potential is also somewhat limited in Burlington by the lack of natural gas servicing across much of the rural area.

Existing Facilities Under the Access to Cannabis for Medical Purposes Regulations

In some municipalities (e.g. Halton Hills), odour issues have been experienced in association with production facilities operated by groups of designated growers that have joined together at a commercial scale under the previous Access to Cannabis for Medical Purposes Regulations. The Regulations did not contemplate this potential exploitation of the permissions for personal medical production and therefore did not contain provisions to limit individual producers from consolidating their operations.

As odour control is not required for registered persons producing cannabis for their own medical use, or designated persons growing on their behalf, some of these operations became problematic as they were operating at a commercial scale without any of the typical measures used to mitigate nuisance issues and achieve land use compatibility.

This has been a motivating factor for many of the municipalities with existing operations of this nature have chosen to introduce additional setbacks and odour control measures for cannabis production facilities. To the best of staff's knowledge, Burlington does not have any existing cannabis production facilities of this nature within its boundaries.

Therefore, staff are not recommending setbacks or odour control measures specific to cannabis production facilities and are satisfied that the zoning regulations for industrial and agricultural uses will be sufficient to achieve land use compatibility for any new facilities licensed under the *Cannabis Act, 2018*.

Official Plan Conformity

With respect to Official Plan policies, the proposed Zoning By-law Amendment conforms to both the Official Plan (1997) and the new Official Plan (2020). Both Official Plans contain policies which address land use compatibility for industrial and agricultural uses generally, which are described in further detail in Section 1 of Appendix B, of this report.

Neither Official Plan contains policies specific to cannabis production, as this was not recommended at the time the Zoning By-law was originally amended to permit medical cannabis production facilities in 2014 (see report [PB-45-14: Zoning Regulations review for Commercial Production Facilities for Medical Marijuana](#)). Therefore, amendments to these plans to remove outdated policies are not required.

Note that this is also the case in terms of Site Plan Control. The Official Plan designates the entire City of Burlington as a Site Plan Control area. With the exception of detached and semi-detached homes in specific areas, as well as agricultural uses, Site Plan Control applies to all new developments, building additions, certain building renovations and various other site works. Therefore, cannabis production facilities operating as an industrial use are already captured by the existing Site Plan Control By-law and amendments are not required.

Burlington Economic Development

Planning staff have consulted with Burlington Economic Development (BED) to better understand the types of jobs associated with cannabis production facilities and to ensure that permitting them within the BC1 and BC2 employment zones is appropriate. Based on their review of the cannabis industry, BED has identified cannabis production as one of its "Key Industries" under the category of Biomedical and Life Sciences on its website. BED describes Biomedical and Life Sciences as "A supportive industry that employs over 7,000 people with a focus on research & development, testing, diagnostics, consulting, and device manufacturing."

BED is therefore supportive of the approach to utilize the existing policy framework to regulate cannabis production facilities at the local level to support an efficient approvals process and to welcome the economic potential of this growing industry.

Financial Matters:

Not applicable

Total Financial Impact

Not applicable

Source of Funding

Not applicable

Other Resource Impacts

Not applicable

Climate Implications

Not applicable

Engagement Matters:

Preliminary engagement occurred via an online survey and in-person survey conducted at the Food for Feedback Community Engagement BBQ in 2019, as detailed in report PB-68-19. In partnership with BED, staff also hosted a targeted engagement session with stakeholders from the cannabis industry on November 20, 2019.

While the number of industry attendees was small, the participants were able to share their experiences and insight in navigating the approvals process across multiple levels of government. They were also able to provide first-hand information regarding some of the operational aspects of these facilities, and to elaborate on some of the mechanisms used to meet the requirements of the Cannabis Regulations with respect to security, odour control and other matters.

When the Cannabis Production Study resumed in 2021, further public engagement was initiated in accordance with statutory requirements under the *Planning Act*. The proposed Zoning By-law Amendment and an accompanying Discussion Guide (attached as Appendix B, to this report) were posted on the City's Cannabis webpage and Public Notices webpage 30 days in advance of the Statutory Public Meeting. Notice was also circulated to the required agencies, neighbouring municipalities and

stakeholders, published in the Burlington Post, announced on social media, and posted to Get Involved Burlington's 'Hot Topics'.

The proposed Zoning By-law Amendment takes into consideration the key priorities expressed by the community through preliminary engagement. Section 3 of Appendix B to this report provides a detailed summary of how preliminary community feedback did or did not influence the recommendations.

Conclusion:

Based on the existing federal and provincial framework which applies to cannabis production facilities, across both the urban and rural area, staff believe that all known community concerns and land use compatibility issues are sufficiently addressed and do not require additional measures at the local level, including Burlington-specific nuisance guidelines, and amendments to the Official Plan and Site Plan Control By-law.

Staff recommend implementing the proposed Zoning By-law Amendment to ensure alignment with the *Cannabis Act, 2018* and the associated Cannabis Regulations. By leveraging the existing regulatory framework for industrial and agricultural uses to achieve land use compatibility, and by avoiding the introduction of redundant or indefensible policies, the City is ideally positioned to embrace the economic potential of this emerging industry. This is in keeping with the feedback collected through preliminary public engagement, where economic development and job creation were highlighted as priority considerations.

To enable a fulsome public engagement process, a decision is not being requested at this time. Staff will consider the additional public input received during the fall engagement period and the Statutory Public Meeting on November 16, 2021 and will report back to Council with a final recommendation in Q1 of 2022.

Respectfully submitted,

Kelly Cook

Senior Planner, Community Planning Department

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Appendices:

- A. Proposed Zoning By-Law Amendment
- B. Cannabis Production Study Discussion Guide

Notifications:

Office of the City Clerk to consult Community Planning Department in preparation of notifications.

Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Council.