



Report to Council

Department: Office of the CAO
Division: Legal and Legislative Services
Date: March 21, 2022
Prepared by: Robert Auger, Town Solicitor/Clerk
Matthew Ducharme, Legislative Intern
Report Number: Legal and Legislative Services-2022-10
Subject: Update re: Light Abatement Bylaw
Number of Pages: 8 pages

Recommendation(s)

The following two (2) recommendations are provided for Council's consideration:

1. **That** Legal and Legislative Services-2022-010 entitled "Update re: Light Abatement Bylaw" prepared by Robert Auger, Town Solicitor/Clerk and Matthew Ducharme, Legislative Intern, and dated March 21, 2022, be received for Information; and
2. **That** Council direct Administration to prepare and return with a by-law to regulate public nuisances related to interior greenhouse light emissions in the Town of Essex, following the best practice recommendations that are expected to be received in 2022 from the greenhouse industry.

Purpose

This report is to respond to the following resolution Council passed on November 16, 2020:

(R20-11-434) That Administration review and a Report be brought back to Council on the implementation of a by-law prohibiting and regulating lights and odours, similar to that recently passed by the Town of Kingsville. **Carried**

Background and Discussion

Industry trends point towards more greenhouse development in the future as the climate becomes increasingly variable and hostile for field crop cultivation. The Town of Essex has to date not experienced the influx of greenhouse development seen in neighbouring municipalities. However, as agricultural lands become scarcer, greenhouse developers will be looking to Essex to establish their operations.

The consequences of internal greenhouse lighting and odour arising from processing and production activities is very evident in Southwestern Ontario. This has resulted in an increase of public nuisance concerns by area residents in recent years. The Town of Kingsville and the Municipality of Leamington have both passed by-laws restricting public nuisances related to greenhouse operations, and other local municipalities are investigating possible regulations to prepare for future greenhouse development.

The Municipal Act does give municipalities the authority to prohibit and regulate public nuisances, including those related to odour and indoor lighting impacts derived from Greenhouse operations.

However it is important to note that Ontario's Farming and Food Production Protection Act indicates that a farmer is not liable in nuisance to any person for a disturbance resulting from an agricultural operation carried on as a normal farm practice, and no municipal by-law applies to restrict such practices.

As a result a farmer or operator affected by a municipal by-law that restricts its agricultural operations may apply to the Normal Farm Practices Protection Board (NFPPB) for a determination as to whether a practice is a normal farm practice for purposes of non-application of a municipal by-law. Similarly, a person directly affected by a disturbance from an agricultural operation may apply to the NFPPB for a determination as to whether the disturbance results from a normal farm practice. This determination is often made on a case by case basis but also in conjunction with what may be established best practices for that particular industry.

Odour Nuisances

Federal Cannabis Regulations already require 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 filters air to prevent the escape of odours to the outdoors. Municipalities are not responsible for enforcing these regulations.

While notice is provided to the municipality in connection with a Part I Cannabis Facility (commercial facilities), please note that no municipality receives notice of any application to Health Canada in connection with a Part II Cannabis Facility (facilities that produce medical cannabis for those individuals who have a certificate to produce the same). A municipality is made aware of these facilities only as a result of information from the public or other sources.

In addition to the Federal Cannabis Regulations, the Town of Essex also already regulates odours emitted from Agricultural Operations through regulations under Zoning By-Law No. 1037 including the following:

Agricultural District 1.1 (A1.1) has the following regulations:

“A mushroom farm shall not be permitted within 350m (1150f) of a Residential District. A facility used for the growing, storage, packaging, or distribution of marijuana or hemp shall be licensed by the licensing authority having jurisdiction and shall be a minimum of 300m (985f) from a dwelling and a Green District and 500m (1640f) from a Residential District.”

Manufacturing District 2.1 (M2.1) has the following regulations:

“A facility used for the growing, storage, packaging, or distribution of marijuana and or hemp or for the production of products derived from them shall be licensed by the licensing authority having jurisdiction and be a minimum of 300m (985f) from a dwelling and Green District and 500m (1640f) from a Residential District.”

These regulations prescribed by the Zoning By-Law No. 1037 together with the Federal Cannabis Regulations are intended to mitigate the effects of possible or realized odour nuisances on neighbouring properties. As such, Administration is recommending that odour

regulations not be included in a municipal by-law relating to greenhouse public nuisances and that the focus be upon the nuisance impacts from light activities.

Light Nuisance Abatement By-laws and Industry Consultations

By-laws

Currently, there are no provincial regulations that address greenhouse lighting. At the current time the Municipality of Leamington, Town of Kingsville, Municipality of Lakeshore, and Municipality of Chatham-Kent have reacted to greenhouse lighting by taking the following regulatory approaches:

- Leamington has adopted a by-law requiring 100% light abatement in Greenhouse sidewalls and endwalls from one hour before sunset to one hour after sunrise. 100% ceiling abatement for the same time period is required except between 2:00 a.m. and 6:00 a.m. when 90% light abatement is required.
- Kingsville has adopted a by-law that simply prohibits greenhouse lighting shining on neighbouring properties or into the night sky at any time.
- Lakeshore and Chatham-Kent have each adopted an interim control by-law to prohibit new greenhouse development to provide time for each municipality to conduct a municipal review of the effects of greenhouses.

Administration is aware that the Normal Farm Practices Protection Board has received many applications by the greenhouse industry for a determination as to whether the regulations of the Municipality of Leamington's Greenhouse Light Abatement By-law are restricting a normal farm practice. The hearing is scheduled for summer of 2022. If the Normal Farm Practices Protection Board rules that the by-law is restricting a normal farm practice, the by-law will not apply to the extent specified in the decision. Administration is recommending that it monitor the rulings forthcoming in this matter as it will provide more guidance to Administration on its future by-law.

Industry Consultations

The Ontario Greenhouse Vegetable Growers (OGVG) association (an organization that represents over 220 of Ontario's greenhouse farmers/operators) is moving forward with efforts to provide reasonable and effective light mitigation solutions. The farm practices of the industry's advanced year- round production of greenhouse produce, which enhances food security and sustainability in Ontario, requires additional light and heat. As a result the OGVG recognizes the community nuisance concerns associated with greenhouse lighting.

Administration has further been advised by the Municipality of Leamington that greenhouse specialists from the Ministry of Agriculture, Food and Rural Affairs (OMAFRA) are working in collaboration with the Ontario Greenhouse Vegetable Growers (OGVG) and Agriculture and Agri-Food Canada (AAFC) to provide scientific evidence upon which municipalities can base its regulations. Administration is aware that OMAFRA is also working with University of Guelph researchers to look at both future light abatement and energy modelling measures to consider within the greenhouse structures as energy curtains and lights contribute to the overall energy balance in commercial greenhouses. Both projects began in September 2020 with final results expected in the fall of 2023. We are advised that interim results will be available through various forums while the projects are underway. Following the completion of the projects, OMAFRA plans to incorporate the results and information into Ministry Factsheets or recommended Best Management Practices for Ontario greenhouse growers.

Finally Administration has directed consulted with the Ontario Greenhouse Vegetable Growers (OGVG) on a proposed by-law with regulations for greenhouse light abatement. During these consultations OGVG indicated that it was not opposed to regulating light emissions from greenhouses but noted that they are finishing the process of developing new/revised best practice recommendations for such greenhouse light abatement , recommendations that would be supported by their organization and its members. Administration was advised that such recommendations would be provided within the second quarter of 2022.

Planning Regulations

Proposed industrial greenhouse operations are currently subject to site plan control approval by Council. During pre-consultation, applicants for site plan control approval are advised of the regulations contained in the Property Standards By-Law, including Section 5.5:

“Lighting fixtures and their supports shall be installed and maintained in a safe and structurally sound condition, and in good working order and in good repair and designed and/or positioned so as to not project light onto abutting properties or otherwise cause a nuisance.”

If a future by-law regulating light emissions is adopted in the future, applicants would be advised of such a by-law during pre-consultation to ensure regulations are followed in the design, construction, and use of the greenhouse. Applicants for site plan control approval would also be required to undertake studies related to such matters as water supply needs and impacts to Town infrastructure and ground water.

Additionally, as part of the development of a new Town of Essex Official Plan currently underway, Planning Services will also review greenhouse and speciality crop land use policies and guidelines.

Conclusion

Given the expected increase in greenhouse development within the Town, it is the recommendation that Administration utilize the proposed light abatement best practices forthcoming from OGVG (expected to be provided to the Town within the second quarter of 2022) These updated/revised best practices will serve as a reasonable basis upon which the Town can prepare a by-law under the nuisance provisions of the Municipal Act to regulate light emissions from greenhouse operations in the Town. It is recognized, however, that such a by-law may require subsequent amendment when the final results/recommendations from the OMAFRA and AAFC abatement projects are released in the fall of 2023.

Financial Impact

All costs associated with the development of a nuisance by-law related to greenhouse light emissions will be absorbed by the operating cost centre for Legal and Legislative Services. Any budgetary implications will be brought forward in future budget deliberations.

The implementation of such a by-law has the potential to have an impact upon the resources of the Building and By-Law Enforcement Division. At this time identifying the potential enforcement costs would be purely speculative as these costs depend on the nature of the enforcement activity necessary, whether the Town would retain external legal counsel, and the number of orders in which the Town would be required to act. At present the impact on enforcement resources is expected to be minimal due to the minimal number of greenhouses currently operating in the Town of Essex.

Consultations

Lori Chadwick, Director, Development Services

Rita Jabbour, Manager, Planning Services

Jeff Watson, Policy Planner

Kevin Carter, Chief Building Official/Manager, By-Law Enforcement

Mike Diemer, By-Law and Property Standards Officer

Kate Giurissevich, Director, Corporate Services/Treasurer

Municipality of Leamington

Ontario Greenhouse Vegetable Growers

Link to Strategic Priorities

- Manage, invest and plan for sustainable municipal infrastructure which meets current and future needs of the municipality and its citizens.
- Create a safe, friendly and inclusive community which encourages healthy, active living for people of all ages and abilities.
- Provide a fiscal stewardship and value for tax dollars to ensure long-term financial health to the municipality.
- Manage responsible and viable growth while preserving and enhancing the unique rural and small town character of the community.
- Improve the experiences of individuals, as both citizens and customers, in their interactions with the Town of Essex.
- Improve the Town's capacity to meet the ongoing and future service needs of its citizens while ensuring the corporation is resilient in the face of unanticipated changes or disruptions.

Report Approval Details

Document Title:	Potential Nuisance Effects of Greenhouse Development.docx
Attachments:	
Final Approval Date:	Mar 15, 2022

This report and all of its attachments were approved and signed as outlined below:

A handwritten signature in black ink, appearing to read "Doug Sweet". The signature is stylized with a large initial "D" and a long horizontal stroke extending to the right.

Doug Sweet, Chief Administrative Officer - Mar 15, 2022 - 5:41 PM