



The Town of Niagara-On-The-Lake

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Report:	CDS-20-018	Committee Date:	June 15, 2020
		Due in Council:	June 22, 2020

Report To:	Community & Development Advisory Committee
Subject:	Town Cannabis Regulation By-law

1. RECOMMENDATION

It is respectfully recommended that:

- 1.1 Council receive Report CDS-20-018 concerning a "By-law to Regulate the Cultivation and Production of Cannabis" for information;
- 1.2 Council approve the draft Zoning By-law Amendment, attached as **Appendix C** to this report;
- 1.3 Council repeal By-law No. 4316BB-14 allowing marihuana for medical purposes production facilities in the Light Industrial Zone;
- 1.4 Council direct Staff to prepare and present a By-law amending the Site Plan Control By-law; and,
- 1.5 Council direct Staff to continue the review and preparation of a *Municipal Act* By-law to address nuisances associated with cannabis operations.

2. PURPOSE / PROPOSAL

The purpose of this report is to provide Committee of the Whole and Council with a recommended course of action for regulating cannabis production.

3. BACKGROUND

On August 27, 2018, Council enacted Interim Control By-law No. 5089-18 under subsection 38(1) of the *Planning Act* to restrict the use of all lands within Niagara-on-the-Lake for any cannabis related uses while undertaking a review of the Town's land use planning policies. Since that time, the Cannabis Committee, involving Councillors Cheropita, McCormack and E. Wiens, have completed extensive research into impacts experienced and regulatory approaches adopted by jurisdictions within Ontario and throughout Canada and the United States.

On July 15, 2019 Council approved the following motion:

1. *A Cannabis processing facility shall operate in a zone designated for industrial use only*
2. *Cannabis production facilities must operate in a wholly enclosed building,*

- no outdoor cultivation to be allowed;*
3. *Operate with an approved odour prevention protocol to eliminate the migration of noxious odour from its premises*
 4. *Be limited to the production, processing and packaging of Cannabis on behalf of the holder of the license for the premises on which the facility is located*
 5. *Interior lighting shall not be visible outside the building from sunset to sunrise*
 6. *Enclosed facilities must have a set-back of at least 250 metres from neighbouring property lines, public school, place of worship, day nursery or designated heritage building or district*
 7. *Include a fence setback requirement between the fence and the town blvd for landscaping purposes.*

That Staff be requested to also receive and consider the focus document prepared for the Cannabis committee after same has been reviewed and amended by the Cannabis committee at its next meeting, which shall be undertaken as soon as possible and in any event before month end.

AND FURTHER THAT leave be given to introduce By-law No 5169-19, being a by-law to extend the period of time during which Interim Control By-law 5089-18 will be in effect, by less than one additional year, to July 15, 2020 and that the same be considered read a first, second and third time and passed, any ruling of this Council to the contrary notwithstanding.

By-law 5169-19 was subsequently approved under subsection 38(3) of the *Planning Act* in order to extend the restriction of any cannabis related land use until July 15, 2020.

CDS Staff subsequently prepared report CDS-19-026 that was considered by Committee of the Whole on September 9, 2019 and Council on September 16, 2019. As a result of the report recommendations, Council approved the following motion:

1. *That Council receive the Staff report CDS-19-026 regarding Cannabis.*
2. *That draft by-law no. 500XX-XX considered by the previous Council in 2018 be brought forward with the following amendments:*
 - a) *That section 4.2.1 a) be deleted;*
 - b) *That section 4.2.1 b) that the setback from sensitive land uses be increased from 150 metres to 1500 metres;*
 - c) *Section 4.2.1 c) shall read:*
No lands, building or structure or portion thereof used for Cannabis Cultivation, Production Processing that is not equipped with air treatment control is situated in the Rural (A) Zone.
3. *That a modified Leamington draft by-law attached to Report CDS-19-026 be referred to outside counsel for review and advise Council.*
4. *That the Cannabis Committee be tasked with moving forward and requesting a meeting with the Minister of Agriculture with respect to presentations related to cannabis cultivation in specialty crop lands.*

5. *That staff be directed to remove the permissions for light industrial areas (sections 3 and 4 of previous draft by-law for review) and to advise Council.*

Since that time, the Cannabis Committee has been meeting to discuss the Cannabis By-law moving forward, and considerations to be made pertaining to the preparation of a revised by-law and finalization for implementation by the Town.

During this time, Staff have also been consulting with legal counsel to better understand the Federal and Provincial policy framework currently regulating the cannabis industry.

4. DISCUSSION / ANALYSIS

4.1 Policy and Legislative Framework

4.1.1 *Cannabis Act* and Regulations

The *Cannabis Act* establishes rules and standards pertaining to the production of legal cannabis products. Cannabis products permitted in Canada include fresh cannabis, dried cannabis, cannabis oil, cannabis plants, cannabis plant seeds, and cannabis topicals. The primary regulations under the *Cannabis Act*, specifically regarding land use and development, include the issuing of cultivation and production licenses to producers, physical security measures required for cannabis production facilities, packaging standards, and good production practices. Licensed producers are also required to comply with municipal zoning by-laws.

4.1.1.1 Cannabis Licensing

Pursuant to the *Cannabis Act*, Health Canada is the licensing authority for cannabis producers. A license is required by producers in order to cultivate (i.e. grow cannabis), produce (i.e. process cannabis), package, and sell cannabis products, as well as to conduct analytical testing and research. Applicants are required to provide Health Canada with proof of having provided written notice to their local municipality, fire authority, and police force of their intention to become a licensed producer prior to being licensed. As of May 2019, Health Canada also requires applicants to have a fully built and functioning site before submitting their licensing application. Producers are required to then notify their local municipality once a license has been issued.

Currently, Health Canada only issues licenses which allow producers to sell cannabis for medical purposes to registered clients. In order to be eligible to open a retail store and sell cannabis for recreational purposes, individuals must obtain a Retail Operator License through the Alcohol and Gaming Commission of Ontario. At its December 17, 2018 meeting, Council chose to prohibit said stores. As such, producers will not be permitted to sell cannabis for recreational

purposes within the Town; regardless of their licensing. All households are permitted to grow up to a maximum of four (4) plants per dwelling from legally acquired seeds.

There are numerous licenses issued by Health Canada which a producer may apply for; depending on type and scale of production they wish to embark upon. The issuing of each license is accompanied by a number of production standards producers must abide by, depending on the scale of the license issued. Cultivation license classes, from least to most intensive, are nursery, micro-cultivation, and standard cultivation. Processing license classes, from least to most intensive, are micro-processing and standard processing. Those with a micro-processing license are permitted to sell or distribute no more than six hundred (600) kilograms of dried cannabis in a calendar year. Health Canada outlines which combinations of licenses may be issued for a single site. These combinations must reflect the overall scale of operations (ex: those with a standard cultivation license are permitted to apply for a standard processing license). Because nursery licenses only permit the growth of 'starting materials' (i.e. plants and seeds), no production licenses are available to nursery operators. Those with any form of either a production or cultivation license are permitted to apply for a sales license, which allows producers to sell cannabis for medical purposes to registered users on site.

4.1.1.2 Physical Security Requirements for Cannabis Operations

The *Cannabis Regulations* (SOR/2018-144) require producers to take adequate measures in order to reduce the risk of the cannabis they possess to be diverted into an illicit market or activity.

4.1.1.2.1 Physical security requirements for standard cultivation and processing operations (as per sections 63 through 73 of the *Cannabis Regulations*)

Producers with standard licenses are required to design their site in order to prevent unauthorized access. This includes constructing a defined perimeter which contains all operational and storage areas. The perimeter may take the form of the exterior walls of the facility, a fence, or other means. The perimeter must be monitored by a visual monitoring system which can detect individuals and/or tampering. In instances where a perimeter wall is shared with an adjacent business, and cameras are not permitted to monitor the exterior surface of the perimeter wall, they must alternatively monitor the interior surface of said wall. Examples of visual monitoring devices

include fence intrusion detection sensors, door or gate contacts, passive infrared motion detectors, and seismic sensors. These systems must be monitored at all times, and may be done so through the hiring of a third-party security alarm monitoring company or on-site security. Plans should be established in the event of intrusion, and such events should be recorded.

Access to operations areas in standard facilities must be restricted only to those whose work is conducted in said areas. Producers are required to maintain a record of all individuals who enter and exit a storage area. Each operations and storage area must be entirely indoors, and must be visually monitored and secured. Outdoor growth areas are required to be surrounded by a physical barrier, such as a chain-link fence. The entry and exit points of outdoor growth areas are the only portions of the area which must be visually monitored. The outdoor growth area is not required to be monitored by the intrusion detection system.

All visual recordings of the facility must be retained by the producer for one (1) year after the day on which they were recorded. All records of detected occurrences and storage area access logs must be retained by the producer for two (2) years after the day on which they were recorded.

4.1.1.2.2 Physical security requirements for micro-cultivation, processing, and nurseries (as per subsections 74(b) through (d) of the *Cannabis Regulations*)

Like standard facilities, micro facilities and nurseries must be designed in a manner which prevents unauthorized access to the site. All areas are similarly required to be within a defined perimeter. A physical barrier, such as a continuous fence, must surround the entire site as a perimeter. All storage areas must have restricted access and be surrounded by a physical barrier.

4.1.1.3 Good Cannabis Production Practices

The *Cannabis Regulations* (SOR/2018-144) require producers to meet the standards of good production practices outlined within the regulations. These include standard operating procedures, restrictions on pest control treatment, storage and distribution requirements,

design and maintenance standards for operation facilities and equipment, and quality assurance and testing requirements to ensure the composition of cannabis seeds and products.

4.1.1.3.1 The regulations under the Cannabis Act permit the outdoor cultivation, propagation and harvesting of cannabis and subsection 84(2) of the Cannabis Regulations, SOR/2018-144 explicitly states that these activities may occur outdoors:

Building or part of building

84 (1) Cannabis must be produced, packaged, labelled, stored, sampled and tested in a building or part of a building that is designed, constructed and maintained in a manner that permits those activities to be conducted appropriately and under sanitary conditions, and in particular that

- (a) permits the building or part of the building to be kept clean and orderly;*
- (b) permits the effective cleaning of all surfaces in the building or part of the building;*
- (c) prevents the contamination of cannabis; and*
- (d) prevents the addition of an extraneous substance to the cannabis.*

Non-application

(2) Despite subsection (1), cannabis may be obtained by cultivating, propagating or harvesting it outdoors,

4.1.1.3.2 One key requirement is the installation of air filtration devices throughout facilities to prevent the escape of odours caused by cultivation and production. These standards are universally applied across all cannabis production facilities, and producers' compliance is monitored by Health Canada.

System — filtration and ventilation

85 (1) 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

- (a) filters air to prevent the escape of odours associated with cannabis plant material to the outdoors;*
- (b) provides natural or mechanical ventilation with sufficient air exchange to provide*

- clean air and to remove unclean air in order to prevent the contamination of the cannabis or thing that will be used as an ingredient;*
- (c) *is accessible and, if necessary for its cleaning, maintenance or inspection, is capable of being disassembled;*
 - (d) *is capable of withstanding repeated cleaning; and*
 - (e) *functions in accordance with its intended use.*

Exception — cultivation, propagation or harvesting of cannabis

(2) Paragraph (1)(b) does not apply in respect of any building or part of a building where the only activities being conducted in respect of cannabis are its cultivation, propagation or harvesting.

Exception — cultivation, propagation or harvesting of anything used as an ingredient

(3) Paragraphs (1)(b) to (e) do not apply in respect of any building or part of a building where the only activities being conducted in respect of anything that will be used as an ingredient are its cultivation, propagation or harvesting.

Because the *Cannabis Act* is federal legislation, the Town has no role in ensuring compliance with security and practice standards outlined in the *Cannabis Regulations*.

4.1.2 *Municipal Act*

The *Municipal Act* is the primary legislation which governs the administration and authority of Ontario municipalities. Sections 8, 9, and 11 of the *Municipal Act* provides that a local municipality may pass by-laws respecting the economic, social, health, safety, and well-being of persons, as well as the protection of persons and property. Section 128(1) 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. Moreover, section 129 provides that a local municipality may prohibit and regulate with respect to noise, vibration, odour, dust, and outdoor illumination, including indoor lighting that can be seen outdoors. Further, section 436 provides that a municipality has the power to pass by-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection.

4.1.3 *Planning Act*

Section 34 of the *Planning Act* provides for the enactment of Zoning By-laws to restrict the use of land and/or prohibit the construction, locating, or use of buildings for such purposes as defined in the Zoning By-law. Subsection 41(3) of the *Planning Act* provides that a local municipality may designate a site plan control area by reference to one or more land use designations contained in a by-law passed pursuant to section 34.

4.1.4 Provincial Policy Statement 2020

Subsection 1.1.1(c) of the PPS advises that healthy, liveable, and safe communities are sustained by avoiding development and land use patterns which may cause environmental or public health and safety concerns. Section 2.3.3 states that only agricultural uses, agriculture-related uses, and on-farm diversified uses are permitted in prime agricultural areas. Moreover,

...proposed agriculture-related uses and on-farm diversified uses shall be compatible with, and shall not hinder, surrounding agricultural operations.

The PPS permits all types, sizes, and intensities of agricultural uses and normal farm practices.

4.1.5 Growth Plan 2019

The Town is designated 'Greenbelt Area' in the Growth Plan for the Greater Golden Horseshoe. Under subsection 1.2.1, a guiding principle of the Growth Plan is to:

...provide flexibility to capitalize on new economic and employment opportunities as they emerge, while providing certainty for traditional industries, including resource-based sectors.

In addition, the Growth Plan aims to:

...support and enhance the long-term viability and productivity of agriculture by protecting prime agricultural areas and the agri-food network."

4.1.6 Greenbelt Plan 2017

The Town is designated as 'Protected Countryside' and 'Specialty Crop Area' within the Greenbelt Plan. Non-agricultural uses are generally not permitted within the Specialty Crop Area. Like the PPS, the Greenbelt Plan further specifies that:

...all types, sizes, and intensities of agricultural uses and normal farm practices shall be promoted and protected, and a full range of agricultural uses.

agricultural-related uses, and on-farm diversified uses are permitted based on the provincial Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas. Proposed agricultural-related uses and on-farm diversified uses shall be compatible with and shall not hinder surrounding agricultural operations.

And, that:

...the geographic continuity of the agricultural land base and the functional and economic connections to the agri-food network shall be maintained and enhanced.

4.1.7 Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas

The Guidelines define an "Agricultural Use" as the growing of crops, whereas "Agriculture-Related Uses" include farm-related commercial and industrial uses which process farm commodities. Crops are further described as a harvestable product, such as fruit, vegetables, mushrooms, field crops including cereal crops, corn, soybeans and forage crops, biomass, nursery crops, trees for harvest/agro-forestry, medicinal herbs, sod/turf grass, and seeds.

4.1.8 Regional Official Plan

In respect to employment lands, the Regional Official Plan (ROP) broadly supports local municipal planning and economic development efforts that attract investment in economic clusters. The ROP policies promote *...planned, orderly, efficient development of employment lands that balances development with natural heritage employment.*

The rural areas of the Town are designated as 'Unique Agricultural Area' within the ROP, whereas the five (5) settlement areas are designated 'Urban Area'. Objective 2.5 of the ROP is to improve regional self-reliance through long-range economic development planning and economic diversification. Objective 5.A.1 of the ROP is to preserve Niagara's agricultural lands, with the unique agricultural lands suitable for tender fruits and grapes having the highest priority. Objective 5.A.8 is to encourage a wide range of farm diversification uses in appropriate locations and at a scale suitable to the farm and the agricultural area where they contribute to profitable and economically sustainable agriculture.

4.1.9 Niagara-on-the-Lake Official Plan

Section 7.2 of the Town's Official Plan outlines goals and objectives for Agriculture in Niagara-on-the-Lake. These includes allowing flexibility to farm operations in both type and size, as well as ensuring that existing small scale industries and commercial uses supportive of agricultural operations are allowed to expand where appropriate, while requiring new development or redevelopment not primarily related to agricultural to locate to appropriately designated areas (i.e. Light Industrial, General Commercial, etc.). A further objective is to ensure

that agricultural areas are protected from harassment and conflict from non-farm residents and non-farm related uses in the Agricultural designation. The main use permitted in areas designated Agricultural are all types of farm and their related buildings, including greenhouses. Accessory buildings and structures are permitted as secondary uses.

Within designated Industrial areas, Section 11.2 speaks to the goal of encouraging industrial development to locate within serviced industrially designated lands, as well as minimizing conflicts between industrial uses and adjacent rural, rural residential, and natural amenity areas through adequate regulation and separation. Main uses permitted in the General Industrial designation include the assembly and processing of raw materials. Accessory buildings and structures are also permitted as secondary uses within this designation.

4.1.10 Proposed Niagara-on-the-Lake Official Plan

In addressing uses in the rural area, Policy 3.2.3.1 of the proposed Official Plan, adopted by Council on October 22, 2019, states:

The following uses may be permitted in the Protected Countryside in accordance with the applicable provisions of this Plan:

- (a) *Agricultural uses except those that require licensing by the Federal Government;*

Section 4.13 of the proposed Official Plan provides policies for Employment Areas that encourage a full range of business and manufacturing uses as well as warehousing, servicing and maintenance operations, communications and transportation facilities, research and development facilities, public utilities, offices, and accessory retail or service commercial within Settlement Areas.

Note: As explained under Section 4.2.3 (below) provisions proposed by lower levels of government may not frustrate the legislative purpose of the more senior levels of government. It is anticipated that Policy 3.2.3.1 (above) will be revisited during the Region's approval of the adopted Official Plan.

4.1.11 Niagara on the Lake Zoning By-law

4.1.11.1 Zoning By-law 4316-09

Currently, Marihuana for Medical Purposes Production Facilities are only permitted in the Light Industrial (LI) Zone in the Glendale Community Zoning District. Subsection 11.12.3 on the Zoning By-law provides that, when an interior side yard or rear yard of a Marihuana for Medical Purposes Production Facility is adjacent to the property of a sensitive land use, strip of land adjacent to the adjoining property line being a minimum of three (3) metres in width shall be used as a buffer strip.

4.1.11.2 Zoning By-law 500A-74

Section 4.1 of Zoning By-law 500A-74 states that uses permitted in the Rural (A), Agricultural Only (AO), and Agricultural Purposes Only (APO) Zone include a farm (and accessory buildings), a nursery or commercial greenhouse, or any use or enterprise customarily carried on in the field of general agriculture. A nursery or commercial greenhouse or any use or enterprise customarily carried on in the field of general agriculture are also permitted in the Rural Residential (RR) Zone.

4.2 Consultation

4.2.1 Public Comments

An Open House was held on June 28, 2019. A Public Meeting, a statutory requirement under the *Planning Act*, was held on October 21, 2019.

Those in favour summarize cannabis cultivation and processing as an agricultural use, and therefore appropriate in the specialty crop area as well. Additionally, the proposed setback distance should be reduced based upon the strict regulations required to obtain a license from Health Canada that are currently in place.

Those opposed summarize issues with cannabis growth are mainly regarding the odour, light pollution and setback distance. Further, the emissions released into the air can be harmful for other crops, including grapes.

4.2.2 Town Department and Agency Comments

The application was circulated to applicable Town Departments and external agencies. Circulation comments received from the Niagara Escarpment Commission (NEC) indicated that in order for such regulations to be in effect in the area of NEC Development Control, policies should be incorporated into the Official Plan. If the regulations are only contained in the Zoning By-law, they will not be in effect in Development Control Area. The Niagara Parks Commission (NPC) requested the definition of "Sensitive Land Use" include "parks and open space" noting that cannabis production and processing facilities may adversely impact such lands under NPC jurisdiction.

4.2.3 Legal Counsel Comments

The various resolutions of Council, proposed Zoning By-law Amendment and public comments were provided to Aird Berlis for review and opinion. Legal Counsel provided the following introductory comments establishing the legal framework within which a zoning by-law amendment regulating cannabis must be considered.

We are obligated to advise that any zoning by-law amendment that would restrict the development or operation of a CPF [Cannabis Production Facilities] is

vulnerable to challenge before the courts, the Local Planning Appeal Tribunal (“LPAT”) and/ or the Normal Farm Practices Board. There has, to date, been little judicial or tribunal consideration of municipal attempts to regulate CPFs.

It is our opinion that a zoning by-law regulating CPFs could be challenged in respect of the following:

- 1. jurisdictional issues concerning the extent of a municipality's authority to regulate CPFs;*
- 2. matters concerning what constitutes good planning with respect to zoning by-laws governing CPFs; and,*
- 3. whether cannabis production and related operations should be considered normal farm practices and, therefore, not subject to zoning by-laws which would restrict these practices.*

There is no certainty regarding the extent of a municipality’s authority to regulate CPFs.

While different levels of government may legislate in overlapping fields, legislative provisions may not expressly conflict, meaning that provisions proposed by lower levels of government may not frustrate the legislative purpose of the more senior levels of government.

The general purpose of the Cannabis Act is to protect public health and safety. The Cannabis Act cites seven specific purposes of which the following two are relevant to this opinion:

Purpose

- 7. The purpose of this Act is to protect public health and public safety and, in particular, to (c) provide for the licit production of cannabis to reduce illicit activities in relation to cannabis;*

(f) provide access to a quality-controlled supply of cannabis;

While the Cannabis Act does not explicitly prescribe a role for municipalities, guidance provided by Health Canada is clear that local by-laws, including zoning by-laws, apply to CPFs. Accordingly, despite the municipal authority to regulate land use, any zoning by-law that would expressly conflict with or frustrate the purposes of the Cannabis Act would be rendered inoperative.

In terms of questions concerning good planning, while zoning by-law amendments pertaining to CPFs have been appealed to the LPAT, to date, most of these appeals have resulted in a settlement between the municipality and the proponent. As a result, there is limited guidance concerning what may be considered “good planning” as such concept relates to standards that might be implemented through a zoning by-law.

A further area of uncertainty arises with respect to whether a CPF is an “agricultural operation” as defined by the Normal Farming and Food Production Act, 1998. Pursuant to the Farming and Food Production Protection Act, 1998, no municipal by-law applies to restrict a normal farm practice carried on as part of an agricultural operation. A person seeking to develop a CPF on agricultural lands can bring an application to the Normal Farm Practices Board for a determination as to whether the production of cannabis constitutes a “normal farm practice”. If the Normal Farm Practice Board were to find that the production of cannabis in the manner anticipated by the proponent is a normal farm practice, the proponent’s proposal would not be subject to provisions of the ZBA. We are aware of only one pending application to the Normal Farm Practice Board concerning a municipal by-law which allegedly restricts the farm practices to be used in connection with a proposed CPF.

4.3 Staff Comment

4.3.1 Zoning By-law 500A-74 (rural areas), as amended

The Council recommended Zoning By-law Amendment (ZBA), based on the September 16, 2019 motion, proposes to remove the current Marihuana for Medical Purposes Production Facilities provisions and introduce Cannabis Production and Processing as a permitted use in the Rural (A) Zone. To fully regulate the new use, the ZBA proposes four (4) new definitions to be added to Section 2 of the Zoning By-law and the introduction of provisions to guiding the development of Cannabis Production and Processing in Section 4 of the Zoning By-law.

The Council recommended Zoning By-law Amendment (ZBA) is included as **Appendix A** to this report.

Definitions – Section 2 of the Zoning By-law

The ZBA proposes to amend Section 2 to add or revise the following defined terms:

- air treatment control;
- cannabis;
- cannabis production and processing; and
- sensitive land use.

Staff are of the opinion that the definitions of “cannabis” is appropriate and poses no conflict with applicable federal or provincial legislation. In respect to “air treatment control” and “cannabis production and processing” and "sensitive land use", Staff offer the following comments:

i. Air Treatment Control

Concerns have been raised by both the public and Council regarding the definition of “air treatment control”. Members of the public have suggested that the definition should be revised to better reflect the requirements under the *Cannabis Act*. Further, it has been recommended that the Town should impose a more strict regulatory requirement to prevent odour emissions.

The Council proposed ZBA provides the following definition:

AIR TREATMENT CONTROL shall mean the functional use of industrial grade multi-stage carbon filtering system, or similar technology, to reduce and/or treat the emission of pollen, dust and odours expelled from a facility and sized accordingly in comparison to the facility it serves as designed by a qualified person.

As outlined earlier in this report, regulations under the *Cannabis Act* set out the rules and standards that apply to the production, distribution, sale, importation and exportation of cannabis by federal licence holders.

As described in Section 4.1.1.3 of this report, the Cannabis Regulations mandates Good Production Practices, including a requirement that CPFs “be equipped with a system that filters air to prevent the escape of odours associated with cannabis plant material to the outdoors”.

The responsibility to monitor and force compliance with the Good Production Practices rests with Health Canada alone, individual municipalities are not afforded any authority.

As explained previously, the ZBA cannot expressly conflict with nor frustrate the legislative purpose of the *Cannabis Act*. To clarify, Legal Counsel explains that to determine whether a conflict exists, we must consider (1) whether it is impossible to comply simultaneously with the ZBA and the *Cannabis Act*, and (2) whether the ZBA frustrates the purpose of the *Cannabis Act*.

To this end, Legal Counsel has advised that the requirement for the air treatment control to “reduce and/or treat” emissions does not appear to conflict with the subsection 85(1) requirement of the Cannabis Regulation that CPFs must be equipped with a system that filters air to prevent the escape of odours. Further, the proposed definition does not appear to frustrate the purposes of the *Cannabis Act* to protect public health and safety while providing for the legal production of cannabis.

With respect to the citizen concern relating to the requirement that the system be “designed by a qualified person”, Staff agree and recommend that the requirement be amended to require that the system must be designed by a “qualified professional engineer”.

The Staff recommended definition reads:

AIR TREATMENT CONTROL shall mean the functional use of industrial grade multi-stage carbon filtering system, or similar technology, to reduce and/or treat the emission of pollen, dust and odours expelled from a facility and sized accordingly in comparison to the facility it serves as designed by a qualified professional engineer.

ii. Cannabis Production and Processing

The Council proposed ZBA provides the following definition:

CANNABIS PRODUCTION AND PROCESSING means lands, buildings or structures used for producing, processing, testing, destroying, packaging and/or shipping of cannabis authorized by an issued license or registration by the federal Minister of Health, pursuant to the Access to Cannabis for Medical Purposes Regulations, SOR/2016-230, to the Controlled Drugs and Substances Act, SC 1996, c 19, as amended from time to time, or any successors thereto.

The proposed definition is intended to make clear the Town's intent to only permit operations that are licensed and authorized by the Federal Government to grow cannabis. The definition limits accommodation to facilities that fall under Health Canada legislation.

It is recommended that the definition of "Cannabis Production and Processing" be amended to add the storing of cannabis to the complete list of uses permitted by the legislation. In addition, it is recommended that the definition be amended to include the current, in-force legislative scheme, namely the *Cannabis Act* and Cannabis Regulation SOR/2018-144.

In order to address challenges in controlling odour related to outdoor cultivation, it is recommended that "lands" be removed from the definition. In this manner, cannabis production and processing would only be permitted within buildings and structures regulated by federal legislation.

The Staff recommended definition reads:

CANNABIS PRODUCTION AND PROCESSING means buildings or structures used for producing, processing, testing, destroying, packaging and/or shipping of cannabis authorized by an issued license or registration by the federal Minister of Health, pursuant to the Cannabis Regulations, SOR/2018-144, to the Cannabis Act, S.C. 2018, c.16, as amended from time to time, or any successors thereto.

iii. Sensitive Land Use

The Council proposed ZBA provides the following definition:

SENSITIVE LAND USE means any building or associated amenity area (indoor

or outdoor) where humans may be adversely affected by adjacent industrial-type land uses, including but not limited to residential uses, day care centres, churches, schools and playgrounds.

As noted previously, the Niagara Parks Commission has requested that the definition include reference to "parks and open space". Staff are of the opinion that the use of "parks and open space" addresses the "playgrounds" use more appropriately and recommends its incorporation within the definition. To this end, Staff also recommend that the definition be amended to address all amenity areas whether or not they are associated with a building.

The Staff recommended definition reads:

SENSITIVE LAND USE means buildings, amenity areas or outdoor spaces where humans may be adversely affected by adjacent industrial-type land uses, including but not limited to residential uses, day care centres, churches, schools and parks and open spaces.

Provisions – Section 4 of the Zoning By-law

The Council ZBA proposes the introduction of the following provisions to regulate the Cannabis Production and Processing use:

4.2.1 Cannabis Production and Processing

The following provisions shall apply to Cannabis Production and Processing:

- a) No lands, building or structure or portion thereof used for Cannabis Production and Processing purposes that is equipped with air treatment control situated in the Rural (A) Zone may be located closer to any sensitive land use than 1,500 metres.*
- b) No lands, building or structure or portion thereof used for Cannabis Cultivation, Production and Processing purposes that is not equipped with air treatment control be situated in the Rural (A) Zone.*
- c) A building or structure used for security purposes for Cannabis Production and Processing may be located in the required front yard and does not have to comply with the minimum front yard, side yard, and near rear yard setbacks.*
- d) Outdoor storage is prohibited on the property in which the Cannabis Production and Processing is located.*
- e) Cannabis Production and Processing shall only be permitted within the zones as explicitly indicated in this Zoning By-law.*
- f) All development in relation to the establishment of or expansion to a Cannabis Production and Processing shall be subject to Site Plan Control.*

Staff offer the following comments in relation to the proposed provisions intended to regulate the use.

- i. Minimum Separation Distance of 1,500 metres from Sensitive Land Uses

Subsection 4.2.1(a) of the Council ZBA proposes a minimum separation distance of 1,500 metres between CPFs and sensitive land uses.

The most common method of mitigating land use concerns is the establishment of setbacks and site plan control. This approach is evidenced throughout the Province where municipalities have imposed setbacks as low as 70 metres and as high as 300 metres where no air treatment control system is in place.

Legal Counsel has advised that the absence of federal and provincial legislation and regulations governing setbacks from sensitive uses does provide potential for the establishment of setback provisions for CPFs without frustrating or conflicting with upper levels. Of course, the setback cannot be so large as to prohibit the use and the Town must have a reasonable justification for its imposition.

To demonstrate the impact of setbacks, Staff have prepared a series of maps approximating lands available for development if setbacks of 150, 300 and 500 metres were imposed. The illustrations are included as **Appendix B** to this report.

As illustrated, the 500 metre setback virtually eliminates the possibility of a CPF from being accommodated in Niagara-on-the-Lake; consequently, the requirement for a 1,500 metre setback would clearly frustrate the purposes of the *Cannabis Act* and be vulnerable to being declared invalid.

Recognizing that cannabis is legal and that the primary objective of the Official Plan is to accommodate all types of agriculture, the approach in establishing an appropriate setback is to ensure that CPFs are treated in a manner similar to other intensive uses such as livestock operations.

Staff have considered other established methods of determining appropriate setbacks between intensive operations and sensitive lands uses, namely Minimum Distance Separation (MDS) and Ministry of Environment, Conservation and Parks (MECP) Environmental Land Use Planning Guides.

MDS is a land use planning tool that is used to determine setback distances between livestock barns, manure storage areas or anaerobic digesters and surrounding land uses. The objective of MDS is to minimize land use conflicts and nuisance complaints related to odour. MDS does not account for other nuisances such as noise or dust. While it is acknowledged that the odour generated by cannabis and swine has not been scientifically equated, Staff have completed a calculation to provide a reference point. To this end, the MDS requirement for a 2,000 swine (feeders) operation is 231 metres measured to the nearest dwelling.

While the MECP does not provide specific guidance on separation distances for cannabis or agricultural uses in general, the following guides are helpful in addressing setbacks:

- D-1 Land Use and Compatibility Guide assists land use planning authorities on how to decide whether new development or land uses are appropriate to protect people and the environment.
- D-6 Compatibility between Industrial Facilities assists land use planning authorities on how to decide what types of land uses are appropriate near industrial areas.

In respect to significant odour emitters, the MECP Guides support the provision of a 300 metre setback.

Understanding that the municipality can not prohibit the legal use, Staff are of the opinion that a setback of 300 metres from sensitive uses affords opportunity to accommodate CPFs and mitigate their impacts on adjacent uses.

Accepting that the industry is evolving, there is a need to monitor its longer term potential for land use impacts/conflict. Staff are of the view a restrictive approach is most prudent.

A copy of the draft Zoning By-law reflecting the Staff recommendations is included as **Appendix C** to this report.

ii. Building of Structure for Security Purposes

Subsection 4.2.1(c) of the Council ZBA proposes to allow a security building or structure within required front, side and rear yards without providing minimum setbacks.

Staff recommend that the provision be amended to identify that the actual location will be approved through Site Plan Control.

iii. Site Plan

Subsection 4.2.1(f) of the Council ZBA proposes all development in relation to the establishment of or expansion to a Cannabis Production and Processing shall be subject to Site Plan Control.

Site Plan Control By-law 3622-02, as amended by By-law 3622C-14, currently includes the following provision:

- 7(a) (i) That site plan control approval be required for any greenhouse operation that is 10,000 square feet or greater;*
- (ii) That all site plans and site plan control agreements for Marihuana for Medical Purposes Production Facilities be forwarded to Council for approval.*

Staff recommend that subsection 7(a)(ii) be amended by replacing “Marihuana for

Medical Purposes Production Facilities” with “any Cannabis Production and Processing use”.

The Town will continue to utilize its authority to regulate the siting of all development, including but not limited to: building location and orientation; ventilation systems location and positioning; parking and loading location and function; photometric plans; grading/drainage; access and egress; and, buffering requirements. On balance, the site plan approval process will assist in addressing odour, noise and lighting emissions to mitigate impacts of development on sensitive uses.

4.3.2 Zoning By-law 4316-09 (urban areas), as amended

Pursuant to Council’s direction to remove cannabis production and processing uses from the Light Industrial Zone in Glendale, Staff are of the opinion that this action is appropriate given the proximity of sensitive uses and challenges to provide appropriate separate. On this basis, Staff recommend that Council repeal By-law No. 4316BB-14.

4.3.3 Municipal Act By-law

The draft by-law (**Appendix D**) submitted by the Committee is based on a by-law adopted by the Municipality of Leamington to regulate matters related to cannabis under the authority of the *Municipal Act* .

The structure of the *Municipal Act* by-law addresses a number of aspects related to the regulations surrounding the cultivation of cannabis within the Town. The main distinction has been made between regulations for Part 1 (licensed growers) and Part 2 (industrial areas). Further, the proposed By-law addresses means to ensure that issues such as odour and light pollution are managed on site to the specifications set out by Health Canada.

The By-law provides distinct provisions for facilities and producers; including requiring them to:

- Operate in a wholly enclosed building.
- Operate within a zone designated for Industrial Use.
- Obtain a Change of Use Permit for existing buildings.
- Obtain a business license, pursuant to the Town’s Business Licensing By-law. (The Town has yet to pass a Business Licensing By-law, but such a by-law is permitted under section 150 of the *Municipal Act*).
- Obtain a plan for an Odour Abatement Protocol to prevent the migration of any noxious odours, and provide satisfactory proof thereof to the Town in the form of an affidavit by a duly qualified mechanical engineer. The sample by-law states that this plan shall be subject to peer review and approval by the Town.
- Obtain Site Plan Approval and enter into a Site Plan Agreement with the Town.
- Restrict all visible lighting from outside the building from sunset to sunrise, and ensure all lighting shall be fully shielded in a manner that all light emitted directly

by the lamp or diffusing element is projected below the horizontal plane through the lowest light emitting part.

- Maintain setbacks from sensitive land uses.

The Town has recently received legal advice relating to the draft Municipal Act By-law that requires further discussion with members of the Cannabis Committee. In recognition of the fact that the *Municipal Act* by-law establishes a number of setbacks, it is necessary for a determination of the zoning provisions to be made to ensure uniformity. To this end, the *Municipal Act* By-law may be presented to Committee of the Whole and Council following approval of the Zoning By-law Amendment.

5. STRATEGIC PLAN

The Protect Distinctive Community Assets pillar of the Town's Strategic Plan contains an objective to recognize the importance of tourism in Niagara-on-the-Lake. Tactics to actively steward heritage, agricultural, wine and cultural assets for the benefit of residents and tourists, include protection of our agricultural, heritage and cultural assets through policy and by-law enforcement.

6. OPTIONS

Not applicable.

7. FINANCIAL IMPLICATIONS

Legal costs continue to be incurred in the Town's defence of the appeal of the related Interim Control By-law extension. If Council's approval of a Zoning By-law Amendment is appealed, costs will also be incurred in defence at the Local Planning Appeal Tribunal.

8. COMMUNICATIONS

Should Council decide to approve a Zoning By-law Amendment, persons who have requested notice of decision will be notified by first class pre-paid mail as required. In addition, the public will be advised through the Town's website and through social media.

9. CONCLUSION

Staff are of the opinion that the proposed Zoning By-law Amendment is appropriate for addressing Council's concerns regarding cannabis within the Town. The Zoning By-law meets *Planning Act* requirements and is consistent with the Provincial Policy Statement and conforms with the Greenbelt Plan, the Regional Official Plan and the Town's in-force Official Plan.

Community and Development Services Staff recommend approval of the proposed Cannabis Zoning By-law.

Respectfully Submitted,



**Craig Larmour, MCIP, RPP
Director, Community &
Development Services**



**Sheldon Randall
Interim Chief Administrative Officer**

ATTACHMENTS



Appendix A - Council Recommended ZBA.pdf Appendix B - Mapping Buffers.pdf



Appendix C - Staff Recommended ZBA.doc Appendix D - Council Recommended Municipal Act By-law..docx



WEB ATTACHMENTS

ATTACHMENTS FOR LINK

First Capital of Upper Canada - 1792

**THE CORPORATION
OF THE
TOWN OF NIAGARA-ON-THE-LAKE
BY-LAW NO. 500XX – 19
Cannabis Production and Processing**

A BY-LAW PURSUANT TO SECTION 34 OF THE ONTARIO PLANNING ACT TO AMEND BY-LAW 500A-74, AS AMENDED, ENTITLED A BY-LAW TO REGULATE THE USE OF LAND AND THE CHARACTER, LOCATION AND USE OF BUILDINGS AND STRUCTURES THEREON.

WHEREAS the Town of Niagara-on-the-Lake Council is empowered to enact this By-law by virtue of the provisions of Section 34 of the Planning Act, R.S.O. 1990, c.P.13, as amended;

AND WHEREAS this By-law conforms to the Town of Niagara-on-the-Lake Official Plan.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE ENACTS AS FOLLOWS:

1. That By-Law 500WO-14 is hereby repealed.
2. That Section 2 (Definitions) is hereby amended by adding the following definitions:

2.2AAA AIR TREATMENT CONTROL shall mean the functional use of industrial grade multi-stage carbon filtration system, or similar technology, to reduce and/or treat the emission of pollen, dust and odours expelled from a facility and sized accordingly in comparison to the facility it serves as designed by a qualified person.

2.13AA CANNABIS shall mean a genus of flowering plants in the family *Cannabaceae*. Synonyms include but are not limited to marijuana, and marihuana. This definition does not include the industrial or agricultural production of hemp.

2.13AAA CANNABIS PRODUCTION AND PROCESSING means lands, *buildings* or *structures* used for producing, processing, testing, destroying, packaging and/or shipping of *cannabis* authorized by an issued license or registration by the federal Minister of Health, pursuant to the Access to Cannabis for Medical Purposes Regulations, SOR/2016-230, to the *Controlled Drugs and Substances Act, SC 1996, c 19*, as amended from time to time, or any successors thereto.

2.68D SENSITIVE LAND USE means any building or associated amenity area (indoor or outdoor) where humans may be adversely affected by adjacent

industrial-type land uses, including but not limited to residential uses, day care centres, churches, schools and playgrounds.

3. That Section 4.1(a) (Uses Permitted – Rural (A) Zone) is hereby amended by adding the use “Cannabis Production and Processing”.
4. That Section 4 (Rural (A) Zone) is hereby amended by adding Section 4.2.1 which reads as follows:

4.2.1 *Cannabis Production and Processing*

The following provisions shall apply to *Cannabis Production and Processing*:

- a) No lands, *building* or *structure* or portion thereof used for *Cannabis Production and Processing* purposes that is equipped with *air treatment control* situated in the Rural (A) Zone may be located closer to any *sensitive land use* than 1,500 metres.
 - b) No lands, *building* or *structure* or portion thereof used for *Cannabis Cultivation, Production and Processing* purposes that is not equipped with *air treatment control* be situated in the Rural (A) Zone.
 - c) A *building* or *structure* used for security purposes for *Cannabis Production and Processing* may be located in the required front yard and does not have to comply with the required minimum front yard, side yard, and rear yard setbacks.
 - d) *Outdoor storage* is prohibited on the property in which the *Cannabis Production and Processing* is located.
 - e) *Cannabis Production and Processing* shall only be permitted within the zones as explicitly indicated in this Zoning By-law.
 - f) All development in relation to the establishment of or expansion to a *Cannabis Production and Processing* shall be subject to Site Plan Control.
5. If no notice of objection is filed with the Clerk within the time provided, this By-Law shall come into force and take effect on the date of passing by The Council of the Corporation of the Town of Niagara-on-the-Lake in accordance with Section 34 of the Planning Act, R. S. O. 1990.

If a notice of objection is filed with the Clerk, this By-Law shall become effective on the date of passing hereof, subject to receiving the approval of the Ontario Municipal Board.

READ A FIRST, SECOND AND THIRD TIME THIS _____ DAY OF
_____, 2019.

LORD MAYOR BETTY DISERO

TOWN CLERK PETER TODD

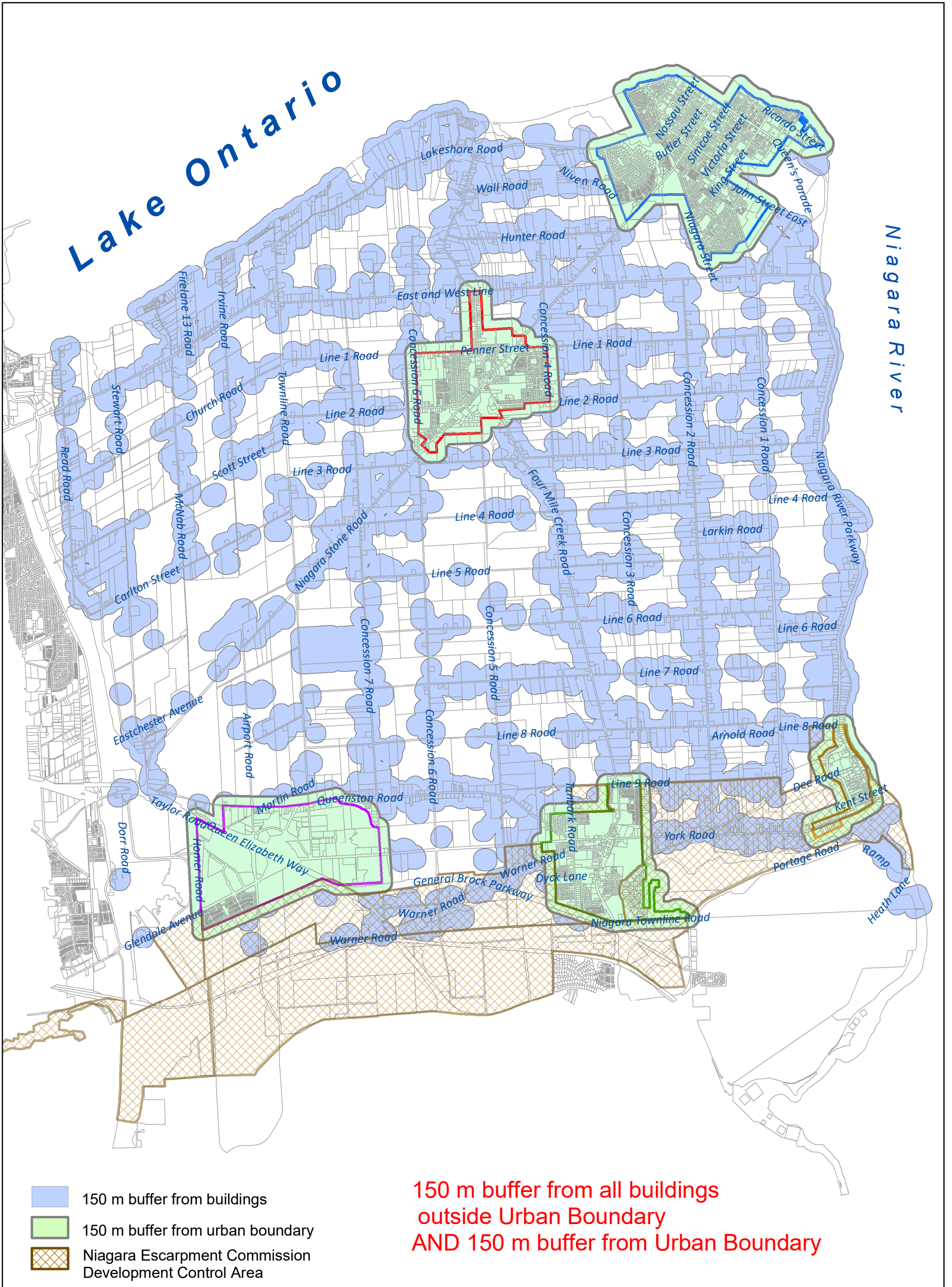
DRAFT

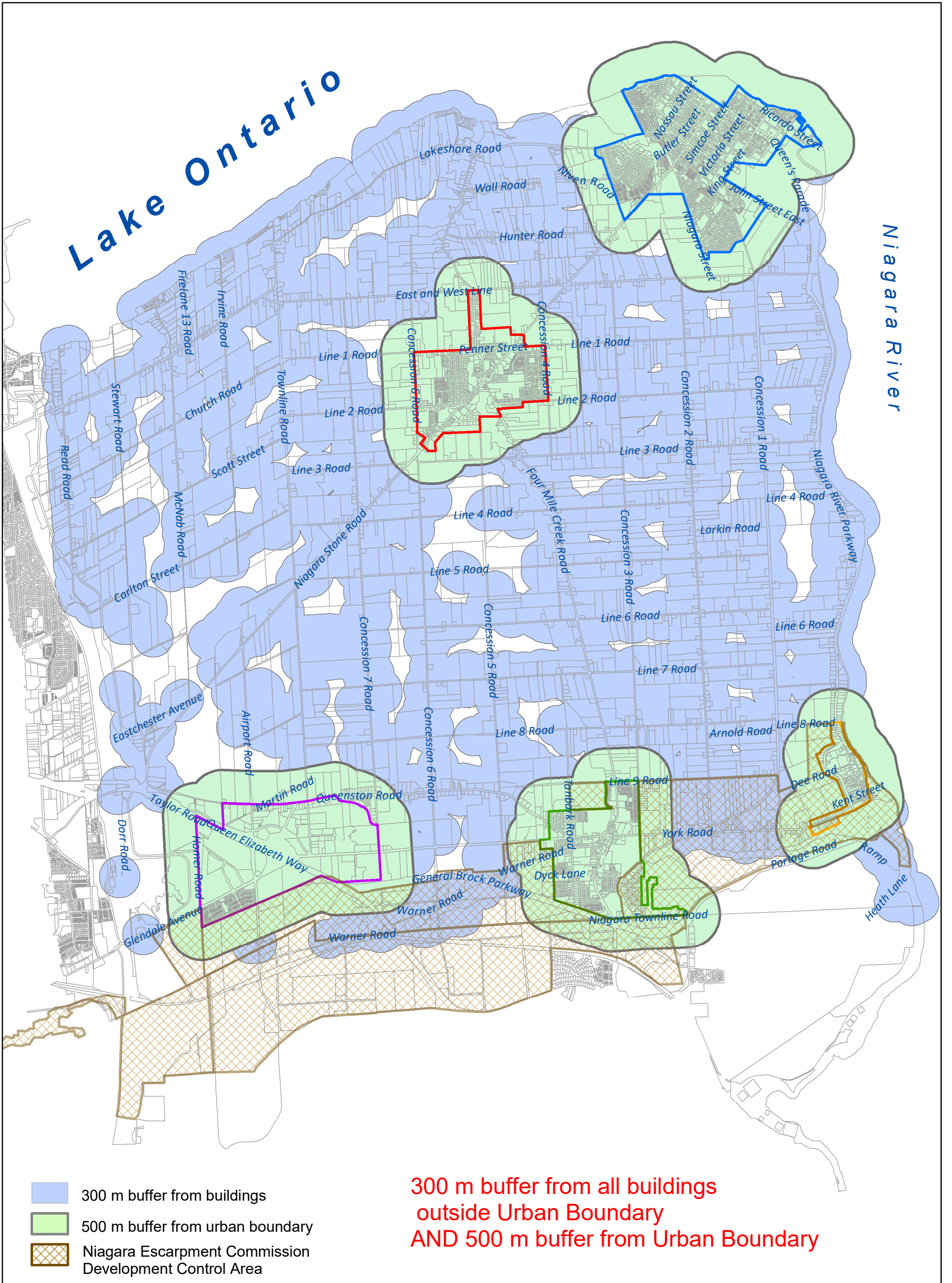
Explanation of the Purpose of
By-law 500XX-19
Cannabis Production and Processing

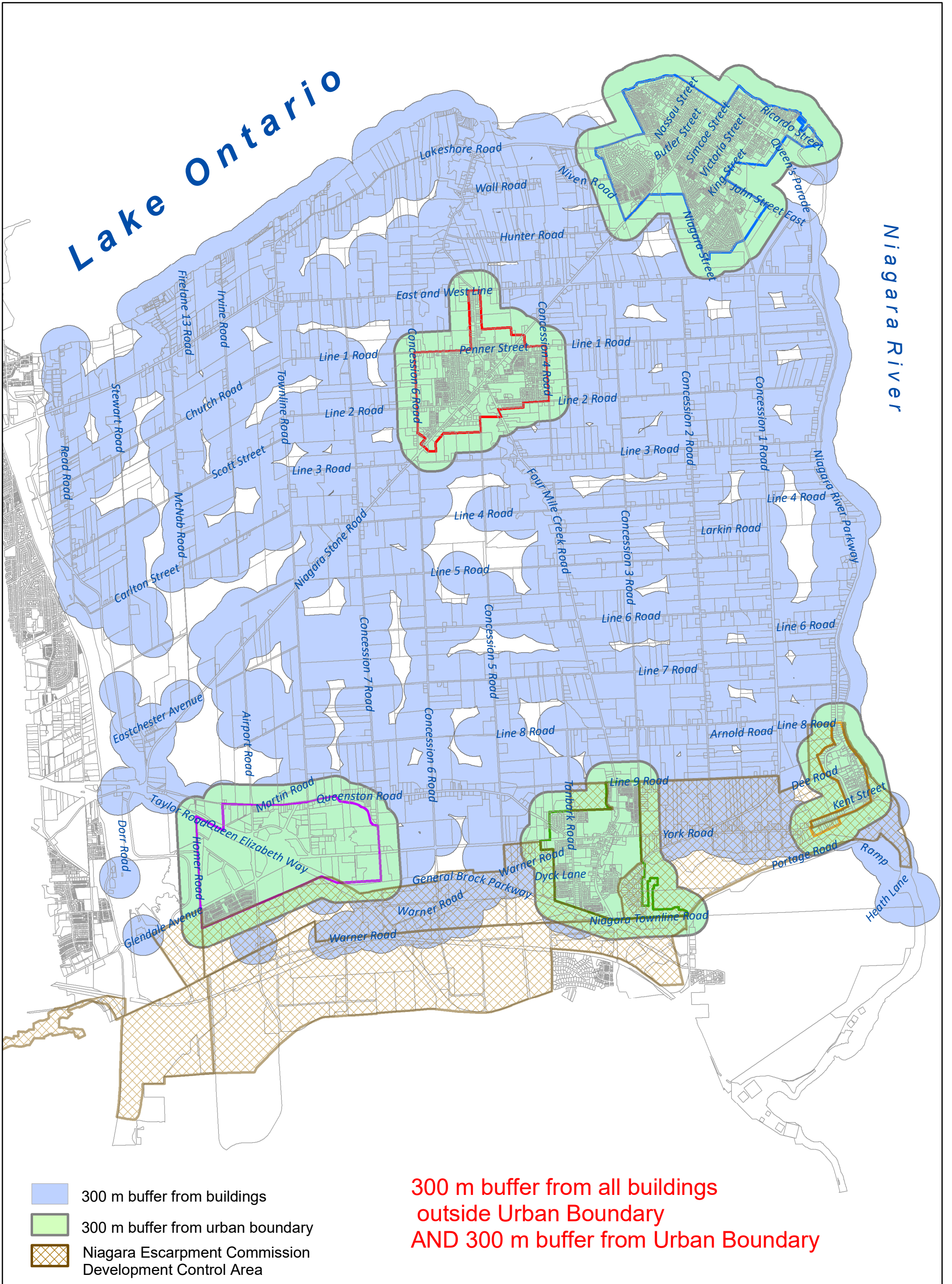
Purpose

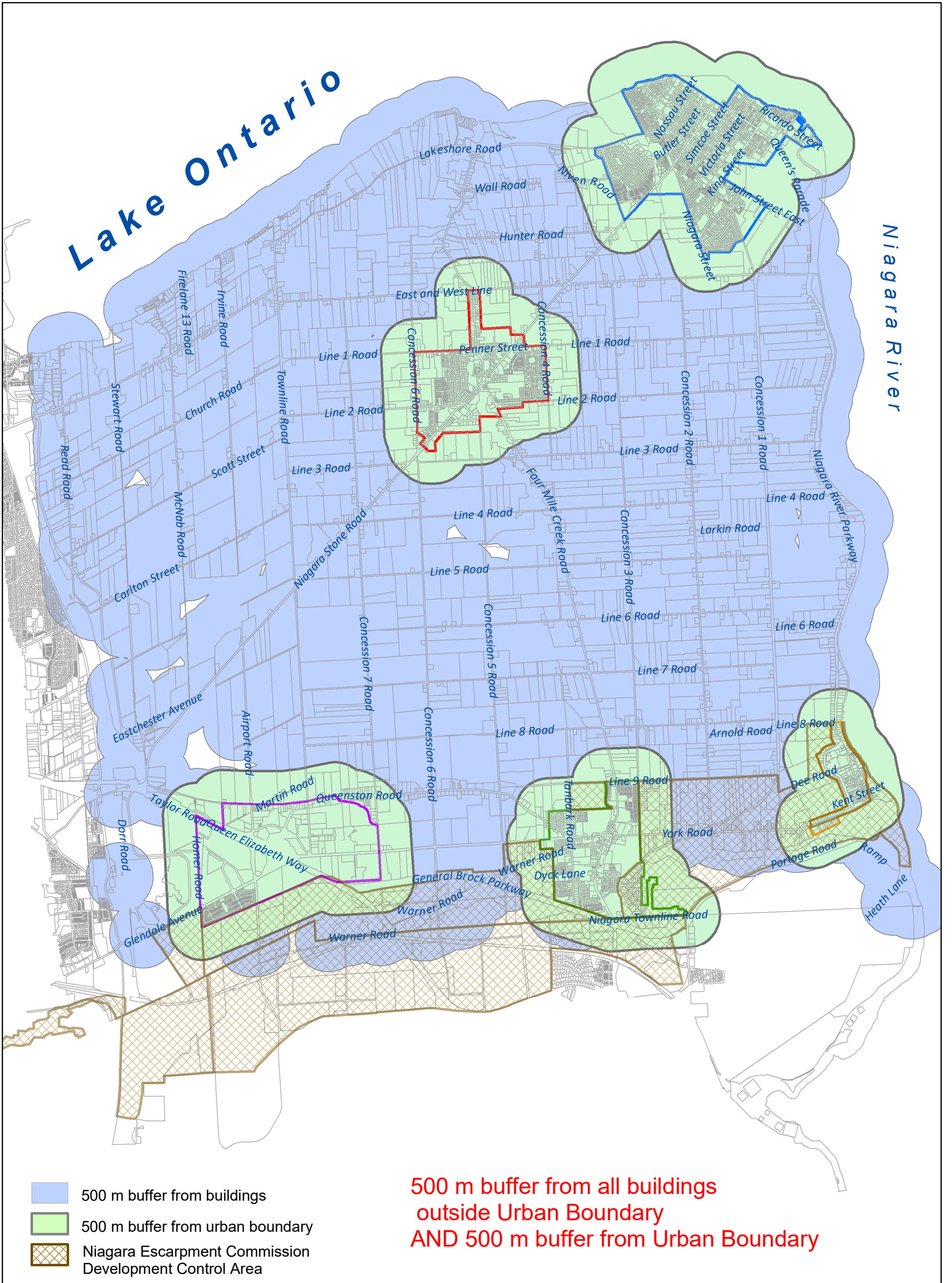
The proposed By-law would affect all rural lands located throughout the Town of Niagara-on-the-Lake, with the purpose of introducing increased setback requirements between cannabis cultivation, production and processing facilities and sensitive land uses. The proposed By-law is also intended to provide for clearer interpretation of provisions in regards to cannabis cultivation, production and processing.

DRAFT









Explanation of the Purpose and Effect of
By-law 500XX-20

Purpose

The purpose of this By-law is to regulate cannabis production and processing within the rural lands throughout the Town of Niagara-on-the-Lake. The By-law introduces increased setback requirements between cannabis production and processing facilities and sensitive land uses and provides more clear provisions in regard to cannabis.

<i>Applicant:</i>	Town of Niagara-on-the-Lake
<i>File Number:</i>	4316XX-20
<i>Report Number:</i>	CDS-20-xxx
<i>Assessment Roll Number:</i>	

**THE CORPORATION
OF THE
TOWN OF NIAGARA-ON-THE-LAKE
BY-LAW NO. 500XX - 20**

Cannabis Production and Processing

A BY-LAW PURSUANT TO SECTION 34 OF THE ONTARIO PLANNING ACT TO AMEND BY-LAW 500A-74, AS AMENDED, ENTITLED A BY-LAW TO REGULATE THE USE OF LAND AND THE CHARACTER, LOCATION AND USE OF BUILDINGS AND STRUCTURES THEREON.

WHEREAS the Town of Niagara-on-the-Lake Council is empowered to enact this By-law by virtue of the provisions of Section 34 of the *Planning Act*, R.S.O. 1990, c.P.13, as amended;

AND WHEREAS this By-law conforms to the Town of Niagara-on-the-Lake Official Plan.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE enacts as follows:

1. That By-law 500WO-14 is hereby repealed.
2. That Section 2 (Definitions) is hereby amended by adding the following definitions:

2.2AAA Air Treatment Control: shall mean the functional use of industrial grade multi-stage carbon filtration system, or similar technology, to reduce and/or treat the emission of pollen, dust and odours expelled from a facility and sized accordingly in comparison to the facility it serves as designed by a qualified professional engineer.

2.13AA Cannabis: shall mean a genus of flowering plants in the family *Cannabaceae*. Synonyms include but are not limited to marijuana, and marihuana. This definition does not include the industrial or agricultural production of hemp.

2.13AAA Cannabis Production and Processing: means buildings or structures used for producing, processing, storing, testing, destroying, packaging and/or shipping of cannabis authorized by an issued license or registration by the federal Minister of Health, pursuant to the Cannabis Regulations, SOR/2018-

144, to the *Cannabis Act*, S.C. 2018, c.16, as amended from time to time, or any successors thereto.

2.68D Sensitive Land Use: means buildings, amenity areas or outdoor spaces where humans may be adversely affected by adjacent industrial-type land uses, including but not limited to residential uses, day care centres, churches, schools, and parks and open space.

3. That Section 4.1(a) (Uses Permitted – Rural (A) Zone) is hereby amended by adding the following permitted Rural Use:

- Cannabis Production and Processing

4. That Section 4.2 Zone Requirements (Rural (A) Zone) is hereby amended by adding Section 4.2.1 which reads as follows:

4.2.1 Cannabis Production and Processing

In addition to the zone requirements of Section 4.2, the following provisions shall apply to Cannabis Production and Processing:

- a) No lands, building or structure or portion thereof used for Cannabis Production and Processing purposes that is equipped with air treatment control situated in the Rural (A) Zone may be located closer to any sensitive land use than 300 metres.
- b) No lands, building or structure or portion thereof used for Cannabis Cultivation, Production and Processing purposes that is not equipped with air treatment control may be situated in the Rural (A) Zone.
- c) A building or structure used for security purposes for Cannabis Production and Processing may be located in the required front yard with the minimum front yard and minimum side yard requirements established through Site Plan Control.
- d) Outdoor storage is prohibited on the property in which the Cannabis Production and Processing is located.
- e) Cannabis Production and Processing shall only be permitted within the zones as explicitly indicated in the Zoning By-law.
- f) All development in relation to the establishment of or expansion to Cannabis Production and Processing shall be subject to Site Plan Control.

5. If no notice of objection is filed with the Clerk within the time provided, this By-law shall come into force and take effect on the date of passing by the Council of the Corporation of the Town of Niagara-on-the-Lake in accordance with Section 34 of the Planning Act, R.S.O. 1990.

If a notice of objection is filed with the Clerk, this By-law shall become effective on the date of passing hereof, subject to receiving the approval of the Local Planning Appeal Tribunal.

READ A FIRST, SECOND AND THIRD TIME THIS 22nd DAY OF JUNE, 2020.

LORD MAYOR BETTY DISERO

TOWN CLERK PETER TODD

DRAFT

<i>Applicant:</i>	name
<i>File Number:</i>	500XX-18
<i>Report Number:</i>	CDS-1x-xxx
<i>Assessment Roll Number:</i>	2627x0000

The Town Of Niagara-on-the-Lake

By-law XXXXX

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

Whereas , Section 8.9 and 11 and in particular 11.2(5)(6)(8) and subsection 11.3(7) of the Municipal Act, 2001, R.S.O. 2001, c. 25 (herein the "Act") provides that a local municipality may pass bylaws respecting the economic, social, health safety and well being of persons and the protection of persons and property .

And Whereas Section 128(1) of 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 Section 129 of the Act provides that a local municipality may prohibit and regulate with respect to noise, vibration, odour, dust and outdoor illumination, including indoor lighting that can be seen outdoors.

And Whereas the Town of Niagara-on-The-Lake is located in the only specialty crop area designated for the production of tender fruit and grapes in Ontario pursuant to the Greenbelt Plan and represents a long established business predating the arrival of Cannabis production in the area.

And Whereas the legislation and regulations permitting the production, sale and consumption of Cannabis do not regulate certain matters of public interest in relation to health, safety, the well being of persons property and existing businesses .

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 result in a disturbance which both in degree and intensity may be intolerable and as such negatively impact (i) the health , safety and well being of persons, (ii) the property of persons (iii) the economic viability of existing businesses and generally (iv) become or cause public nuisances.

Now Therefore by its Council The Town of Niagara on The Lake Hereby Enacts as Follows:

Interpretation

1. In this By-Law:

- (a) "Cannabis" shall have the same meaning as cannabis is defined in the Cannabis Act S.C. 2018 c. 16 .

- (b) "Cannabis Facility" means a premises used for growing, producing, testing, destroying, storing ,packaging , distributing or otherwise made ready for sale and/or shipping of Cannabis, or Cannabis Products , in accordance with the provisions of a license 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 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 pursuant to the exemption provisions of Section 12 of the Cannabis Act S.C. 2018, c.16 .
- (c) "Cannabis Products" means any product for which Cannabis is one of the principal ingredients, including but not limited to extracts from Cannabis such as oils and tinctures.
- (d) "Council" means the Council of the Town of Niagara on the Lake
- (e) " Industrial Use" means those Zones of the Town designated Enterprise or Light Industrial
- (f) "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;
- (g) "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;
- (h) "Noxious Odour" means an odour from emanating from a Cannabis Facility that is either (i) repetitive without regard to frequency , (ii)persistent or (iii) continuous and is likely to interfere with the ordinary enjoyment or the economic viability of other property in the vicinity of the Cannabis Facility;
- (i) "Odour Abatement Protocol" means the combination of methods, practices, equipment and technologies designed for the purpose of preventing the emission and emanation of Noxious Odours from the Premises to any other property including by way of example and not limitation the use of a carbon filtration system ;
- (j) "Part I Cannabis Facility" means a Cannabis Facility for which the Town has received notice as a term of the application to Health Canada;
- (k) "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;

- (l) "Process" means the operation whereby harvested Cannabis, is transformed by the application of manual, mechanical or chemical methods into another form;
- (m) "Sensitive Use" means a 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, or a Town designated community center.
- (n) "Town" means the Town of Niagara on the Lake .
- (o) "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.

2 Prohibitions

- (a) No person shall operate a 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 or processes dangerous or noxious to the public.

License

- 3 The owner, occupier and/or operator of a Cannabis Facility shall produce on request by duly authorized representatives of the Town for inspection any license or other form of authorization which permits the activities in respect of Cannabis on the premises.

Part I Cannabis Facility

- 4 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 in a wholly enclosed building ;
 - c. operate only in a Zone designated for Industrial Use ;

- 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

5 A Part II 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 in a wholly enclosed building ;
- c. operate in a Zone designated for Industrial Use;
- d. obtain a business license pursuant to the provisions of the Town's Business Licensing By-law -;
- 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 , a plan for an Odour Abatement Protocol to prevent the migration of any Noxious Odour off its Premises and provide satisfactory proof thereof to the Town in the form of an affidavit by a duly qualified mechanical engineer licensed in the Province of Ontario, which shall be subject to peer review and approval by the Town;
- g. 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**;

- h. operate following the Odour Abatement Protocol to prevent the migration of any Noxious Odour off its Premises and provide satisfactory proof thereof to the Town in the form of an affidavit by a duly qualified mechanical engineer licensed in the Province of Ontario ;
- i. Lighting shall not be visible outside the building from sunset till sunrise ; all lighting shall be fully shielded in such a manner that all light emitted directly by the lamp or diffusing element is projected below the horizontal plane through the lowest light emitting part ;
- j. be limited to the production, processing and packaging of Cannabis on behalf of the registered owner of the Premises and one other person; and
- U) be inspected by the Town's Fire Department and comply with the provisions of the Fire Protection and Prevention Act, 1997, S.O. 1997, c.4.

6. Part I and Part II Cannabis Facility Separation distances

A lot with a Cannabis Facility must be:

(a) at least 250(TBD) metres from a lot in a:

- (i) Established Residential Zone category;
- (ii) Residential Multiple Zone category;
- (iii) General Commercial Zone category;
- (iv) Residential Development Zone category;
- (v) Village Commercial Zone category;
- (vi) Institutional Zone category; and
- (vii) Open Space Zone category; and

(B) at least 250 (TBD) metres from a lot with a:

- (i) public school; (ii) private school;
- (iii) place of worship;
- (iv) day nursery;
- (vi) Sensitive Use;
- (vii) designated Heritage Building or District

Severability

- 6 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

- 7 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

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

Enforcement

- 9 In addition to any other penalty or remedy available to the Town, the Council may, on behalf of the Town with the consent of the appropriate authority in the Niagara Regional 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

- 10 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 license 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

- 11 The Town 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

- 12 This By-law may be referred to as the Cannabis Regulation By-law,XXXX.