

City of **MARKHAM**

Task 16A: Review & Assessment of Medical Marihuana Production Facilities

Comprehensive Zoning By-law Project



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1. INTRODUCTION

1.1 Purpose

The purpose of this report is to identify and review issues associated with *medical marihuana*¹ *production facilities* that need to be addressed prior to drafting a new comprehensive zoning by-law and to provide options for addressing these issues. Chapter 1 reviews the current federal and provincial legislation regarding medical marihuana facilities, as well as a description of how medical marihuana facilities operate. Chapter 2 of this report will provide a review of any Markham Official Plan policies and zoning by-law provisions dealing with these uses. Chapter 3 will review recent Markham and Region of York issues relating to medical marihuana, the *Marihuana for Medical Purposes Regulations Guidance Document* and other studies and reports involving zoning for medical marihuana in different jurisdictions in Ontario. Chapter 4 will examine case studies of three municipalities dealing with medical marihuana production in their zoning by-laws (Toronto, Ottawa, and Chatham-Kent). Finally, Chapter 5 will identify issues reviewed in this report and provide options for dealing with medical marihuana production facilities (MMPF) in the new zoning by-law.

1 This report will use the spelling of 'marihuana' instead of the alternative spelling of 'marijuana' that was used in the Markham RFP for this study, since federal legislation and other municipal by-laws in Ontario use 'marihuana' as the spelling.

1.2 Types of Uses

The land uses that have been identified for the purposes of this report pertain to:

1. Medical marihuana production facilities; and
2. Personal home medical marihuana grow-operations.

Neither of these land uses are specifically defined in any of the City of Markham's current zoning by-laws. Medical marihuana production can have environmental (i.e., odour) or security issues, which in some cases may need to be identified and regulated under zoning. Federal legislation over the past decade has changed the status of the use of marihuana for medical purposes to be recognized as a legal activity. As such, there should be consideration for regulating land uses associated with such activity at the municipal level.

1.3 Federal and Provincial Legislation

1.3.1 Federal Regulations on Medical Marihuana²

Marihuana is a Schedule II drug under the *Controlled Drugs and Substances Act*. In Part I, 4(1), the Act states, "Except as authorized under the regulations, no person shall possess a substance included in Schedule I, II or III."³ Since 2001, Health Canada has granted access to medical marihuana for medical purposes pursuant to regulations made under the *Controlled Drugs and Substances Act*. Under the *Marihuana Medical Access Regulations* (MMAR), individuals had three options for obtaining a legal supply of dried marihuana: they could apply to access Health Canada's supply, they could apply for a personal-use production license, or they could designate someone to cultivate on their behalf. These regulations focused on the criteria of individuals applying for the licenses and did not indicate any reference to local legislation regarding land use or registration by the municipality. Under the MMAR regulations, thousands of licenses were issued to individuals and organizations allowing for the production of medical marihuana, without regard to the status of the premises at which the marihuana was being grown under municipal legislation. In other words, licenses were issued regardless of what land use permissions (zoning) existed on the properties.

In June of 2013, the Federal Government introduced the new *Marihuana for Medical Purposes Regulations* (MMPR), which create conditions for a new, commercial industry responsible for the production and distribution of medical marihuana. The MMPR came into effect on April 1, 2014. These new rules allow for the licensing of medical marihuana production facilities by the federal government. In order to be licensed, commercial producers must adhere to local regulations, including zoning. The new rules prohibit personal production, and the production of marihuana for medical purposes under the MMAR was to end as of March 31, 2014. On March 21, 2014 the Federal Court of Canada issued an injunction that extends certain individuals' personal production licenses obtained under the MMAR: individuals with an Authorization to Possess valid on March 21, 2014, may hold a maximum quantity of dried marijuana as specified by their Authorization to Possess or 150 grams, whichever is less. At this time, there is no definite date for expiry of these personal production licenses issued under the MMAR. The main argument against the new regulations is the potential increase in cost for individuals who produce their own marihuana for

2 Derived from City of Markham Briefing Note, Corporate Services Commission, July 21, 2014, spokesperson Kimberley Kitteringham and telecom with Building, Special Investigations staff.

3 *Controlled Drugs and Substances Act*. S.C. 1996, c.19. Part 1, Section 4(1). < <http://laws-lois.justice.gc.ca/eng/acts/c-38.8/>>

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medical purposes. The MMPR, with strict security and production regulations and the adherence to municipal zoning by-laws, creates many barriers to personal production of marihuana.

Under the MMPR regulations, applicants for a commercial production license are required to notify municipalities of their intention to open medical marihuana production facilities within their local jurisdiction. The federal regulations, as administered by Health Canada, state that although municipalities are not involved in the issuing licensing process, they may enforce local development standards for the location of these facilities, including compliance with local zoning by-laws. Under the Health Canada website, the MMPR note the following:

1. “the process for applicants and health care practitioners is streamlined, eliminating the need for individuals to provide Health Canada with their personal information or apply to the department;
2. personal and designated production by individuals in their homes was eliminated on March 31, 2014; however as indicated below, the effect of the interim injunction permits certain individuals to continue to produce;
3. dried marihuana for medical purposes is distributed through regulated, commercial Licensed Producers who produce a variety of strains;
4. Licensed Producers must demonstrate compliance with regulatory requirements such as quality control standards, record-keeping of all activities, as well as inventories of marihuana, and physical security measures to protect against potential diversion;
5. storefronts or retail outlets are not permitted; and,
6. physicians and nurse practitioners, if permitted within their respective province or territory, may sign a medical document enabling patients to purchase the appropriate amount for their medical condition from a Licensed Producer.”⁴

Furthermore, in adherence with MMPR regulations, the licensed production facilities (MMPF) must meet a number of legal requirements. These include:

- Physical security measures, in which production sites must be located indoors and not in private dwellings;
- Good production practices including cleanliness of the premises and equipment as well as environmental controls, quality assurance and pest controls;
- Packaging, labeling and shipping requirements to ensure tamper-proof and child-proof packaging and for security measures;
- Specific reference to import and export permits, if applicable; and
- Security clearance, which requires a number of individuals to have valid security clearance.⁵

To date, the commercial production, processing and distribution of controlled drugs has been determined to be an industrial use under Markham’s current zoning by-laws. Operations that are based on the licenses under the old federal legislation are effectively exempt from any zoning regulations, including use.

4 [Medical Marihuana – Latest Updates](http://www.hc-sc.gc.ca/dhp-mps/marihuana/index-eng.php), Health Canada, <<http://www.hc-sc.gc.ca/dhp-mps/marihuana/index-eng.php>>

5 See Marihuana for Medical Purposes Regulations Division 3, 4, 5, 6 and 7. <<http://www.laws-lois.justice.gc.ca/eng/regulations/SOR-2013-119/page-11.html#docCont>>

1.3.2 Provincial Regulations on Medical Marihuana

There is no provincial legislation specifically related to medical marihuana production facilities. Provincial governments have jurisdiction over healthcare, and therefore have a role in the distribution of medical marihuana. For instance, the provinces have control over when medical marihuana will be covered by a provincial healthcare plan, and other issues of healthcare regulation as they relate to medical marijuana.

As discussed above, under the MMPR, the location of a production facility will be influenced and governed by municipal zoning by-laws. This power is devolved to municipalities by the province through section 34(1) of the Ontario *Planning Act*.⁶ Therefore, while the provinces set up the framework for municipalities to govern the location of production facilities, they do not have any actual involvement in the regulation of where these facilities are located.

1.4 Description of a Medical Marihuana Production Facilities (MMPFs)

Marihuana can be grown in soil or hydroponically, which means suspended in water. In both instances, the production of marihuana requires ample water and electricity to properly grow. When grown indoors, marihuana plants are typically kept under require high-intensity discharge lights for 12-20 hours per day, which uses a large amount of electricity. Similarly, the plants need an abundance of water for optimal growth and to maintain the appropriate temperature. Typically, facilities require mechanisms to artificially increase humidity, which requires water.⁷

Medical marihuana production facilities are typically large (several thousand square metres) and are located indoors, with the majority of the facility dedicated to the growth of the marihuana.⁸ The germination of the marihuana plant not only involves light, water and humid temperatures but also requires the use of nutrient fertilizers and proper ventilation. Therefore, a lot of the effort, money and space is required for the actual grow rooms of the MMPFs. In addition to the growing of the marihuana, there is also the harvesting, processing, safety testing and packaging that occurs at MMPFs.⁹ These activities must also occur indoors and at the same site where the marihuana is produced, according to the MMPR.¹⁰ While the grow rooms take up the majority of space, the accessory activities do not require as much room and can be housed in smaller areas or separate smaller buildings on site.

6 See *The Planning Act*. Part V. Section 34(1). <<https://www.canlii.org/en/on/laws/stat/rso-1990-c-p13/latest/rso-1990-c-p13.html>>

7 Chabot, Bailey. "Planning for Pot: Incorporating the Production of Medical Marihuana into the Zoning Bylaw of the District of West Kelowna." 2014. Page 16. <<http://qspace.library.queensu.ca/bitstream/1974/12196/1/Incorporating%20the%20Production%20of%20Medical%20Marihuana%20Into%20the%20Zoning%20Bylaw%20of%20the%20District%20of%20West%20Kelowna.pdf>>

8 *Ibid.* Page 18.

9 For more information on MMPFs that adhere to MMPR, see "CanniMed's Production Process" <<http://cannimed.ca/pages/cannimed-production-process>>; Brown, David. "Visiting Tilray's 65,000 Sq Ft Nanaimo Facility." *Lift Blog*. April 17, 2015. <<http://blog.liftcannabis.ca/2015/04/17/visiting-tilrays-65000-sq-ft-nanaimo-facility/>>; Cross, Jesica Smith. "Inside a Pot Plant: Touring a Medical Marijuana Grow-Op." *Metro News*. June 26, 2014. <<http://metronews.ca/news/toronto/1078595/inside-a-pot-plant-a-legal-marijuana-grow-op/>>. For more information on the growing process, see Hydroponics BC. "Medical Marijuana." <<http://www.hydroponicsbc.com/medical%20marijuana.html>>

10 Marihuana for Medical Purposes Regulations (SOR/2013-119) Part 1, Section 14. <<http://www.laws-lois.justice.gc.ca/eng/regulations/SOR-2013-119/index.html>>

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Once the marihuana plants are grown, they are trimmed, dried and tested. This part of the process does not require as much water or light. The dried and tested marihuana is then packaged in tamper-proof and child-proof packages that are airtight and properly labeled as outlined in the MMPR regulations. At this point, the medical marihuana is ready for shipment. The excess dried marihuana is stored safely.¹¹

Due to the nature of the growth and production process, a MMPF can typically be characterized as “a large, windowless, single story, industrial building with a relatively small testing lab, storage space, and packing and shipping room, with space for offices. The facility is somewhat similar to a mushroom farm, but with more employees.”¹² It is important to note that some medical marihuana production facilities use greenhouses to grow marihuana, which uses sunlight in addition to artificial light, such as Tweed Farms Niagara on the Lake.¹³

Medical marihuana also produces two major negative externalities, including odour and the potential of criminal activity. The MMPR requires odour pollution to be mitigated through air filtration systems¹⁴ and further provides regulations for security measures.¹⁵

In addition to the medical marihuana product that is ultimately grown for shipment, the MMPFs also produce waste including the dead marihuana plants and wastewater. Once marihuana plants die and are no longer useful, they must be destroyed in accordance with MMPR, which can occur on site¹⁶ or via a third party compost business. The water used to fertilize the plants can be treated by standard waste water treatment systems in most municipalities, but cannot be discarded into a stormwater drain or septic tanks where contamination of groundwater could occur.¹⁷

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- 11 For more information on MMPFs that adhere to MMPR, see “CanniMed’s Production Process” <<http://cannimed.ca/pages/cannimed-production-process>>; Brown, David. “Visiting Tilray’s 65,000 Sq Ft Nanaimo Facility.” *Lift Blog*. April 17, 2015. <<http://blog.liftcannabis.ca/2015/04/17/visiting-tilrays-65000-sq-ft-nanaimo-facility/>>; Cross, Jesica Smith. “Inside a Pot Plant: Touring a Medical Marijuana Grow-Op.” *Metro News*. June 26, 2014. <<http://metronews.ca/news/toronto/1078595/inside-a-pot-plant-a-legal-marijuana-grow-op/>>. For more information on the growing process, see Hydroponics BC. “Medical Marijuana.”: <<http://www.hydroponicsbc.com/medical%20marijuana.html>>
- 12 Chabot, Bailey. “Planning for Pot: Incorporating the Production of Medical Marihuana into the Zoning Bylaw of the District of West Kelowna.” 2014. Page 18. <<http://qspace.library.queensu.ca/bitstream/1974/12196/1/Incorporating%20the%20Production%20of%20Medical%20Marihuana%20Into%20the%20Zoning%20Bylaw%20of%20the%20District%20of%20West%20Kelowna.pdf>>
- 13 Tweed. <<http://www.tweed.com/pages/about-tweed>>
- 14 Marihuana for Medical Purposes Regulations Division 3, Section 50. <<http://www.laws-lois.justice.gc.ca/eng/regulations/SOR-2013-119/index.html>>
- 15 See Marihuana for Medical Purposes Regulations Division 1 and 6. <<http://www.laws-lois.justice.gc.ca/eng/regulations/SOR-2013-119/index.html>>
- 16 If the composting occurs on site, no individuals can be exposed to cannabis smoke, as outlined in MMPR Part 1, Division 1, Section 20.a ii. <<http://www.laws-lois.justice.gc.ca/eng/regulations/SOR-2013-119/index.html>>
- 17 Chabot, Bailey. “Planning for Pot: Incorporating the Production of Medical Marihuana into the Zoning Bylaw of the District of West Kelowna.” 2014. Page 17.

2. REVIEW OF OFFICIAL PLAN & EXISTING ZONING BY-LAWS

2.1 Markham Official Plan Part I - Medical Marihuana Production Facilities

The Markham Official Plan Part I does not have any specific policy directed at medical marihuana production facilities. The Official Plan does define *agricultural uses* to mean:

“the growing of crops, including nursery and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures, including accommodation for full-time farm labour when the size and nature of the operation requires additional equipment.”¹⁸

Since medical marihuana production facilities involve the “growing of crops” as well as the “manufacturing” of a product, there has been debate as to whether or not the use is considered an agricultural use or an industrial use. There are obvious elements of both, since growing of the substance must take place on the premises as per federal legislation, whereas tobacco, for example, would be grown in agricultural areas and then transported to factories for the manufacturing of cigarettes. Tobacco factories are distinctively industrial uses and found in industrial areas. Medical marihuana production facilities involves the growing, harvesting, and manufacturing of a product all at the same location.

There may be a need to consider a definition or policies in the Official Plan in the future to identify medical marihuana production facilities as a distinctive use from both agricultural use and industrial

18 City of Markham Official Plan, Section 11.2 Definitions, Agricultural uses.

use. The Official Plan makes many references regarding the location and criteria for allowing 'industrial uses' and 'manufacturing uses' in certain parts of the municipality.

2.2 Markham's Current Zoning By-laws - Medical Marihuana Production Facilities

None of the City of Markham's 46 current zoning by-laws define or recognize *medical marihuana production facilities* as a specific use. There are five definitions for *agricultural use* found in eleven of Markham's zoning by-laws. The terms '*industrial purposes*' and '*industrial use*' are also defined terms found in three of Markham's zoning by-laws.

Based on discussions with municipal staff, any medical marihuana production facilities that have considered locating in Markham to date have been determined to be a permitted use on lands that are zoned for industrial or manufacturing uses. However, given the fact that a product is grown, harvested, and manufactured on the premise, there is an argument to be made as to whether or not such a use should be considered a permitted use in agriculturally zoned areas. To date, Building Standards' interpretation is that the activity is an industrial one and is not within the definition of an agricultural or farm use under Markham's current zoning by-laws.

3. REVIEW OF RESEARCH AND STUDIES

3.1 Recent Markham and Region of York Issues Relating to Medical Marihuana

There are currently twenty-five authorized licensed producers for medical marihuana in Canada under the new MMPR¹⁹. There have been a few cases where licenses issued under the MMAR program have led to land use planning issues in Markham, most recently an example where medical marihuana was being grown for personal use in a location across the street from a public school.

The one licensed producer in Markham is a Canadian corporation which opened in February 2014 and operates a 55,000 square foot cannabis cultivation facility. The facility is located in an employment area zoned for industrial uses. In addition, there are thousands of small residential grow facilities throughout Markham that have been issued licenses under the MMAR program. The odour associated with the production of marihuana is the main planning issue and there are few regulations to date to address this matter, besides possibly regulations governed by the Ministry of Environment. There is a preference by the City for locating such uses within a sole-tenant buildings instead of a multi-tenant buildings, for reasons associated with security and odour-related issues. One of the pending applications in Markham is for a factory with a design involving a large fence for security purposes, but which violates fire regulations and other zoning-related provisions.

19 Authorized Licensed Producers under the Marihuana for Medical Purposes Regulations, Health Canada website at: <http://www.hc-sc.gc.ca/dhp-mps/marihuana/info/list-eng.php>

There is a concern that Health Canada did not properly regulate marihuana growers under the previous legislation and city and regional staff (including the police) are not even sure how many or where licenses have been issued in the City of Markham under the previous MMAR. The city's fire marshal can only examine and get access to residential grow facilities when an issue arises, such as overloads on the local electrical system, or a similar matter involving health or safety.

3.2 MMPR Guidance Document: Building and Production Security Requirements for Marihuana for Medical Purposes

This document is an administrative guideline and is not a legal document. It is intended to help Licensed Producers (LPs) follow the Division 3 security measure requirements of the MMPR. These include security measures for the site where cannabis is present. The document outlines the purpose, background, scopes procedures and specific regulatory provisions in Division 3 of the MMPR.

The specific regulatory provisions relate to:

1. Securing Your Site;
2. Monitoring and Detection;
3. Access Control;
4. Intrusion Detection;
5. Air Filtration²⁰

Under the new regulations, applicants for commercial production licenses are required to notify and inform municipalities about new *Medical Marihuana Production Facilities*, but the municipalities are not directly involved in approval or consultation on these licenses. Instead, the *MMPR Guidance Document* specifies that production facilities must comply with municipal building and fire by-laws.²¹ Health Canada also states that municipalities can enforce the location and development standards for these facilities within local zoning by-laws.²²

20 [Guidance Document – Building and Production Security Requirement for Marihuana for Medical Purposes](#), Health Canada.

21 Health Canada. "Guidance Document – Building and Production Security Requirements for Marihuana for Medical Purposes." <http://www.hc-sc.gc.ca/dhp-mps/marihuana/info/bp-securit-eng.php>

22 Health Canada. "Medical Use of Marihuana - Information for Municipalities." <http://www.hc-sc.gc.ca/dhp-mps/marihuana/muni/index-eng.php>

3.3 Other Studies and Reports involving Zoning

There are a number of municipal reports and studies relating to the issues discussed in this report and the matter of zoning. Some have led to new zoning regulations in their respective zoning by-laws and are reviewed in chapter 4 of this report. For references purposes we note the following studies and reports and have provided a brief summary to the key points raised.

3.3.1 Town of Newmarket, Information Report 2013-44, Medical Marihuana Legal Production in Newmarket

In response to an inquiry in 2013 by a business that wanted to locate a medical marihuana production facility, the Town of Newmarket Planning and Building Services issued an information report to Newmarket Council on October 24, 2013 to outline the new legislation regarding this emerging land use, as well as identifying how the land use could be controlled and restricted. The following points were raised in that report:

1. Municipalities can regulate the use, not prohibit it. Staff will investigate various regulatory tools and perhaps initiate a technical zoning by-law amendment to permit this use in certain areas with restrictions. On a preliminary basis, such restrictions could include:
2. Placing a cap on the number of commercial producers.
3. Restricting the location of commercial producers to certain zones.
4. Limiting the size of the facility used by the commercial producer.
5. Requiring a minimum distance between commercial producers.
6. Requiring that any facility used for commercial production be a stand-alone building.
7. Requiring odour control measures to prevent nuisance to surrounding properties.
8. Planning restrictions on signage (i.e., no mention of the word marihuana)
9. Requiring that the site be secured to prevent unauthorized entry.
10. Requiring a minimum separation distance from residential areas, schools, playgrounds, community centres, etc.
11. Requiring a building permit for any new construction or conversion of an existing building to ensure safety measures are in place for such a use.²³

3.3.2 Regulating Medical Marihuana Production Facilities through Municipal Land Use Planning, Wood Bull Bulletin

This is an information bulletin issued by the law firm of Wood Bull in April of 2014. It outlines the status of medical marihuana and how municipalities have approached regulating under the new MMPR legislation. The bulletin outlines three different approaches found in the municipal zoning by-laws that they examined:

1. Category 1- The use fits within existing definitions of an industrial or manufacturing use and accordingly no further action is required. Such examples are found in the municipalities of Windsor and Smith Falls;

²³ Information Report 2013-44, Planning and Building Services – Planning Report, Town of Newmarket, October 23, 2013, p.2

2. Category 2 – The municipalities have approved recommendations or passed zoning by-law amendments that define MMPFs and permit them “as of right” in specified zones. Such examples are found in the municipalities of Toronto, Ottawa, Fort Erie, Milton, and Port Colborne; and
3. Category 3 – The municipalities have passed zoning by-law amendments that define the use and specify the zone in which the use must be located, but in all cases require an additional site-specific zoning by-law amendment to permit the use.

The bulletin also notes that the use of setbacks involving the location of MMPFs vary substantially between municipalities, from Windsor and Smith Falls having no setbacks, to Toronto and Fort Erie that impose setbacks to other specified zones or identified sensitive uses (eg. schools, residential areas, etc.), to West Lincoln which imposes one setback if the MMPF is located in an agricultural zone and a different setback if the MMPF is located in an industrial zone.²⁴

3.3.3 Zoning Changes for Medical Marihuana Production, City of Toronto Report

This report reviews the context of the changing legislation involving MMPFs and makes a number of recommendations for changes to the zoning by-law for this use, which is outlined in more detail under section 4.1 of this report. The report states that three areas need to be addressed through the city’s zoning regulations:

1. The proximity of these facilities to a dwelling place;
2. Types of activity associated with these facilities;
3. Location of the activities on the site; and
4. Site/facility security.

The resulting regulations address the following:

1. the use and associated loading facility be within a wholly enclosed building,
2. open storage is not permitted in association with this use,
3. a security building associated with this use be permitted in the front yard;
4. the use is exempt from certain yard setbacks, and
5. there be a 70 metre separation distance from most zones (other than industrial) and identifiable sensitive uses. The 70 metre measurement is based on the Provincial D-6 Guidelines for separation distance and is consistent with a Class II industrial use.²⁵

24 Regulating Medical Marihuana Production Facilities through Municipal Land Use Planning, Volume 3, Issue 1, Wood Bull Bulletin by Peter Gross, April 30, 2014, p.1

25 Zoning Changes for Medical Marihuana Production Facilities, City of Toronto Planning and Growth Management Committee, September 24, 2013, pp. 4-5.

3.3.4 Zoning By-law Amendment – Medical Marihuana Production Facilities, City of Ottawa Report

This report also reviews the context of changing legislation involving MMPFs and suggests changes to the zoning by-law to define and control the use. This is outlined in more detail in section 4.2 of this report. Interestingly, based on the Ottawa by-law's definition of 'agricultural use', the production of medical marihuana would be considered an agricultural use as it involves the growing of a crop. The report recommended that the use be defined and it looked at permitting the use in ten zones, including the agricultural zone, the rural countryside zone, the mineral extraction zone, the mineral aggregate reserve zone, four types of urban industrial zones, and two types of rural industrial zones. In the end the report recommends that the use be permitted in two of the urban industrial zones and one of the rural industrial zones.²⁶

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26 Zoning By-law Amendment- Medical Marihuana Production Facilities, City of Ottawa Planning Committee Report 65A, February 26, 2014, p.33.

4. CASE STUDIES

This chapter of the report reviews three municipal zoning by-law case studies (Toronto, Ottawa, and Chatham-Kent) to show how they regulate and control medical marihuana production facilities. The chapter examines the relevant definitions, zones that uses are permitted in or prohibited from, and regulations that may apply to this use.

4.1 City of Toronto Zoning By-law 569-2013 as it pertains to Medical Marihuana Production Facilities

4.1.1 Definitions (Chapter 800)

Medical Marihuana Production Facility

“means **premises** used for growing, producing, testing, destroying, storing, or distribution of medical marihuana or cannabis authorized by a license issued by the federal Minister of Health, pursuant to section 12 of the Marihuana for Medical Purposes Regulations, SOR/2013-119, under the Controlled Drugs and Substances Act, S.C. 1996, c.19, as amended.”²⁷

This definition was brought into Zoning By-law 569-2013 by amendment By-law 0403-2014, which is currently under appeal to the Ontario Municipal Board.

27 City of Toronto Zoning By-law 569-2013, as amended by By-law 0403-2014, Chapter 800 (Definitions) (473), p.320.

4.1.2 Zones Permitting Medical Marihuana Production Facilities

This use is a permitted use in the “E” (Employment Industrial) and “EH” (Employment Heavy Industrial) zones, subject to condition #2 under section 60.20.20.100 and condition #3 under section 60.30.20.100, respectively. Both conditions point to the regulations regarding medical marihuana production facility found under section 150.60 of By-law 569-2013.

4.1.3 Regulations specific to Medical Marihuana Production Facility, regardless of zone (Chapter 150)

Section 150.60 of By-law 569-2013 deals with use requirements, building requirements, ancillary building requirements and loading space location requirements for medical marihuana facilities. The regulations state:

“150.60.20 Use Requirements

150.60.20.1 General

(1) All Activities in an Enclosed Building

A **medical marihuana production facility** must be in a wholly enclosed **building**.

(2) Open Storage

Open storage is not permitted with a **medical marihuana production facility**.

150.60.40 Building Requirements

150.60.40.1 General

(1) Separation Distance

A **lot** with a **medical marihuana production facility** must be:

(A) at least 70 metres from a **lot** in a:

- (i) Residential Zone category;
- (ii) Residential Apartment Zone category;
- (iii) Commercial Zone category;
- (iv) Commercial Residential Zone category;
- (v) Commercial residential Employment Zone category;
- (vi) Institutional Zone category; and
- (vii) Open Space Zone category; and

(B) at least 70 metres from a **lot** with a:

- (i) **public school**;
- (ii) **private school**;

(iii) **place of worship**; and

(iv) **day nursery**.

150.60.60 Ancillary Building

150.60.60.10 Location

(1) Location of Building or Structure Used for the Purpose of Site and Facility Security

A **building** or **structure** used for security purposes for a **medical marihuana production facility**:

(A) may be in the **front yard**; and

(B) is exempt from the required minimum **front yard setbacks, side yard setbacks** and **rear yard setbacks**.

150.60.90 Loading

150.60.90.10 Location

(1) Loading Space Location

Loading spaces for a **medical marihuana production facility** must be in a wholly enclosed **building**.²⁸

These regulations were brought into Zoning By-law 569-2013 by amendment By-law 0403-2014, which is currently under appeal to the Ontario Municipal Board. By-law 0403-2014 did not introduce any parking or loading regulations specific to medical marihuana production facilities, other than that noted above.

4.2 City of Ottawa Zoning By-law 2008-250 as it pertains to Medical Marihuana Production Facilities

4.2.1 Definitions (Part 1, Section 54)

Zoning By-law 2008-250 defines *medical marihuana production facility* as follows:

“means a federally-licensed facility used for the cultivation, processing, testing, destruction, packaging or shipping of marihuana used for medical purposes as permitted under the federal government’s *Marihuana for Medical Purposes Regulations* or any subsequent legislation which may be enacted in substitution thereof.”²⁹

28 City of Toronto Zoning By-law 569-2013, as amended by By-law 0403-2014, Chapter 150.60 (Medical Marihuana Production Facility), pp.264-265.

29 City of Ottawa Zoning By-law 2008-250, as amended by By-law 2014-74, Part 1, Section 54 (Definitions), p. 1-25.

4.2.2 Zones Permitting Medical Marihuana Production Facility (Parts 11 and 13)

Industrial Zones

1. IG (General Industrial Zone) permits medical marihuana production facility, subject to provisions 199(3) to (5).
2. IH (Heavy Industrial Zone) permits medical marihuana production facility, subject to provisions 201(3) to (5).

Rural Zones

1. RG (Rural General Industrial Zone) permits medical marihuana production facility, subject to provisions 219(3) to (5).
2. RH (Rural Heavy Industrial Zone) permits medical marihuana production facility, subject to provisions 221(3) to (5).

4.2.3 Regulations specific to Medical Marihuana Production Facility (Section 97)

Section 97 of the zoning by-law states:

- “(1) A **medical marihuana production facility**:
- (a) must be a listed permitted use in the zone it is located in and must comply with the provisions of that zone,
 - (b) must be located completely within a building,
 - (c) must not have any outdoor storage;
 - (d) is not permitted in a dwelling;
 - (e) must not be located in a building that is within 150 metres of a Residential, Institutional, Village Residential, Rural Residential or Rural Institutional Zone;
 - (f) despite (e) above, may be located within 150 metres of a Rural Institutional Zone or Institutional Zone if the only permitted uses in these zones are an **environmental preserve and educational area, emergency service, municipal service centre, office, storage yard or warehouse**,
 - (g) established in compliance with this Section is not considered to be non-complying to (e) and (f) above by the subsequent erection of a residential or institutional use building on another lot.”³⁰

4.2.4 Parking Regulations (Part 4)

Parking rates are based on four “areas” identified under Schedule 1 of the zoning by-law, which generally pertain to three areas within the urban portion of Ottawa, and one area in the rural area of Ottawa.

30 City of Ottawa Zoning By-law 2008-250, as amended by By-law 2014-74, Part 3, Section 97 (Medical Marihuana Production Facility), p. 3-10.

Minimum Number of Parking Spaces Required for Medical Marihuana Production Facility

- In Areas 'A' (Central Area), 'B' (Inner City Area), and 'C' (Suburban Area) - 0.5 per 100 square metres of gross floor area.
- In Area 'D' (Rural Area) – 0.8 per 100 square metres of gross floor area.

4.3 Municipality of Chatham-Kent Zoning By-law 216-2009 and Official Plan policies as it pertains to Marihuana Production Facilities

4.3.1 Definitions (Section 3)

The Chatham-Kent Zoning By-law 216-2009, as amended by By-law 1-2014, includes the following as the definition of *Marihuana for Medical Purposes Production Facility*:

“means any building or structure licensed and/or authorized to possess, sell, provide, ship, deliver, transport, destroy, produce, export and/or import marihuana for medical purposes, including related research under, the Marihuana for Medical Purposes Regulations under Subsection 55(1) of the *Controlled Drugs and Substances Act* or as amended.”³¹

It is also important to note that By-law 1-2014 amended the definitions of “agricultural use” and “industrial use”, to state that these terms do not include a marihuana for medical purposes production facility.

4.3.2 General Provisions for All Zones (Section 4)

Under amendment By-law 1-2014, the zoning by-law incorporates Section 4.41 dealing specifically with Marihuana for Medical Purposes Production Facility (MMPP), which states:

“Marihuana for Medical Purposes Production Facilities shall be permitted on a site-specific basis subject to the criteria of Section 2.7 of the Chatham-Kent Official Plan and:

- a) The following minimum separation distance shall apply:
 - i) within a primary urban area as defined and delineated by the Chatham-Kent Official Plan no lot on which an MMPP facility is to be located shall be located closer to any residential, institutional or open space zone boundary than 75m.
 - ii) in areas not located in a primary urban area no building or structure or portion thereof used for an MMPP facility shall be located closer than 100 m to an existing residential, institutional or open space zone boundary.
- b) Parking Requirement: 1 space per 46.45 sq.m. or one space per two employees whichever is greater.
- c) Residential uses on lots zoned to permit a MMPP facility are prohibited excluding a single detached dwelling or mobile home accessory to an agricultural use.”³²

31 Municipality of Chatham-Kent Zoning By-law 216-2009, amended by By-law 1-2014, Section 3.154.1, p.25.

32 Municipality of Chatham-Kent Zoning By-law 216-2009, amended by By-law 1-2014, Section 4.41, p.73.

4.3.3 Chatham-Kent Official Plan Policies (Section 2.7)

Unlike the Toronto and Ottawa examples, the Municipality of Chatham-Kent also has specific Official Plan policies pertaining to medical purposes production facilities, through amendment # 31. As noted in section of the zoning by-law, Section 2.7 of the Official Plan has the following policies:

“As of June 2013 Health Canada introduced new Marihuana for Medical Purposes Regulations (MMPR). Following broad consultations with stakeholders, the Government of Canada was concerned that the Marihuana Medical Access Program (MMAP) was open to abuse. The MMPR represent a comprehensive response to a number of concerns raised over the past years and during the public comment period following the introduction of the draft regulations in December 2012. The regulations aim to treat marihuana as much as possible like any other narcotic used for medical purposes by creating conditions for a new, commercial industry that is responsible for its production and distribution. The regulations will provide access to quality-controlled marihuana for medical purposes, produced under secure and sanitary conditions, to those Canadians who need it, while strengthening the safety of Canadian communities. In addition, the new regulations will also provide more choices of marihuana strains and commercial suppliers.

It shall be the objective of Chatham-Kent to:

- 2.7.1 Support and promote new industry as a cornerstone of economic development through diversification.

It shall be the policy of Chatham-Kent to:

Permit Marihuana for Medical Purposes Production Facilities within the Employment Area, Agricultural Area and Rural Industrial designation on Schedules “A” and Schedule “E” Series – Land Use to this Official Plan.

2.7.1.1 The following land use policies shall apply:

- a) All facilities will require a site-specific zoning amendment;
- b) Within the Agricultural Area designation facilities are to be located on an arterial or collector road or have the main access to the facility located not less than 100 m from an arterial or collector road;
- c) Owner(s) must undertake consultation with Chatham-Kent Police and Fire Services to ensure that proposed locations are located with regard for any Police or Fire criteria applicable for such facilities;
- d) Facilities shall not be located within close proximity to sensitive land uses such as residential, institutional, open space or as more specifically outlined in the zoning by-law;
- e) Access to municipal water supply is preferred, however in the case of a private water supply the owner(s) will be required to provide justification that there is sufficient water for daily usage (Ministry of Environment water taking permit may be required) and adequate fire suppression; f) Access to municipal sanitary sewer is preferred however in the case of a private septic system or other on-site disposal systems the owner(s) will be required to confirm that discharge from facilities can be safely treated in a private septic system or alternative. If discharge or treatment of product requires off site handling the owner(s) will provide documentation of agreement(s) with approved waste handlers;

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- g) Facilities must have acceptable access for emergency services;
- h) Facilities must have adequate on-site parking for the proposed use;
- i) Location of facilities on a lot with a residential use is prohibited;
- j) New construction will be subject to site plan approval as per the Chatham-Kent Site Plan Control By-law;
- k) Proponents may be required to provide a fire plan for emergency services;
- l) Only facilities licensed by Health Canada under the Marihuana for Medical Purposes Regulations (MMPR), or as amended, will be permitted, and;
- m) The use of the Holding provision may be required for proposals within existing buildings.”³³

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33 Municipality of Chatham-Kent Official Plan, Section 2, Policy 2.7, pp. 2-62 – 2-63.

5. ISSUES IDENTIFIED AND POTENTIAL OPTIONS

Based on the review and assessment of federal legislation regarding medical marihuana, Markham's Official Plan policies and existing zoning by-law regulations, recent City of Markham and Region of York issues, planning reports and studies on the topics, and case studies from other municipal zoning by-laws dealing with the matters, this report has identified a number of issues surrounding medical marihuana production facilities.

5.1 Issues Identified

1. Medical marihuana production facilities (MMPFs) have external effects such as odour, safety, and distribution that should be regulated by land use planning regulations;
2. New Federal legislation recognizes that municipalities may control the location of MMPFs;
3. Based on case studies reviewed, MMPFs may be considered a form of industrial use, agricultural use, or both;
4. Markham's Official Plan currently does not identify or address MMPFs specifically;
5. Licenses issued under the previous MMAR have no requirements regarding municipal regulations, and there is nothing that existing or new zoning regulations can do to control where these activities can take place;
6. Licenses issued under the new MMPR make compliance with local regulations regarding location mandatory, therefore these uses may be addressed by zoning by-law regulations;
7. MMPFs have been defined and regulated under zoning by-laws in other Ontario municipalities;

8. Municipalities must ensure that any zoning by-law regulations involving MMPFs are based on sound land use planning principles; and
9. It is appropriate to address zoning legislation in the new zoning by-law on MMPFs.

5.2 Potential Options

1. Consider Identifying and defining “medical marihuana production facility” as a distinct land use;
2. Given the various activities associated with MMPFs, examine and consider whether or not the use should be limited to certain industrial areas in the city, or if there should be any consideration for allowing them in agricultural areas;
3. Consider identifying zone(s) where MMPFs would be permitted;
4. Consider zoning regulations that require MMPFs to be the sole-tenant use in a building given the external effects (i.e., odour) and security measures surrounding the use;
5. Consider zoning regulations that restrict open storage associated with the use, primarily due to security related matters;
6. Consider zoning regulations and site plan measures involving MMPFs that allow for appropriate security while at the same time respecting urban design and other site plan objectives;
7. Consider zoning regulations to mitigate odour-related matters, including appropriate separation distances from certain zones and sensitive uses which can be drawn from the Provincial D-6 Guidelines for separation distance involving a use that may be similar to a Class II industrial use; and
8. Consider establishing Official Plan policies for MMPFs to clarify Council’s policies on this use which would be implemented through new zoning by-law regulations.