

Town of Fort Erie

Cannabis Legislation and Policy Study

Background, Analysis and Options Report

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1 Introduction

The Cannabis Act came into effect in October 2018. It had the effect of legalizing the production, sale and use of cannabis (sometimes referred to as marihuana or marijuana) for recreational purposes in Canada.

While the production of cannabis is addressed within the Fort Erie Official Plan through Official Plan Amendment No. 18 and the Town's Comprehensive Zoning By-law No. 129-90, these permissions are only in the context of marihuana for medical purposes permitted under the earlier Marijuana for Medical Purposes Regulations. With the change in legislation, cannabis production is now permitted for commercial growth for both medical and recreational purposes, and as such, the existing zoning by-law provisions no longer capture the full range of legal uses.

The main purpose of this Study is to examine the opportunities for the Town of Fort Erie to regulate activities permitted under the Cannabis Act, specifically the commercial growing and production of cannabis. The purpose is also to assess and recommend changes to the Official Plan and/or Zoning By-law, as needed, to regulate cannabis production as a land use.

The scope of the Study includes land use regulation for the cultivation and production of cannabis, but not the personal growth of cannabis nor the sale of cannabis in a retail store format. The Cannabis Act permits, without a license, the personal growth of up to 4 cannabis plants per dwelling for the purpose of recreation. As this Study is specific to commercial growth, the personal growth of cannabis within a household falls outside its scope. Also, while retail sale of cannabis from a provincially licensed store is legal and is a permitted use in zones in Fort Erie where retail uses are permitted, this Study does not consider the sale of cannabis in retail stores, as the focus of this Study is production.

Section 2 of this report discusses the relevant Acts and policies related to cannabis production in Canada and Ontario.

Section 3 describes the current Fort Erie planning framework as it relates to cannabis production.

Section 4 outlines the Study's best practice review of current standards and policies from other municipalities.

Section 5 provides a case law review.

Section 6 provides options for the Town to consider in order to permit, regulate and control the use.

2 Cannabis Production in Canada

2.1 Legal Framework of Cannabis Production in Canada

2.1.1 Previous Medical Marijuana Permissions

Prior to the introduction of the Cannabis Act in 2018, cannabis was an illegal substance and only permitted to be grown and sold for medical purposes. There were rules in place for the personal growth and consumption of medical cannabis, as well as rules for the commercial growth, processing and sale of cannabis for medical purposes.

The Marijuana for Medical Purposes Regulations (MMPR) were enacted in 2013 which controlled the production, distribution and use of medical cannabis within Canada. Currently, the Town of Fort Erie Official Plan (through OPA No. 18) and Comprehensive Zoning By-law No. 129-90 reference medical marihuana and medical marihuana grow and production facilities in alignment with the permissions of the MMPR.

The MMPR was replaced by the Access to Cannabis for Medical Purposes Regulations (ACMPR) in 2016, which further permitted individuals or their designated growers to produce a specific amount of cannabis for their own medical purposes as prescribed by their health care practitioner.

2.1.2 The Cannabis Act

With the introduction of the Cannabis Act in 2018, the consumption of cannabis for non-medical purposes became legal. This is sometimes referred to as “recreational” cannabis, as opposed to “medical” cannabis. With this legalization, came a new permission framework for cannabis production and distribution, which is generally described in this section. As well, the previous ACMPR is now covered under the Cannabis Act.

The Cannabis Act permits the commercial growth of cannabis by licence holders in Canada. There are a number of licences which can be applied for:

- Cultivation,
- Processing,
- Analytical Testing,
- Sale,
- Research, and
- Cannabis Drug Licence.

Cultivation licences are broken down into 3 classes:

- Micro-cultivation (surface area of cannabis less than 200 m^2),
- Standard cultivation, and
- Nursery.

Under this framework, a person is required to obtain a license issued by Health Canada to conduct various cannabis-related activities. Federal licenses do not permit sales to the general public, rather only sale of medical cannabis, through the mail and not in a store format, although a separate permission for retail sale can be applied for through the Province**. Figure 1** provides a summary of the types of licences that can be applied for under the Cannabis Act.

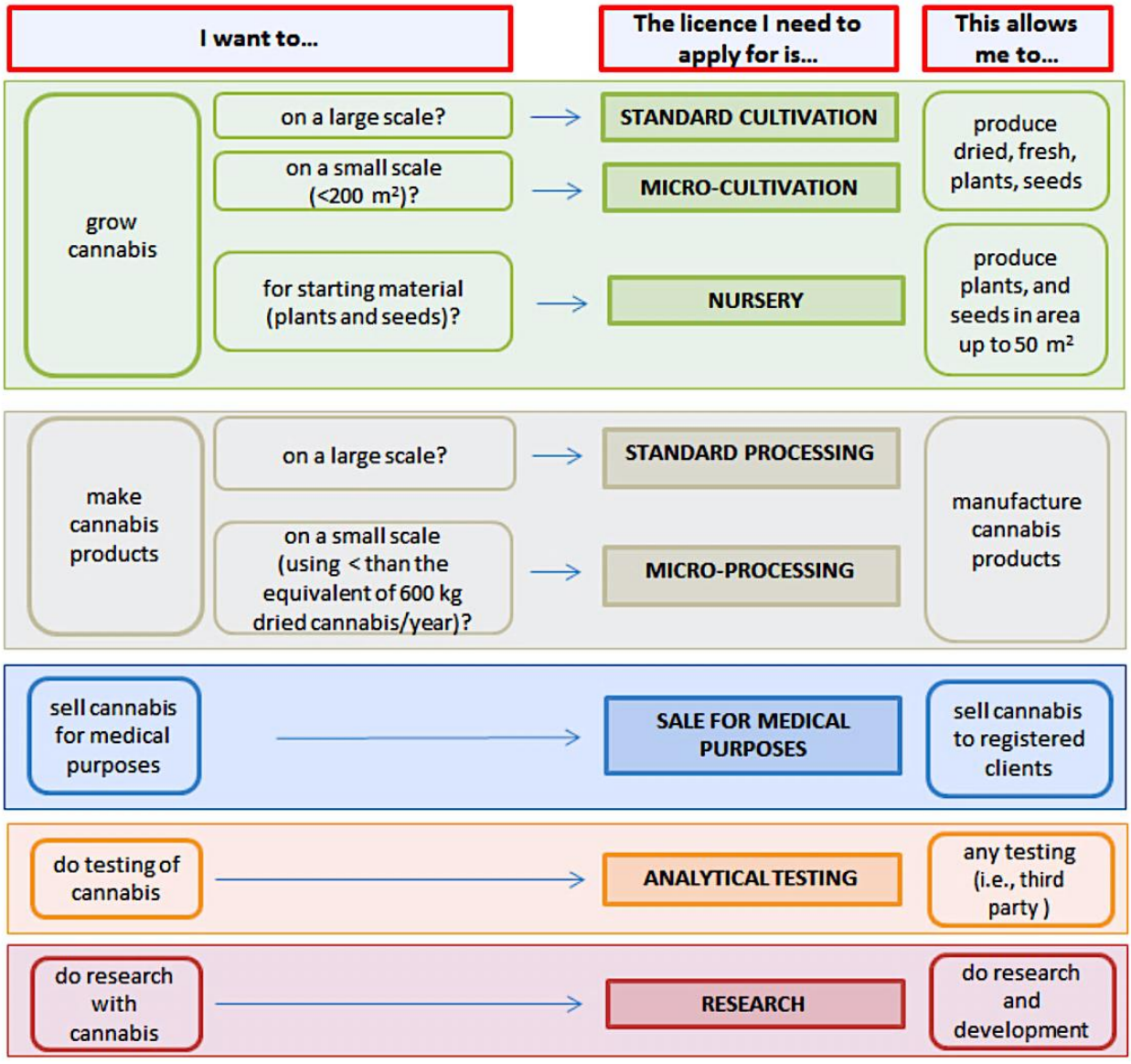


Figure 1: Types of licences Under the Cannabis Act
Source: Cannabis Licencing Application Guide (Government of Canada)

The sale of recreational cannabis to the public is regulated at the Provincial level. In Ontario, recreational cannabis can either be purchased from the online Ontario Cannabis Store or from privately-run authorized dealers in a retail store. The privately-run authorized dealers in Ontario are licenced by the Alcohol and Gaming Commission of Ontario (AGCO) and, at the beginning of 2019, municipalities in Ontario had a one-time chance to opt out of having cannabis retail stores in their municipality.
The Town of Fort Erie did not opt out and chose to allow retail sales of recreational cannabis. While retail sale of cannabis from a provincially licensed store is legal and is a permitted use in zones where retail uses are permitted, this Study does not consider the sale of cannabis in retail stores, as the focus of this Study is production.

The focus of this Study and report is the consideration of land use permissions related to commercial growth, processing, analysing and medical sales of cannabis regulated under the Cannabis Act. These are broadly referred to as "cannabis-related uses" in the report.

The changes brought by the Cannabis Act necessitate the need for this Study.

2.2 Cannabis Act Regulations

2.2.1 Licenced Facilities

The Federal Government released both the Cannabis Act and Cannabis Regulations. Under the Act, someone may not "cultivate, propagate or harvest any cannabis plant at a place that is not their dwelling-house or to offer to do so" (Part 1, Section 12 (6) of the Act). Thus, there is no legal permission for cannabis growth outside of a home for personal use if not in a licenced facility/area.

The Act also permits licences issued under the previous Access to Cannabis for Medical Purposes Regulations to continue under the Cannabis Act.

The Cannabis Regulations set out a number of requirements related to land use as follows:

- Prior to an individual submitting an application for a licence for cultivation, processing or sale, the applicant must notify the local government, the local fire authority and the local police force. The notice must contain a number of elements, including the address, and if applicable, the buildings where the cannabis related activities will be conducted. The notice must be addressed to a senior official at the local government (i.e. the Town of Fort Erie) (Part 2 (Licensing) Section 7). A licence holder must also notify the local municipality if the licence is granted, suspended, revoked, reinstated or amended (Part 2, Section 35 (1), and Part 2 Section 34 (1, 2 and 3)).

- A licence holder is required to notify the Minister of any changes to a site plan within 5 days of these occurring, except if the changes relate to meeting the

required security measures, in which case, the Minister must be notified in advance (Part 2, Section 24 (1)).

Location of uses

- No activity authorized by a licence can take place in a dwelling. (Part 2, Section 40)

- Only cultivation, propagation and harvesting may occur outdoors, while testing, storage, packaging and labeling of cannabis cannot occur outdoors. (Part 2, Section 41)

Security

- The site must be designed in a manner that prevents unauthorized access. (Part 4, Section 63)

- The perimeter must be monitored by a visual recording devise capable of recording any unauthorized access attempt, must have an intrusion detection system to detect intrusions at all times and this system must be monitored at all times. (Part 4, Sections 64,65)

- Operation and storage areas are to be designed with a physical barrier to only permit access to those individuals who require access to perform their work and these areas are to be monitored by a visual recording device. The entrance and exits to the growth area must also be monitored by a visual recording device. Operation and storage areas must also have an intrusion and movement detections systems. For growing areas, intrusion into but not movement within needs to be monitored. (Part 4, Sections 68 and 69, 70(2))

- The security measures for micro-cultivation, micro processing and nurseries are somewhat less stringent, requiring only physical barriers to the site and storage areas. (Part 4, Section 75)

Air filtration

- There must be an air filtration system that prevents the escape of odors from any building where cannabis is produced, packaged, labelled and stored. This requirement applies to both standard cultivation and micro-cultivation.

2.2.2 Cannabis Licence Application Requirements

The Cannabis Licensing Application Guide provides guidance to those applying for a license from Health Canada for the cultivation and processing of cannabis (among other licenses) under the Cannabis Regulations. According to the Guide, the applicant should be familiar with the applicable federal requirements, as well as all applicable municipal by-laws (including zoning and building permits).

Applications to Health Canada require a range of information including company details, site ownership, notice to local authorities, key personnel and specific facility and

operating requirements. As it applies to site and land use regulations, the application requires information regarding site details, physical security and good production practice measures.

Site Details

Site details to be submitted generally include:

- complete site address including latitude and longitude coordinates;
- a site survey including building location prepared by a qualified land surveyor;
- an aerial view of the proposed site and surrounding lots within 500 meters;
- an estimate of the proposed annual production amount and capacity; and
- areas and activities including outdoor areas (if applicable) and indoor areas; including labeled rooms based on their purpose related to cannabis uses.

Physical Security

Requirements for an organizational security plan apply to all license classes. Plans require detailed scheduling and monitoring information, business plans and organizational charts as well as key personnel information relating to security measures and tracking. Physical security requirements must be shown on site and floor plans for cultivation and processing facilities, which differ depending on classes and applicable subclasses (for example, Standard Process and Cultivation vs. Micro-Cultivation, Micro-Processing and Nursery Licenses).

All site and floor plans for must generally identify:

- the perimeter of the site;
- footprint of the building;
- locations of all storage areas;
- location of any outdoor cultivation with latitude and longitude coordinates for all four corners;
- clear delineation of rooms where operations, grow and storage activities take place; and
- cannabis flow between rooms.

Licenses for Standard Cultivation and Standard Processing must additionally identify the locations of, and area covered by, security devices and visual monitoring devices for the site perimeter, all storage areas and any outdoor cultivation areas.

Security reports for cultivation and processing licenses are required to demonstrate how the intrusion detection system requirements will be met and visual security evidence must include a guided video tour of the entire site. Video and photographic evidence must highlight all security features, operation areas and storage areas in order to demonstrate complete and clear security coverage and the prevention of unauthorized access.

Good Production Practices

A Good Production Practices Report based on the Good Production Practices Guide for Cannabis must be submitted as part of the licencing application process that clearly demonstrates how requirements relating to the following will be met:

- **Storage**
  - How and where cannabis and related ingredients will be stored, including storage procedures.

- **Building**
  - Description and/or depiction of the facility including details of construction surfaces such as walls, ceilings (non-porous panels, sealant, etc.), floors (polished, concrete, epoxy sealant, etc.) and seams (caulking, joints between floor, walls and ceiling, etc.); and
  - Process flow diagram detailing the movement of cannabis through the building.

- **Air Filtration and Ventilation Systems**
  - Description of an adequate filtration and ventilation system demonstrating how it will filter air to prevent the escape of odours to the outdoors;
  - Description of how the filtration and ventilation system is accessible for cleaning, maintenance, or inspection, and is able to withstand repeated cleaning and functions, where required;
  - Type, number and location of air filters installed that are sufficient in preventing the escape of odours from the building, and maintain air quality; and
  - Diagrams and/or floor plans detailing the filtration and ventilation system.

  The Health Canada guide provides no specific technical requirements for the form or type of air filtration system; it simply requires implementation of a system that successfully blocks the escape of odours.

- **Water Supply**
  - Description of the water supply source, and if not municipal water, evidence that the water is appropriate for the activities conducted; and
  - Description of any non-potable water sources and how cross connection with potable water sources will be eliminated or contamination risks mitigated.

- **Lighting**
  - Description of lighting in operation and storage areas, demonstrating how cannabis or ingredients will not be affected in the event of breakage; and
  - Description of how light fixtures will be able to withstand repeated cleaning and sanitizing.

2.2.3 Enforcement

Through our review of cannabis facilities within Niagara Region, Health Canada was contacted and asked how odour concerns and enforcement measures with regards to cannabis production will be addressed. Health Canada generally stated that in order to ensure cannabis is produced, sold and distributed in accordance with the Cannabis Regulations, all licence holders are inspected on a regular basis. According to Health Canada, the Department takes issues and complaints seriously and ensures that appropriate actions are taken to correct any potential non-compliance with the regulations.

During the regular inspections by Health Canada, the report will include a citation under the Regulations if any strong odours are prominent outside of the licensed facility. If odours occur, the regulated party will be required to address the situation as part of a corrective action plan. While Health Canada has indicated that complaints are taken seriously and corrective actions taken, there is currently no information available on the number of complaints that have been filed nor on the investigation of complaints.

Based on the above information, odour from indoor cultivation facilities where a proper ventilation system is in place and is appropriately maintained should not be a concern. However, there could be interpretation differences with regards to what is considered an appropriate level of odour mitigation and what constitutes a “strong odour”.

Federal licence holders are required to comply with all relevant provincial and municipal laws, including local zoning by-laws, odour controls and electrical and fire safety. Accordingly, odour issues are a shared responsibility between Federal, Provincial and Municipal governments, and all levels of government may verify compliance with their respective regulations and can apply their individual compliance and enforcement measures as necessary.

2.2.4 Personal Medical Growth

In addition to the above permitted means of cannabis cultivation, the Access to Cannabis for Medical Purposes Regulations (ACMPR) allow individuals, or their designated growers, to register to produce a specific amount of cannabis for their own medical purposes as prescribed by their health care practitioner. Persons who have obtained a registration certificate from Health Canada may grow the number of plants allowed to fulfill their medical needs as prescribed. In the case of production for medical purposes, an individual can possess up to a 30 day supply of the dose recommended by their health care practitioner. Production is allowed both indoors and outdoors at the registered person’s place of residence, land owned by the registered person or land owned by another with authorization from the owner.

If production is occurring outdoors, the boundary of the land where a person is authorized to produce cannot have any points in common with the boundary of a school, public playground, daycare facility or other public place frequented mainly by persons under 18 years of age.

Health Canada's website clearly states that holders of registration certificates "are also expected to comply with all relevant provincial/territorial and municipal laws including local bylaws about zoning, electrical safety, fire safety, together with all related inspection and remediation requirements (emphasis added)."

An individual may grow for medical purposes for up to two people, either themselves and one other person or for two other people. Medical growth for up to four people can occur in one location, if two people who are designated to grow for others pair up and grow in one co-location. Such clustering of designated growth for medical cannabis can raise odour and concerns.

2.3 Other Acts and Policies

2.3.1 Farming and Food Production Protection Act, 1998

The Farming and Food Production Protection Act in Ontario is an Act that serves to protect the agricultural use of land. Under the Act, the term "agricultural operation" is defined to include:

> "the production of agricultural crops, greenhouse crops, maple syrup, mushrooms, nursery stock, tobacco, tree and turf grass, and any additional agricultural crops prescribed by the Minister"

and

> "the processing by a farmer of the products produced primarily from the farmer's agricultural operation;

From these definitions and based on personal communication with the Ministry, the cultivation of cannabis, as well as the processing of the same, where legal through the licencing process, appears to be captured in the definition of agricultural operation.

Under section 6 of the Act, the Act states,

> "No municipal by-law applies to restrict a normal farm practice carried on as part of an agricultural operation."

Accordingly, any restriction on the cultivation of cannabis may need to stand up to the test of whether "normal farm practices" have been restricted. The Act defines "normal farm practice" as a practice that:

> "is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances,

or

> makes use of innovative technology in a manner consistent with proper advanced farm management practices;…"

2.3.2 Provincial Policy Statement, 2014

The Provincial Policy Statement (PPS), which provides direction for planning in Ontario, supports the viability of rural areas and agricultural uses in municipalities and seeks to balance economic growth and prosperity.

Policy 1.1.4.1 states in part that healthy, integrated and viable rural areas should be supported by:

- promoting diversification of the economic base and employment opportunities through goods and services, including value-added products and the sustainable management or use of resources; and
- providing opportunities for economic activities in prime agricultural areas.

Section 2.3 of the PPS contains policies applying to agricultural areas. Section 2.3.1 states that prime agricultural areas shall be protected for long-term agricultural use. Policy 2.3.3.1 states that agricultural uses, agriculture-related uses and on-farm diversified uses are permitted in prime agricultural areas, and that proposed uses are to be compatible with, and shall not hinder, surrounding agricultural operations. According to Policy 2.3.3.2, in accordance with provincial standards, all types, sizes and intensities of agricultural uses and farm practices shall be promoted in prime agricultural areas.

The PPS provides the following definition for 'agricultural use':

> "the growing of crops, including nursery, biomass, 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, but not limited to livestock facilities, manure storages, value-retaining facilities, and accommodation for full-time farm labour when the size and nature of the operation requires additional employment".

The PPS defines 'on-farm diversified uses' as the following:

> "uses that are secondary to the principal agricultural use of the property, and are limited in area. *On-farm diversified uses* include, but are not limited to, home occupations, home industries, *agri-tourism uses*, and uses that produce value-added agricultural products."

2.3.3 Ontario Regulation 332/12 under the Building Code Act, 1992

Ontario Regulation 332/12 under the Ontario Building Code Act sets out requirements for farm buildings, which outlines requirements for buildings involving cannabis operations within Section 1.3.1.2.7. The Regulations set out requirements for cannabis operations involving extraction relating to locking, latching and other fastening devices for doors, as well as to ventilation.

2.3.4 Summary

Figure 2 provides an overview of the various levels of government who control the regulation of cannabis, as it relates to the Town of Fort Erie.

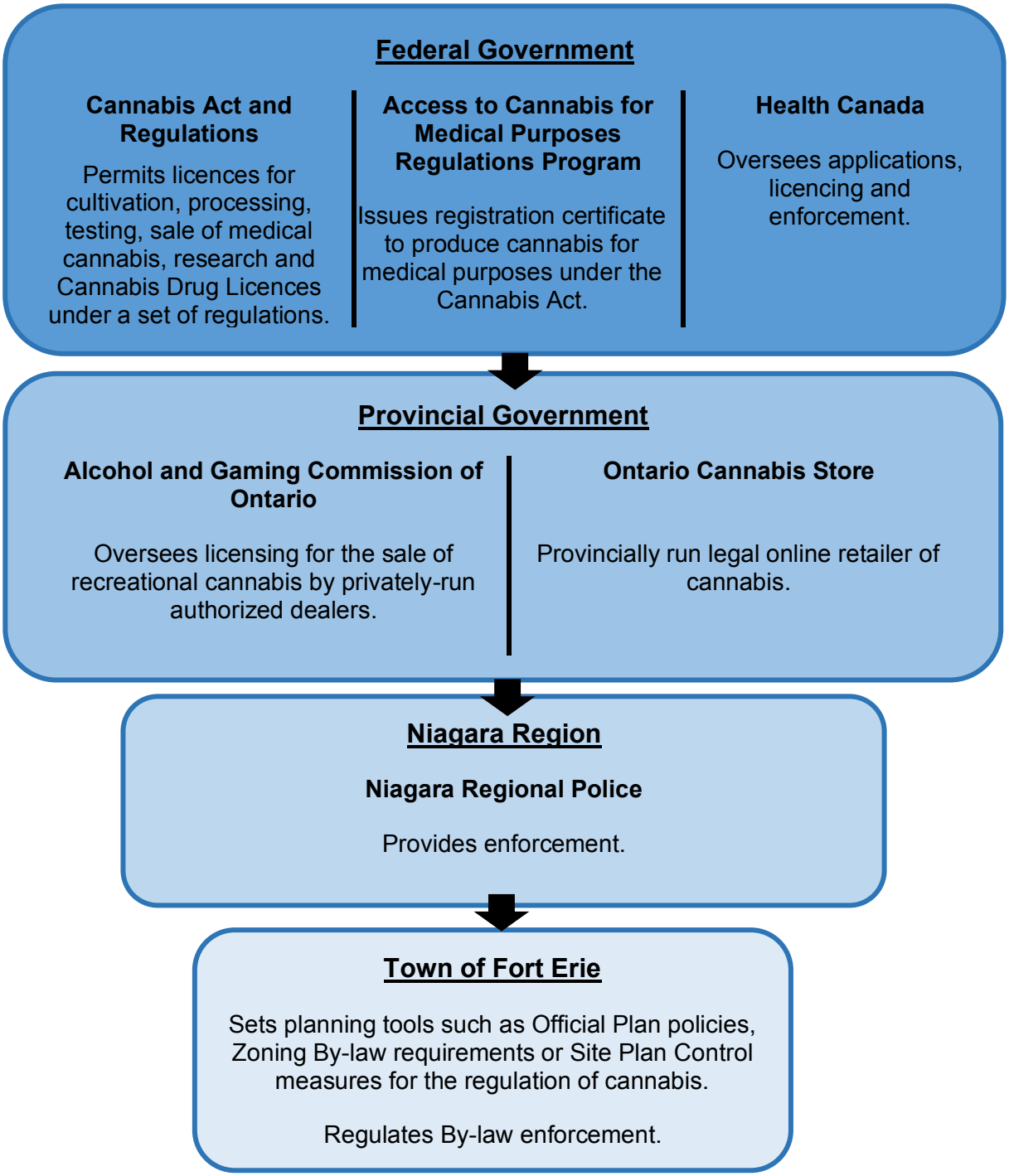


Figure 2. Federal, Provincial and Municipal Involvement in Cannabis Regulations

3 Fort Erie Planning Framework

This section examines the current policy and zoning permissions related to Cannabis production in Fort Erie.

3.1 Official Plan

3.1.1 Official Plan Amendment No. 18

Official Plan Amendment (OPA) No. 18 (By-law No. 06-2014) introduced medical marihuana policies to the Town's Official Plan, in response to the Marihuana for Medical Purposes Regulations passed under the Controlled Drug and Substances Act.

It is noted that since the writing of this by-law, the Marijuana for Medical Purposes Regulations was replaced by the Access to Cannabis for Medical Purposes Regulations and is now covered under the Cannabis Act.

The basis of OPA 18 outlines that "the proposed use [medical marihuana grow and production facilities] has been interpreted as being agricultural and permitted within the Agricultural, Rural and Open Space designations. The amendment proposes to permit the facilities within lands designated as Industrial Business Park and to limit these facilities to Open Space destinations outside the Urban Settlement Area."

Amendment No. 18 made the following changes to the Official Plan designations:

- Permitting growing of marijuana plants within buildings licensed and operated in accordance with the Marijuana for Medical Purposes Regulations in the Industrial Business Park designation; and
- Permitting agricultural uses in the Open Space designations outside of the Urban Area;

No changes to the Rural or Agricultural designations are made as part of this OPA. Based on the discussion in the "basis of amendment" section of the OPA, it appears the Town interprets these designations to already permit medical marihuana grow and production facilities as-of-right as agricultural uses.

A further amendment to Section 10.5: Separation Distances of Sensitive Land Uses from Industrial Operations included the following policy addition:

> "It is important that facilities for the production of Marihuana for Medical Purposes, licensed and operated accordance with the Marihuana for Medical Purposes Regulations and permitted as an agricultural or industrial use be appropriately distanced from sensitive land uses, including residences, schools, churches etc. Policy 10.5.1 shall provide guidance on distance separation in this

> regard. Further as permitted by Policies 13.4.1 and 13.4.II, these facilities shall be put under Site Plan Control to enhance land use and operational compatibility."

Section 10.5.1 further requires that Council have regard to the Ministry of Environment D6 Guidelines in determining appropriate separation distances and necessity of more detailed compatibility studies.

Section 13.4.II of the Official Plan (Site Plan Control) was amended to specifically require site plan control for medical marihuana grow and production facilities.

Figure 3 was included in Official Plan Amendment No. 18 to illustrate potential lands for medical marijuana production facilities and identifies the Town's existing Open Space Zones outside of the Urban Boundary as well as the zones associated with the Industrial Business Park Designation.

Figure 4 illustrates the Town's current land use designations, which highlights the locations of agricultural, rural, industrial and open space areas.

OPA 18 has not yet been consolidated into the latest version of the Official Plan, though it is in effect.

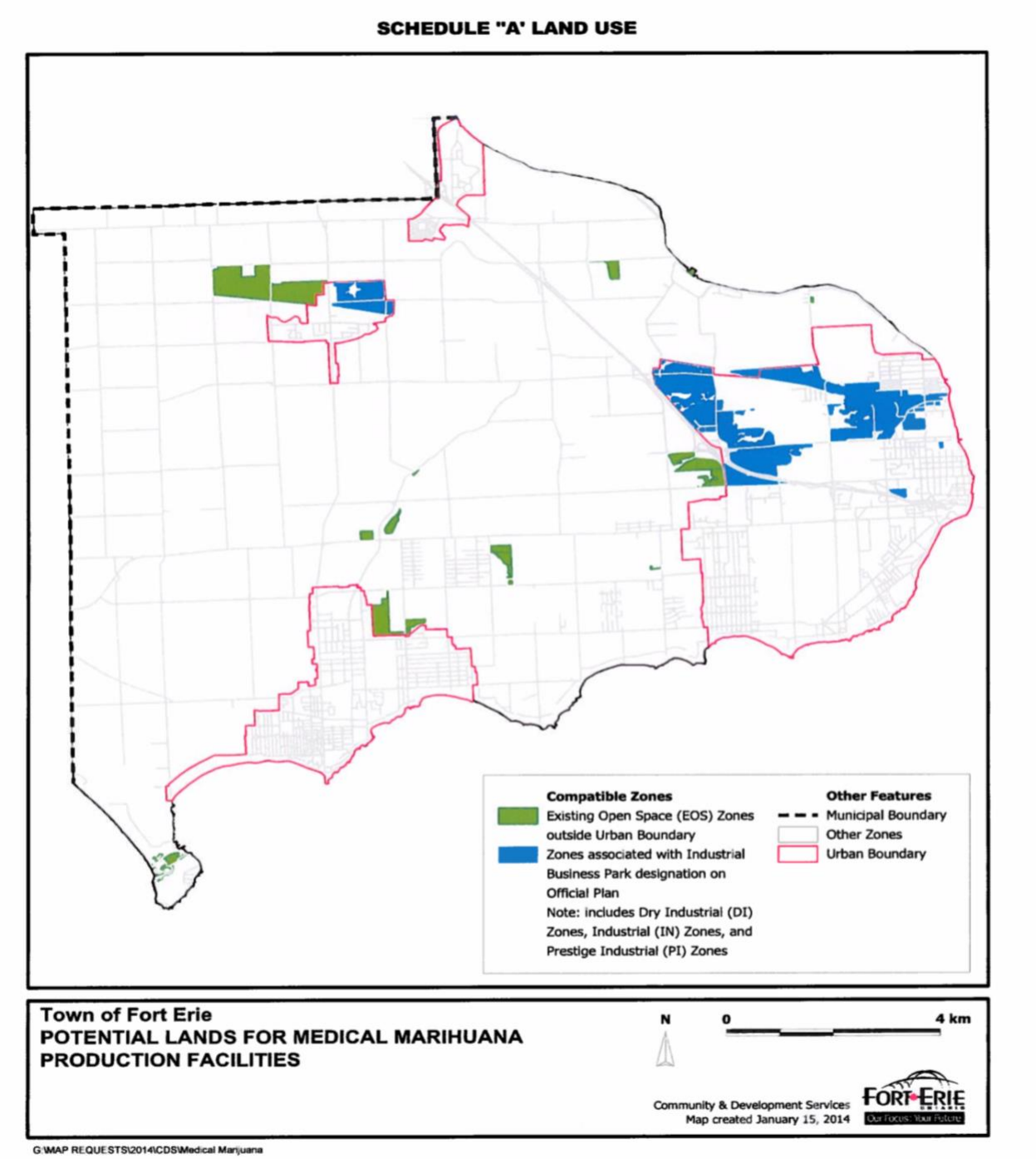


Figure 3. Official Plan Amendment No. 18 Potential Lands for Medical Marihuana Production Facilities Map

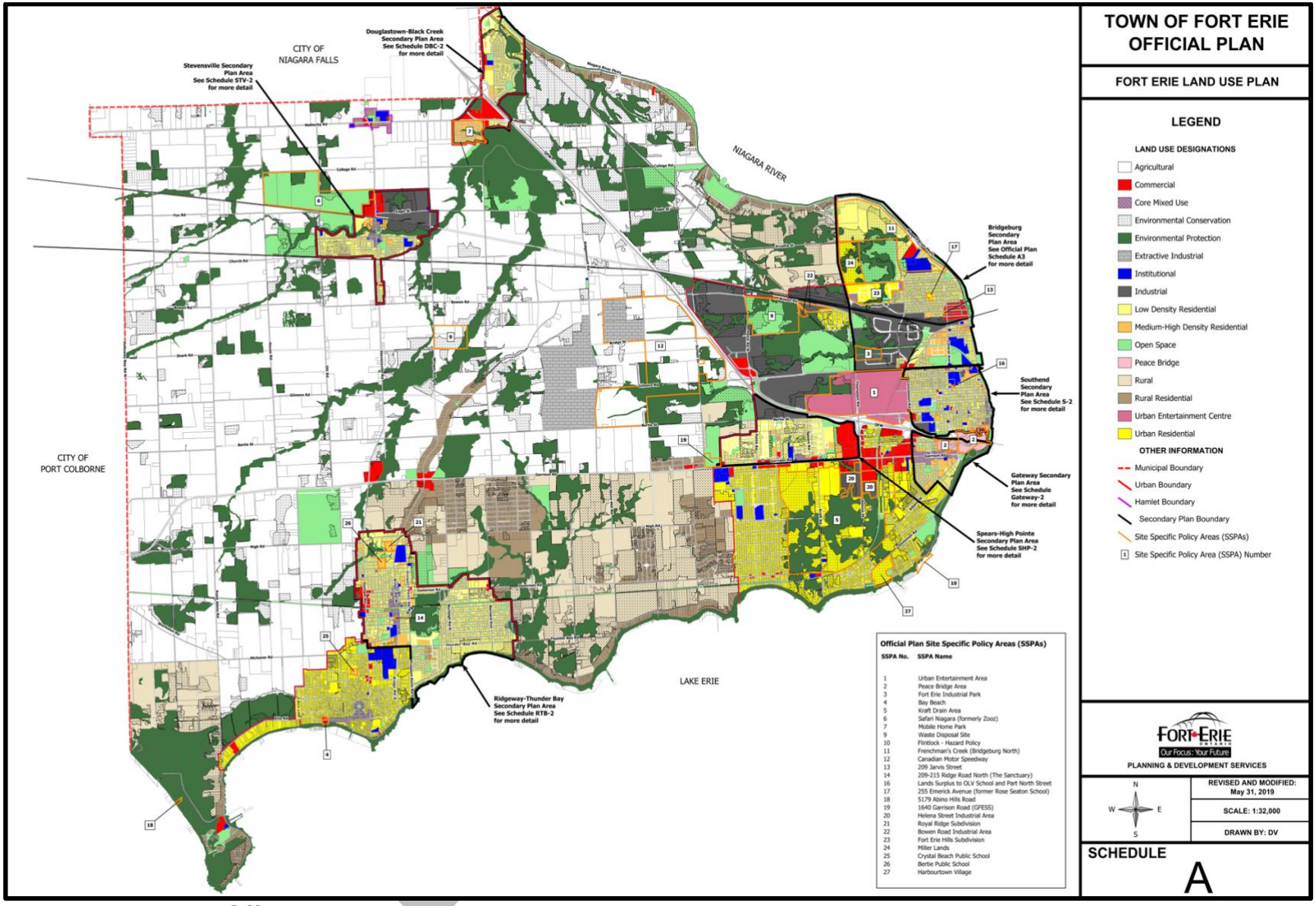


Figure 4. Fort Erie Official Plan Land Use Plan

3.1.2 Agricultural

Policies for the Town's Agricultural areas are outlined in Section 4.5 of the Fort Erie Official Plan. The intent of the Official Plan policies are to prevent urban development and preserve designated areas for agricultural areas. The predominant use of land shall be for agriculture, which includes:

> "the growing of crops, 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 labor when the size and nature of the operation requires additional employment."

Section 4.5.2.III of the Plan outlines a list of criteria which all permitted agricultural related-uses shall comply with. Among other criterion, this generally includes the requirement to locate uses in a manner that minimizes any adverse impacts on surrounding agricultural lands and operations. As well, agricultural uses should be located a suitable distance away from incompatible land uses.

Section 4.5.2.IV addresses secondary uses, which are "permitted as accessory and subordinate uses to the principle use of the property in the agricultural designation" in accordance with a list of criteria. Generally, the Official Plan requires that the use is small in scale and ancillary to the principle use, and that any value-added agricultural productions are from the same property. The whole property must remain designated and zoned agricultural and the new use must be compatible with and not negatively impact any surrounding agricultural areas.

3.1.3 Rural

Policies for the Rural designation are outlined within Section 4.6 of the Official Plan. Agriculture of all types are permitted within this designation in addition to other uses permitted by the policies of this section which includes agriculture related uses as outlined by Section 4.6.1.I.a.

3.1.4 Industrial

The Town has two different Industrial designations: Industrial Business Park and Extractive Industrial. The Industrial Business Park Designation is labeled and shown as Industrial on the Town's Land Use Schedule A **(Figure 3)**, while the Extractive Industrial designation is specifically labelled as Extractive Industrial and only permits licenced extractive aggregate operations. According to Section 4.10 of the Official Plan, the Industrial Business Park designation permits "an integrated mix of industrial/manufacturing operations and business activities. Lands designated in this category shall be predominately used for manufacturing, assembly, processing, fabrication, warehousing and storage of goods and materials". As previously discussed, Official Plan Amendment No. 18 permits the growing of marihuana plants within buildings within this designation.

Section 4.10.VI outlines that permitted uses should not be obnoxious and where necessary, must mitigate emissions relating to odour, dust, smoke, gas, fumes, particulate matter, noise and/or vibration. Development is directed to operate according to the applicable noise and emissions standards set out by the Ministry of Environment.

According to Section 4.10.VIII, all industrial development shall be regulated by adequate provisions within the Town's Zoning By-law including setbacks, parking and loading requirements, landscaped areas, screening and buffering requirements where applicable, the prohibition of nuisances, and outdoor storage requirements.

3.1.5 Open Space

As discussed, Official Plan Amendment No. 18 introduced the following permission to the end of Section 4.13.1.I: "Outside of the urban area boundary agricultural uses, except intensive animal operations and accessory dwellings will be permitted". The policies of this designation do not outline any further direction related to agricultural uses nor medical marihuana grow and production facilities.

3.2 Comprehensive Zoning By-law No. 129-90

Currently, the Town's Comprehensive Zoning By-law No. 129-90 defines a medical marihuana and grow production facility as:

> "a building or structure used for the cultivation, processing, testing, destruction, packaging and shipping of marihuana used for medical purposes as permitted under the federal government's Marihuana for Medical Purposes Regulations (MMPR) as amended from time to time, or any successors thereto."

A medical marihuana and grow production facility is listed as a permitted use in the Agricultural, Rural, Industrial and Prestige Industrial Zones. Medical marihuana and grow production facilities are also included within a list of uses under the by-law's definition of "agricultural". The Extractive Industrial (EI) Zone, Existing Open Space (EOS) Zone and the Hazard (H) Zone also permit Agricultural uses, which results in medical marijuana grow and production facilities also being permitted in those zones.

The cultivation of medical marihuana is only permitted indoors within these zones.

3.2.1 Agricultural Zone

The Town's Agricultural Zone (A) permits "agricultural uses including greenhouses and medical marihuana grow and production facilities". Section 7.9. of the by-law outlines the following regulations for greenhouses and medical marihuana grow and production facilities:

Minimum lot area	Permitted only on an existing lot having a minimum size of 2 ha
Minimum Lot Frontage	60 m
Minimum Front Yard	15m except: i) that where the yard abuts a Residential Zone, residential use or other sensitive land use, 70m is required but this setback does not apply to existing buildings or structures.
Minimum Interior Side Yard And Rear Yard	6m, except: i) that where the yard abuts a Residential Zone, residential use or other sensitive land use, 70m is required but this setback does not apply to existing buildings or structures.
Minimum Exterior Side Yard	15m except: i) that where the yard abuts a Residential Zone, residential use or other sensitive land use, 70m is required but this setback does not apply to existing buildings or structures
Maximum Lot Coverage	60%
Maximum Building Height	12m

Minimum Landscaping Requirements	A landscaping area in the form of a 3m wide planting strip shall be provided and maintained adjacent to every portion of any lot line that abuts a Residential Zone, or the extent of an abutting existing residential use not located in a Residential Zone.
Outside Storage Requirements for Greenhouses	Outside storage of goods, materials or supplies is permitted in the rear yard or side yard only, provided it is screened from view from any street.
Outside Storage Requirements for Medical Marihuana Grow and Production Facilities	Outside storage of goods, materials or supplies is not permitted.
Maximum Gross Floor Area for Processing and Packaging	20% of the gross floor area of the operation
Visible Nighttime Lighting	Where a building or structure consists of more than 40% of glass and where artificial lighting is required a closed wood board on board or composite/vinyl fence shall be provided and maintained adjacent to every portion of any lot line that abuts a Residential Zone, residential use or other sensitive land use.
Parking	1 parking space for every 100 sq. m. of gross floor area or every 2 employees, whichever is the greater.

3.2.2 Rural Zone

The Rural Zone (RU), in Section 8 of the by-law, permits among other uses, agricultural uses including greenhouses and medical marihuana grow and production facilities. According to Section 8.7, greenhouses and medical marihuana grow and production facilities are subject to the regulations outlined by Section 7.9 of the by-law, which are outlined above in reference to the Agricultural Zone.

3.2.3 Industrial Zone

The Town's Industrial Zone (IN) lists "medical marihuana grow and production facilities" as a permitted use, and outlines a table of specific regulations for the use within Section 27.6 as follows:

Minimum Lot Frontage	40m
Minimum Front Yard	15m, except: i) that where the yard abuts a Residential Zone, residential use or other sensitive land use, 70m

	is required but this setback does not apply to existing buildings or structures.
Minimum Interior Side Yard And Rear Yard	6m, except: ii) that where the yard abuts a Residential Zone, residential use or other sensitive land use, 70m is required but this setback does not apply to existing buildings or structures.
Minimum Exterior Side Yard	10.5m except: i) that where the yard abuts a Residential Zone, residential use or other sensitive land use, 70m is required but this setback does not apply to existing buildings or structures.
Maximum Lot Coverage	60%
Maximum Building Height	12m
Minimum Landscaping Requirements	A landscaping area in the form of a 3m wide planting strip shall be provided and maintained adjacent to every portion of any lot line that abuts a Residential Zone, residential use or other sensitive land use.
Minimum Loading Requirements	No loading space shall be established in any front yard or any yard adjacent to a residential zone or QEW.
Outside Storage Requirements	Outside storage of goods, materials or supplies is not permitted.
Building Façade Regulations	No exterior walls that face a street shall be constructed of concrete blocks unless the same are decorative masonry units or are used in a decorative pattern form or are surfaced with stucco or with a permanent coloured finish (does not include paint).
Visible Nightime Lighting	Where a building or structure consists of more than 40% of glass and where artificial lighting is required a closed of wood board on board or composite/vinyl fence shall be provided and maintained adjacent to every portion of any lot line that abuts a Residential Zone, residential use or other sensitive land use
Parking	1 parking space for every 100 sq. m. of gross floor area or every 2 employees, whichever is the greater.

3.2.4 Prestige Industrial Zone

The Town's Prestige Industrial Zone (PI) lists "medical marihuana grow and production facilities" as a permitted use, and outlines a table of specific regulations for the use within Section 27.6 as follows:

Minimum Lot Frontage	40m
Minimum Front Yard	15m
Minimum Interior Side Yard And Rear Yard	6m, except: i) that where the yard abuts a Residential Zone, residential use or other sensitive land use, 70m is required but this setback does not apply to existing buildings or structures.
Minimum Exterior Side Yard	10.5m except: i) that where the yard abuts a Residential Zone, residential use or other sensitive land use, 70m is required but this setback does not apply to existing buildings or structures.
Maximum Lot Coverage	50%
Maximum Building Height	9m
Minimum Landscaping Requirements	A landscaping area in the form of a 3m wide planting strip shall be provided and maintained adjacent to every portion of any lot line that abuts a Residential Zone, residential use or other sensitive land use.
Minimum Loading Requirements	No loading space shall be established in any front yard or any yard adjacent to a residential zone or QEW.
Outside Storage Requirements	Outside storage of goods, materials or supplies is not permitted.
Building Façade Regulations	No exterior walls that face a street shall be constructed of concrete blocks unless the same are decorative masonry units or are used in a decorative pattern form or are surfaced with stucco or with a permanent coloured finish (does not include paint).
Nightime Lighting	A closed fence shall be provided and maintained adjacent to every portion of any lot line that abuts a Residential Zone, residential use or other sensitive land use
Parking	1 parking space for every 100 sq. m. of gross floor area or every 2 employees, whichever is the greater.

3.3 Site Plan Control

According to the Town's Site Plan Control By-law No. 133-86, the entire Town of Fort Erie is designated as a Site Plan Control Area. By-law No. 134-86 establishes site plan control exceptions, which was later amended by By-law No. 08-2014 to require site plan control for medical marihuana grow and production facilities.

As previously discussed, licensing applications to Health Canada require a broad range of site, security and good production practice measures to be implemented, with specific requirements for storage, building layout, air filtration and ventilation systems, water supply and lighting. Based on these existing federal requirements, the Town will need to consider if additional site plan control measures are required to effectively control and regulate facilities. If nothing else, the Town may choose to require site plan control for cannabis facilities in order to be able to enter a site plan control agreement and have more tools with regards to enforcement if any issues arise.

3.4 Other By-laws

The Town of Fort Erie has additional by-laws that regulate the use of land and nuisance concerns including: Property Standards By-law 186-08; Lot Maintenance By-law 92-2019; Public Nuisance By-law 30-09; Fence By-law 71-2016; and Sign By-law 199-2-1. None of these include any provisions for cannabis or marijuana, however there may be opportunities to introduce regulations.

3.5 Cannabis Facilities in the Town

The Town of Fort Erie currently has two cannabis cultivation facilities in operation. Over the past year, the Town has received 8 inquiries about cannabis facilities. Four of these are active site plans and the other 4 have had pre-consultation meetings with the Town.

4 Best Practice Review

4.1 Summary of Best Practice Review

The available information from 19 municipalities was reviewed in order to analyze and assess the various approaches that other municipalities have taken to deal with the permission for cannabis growing facilities in Ontario. Six municipalities within Niagara Region were reviewed, which include: the Town of Niagara-on-the-Lake, the City of Port Colborne, the Township of Wainfleet, the Town of Lincoln, the Township of West Lincoln and the Town of Pelham. Other Ontario municipalities were chosen to represent urban and rural approaches. These include the Town of Milton, the Town of Georgina, the Township of Oro-Medonte, the Town of Amherstburg, the Municipality of Chatham-Kent, the Town of Halton Hills, the Municipality of Leamington, Norfolk County, the Town of Oakville, the Town of Arnprior, the City of Ottawa, Haldimand County, the City of Barrie and Brant County.

At the time of the review, a number of municipalities were in different stages of approval of amendments related to cannabis uses including:

- The Township of Wainfleet has an Interim Control By-law in place, expiring November 2020, while it assesses current land use planning policies and ensure the provision of adequate tools to regulate the growing and processing of cannabis. According to previous discussions with Staff, it was anticipated that an Issues and Opportunities Report would go to Council in October 2020 outlining options for draft zoning, site plan and licencing agreements and the Interim Control By-law is not anticipated to be extended. However, Wainfleet's report was not yet available during the writing of this report;
- The Town of Niagara-on-the-Lake passed a Zoning By-law Amendment in June 2020, which is currently under appeal, with its Interim Control By-law extended until an LPAT decision is reached;
- The Town of Lincoln recently passed new Official Plan and Zoning By-law Amendments in mid-September 2020, with no appeals received; and
- The Town of Georgina Council recently approved a Zoning By-law Amendment in August 2020, however the passing of the by-law was subject to a revision regarding setback requirements for outdoor cultivation. Changes to the amendment have been made and are available on the Town's website, however the Town's Interim Control By-law is still in place until the updated by-law comes into force and effect. A by-law to repeal the Interim control By-law is scheduled was scheduled for passing in late January 2021.

4.2 Official Plan Permissions

Of all the municipalities reviewed, six currently address cannabis facilities within their Official Plans: Pelham, Port Colborne, Lincoln, Milton, Halton Hills and Chatham Kent.

Pelham passed an Official Plan Amendment in July 2020, permitting Indoor Cannabis and Industrial Hemp Cultivation in the Town's Good General Agricultural, Specialty Agricultural and Industrial Designations through a Zoning By-law Amendment. According to Section 4: Basis of the Amendment, the Official Plan Amendment does not deal with outdoor cultivation as this is already permitted in the agricultural designation and recognized as an agricultural use. A number of studies are required at no expense to the Town to support the establishment of indoor facilities including an Emission Summary and Dispersion Modelling Report, a Contingency Odour Mitigation Plan, a Light Mitigation Plan, and a Traffic Impact Study. Development criteria for new facilities is outlined, which includes:

- designing the building in conformity with its surrounding agricultural and rural context;
- avoiding any adverse noise, dust, odour and light impacts;
- protecting sensitive surface and ground water features;
- providing adequate parking facilities;
- providing appropriate servicing;
- providing stormwater management; and
- providing appropriate waste management systems.

The amendment also discusses value-added components, which must demonstrate that they are compatible with surrounding agricultural operations and directly related to the farm operations on site. Additionally, the use of appropriate setbacks is required for facilities according to guidelines set out by the amendment, which may be lower or higher depending on a set of facility criteria. This includes a minimum of 300 to 500 metres from sensitive land uses and a minimum of 2,000 to 4,000 metres from other facilities.

The Official Plan Amendment for Port Colborne allows a Cannabis Production Facility in the Industrial/Employment, Economic Gateway Centre, Agricultural and Rural designations. The Official Plan was amended to ensure compatibility with neighbouring land uses through installation and operation of odour and light mitigation systems; maintenance and monitoring plans, servicing; and maintaining appropriate setbacks from sensitive receptors.

The Town of Lincoln passed an Official Plan Amendment in September 2020. Accordingly, cannabis production facilities are permitted in Lincoln's Specialty Agricultural and Prime Agricultural designations and are subject to site plan control. In part, the regulations: prohibit activity within a dwelling, permit both indoor and outdoor

cultivation, but indoor storage and processing, require mitigation measures as well as buffering, screening and security requirements.
The Town of Milton passed an Official Plan Amendment in June 2020, introducing Cannabis Production and Processing as a permitted use within the Business Park Area, Industrial Area, Agricultural Area and Mineral Resource Extraction Area designations. The Official Plan Amendment requires a minimum 70 metre setback to sensitive land uses for new facilities in Business Park and Industrial Area designations and a minimum 150 metre setback to sensitive land uses for new facilities in the Agricultural and Mineral Resource Extraction Area designations. It also requires facilities to be subject to Site Plan Control, and as part of a complete application, a number of studies are required related to odour, light impacts, traffic and hydrogeological systems. A standalone cannabis processing facility is not permitted within the Town's rural areas.

The Chatham-Kent Official Plan lists cannabis production as a permitted use within the Employment Area, Agricultural Area and Rural Industrial designations. Cannabis production is addressed as its own section, providing the objective of supporting and promoting new industry through diversification and requiring setbacks from sensitive land use, site plan approval and impact mitigation in accordance with Federal regulations and a Health Canada licence.

The Halton Hills Official Plan permits, through OPA 35, cannabis cultivation and processing in the General Employment Area and Prestige Industrial Area designations. Outdoor cultivation is also permitted in the Protected Countryside Area and Agricultural Area, subject to setbacks of 150 metres to sensitive uses and 50 metres to lot lines for outdoor uses. The Official Plan permits indoor cultivation of cannabis and processing of cannabis in the Protected Countryside Area and Agricultural Areas through a Zoning By-law Amendment and Site Plan control.

4.3 Cannabis Facility Definitions

Various approaches have been taken to define cannabis growing, production and harvesting. The following terms have been used within zoning by-laws and official plans reviewed:

- Cannabis Production
- Cannabis Production Facility
- Cannabis Growing and Harvesting Facility
- Cannabis Production and Processing
- Cannabis Related Facility
- Cannabis and Industrial Hemp Cultivation

The definitions of these terms all seek to describe the specific cannabis related uses that are encompassed by the term, these often being cultivation, growing, processing, production, testing, destruction, packaging and shipping of cannabis etc. Many of the definitions had a structure similar to the following example from Chatham-Kent:

> "Cannabis Production Facility: means any building structure, or lands licensed by, Health Canada to undertake cultivation, processing, sale, analytical testing, and research of cannabis, pursuant to the Cannabis Regulations under the Cannabis Act, or successor legislation."

Some of the municipalities have chosen to restrict outdoor cultivation through new definitions for facilities, specifically defining a cannabis facility as an "indoor structure", "wholly enclosed building" or "building or structure" and excluding any reference to "lands". The City of Barrie provides the following definition:

> "Cannabis Production Facility: shall mean a wholly enclosed building, structure, or part thereof, used to possess, produce, sell, provide, ship, deliver, transport or destroy marihuana or cannabis …."

Approximately half of the definitions mention that the cannabis related uses must be done pursuant to applicable regulations and provisions, some of them naming the Act and Regulations directly, and a few mention that retail sale is not to be permitted on the premises.

Some municipalities have also chosen to revise their current definition of other uses, such as "agricultural use" and "industrial use" to either include or specifically exclude cannabis facilities and production:

- Oro-Medonte amended their definition of "Agricultural Use" and "Agricultural Use: Specialized" to state that "an Agricultural Use does not include a Cannabis Production and Processing Facility or the outdoor growing of Cannabis";
- Norfolk County amended definitions within their zoning by-law for "farm", "garden centre", and "wholesale outlet" to specifically exclude "cannabis production and processing"; and
- Chatham-Kent amended their definition of "Agricultural Use" to include "a Cannabis Production Facility" and their definition of "Industrial Use" to include "a Cannabis Production Facility excluding the outdoor cultivation of cannabis".

The Town of Halton Hills introduced 6 different definitions relating to cannabis production into the zoning by-law, which mirror the various definitions associated with the licences available. These include:

- Cannabis Analytical Testing Facility;
- Cannabis Cultivation – Indoor;
- Cannabis Cultivation – Outdoor;
- Cannabis Drug Production Facility;
- Cannabis Processing Facility; and
- Cannabis Research Facility.

With the introduction of new regulations for cannabis facilities, some municipalities have also introduced new definitions for “Air Treatment Control” and “Sensitive Land Use”, in order to more effectively administer the new regulations. The Town of Georgina has also chosen to introduce a definition for a “Gatehouse”, which pertains to a security building to monitor the lot, as well as for a “Registered Person” which includes an individual who is authorized to cultivate, propagate and harvest cannabis in accordance with Federal regulations.

4.4 Mechanism for Zoning Permissions

Most of the municipalities reviewed permit cannabis growing facilities in some way, whether as-of-right (i.e. without a need for a special application) or through a zoning by-law amendment process (i.e. with the need for a zoning by-law amendment application), as illustrated within **Table 1**. The zones within each municipality where the indoor and outdoor growth of cannabis and related uses are permitted are described within **Table 1**. These zones are generally grouped by: agricultural and rural areas; and employment and industrial areas.

Unique in our review, the Town of Oakville does not refer to cannabis specifically at all. It is our understanding from a review of their website and discussion with the Manager of Zoning that cannabis facilities and their uses are considered to be captured by the existing defined terms of “agriculture” and “manufacturing” within the zoning by-law. According to the Town’s “Cannabis Legalization – One Year Review” dated February 2020 from the Municipal Enforcement Services and Legal Department, “production facilities, whether medical or recreational cannabis, are regulated exclusively by the Federal government.” The report additionally states the following:

> “At present, staff direct notices to the Chief Building Official so that the application can be reviewed for zoning compliance. In Oakville, applications for cultivation, processing and/or sale of cannabis will be reviewed to determine what the primary use is in accordance with existing use definitions such as Agriculture or Manufacturing, and the applicable zoning permissions.”

The Municipality of Leamington is also unique, as they have chosen to implement a stand-alone Cannabis Regulation By-law, which sets aside similar provisions to those of the other municipality’s zoning by-laws, however it is a by-law independent of their zoning by-law.

The Town of Pelham has considered additional by-laws to accompany implementation of an official plan and zoning by-law amendment, including a Draft Fence By-law, a Draft Fortification By-law, a Draft Cannabis Nuisance By-law and a Draft Odour By-law. In July 2020 the Town passed an Odorous Industries Nuisance By-law, and according to the Town, they are still contemplating a future Noise Nuisance By-law and a Light Nuisance By-law. The Odorous Industries Nuisance By-law outlines that an odorous

industrial facility must not cause an adverse effect or public nuisance and provides definitions for a cannabis operation and cannabis. According to the by-law, the owner and/or operator of an odorous facility must employ air filtration systems where cannabis is present to prevent obnoxious odours from escaping and during inspection, and must provide all licences, registrations and other forms of authorization which permit the cannabis operation on the property. The by-law outlines and defines specific Odour Unit measurements, with numerical parameters for odour strength and proximity to sensitive land uses. Regulations and penalties are addressed, with fines ranging from $500 to $50,000 for a first conviction.

Table 1. Summary of Municipal Cannabis Facility Zoning Permissions

Municipality	Indoor Cultivation Permitted		Outdoor Cultivation Permitted	
	Agricultural and Rural Areas	Employment and Industrial Areas	Agricultural and Rural Areas	Employment and Industrial Areas
Niagara Region				
Niagara-on-the-Lake[1]	As-of-right			
Lincoln	As-of-right			
Port Colborne	As-of-right	As-of-right	As-of-right outside the Urban Boundary	
Pelham	Through a ZBA	Through a ZBA	Outdoor growth defined but not permitted anywhere	
West Lincoln	Through a ZBA	Through a ZBA		
Other Municipalities				
Milton	As-of-right	As-of-right	As-of-right	As-of-right
Georgina[2]	As-of-right	As-of-right	As-of-right	
Oro-Medonte	As-of-right	As-of-right		
Amhurstberg	As-of-right	As-of-right	As-of-right	
Chatham-Kent	As-of-right	As-of-right	As-of-right	
Halton Hills	As-of-right	As-of-right	As-of-right	
Ottawa		As-of-right	As-of-right	
Leamington	As-of-right	As-of-right		
Norfolk County	As-of-right	As-of-right		
Arnprior		As-of-right		As-of-right
Haldimand County	As-of-right	As-of-right		
Brant County	As-of-right	As-of-right		
Barrie		As-of-right		

[1] Passed by Council June 2020 and under appeal: Interim Control By-law in place until LPAT decision
[2] Council approved but passing subject to minimum setback revision: Interim Control By-law in effect

4.5 Zoning Permissions – Indoor Cultivation

The majority of the municipalities permit the indoor cultivation of cannabis as-of-right within their zoning by-laws, in agricultural, employment or industrial zones as noted in **Table 1**.

In comparison to permitting the use as-of-right, the Town of Pelham requires a site-specific Zoning By-law Amendment to permit indoor cultivation within its newly established Agricultural Cannabis and General-Industrial Cannabis zones. When an amendment is proposed within either an agricultural or industrial zone, one of these new zones would be applied. The Town of West Lincoln also requires a site specific/zoning by-law amendment to permit the indoor cultivation of cannabis along with processing, testing, destruction and packaging.

4.6 Zoning Permissions – Outdoor Cultivation

Outdoor Cultivation Permitted
Only some of the municipalities reviewed specifically allow the outdoor cultivation of cannabis. Milton, Chatham-Kent, Georgina, Amherstburg, Halton Hills and Ottawa permit outdoor cultivation as of right within their Agricultural, Rural and/or Protected Countryside Zones. The Town of Georgina's recent Zoning By-law Amendment specifically permits outdoor cultivation in the Rural Zone, as follows:

> "Cultivation, propagation and harvesting of cannabis outdoors shall be permitted subject to these uses complying with the minimum separation distances from sensitive land uses and the minimum yard setbacks for non-residential uses as outlined in this section."

While the Town of Pelham has introduced extensive Official Plan and zoning permissions for indoor cultivation, according to their Official Plan Amendment and Town reports prepared for the Cannabis Control Committee, outdoor cultivation is considered to be permitted as an agricultural within agricultural areas. However, the defined term of outdoor cultivation of cannabis in their zoning is not permitted anywhere. This is also true for the City of Port Colborne, who chose to delete their draft prohibition of outdoor cultivation in the rural and agricultural zone, because, according to Recommendation Report 2020-09, the "growing of cannabis is seen as an agricultural use as indicated by the Region of Niagara". However, the report states that "the prohibition will remain for any facility permitted within the City's urban boundary as agricultural use is not supported in the City's Official Plan".

Unique to Ottawa's permissions, cannabis cultivation within the City's Agricultural and Rural Countryside zones is specifically limited to outdoor and greenhouse cultivation. As previously discussed, the Town of Oakville considers cannabis facilities as an

agricultural use, and according to discussion with the Manager of Zoning, outdoor cultivation facilities would therefore be permitted where agricultural uses are permitted.

The Town of Lincoln, Norfolk County and the Town of Arnprior zoning by-laws make no reference to indoor or outdoor cultivation, however Lincoln and Norfolk County both prohibit outdoor storage.

Outdoor Cultivation Not Permitted
Within the zoning by-laws of West Lincoln, Niagara-on-the-Lake (passed and under appeal), Oro-Medonte, Leamington, Haldimand County, Barrie and Brant County, specific reference is made that either directly prohibits the outdoor storage and growing of cannabis or only permits indoor cultivation.

4.7 Zoning and Site Plan Requirements

While specific zoning provisions and requirements for facilities differ across municipalities, the following summary captures the provisions that are commonly referenced:

- Requiring setback or separation regulation for cannabis facilities from sensitive land uses, typically, from residential, institutional and open space zones;
- Setback distances vary depending on which zone the use is permitted within (i.e. setbacks for facilities within the agricultural zone will differ from those for facilities within employment zones). Setbacks range from 40 metres to 300 metres but are often set at 150 metres within by-laws that only specify one requirement. Niagara-on-the-Lake is a unique exception to this range, as their zoning by-law requires a separation distance of 600 metres from sensitive land uses;
- Separation distance between greenhouses, buildings and structures within a cannabis facility operation;
- Requirement of a security fence around the premises to a certain standard. Many regulations also state that security buildings will require the same setbacks as facilities;
- Parking requirements including number of spaces and maximum coverage, which depend on the size of the facility and number of employees;
- Loading requirements, requiring either hidden or fully enclosed spaces to be provided;
- Subjecting cannabis facilities to site plan control;
- Requirement for mitigation of potential impacts such as light, air and odour emissions, which may include the submission of studies to the municipality.
- Design and operation of facilities in accordance with Federal regulation, a licence from Health Canada, and any other requirements of the Province or competent authority;
- Prohibition on retail stores and sales;
- Planting strip requirements;
- Restriction on outdoor signage or advertisement of the facility; and
- Restriction on residential uses or dwelling units located on the same lot as a cannabis facility.

Table 2 provides a summary of the specific reoccurring zoning regulations implemented by the different municipalities reviewed.

Table 2. Summary of Municipal Cannabis Facility Zoning Requirements

Requirement	Municipality	Regulation
Minimum Setback to Sensitive Land Use or Zone	Niagara-on-the-Lake	• 600 m
	Lincoln	• 300 m
	Port Colborne	• 150 m
	Pelham	• For outdoor uses: 300 m
	Milton	• Within industrial areas: 70 m • Within agricultural areas: 150 m
	Georgina	• Facilities containing air treatment control: 150 m • Rural zoned lots less than 8,000 m^2: 150 m • Facilities with no air treatment control: 300 m • To a school site: 300 m
	Oro-Medonte	• 150 m
	Amherstburg	• 150 m to residential use on separate lot • 225 m to institutional or open space zone
	Chatham-Kent	• Within institutional zones: 75 m • Within agricultural and rural zones: 100 m
	Halton Hills	• 150 m
	Ottawa	• 300 m • Facility may be located within 300 metres of a sensitive use zone if the only permitted uses of the zone are environmental preserve and education area, emergency service, municipal service centre, office, storage yard and warehouse
	Leamington	• 200 m
	Norfolk	• From sensitive zones for facilities containing air treatment control in industrial zones: 70 m • From sensitive zones for facilities containing air treatment control in agricultural zones: 150 m • From existing sensitive uses for facilities containing air treatment control in industrial or agricultural zones: 150 m

Requirement	Municipality	Regulation
		• From existing sensitive uses for facilities containing no air treatment control in industrial or agricultural zones: 300 m
	Arnprior	• 100 m

	Haldimand County	• 150 m
		• Increased setbacks based on building size:
		  ○ Less than 6,967 m^2: 150 m
		  ○ Less than 9,260 m^2: 200 m
		  ○ Greater than 9,260 m^2: 300 m
		• No air treatment control provided: 300 m

	Brant County	• 150 m
Minimum Building and Structure Setback from Property Lot Lines	Lincoln	• 30 m
	West Lincoln	• Where located in employment zones: 45 m • Where located in agricultural zones: 50 m
	Halton Hills	• Outdoor growth: 50 m
	Haldimand County	• 30 m

Lot Requirements	Port Colborne	• Minimum lot frontage: 75 m
		• Minimum lot area: Permitted only on an existing lot having a minimum size of 3 hectares
		• Maximum lot coverage:
		  ○ Lots less than 5 ha: 30%
		  ○ Lots less than 10 ha: 10%
		  ○ Lots greater than 10 ha: 5%
		• Minimum front yard: 30 m
		• Minimum interior side yard: 16 m
		• Minimum corner side yard: 30 m
		• Minimum rear yard: 30 m

	Pelham	• Maximum lot coverage: 30%
	Georgina	• Maximum lot coverage: 30% • Maximum height in Rural Zone: 11 m

Requirement	Municipality	Regulation
	Haldimand County	• Minimum lot area: Greater than 4.0 ha
Security and Fencing	Niagara-on-the-Lake	• Security buildings may be located in the required front yard and do not have to comply with setbacks
	Lincoln	• Security buildings located in the front yard do not have to comply with setbacks
	Port Colborne	• Security buildings may be located in the front yard • Where a building or structure consists of more than 40% glass and where artificial lighting is required an opaque fence shall be provided and maintained adjacent to every portion of any lot line that abuts a sensitive land use
	West Lincoln	• Minimum 1.8 m high solid fence required around the perimeter of the lot
	Milton	• Security buildings are permitted in any yard and are not subject to setbacks
	Georgina	• Gatehouse buildings are permitted in front or exterior side yard with a maximum floor area of 20 m
	Norfolk	• Security buildings may be located in the front yard and does not have to comply with setbacks
	Brant County	• Security buildings may be located in the front yard
Outdoor Storage	Niagara-on-the-Lake	• No outdoor storage
	Lincoln	• No outdoor storage
	Port Colborne	• No outdoor storage
	Pelham	• No storage area within 30 m of a street or the lot line or an adjacent residential use
	West Lincoln	• No outdoor storage
	Milton	• No outdoor storage
	Georgina	• No outdoor storage
	Ottawa	• No outdoor storage
	Norfolk	• No outdoor storage
	Arnprior	• No outdoor storage
	Brant County	• No outdoor storage

Requirement	Municipality	Regulation
Parking and Loading	Lincoln	• 1 space per employee on the largest shift • Wholly enclosed loading spaces
	Pelham	• 1 parking space for every employee on the largest shift
	Port Colborne	• 1 parking space per 100 m^2 of GFA for indoor
	Chatham-Kent	• Two spaces per three employees (maximum enrollment) or one space per 18 m^2 floor area used for office, whichever is greater, plus one space per 1,000 m^2 floor area used for production
	Halton Hills	• 1 space per 30 m^2 for the first 1,000 m^2 • 1 space per 100 m^2 for the floor area between 1,000 and 5,000 m^2 plus 1 per 200 m^2 in excess of 5,000 m^2 • Wholly enclosed loading spaces
	Arnprior	• 1 space per 100 m^2
	Haldimand County	• 1 parking space per 100 m2 GFA • Loading spaces must be within a wholly enclosed building
	Brant County	• 1 space per 100m^2 • Wholly enclosed loading spaces may be located within the rear yard, not adjacent to a street
Residential Uses on the Same Lot	Lincoln	• Not permitted on a lot containing a residence
	Ottawa	• Not permitted in a dwelling
	Arnprior	• No residential uses permitted on the same lot
	Halidmand County	• Dwelling units not permitted on site
Retail Store and Signage Restrictions	Pelham	• Retail stores are prohibited
	Amherstburg	• Advertising restrictions
	Arnprior	• Retail sales are not permitted
	Haldimand County	• Outdoor signage is prohibited
	Lincoln	• 1,000 minimum separation distance between other facilities

Requirement	Municipality	Regulation
Nuisance Mitigation Requirements	Port Colborne	• Greenhouses should be shielded so no light escapes between sunset and sunrise when abutting a sensitive land use • Servicing for the facility shall be designed by a Qualified Professional, identifying the source of irrigation water, water quantities required and the effects of same on the groundwater table and nearby wells.
	Ottawa	• No nuisance permitted due to odour or fumes
	Leamington	• Operate with an Odour Abatement Protocol to eliminate the mitigation of any Noxious Odour off its Premise • Be inspected by the Municipality's Fire Department and comply with the provisions of the Fire Protection and Prevention Act

The following municipalities have subjected cannabis facilities to the site plan control process:

- Niagara-on-the-Lake;
- Lincoln;
- Port Colborne;
- Pelham;
- Milton;
- Georgina;
- Amhurstberg;
- Chatham-Kent;
- Halton Hills;
- Norfolk County;
- Haldimand County; and
- Brant County.

5 Case Law Review

To date, both tribunals and courts have had occasion to consider cannabis-related land use planning matters. Additional legal challenges are expected in the coming years as more municipalities begin to regulate in this area.

5.1 Local Planning Appeal Tribunal

5.1.1 Interim Control By-laws

An interim control by-law ("ICBL") is a tool provided for in the *Planning Act* which permits a municipality to temporarily freeze the development of certain land uses while it undertakes a review or study of its land use planning policies. The *Planning Act* mandates this review or study as a required condition of an ICBL. In many cases, a municipality will make amendments to its zoning by-law or official plan as a result of the review or study.

In the lead up to and following the legalization of recreational cannabis, a number of Ontario municipalities passed ICBLs prohibiting cannabis-related land uses pending the completion of a review or study with respect to land use planning policies in the municipality. Many of these municipalities subsequently amended their original ICBLs to extend the period of prohibition to provide additional time to complete the relevant reviews or studies.

Prior to amendments to the *Planning Act* in 2018, any person or public body who was given notice of the passing of an ICBL could appeal its passage to the Local Planning Appeal Tribunal ("LPAT"). As amended, however, the *Planning Act* permits only the Minister to appeal the original passage of an ICBL. The *Planning Act* continues to permit any person or public body to appeal the extension of an ICBL to the LPAT. To date, the LPAT has yet to hold a hearing on the merits regarding an appeal of an extension to a cannabis-related ICBL. The LPAT has, however, considered certain important preliminary matters with respect to an appeal of the Town of Niagara-on-the-Lake's extension ICBL.[1]

The Town of Niagara-on-the-Lake passed an ICBL restricting the use of all lands in the municipality for any cannabis-related land use for a period of one year pending the completion of a review or study in respect of land use planning policies in the

[1] *Tweed Farms Inc. & 2470689 Ontario Inc. v. Niagara-on-the-Lake (Town)*, 2020 Carswell Ont 4530, 100 M.P.L.R. (5th) 230 (LPAT).

municipality. The Town later passed a by-law extending the period of prohibition of cannabis-related land uses for another year. Two appellants appealed the extension of the ICBL to the LPAT.

Subsequently, both the Town and the appellants filed motions with the LPAT to express their respective positions in the matters raised in the appeal. The Town brought a motion seeking an order from the Tribunal that the only issue before it was whether the decision to extend the ICBL was permissible in the circumstances. The appellants brought a motion for approval of a procedural order establishing a list of issues to be considered at the hearing. In hearing these motions, the Tribunal considered whether it had the jurisdiction pursuant to the *Planning Act* to consider and adjudicate on the underlying reasons and issues for the enactment of the original ICBL at the hearing of the appeal of the extension ICBL.

The Tribunal took a broad and purposive approach to the provisions of the *Planning Act* which permit a challenge to a by-law extending an ICBL. The Tribunal found that it has the jurisdiction under the *Planning Act* to consider and adjudicate on the underlying reasons and issues for the enactment of the ICBLs in the appeals. The Tribunal allowed the procedural order with some modifications.

It is notable that the Tribunal declined to rule on whether a cannabis-related land use is a normal farm practice, finding that this is an issue for another forum.

The Town sought leave to appeal the decision of the Tribunal.[2] The Divisional Court found that the Town's motion for leave to appeal was premature because an appeal of the procedural order would not have the potential to dispose of the appeal before the Tribunal, would not resolve the issue respecting development rights of landowners within a defined geographical area, and would not result in any significant saving of time and expense. As such, the Divisional Court found it was not necessary to address the issues of whether there was good reason to doubt the correctness of the LPAT's decision and whether the decision was of sufficient importance to merit the attention of the Divisional Court.

In June 2020, the Town passed a zoning by-law amendment with respect to cannabis production and processing. This zoning by-law amendment has been appealed to the LPAT. By operation of the *Planning Act*, the interim control by-law will continue to be effect until all appeals of the zoning by-law amendment have been withdrawn or the LPAT has issued its final order with respect to the appeals.

[2] *Tweed Farms Inc. & 2470689 Ontario Inc. v. Niagara-on-the-Lake (Town)*, 2020 ONSC 3664, 100 M.P.L.R. (5th) 242 (Ont. Div. Ct.).

5.1.2 Appeals of Municipal Zoning By-law or Official Plan Amendments

In recent years, a number of municipalities have passed zoning by-law amendments and official plan amendments regulating cannabis-related land uses. A number of these instruments have been appealed to the LPAT. To date, however, we are not aware of any appeal that has proceeded to a contested hearing before the Tribunal. Consequently, at this time, there is a lack of specific guidance from the Tribunal regarding what constitutes good land use planning in the context of cannabis-related zoning regulations and planning policies.

5.1.3 Appeals of Private Zoning By-law Amendments

The LPAT (constituted as the OMB) has had occasion to consider appeals of private applications for zoning by-law amendments to permit cannabis production facilities.[3] These appeals are dealt with in the same manner as appeals of zoning by-law amendments involving other land uses. Specifically, consideration is had to whether the proposed instrument is consistent with the Provincial Policy Statement, conforms to the Growth Plan and other applicable provincial plans and whether it conforms to the relevant official plan(s).

In *Garbutt v. Mulmur (Township)*, the OMB considered an appeal of the Township's decision to approve a zoning by-law amendment to permit the development of a medical marijuana production facility which was to be licenced by Health Canada. The appellants in this case were the owners of properties located in the vicinity of the proposed facility. The appellants expressed a number of objections to the proposal including concerns regarding security, increased traffic, inadequate sightlines on the municipal road servicing the property, impacts on groundwater and compatibility with the rural character of the area, in light of their view that the facility was an industrial operation. The Board considered the evidence of the applicant's planner who explained that the facility would be required to operate under Health Canada regulations which address security measures and the minimization of odour. The applicant's planner addressed the policies of the Provincial Policy Statement, the Growth Plan as well as the County and Township official plans and opined that the proposed zoning by-law amendment did not give rise to any issues of non-conformity or inconsistency. The Board preferred the evidence of the applicant's planner and dismissed the appeal. In particular, the Board found that the proposed facility was not constrained by servicing issues and that a detailed site plan would adequately address any issues with respect to sightlines on the municipal road. The Board also found that the proposed facility would not interfere with any agricultural operations in the area and would not result in any unacceptable visual impacts. The Board questioned whether security was a legitimate planning issue but nonetheless determined that the Health Canada regulations which

[3] *Garbutt v. Mulmur (Township),* 2017 Carswell Ont 6478 (Ont. LPAT); *Hurley v. Brock (Township)*, 2017 Carswell Ont 16122 (LPAT).

contain detailed requirements for security go well beyond what is normally implemented for a commercial enterprise.

In *Hurley v. Brock (Township)*, the OMB considered an appeal of the Township's decision to approve an application for a temporary use by-law which proposed to amend the Township's zoning by-law to permit a medical marijuana production facility until a site for a larger facility could be found in the area. The appellant raised concerns about the consistency of the proposal with the Provincial Policy Statement, conformity with the Regional and Township official plans and compatibility of the proposal with the surrounding area. Partway through the hearing, the parties informed the Board that all issues in dispute had been settled and the appellant no longer opposed the temporary use by-law. The Board considered the evidence and found that the Health Canada requirements would provide for security and monitoring of the site; air quality would be controlled and emissions were not expected to create any issues; and traffic generated from the facility would not be substantial and could be accommodated on the streets without need for any improvements. The Board also found that noise generated by the facility would be well below the standards for the area. The Board found that the temporary use by-law complied with the requirements of the *Planning* Act, was consistent with the Provincial Policy Statement, and complied with the Greenbelt Plan, Growth Plan and Regional and Township official plans. The Board approved the by-law in principle but withheld its final order pending the execution of a site plan agreement.

5.1.4 Appeals of Minor Variances to Permit Cannabis-Related Uses

In *Hines v. Port Colborne (City),* the Ontario Municipal Board (now the LPAT) considered an appeal from the decision of the City's Committee of Adjustment to approve two minor variances to permit the development of a medical marihuana production facility.[4] The Board evaluated the variances under the required four tests: whether they maintain the general intent and purpose of the official plan; whether they maintain the general intent and purpose of the zoning by-law; whether they are desirable for the appropriate development or use of the land, building or structure; and whether they are minor. The Board found that the variances maintained the general intent and purpose of the official plan which was supportive of new forms of agriculture to respond to new markets and opportunities. The Board also found that the variances maintained the general intent and purpose of the zoning by-law which had been amended following the federal government's adoption of regulations for medical cannabis. Additionally, the Board found that the variances were desirable for the appropriate development of the land in an agricultural area. In this regard, the Board considered the appellants' concerns regarding odour and security and found they were addressed by the federal regulations and conditions of the Health Canada licence. Similarly, the Board found concerns about site lighting could be addressed through the site plan approval process. The Board further found the appellants' concerns about

[4] *Hines v. Port Colborne (City)*, 2016 Carswell Ont 9554, 89 O.M.B.R. 432 (OMB).

adverse impacts on water, fish and species at risk were not accepted by the agency charged with protecting those resources and that the appellants provided no evidence to call into question the conclusions of that agency. Likewise, the Board found that the appellants submitted no evidence to prove that the proposal would negatively affect their property values. The Board dismissed the appeal and authorized the variances, concluding that they satisfied the four tests.

In Cosimal Investments Inc. v. Welland (City), the LPAT considered an appeal of a decision of the City's Committee of Adjustment to refuse an application for a minor variance to permit reduced separation distances between a proposed medical cannabis production facility and various sensitive land uses.[5] Neither the appellant nor the municipality came to the hearing prepared with any expert land use planning evidence. As a result, the Tribunal determined that the appellant would not be able to satisfy its onus of demonstrating that its proposal satisfied the tests for a minor variance. Accordingly, the Tribunal dismissed the appeal.

5.2 Normal Farm Practices Protection Board

Subsection 6(1) of the *Farming and Food Production Protection Act, 1998*[6] provides that no municipal by-law applies to restrict a normal farm practice carried on as part of an agricultural operation. Subsection 6(2) permits an application to be brought before the Board for a determination as to whether a practice is a normal farm practice for the purposes of the non-application of a municipal by-law.

In *Burnstown Farms Cannabis Company v. Township of Beckwith*[7] the Normal Farm Practices Protection Board was asked to consider whether its home statute, the *Farming and Food Production Protection Act, 1998* was "repugnant" to the federal *Cannabis Act*.[8] This decision was made in the context of proceedings brought by a company which had applied for a federal licence to produce cannabis on a farm in the Township.

Section 95 of the *Constitution Act* provides concurrent jurisdiction to the provinces and the federal government with respect to agriculture but only as long as provincial laws are not repugnant to any federal law.[9] In this context, a provincial law would be "repugnant" to a federal law if it was inconsistent with or contradictory to it.

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[5] *Cosimal Investments Inc. v. Welland (City),* 2019 Carswell Ont 17681 (LPAT).

[6] *Farming and Food Production Protection Act, 1998*, S.O. 1998, c. 1.

[7] *Burnstown Farms Cannabis Company v Township of Beckwith*, 2019 CanLII 57318 (NFPPB).

[8] *Cannabis Act*, S.C. 2018, c. 16.

[9] *The Constitution Act, 1867* (UK), 30 & 31 Victoria, c 3, s. 95.

The Normal Farm Practices Protection Board determined that until the farm practices for the proposed operation were defined, it was unable to consider constitutional questions concerning whether the *Farming and Food Production Protection Act, 1998* is in conflict with or repugnant to the *Cannabis Act* and its regulations.

5.3 Assessment Review Board

5.3.1 Impact of Cannabis Production Facilities on Property Value

Cannabis production facilities have also been considered in the context of municipal taxation.

In *Zwiep Municipal Property Assessment Corp., Region 18, Re,* the appellants filed an appeal of their tax assessment arguing that the Municipal Property Assessment Corporation's ("MPAC's") assessment of current value was too high.[10] Among the issues considered by the Assessment Review Board was whether nearby cannabis production facilities had a negative effect on the current value of the subject property.

The appellants argued that it was logical that a negative effect on property values would occur due to nearby cannabis production activities and resulting odours. The Board found that there was no evidence that property values had been negatively affected by the cannabis industry. The Board declined to make a finding of an effect on value that had not occurred and determined that it could not speculate on whether this new industry affected property values nor could it quantify a value without evidence.

5.4 Ontario Superior Court of Justice

5.4.1 Injunctions to Restrain the Contravention of a Municipal By-law

Tay (Township) v. Fan, dealt with a motion by the Township to the Ontario Superior Court of Justice for an injunction, restraining the respondents from growing, cultivating, processing or otherwise producing cannabis at their property.[11] The respondents were growing over 800 cannabis plants and purported to be doing so under a Personal Production Licence for Marihuana for Medical Purposes. The Township submitted that the respondents' growing activities contravened the Township's zoning by-law because such activities were taking place in a commercial zone which did not include permissions broad enough to encompass cannabis growing.

[10] *Zwiep Municipal Property Assessment Corp., Region 18, Re*, 2019 CarswellOnt 4532 (ARB).

[11] *Tay (Township) v. Fan*, 2018 ONSC 6375, 82 M.P.L.R. (5th) 112 (Ont. Sup. Ct.).

The Court applied the test for an interlocutory injunction and determined that one was required to issue in order to prevent the respondents from growing, cultivating, processing or otherwise producing marijuana at the subject property. The Court found the Township had a strong *prima facie* case that its zoning by-law was valid and that the respondents' use was not permitted in the zone in which they operated. The Court further found that the Township would suffer irreparable harm if the respondents' contravention was permitted to continue. On this branch of the test, the court found that Township's zoning by-law was enacted for the public good and that the Township had the duty to enforce it. Finally, the Court found that the balance of convenience favoured the municipality. The Court acknowledged concerns relating to odour complaints and also noted electrical and fire hazards associated with the use of the property. The Court found any breach of the zoning by-law would impact on the public good and undermine the orderly government of the Township. The injunction permitted the respondents some time to move their operation to another licenced facility in a properly zoned area.

5.5 Federal Court of Canada

5.5.1 Federal Licencing and Municipal Zoning By-laws

P. & S. Holdings Ltd. v. Canada is a pre-legalization decision that contains relevant discussion regarding the interplay of local and federal powers with respect to land use planning and cannabis licencing.[12]

The applicants in this case were a corporation and trade union who conducted business on a property adjacent to the site of a proposed medical marijuana production facility. The proponents of the facility had applied to the federal government for a licence from Health Canada to produce medical marijuana.

The applicants applied to the Federal Court of Canada for a declaration that they were entitled to be heard as part of the federal cannabis licensing process and for an order of *mandamus* compelling the Minister to grant them participatory standing in the process.

The Federal Court found that the applicants' concerns were not in fact related to the licensing process but instead to the uses to which the adjacent property could be put. The Federal Court concluded that these concerns related to what were essentially land use planning issues, and that the appellants had the right to participate in the municipal zoning process if they had concerns regarding a proposed use for a neighbouring property. The Federal Court found that applicants did not, however, have either a statutory or common-law right to participate in the federal licencing process.

[12] *P & S Holdings Ltd. v. Canada*, 2015 FC 1331, 2015 CF 1331, 261 A.C.W.S. (3d) 252 (FC).

The applicants appealed to the Federal Court of Appeal.[13] In upholding the decision of the Federal Court, the Federal Court of Appeal made the following observations regarding the federal and provincial roles in relation to cannabis production:

> 30…Parliament would exceed its jurisdiction and trench upon the provincial heads of power if it were to determine delegate to the Minister, either directly or indirectly, the power to determine where marijuana production facilities may be geographically located. This is a pure zoning issue, one that falls either within the power of the provincial legislatures to make laws in relation to municipal institutions or in relation to local or private matters (see s. 92(8) and (16) of the *Constitution Act, 1867*).
>
> 31 No doubt in recognition of these constitutional constraints, and in the spirit of cooperative federalism, the two levels of government have harmonized their legislation and deferred to one another for those matters that do not squarely fall within their jurisdiction…

This decision reaffirms the authority of municipalities to apply their zoning powers to federally licensed cannabis operations.

[13] *P. & S. Holdings Ltd. v. Canada*, 2017 FCA 41, 23 Admin. L.R. (6th) 49 (FCA).

6 Consideration of Options

Licenced facilities must adhere to local laws, thus there is an ability to regulate cannabis growing facilities. It is important to note however, that defensible regulations require justified planning grounds. This section of the report discusses options for considering cannabis facilities in Fort Erie's planning documents. Based on the background discussed in the previous sections of this report, a number of options are explored and the pros and cons of the different options are discussed.

6.1 Permitting the Use

6.1.1 Should cannabis related uses be permitted in Agricultural and/or Industrial Areas?

Option 1a. Permit indoor cultivation of cannabis in Agricultural and Rural Areas as-of-right.

The basis of Official Plan Amendment (OPA) 18 specifically outlines that "medical marihuana grow and production facilities have been interpreted as being an agricultural use and permitted as-of-right within the Town's Agricultural and Rural designations" and OPA 18 permitted the use in Open Space designations outside of the Urban Area.

Additionally, in the zoning by-law, medical marihuana grow and production facilities are specifically permitted as-of-right within the Agricultural and Rural zones. As-of-right zoning means that the zoning by-law permits the use on the property and no further zoning application is required.

The following outlines the pros and cons of permitting indoor cultivation in the Agricultural and Rural Areas of Fort Erie:

Pro	Con
• Permitting the indoor cultivation of cannabis would align with permitting indoor cultivation of other crops in greenhouses, agricultural and rural areas • This approach aligns with that of the existing Official Plan and zoning by-law, which already permits medical marihuana grow and production facilities in Fort Erie's Agricultural and Rural areas.	• Little information is available from Health Canada on the complaint/mitigation system related to indoor cannabis cultivation. • Nuisance concerns related to noise, odour, security, lighting, etc. may occur. • Regulations and complaint mechanisms for indoor uses may not be sufficient to enforce mitigation of an odour nuisance.

Mechanisms for permitting indoor cultivation of cannabis in agricultural areas would include:

- Remove the reference to medical marihuana grow and production facilities from the Official Plan and zoning by-law, with the interpretation that the indoor cultivation of cannabis and associated uses are already permitted through the definition of an agricultural use; **or**
- Amend the Official Plan to clarify that the indoor cultivation of cannabis is permitted in the Agricultural and Rural designations, by updating the existing references to medical marihuana grow and production facilities to include any licensed cannabis facilities;

and

- Amend the Town's zoning by-law to clarify that the indoor cultivation of cannabis and associated uses are permitted within Agricultural and Rural zones, by amending the existing reference to medical marihuana grow and production facilities to reflect licenced cannabis facilities.

Option 1b: Require a zoning by-law amendment application to permit indoor cultivation of cannabis in Agricultural and Rural Areas

Alternatively, the Town could require a site specific zoning by-law amendment in order to permit a facility on any site.

The requirement of a site-specific zoning by-law amendment to permit cannabis cultivation and/or associated activities would provide the municipality with additional review of the particulars of each application and ensure a public review process. The Town could require completion of studies that assess potential nuisances and identify mitigation measures. Pelham and West Lincoln are examples of municipalities that require a site-specific zoning by-law amendment to permit the use.

The following outlines the pros and cons of requiring a zoning by-law amendment to permit cannabis related uses:

Pro	Con
• Provides the Town with the opportunity to consider the use on a case by case basis and involve the public each time. • Gives the Town the opportunity to request studies of potential nuisances.	• Different from current approach for medical marihuana

The most straightforward mechanism for permitting the use through a site-specific zoning by-law amendment would be to define the use in the zoning by-law, but not list it as a permitted use in any of the zones. Further, the Official Plan could be amended to

permit cannabis-related uses but specifically require a site specific zoning by-law amendment and set out the study requirements for any such application.

Option 1c. Do not permit indoor cultivation of cannabis in Agricultural and Rural Areas

When licenced, the production of cannabis is a legal undertaking in Canada. In order to prohibit the uses outright, planning grounds would be required for why the use is not appropriate anywhere within the Town of Fort Erie. While there are nuisance concerns, as discussed within the previous sections of this report, it must be determined whether such concerns are sufficient grounds for outright prohibition of cannabis cultivation and production.

The Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) has been considering this matter. Communication with staff at the Ministry has indicated that they consider the growth of cannabis to be subject to the Farming and Food Production Protection Act, 1998. Any restriction on the cultivation of cannabis may need to stand up to the test of whether "normal farm practices", as defined by the Farming and Food Production Protection Act, have been restricted.

Also of relevance, the Province publishes the Minimum Distance Separation Guidelines for separation of livestock operations and sensitive land uses. These Guidelines are based on the potential nuisance effect cause by odour from livestock operations. It is used to restrict the location of new or expanded livestock operations, and vice-versa the location of new residential dwellings and other sensitive uses. The restrictions exist despite the Farming and Food Production Protection Act requirements not to restrict normal farm practice. These guidelines are an example where normal farm practices can be restricted due to concerns for odours.

The following outlines the pros and cons of not permitting indoor cultivation in Agricultural and Rural Areas in Fort Erie:

Pro	Con
• Alleviates nuisance concerns related to indoor cultivation of cannabis.	• No planning grounds for outright prohibition of legal use were discovered in the best practice research; making defending the recommendation more difficult. • By-laws that prohibit indoor cultivation may be deemed to not apply by the Normal Farm Practices Protection Board, anywhere agricultural uses are currently permitted. • Indoor cultivation for medical marijuana is already permitted in the zoning.

The mechanisms for removing the permission of indoor cultivation of cannabis in agricultural areas would include amending both the Official Plan and zoning by-law to define the use and list it as a prohibited use, as well as to remove the reference to medical marihuana grow and production facilities.

Option 2a. Permit outdoor cultivation of cannabis in Agricultural and Rural Areas.

Outdoor cultivation is not currently contemplated in the Town's planning documents for medical marihuana, as the previous legislation did not permit it.

The key concern associated with outdoor cultivation is odour. However, there is currently limited information available to assist in understanding the nuisances related to outdoor cultivation of cannabis. As discussed further in the report, none of the literature reviewed with regards to odour speaks directly to outdoor cultivation; however, it is understood that odours generally occur when the plant flowers and produces the buds.

The following outlines the pros and cons of permitting outdoor cultivation in Agricultural and Rural Areas in Fort Erie:

Pro	Con
• Permitting outdoor cultivation would align with permitting the cultivation of other crops in Agricultural and Rural areas.	• Little information is available about the nuisance effects of outdoor cultivation. • Little information is available from Health Canada on complaint/mitigation systems related to outdoor cannabis cultivation. • Nuisance concerns related to odour, security, lighting etc. may occur.

The mechanisms for permission of outdoor cultivation in Agricultural Areas are similar to those discussed in Option 1a for permitting indoor cannabis growth.

Option 2b: Do not permit outdoor cultivation of cannabis in Agricultural and Rural Areas

As previously discussed, the licenced production of cannabis is a legal undertaking, and planning grounds would be required as to why the outdoor cultivation of cannabis is not appropriate within any of Fort Erie's Agricultural and Rural Areas. While there are nuisance concerns, little information is available on outdoor cultivation to inform the potential potency of this nuisance.

Only some of the municipalities we reviewed actually permit outdoor cannabis cultivation. However, it is important to note that the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) considers cannabis cultivation a normal farm practice. Therefore, a municipal by-law preventing outdoor cultivation could potentially be challenged at the Normal Farm Practices Protection Board.

The following outlines the pros and cons of not permitting outdoor cultivation in Agricultural and Rural Areas in Fort Erie:

Pro	Con
• Alleviates nuisance concerns related to the outdoor cultivation.	• By-laws preventing outdoor cultivation of cannabis may be deemed to not apply anywhere agricultural uses are currently permitted by the Normal Farm Practices Protection Board.

The mechanisms for restricting outdoor cannabis cultivation in Agricultural Areas are similar to those discussed in Option 1b for not permitting indoor cannabis cultivation.

Option 3a: Permit cannabis related uses in Industrial Areas

Cannabis related uses are similar to many industrial processing functions such as testing, drying, packaging, etc. While nuisance concerns associated with the processing of cannabis may occur, these concerns are not unlike the concerns associated with other industrial functions. A certain level of nuisance is expected and accepted in industrial areas, hence the typical separation from sensitive uses and one of the reasons cannabis related uses may be suited for employment areas.

OPA 18 permits indoor medical marihuana grow and production facilities within the Business Park designation. Within the Town's zoning by-law, a medical marihuana and grow production facility is listed as a permitted use in the Industrial and Prestige Industrial zones and is also included within a list of uses under the zoning by-law's definition of "agricultural".

The following outlines the pros and cons of permitting cannabis related uses in Industrial Areas in Fort Erie:

Pro	Con
• The post-cultivation uses (processing, packaging, etc.) are not that different from other industrial uses and have similar nuisance potential. • Industrial areas are typically removed from sensitive uses, thus there may be less potential for nuisance impacts. • This approach aligns with that of the existing Official Plan and zoning by-law, which already permits medical marihuana grow and production facilities in Industrial Areas in Fort Erie.	• Nuisance concerns related to odour, security, lighting, etc. may occur. • Little information is available from Health Canada on complaint systems or mitigation related to cannabis cultivation and processing. • Regulations and complaint mechanisms may not be sufficient to enforce mitigation of an odour nuisance.

Mechanisms for the permission of indoor cannabis cultivation in Industrial areas would include:

- Amend the Official Plan to specifically clarify that cannabis cultivation/processing /packaging etc. is permitted in Business Park Designation, by updating the existing reference to medical marihuana grow and production facilities to include any licensed cannabis facilities;

and

- Amend the Zoning by-law to clarify that cannabis cultivation and processing /packing/testing etc. are permitted in Industrial Zones, by updating the existing reference to medical marihuana grow and production facilities to include any licensed cannabis facilities.

Option 3b: Do not permit cannabis related uses in Industrial Areas

Limiting certain uses in employment areas are typical official plan and zoning provisions.

The following outlines the pros and cons of not permitting cannabis related uses in Industrial Areas in Fort Erie:

Pro	Con
• Alleviates nuisance concerns related to the uses.	• The post-cultivation uses (processing, packaging, etc.) are not that different from other industrial uses and have similar nuisance potential. • Both the Official Plan and zoning by-law already currently permit medical marihuana grow and production facilities within Industrial Areas, which the permission would have to be removed.

If the Town of Fort Erie decided to restrict the use in Industrial Areas, the most transparent mechanism for prohibiting indoor cultivation would be to amend the Official Plan and zoning by-law to define the use and list it as a prohibited use, as well as to remove the reference to and permission for medical marihuana grow and production facilities.

6.2 Regulating the Use

6.2.1 What specific provisions should the By-law address?

Option 1: Implement a separation distance requirement to sensitive uses or zones

While more than one reason may exist for separating cannabis-related uses from sensitive uses, odour is often raised as the primary consideration. The difficulty, however, lies in determining an appropriate setback to address odour concerns.

Section 10.5: Separation Distances of Sensitive Land Uses from Industrial Operations of the Town's Official Plan was amended by OPA 18 to specify that medical marihuana grow and production facilities, permitted as an agricultural or industrial use, shall be appropriately distanced from sensitive land uses, such as residences, schools and churches. Policy 10.5.1 of the Official Plan requires Council to have regard for the Ministry of Environment D6 Guidelines in determining appropriate distances.

As previously described within this report, the Cannabis Act Regulations require "a system that filters air to prevent the escape of odours". In addition, Health Canada has produced a guide entitled "Good Production Practices Guide for Cannabis", which provides additional direction to fulfilling the Regulations related to air filtration. A Good Production Practices Report must be submitted as part of a Cannabis License Application, that clearly demonstrates how requirements to the following will be met including:

- "The building or part of the building used for the production, packaging labelling and storage of cannabis is equipped with an adequate ventilation system that is capable of maintaining air quality within it.
- The number and quality of air filters is sufficient for preventing the escape of odours from the building or part of the building where all activities with cannabis are taking place, as well as to maintain air quality within these areas.
- Ventilation and air filtration is maintained in accordance with a schedule.
- Maintenance operations are carried out in a manner that does not present any risk to the quality of the cannabis.
- The presence of odours surrounding the facility is monitored in accordance to a schedule and responded to if necessary.
- Inspection and repair activities occur when required."

The Health Canada guide provides no specific technical requirements for the form or type of air filtration system; it simply requires implementation of a system that successfully blocks the escape of odours. However, as previously described, Health Canada inspects all licence holders on a regular basis to ensure cannabis is produced, sold and distributed in accordance with the Cannabis Regulations. According to personal communication with Health Canada, the Department takes issues and complaints seriously and ensures that appropriate actions are taken to correct any

potential non-compliance with the regulations. Therefore, odour from indoor cultivation facilities where a proper ventilation system is in place and is appropriately maintained should not be a concern. However, it is not clear what is considered an appropriate level of odour mitigation and what constitutes a "strong odour". It is also not clear how Health Canada deals with odour complaints or what the ramifications are for producers that produce an odour. As well, odour related to outdoor cultivation is not addressed in the regulations or guidelines.

A best practice review of other municipalities approach to separation distances found that a number of municipalities have implemented separation requirements for cannabis growing facilities in their Zoning by-laws. One of the concerns with implementing a setback and/or separation distance in the Zoning By-law is that the requirement could be appealed. For example, the City Hamilton implemented Official Plan and Zoning by-law changes to address cannabis facilities and the following provisions were under appeal:

- A policy of the Official Plan requiring that an appropriate setback between cannabis facilities and sensitive land uses be established in the Zoning by-law;
- A Zoning by-law requirement for a building setback of 30 metres for cannabis facilities in the Agricultural and Rural Zones; and
- In the Agricultural and Rural Zones, a separation distance requirement for cannabis facilities of 150 metres to residential dwellings and zones which permit sensitive uses.

However, the appeal was later dismissed on the grounds that the appellant had failed and/or refused to comply with directions from the Local Planning Appeals Tribunal.

The zoning by-law amendment passed by the Town of Niagara-on-the-Lake was also recently appealed.

A range of setback distances from cannabis facilities to sensitive land uses or zones are used by other municipalities within their planning documents. The majority of these range from 150 metres to 300 metres. While a number of municipalities have set a singular minimum separation distance requirement, as was detailed in Section 4.7 of this report, others have set a range of distances based on a set of parameters such as:

- the location of the facility (within an agricultural vs. industrial area); or
- the presence/lack of air treatment control; or
- building size.

Greater distances of up to 300 metres are generally required for facilities with no air treatment control. As previously discussed, air treatment control is a requirement of indoor licenced facilities. The greater distance requirements appear to be geared to medical facilities that are not subject to the same stricter licence requirements, but

permitted through the registration certificates. For the municipalities that provide a distinction, separation distances in agricultural areas are larger than in industrial areas.

Should the implementation of separation distances for cannabis-related uses be desired within the Town's Zoning by-law, a minimum separation distance of either 150 metres or 300 metres is the most common, with the additional option to provide a range based on the location of the facility (within an agricultural vs. industrial area) or size of the facility.

The following outlines the pros and cons of implementing a separation distance for cannabis-related uses in the zoning by-law:

Pro	Con
• Provides some level of nuisance mitigation by separating uses that may not be compatible. • 150 m to sensitive uses and/or zones is standard across many municipalities reviewed.	• Difficult to determine appropriate setback as lack of evidence/studies exist around nuisance related to Cannabis facilities. • Health Canada enforces where "strong odours" occur so separation distance may not be needed. • Provisions may be appealed to the Normal Farm Practices Protection Board. • An application for a minor variance or zoning by-law amendment could potentially reduce/modify the setback

Mechanisms for implementing a separation distance would be implemented through the zoning by-law.

Option 2: Provide a requirement for fencing in the by-law

A fencing or barrier system around a facility may assist in addressing security concerns. The following outlines the pros and cons of implementing a use-specific fencing requirement for cannabis related uses in the Zoning by-law:

Pro	Con
• Provides an additional security measure.	• Health Canada reviews facility applications to assess the adequacy of the security measures proposed. This provision may not be needed.

Option 3: Provide parking rates specific to the use

Some municipalities have added specific parking rates for cannabis facilities, while others have let this use be captured under the existing rates for similar agricultural or industrial uses. The following outlines the pros and cons of implementing use-specific parking rate requirements for cannabis related uses in the zoning by-law:

Pro	Con
• Parking requirements for cannabis facilities would help to regulate the size of lots and number of spaces.	• Limited information is available on appropriate parking rates for cannabis related uses.

Option 4: Require loading spaces to be enclosed in a building

In order to address concerns of security, and perhaps odour, some municipalities have required that a loading space be entirely enclosed within a building. The following outlines the pros and cons of requiring enclosed loading spaces for cannabis related uses in the zoning by-law:

Pro	Con
• As a security measure, some by-laws also require that the loading bays be wholly enclosed within a building.	• Health Canada reviews the applications to assess the adequacy of the security measures proposed. This provision may not be needed.

Option 5: Restriction on outdoor signage of the facility

Select municipalities have implemented requirements restricting signage of the use. The following outlines the pros and cons of implementing signage requirements for cannabis related uses in the zoning by-law:

Pro	Con
• The restriction of outdoor signage would reduce concerns for perception of living near a cannabis facility or concerns with security.	• Any use would also be subject to the Town's Sign By-law, thus this provision may not be required.

Option 6: Restrict outdoor storage

While cannabis product is not permitted to be stored out of doors, some municipalities have also specifically re-iterated in their requirements that outdoor storage is not permitted. The following outlines the pros and cons of restricting outdoor storage related to cannabis uses in the Zoning by-law:

Pro	Con
• The specific restriction on outdoor storage of cannabis product would provide additional clarity to the public and applicants as to what the permitted uses entail.	• Prohibition of outdoor storage is already addressed in the Act and Regulations already, and therefore it may not be needed.

Option 7: Prohibit residential uses or dwellings located on the same lot

As a mechanism to mitigate nuisance potential, some municipalities have restricted residential uses on the same lot as cannabis uses. The following outlines the pros and cons of prohibiting dwellings on lots containing licenced cannabis uses in the zoning by-law:

Pro	Con
• The restriction of residential uses on the same lot as a cannabis related facility would ensure that all operations occur in non-residential buildings.	• The Cannabis Act does not allow any of the licenced activities to take place in a dwelling so it is already address by the Act. • Agricultural operations typically have a dwelling on the property.

6.3 Site Plan Control

6.3.1 Should the Site Plan Control By-law be updated to address cannabis related uses?

Option 1: Update the Site Plan Control By-law to specifically address the use

According to the Town's Site Plan Control By-law No. 133-86, the entire Town of Fort Erie is designated as a Site Plan Control Area. By-law No. 134-86 establishes site plan control exceptions, which was later amended by By-law No. 08-2014 to require site plan control for greenhouses and medical marihuana grow and production facilities.

In order to require site plan control for cannabis related facilities, the provision of the site plan by-law could be amended to change medical marihuana facilities to include all cannabis related uses.

Site plan control for cannabis facilities would allow the Town more control in ensuring sites are designed in a way that mitigate impact and nuisance. As greenhouses and medical marihuana facilities are already subject to site plan control, it is not unreasonable to require cannabis related buildings to be subject to site plan control. Outdoor cultivation is not typically covered by site plan control, however given the need for fencing and or security measures, it may be worth considering.

The following outlines the pros and cons of making cannabis related uses subject to site plan control:

Pro	Con
• Site Plan control would allow the Town better opportunity to mitigate nuisance potential. • Since medical marihuana facilities are currently subject to site plan control, it is reasonable to extend this to a similar use, such as an indoor cannabis cultivation facility. • A site plan agreement can address matters such as odour control allowing for easier enforcement.	• Health Canada reviews the site plans and layouts of proposed facilities to ensure compliance with the Act and Regulations.

Option 2: Leave the Site Plan Control By-law as it stands today

Health Canada reviews the site plans and layouts of proposed cannabis facilities to ensure compliance with the Act and Regulations. The Town may choose to leave the design of the site, subject to meeting any by-law requirements, to the Health Canada application/licencing process. This option would likely require the Town to remove reference to medical marihuana facilities.

The following outlines the pros and cons of not making cannabis related uses subject to site plan control:

Pro	Con
• Health Canada already reviews the site plans and layouts of proposed facilities.	• The Town will lack the ability to control placement of buildings on site and also the ability to require additional study requirements such as odour control measures.

6.4 Summary Discussion

As with all planning matters, a balance will need to be struck between regulation and flexibility. In Ontario, Cannabis related uses are unique to other uses owing to the interplay of Provincial and Federal legislation. The Cannabis Act and Regulations clearly outline that municipal by-laws apply to any cannabis related use, giving the Town some control of this use through their planning processes. However, the Ontario Farming and Food Production Protection Act stipulates that by-laws which restrict normal farm practices do not apply and OMAFRA has indicated that cannabis is a crop subject to the Act. However, the Minimum Distance Separation Guidelines provide an example of where normal farm practices are limited where there is potential for odours from livestock facilities. As cannabis cultivation is a new use, there is not yet a clear standard for normal farm practice in the context of nuisance concerns.

From a planning perspective, regulating any use must be justified with a rationale of what makes a use unique and what steps are appropriate to regulate nuisance and concerns related to that use.

The purpose of this section of the report is to identify options for addressing cannabis related uses in Town of Fort Erie Planning documents. The next step of this process is to seek public consultation on the options in order to inform the recommendations developed in the next phase of this Study.

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