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Date: October 16, 2020
To: Mayor and Council
Author: John Norton, CAO
RE: Lighting and Odour Nuisance By-law
Report No.: CAO2020-01

AIM

To provide Council with information regarding a Light and Odour Nuisance By-law. Council can choose to adopt and approve the By-law for immediate effect or defer the decision to the next regular meeting of Council to give time for public input and comment.

BACKGROUND

Since 2018, both Council and Administration recognized the need for enhanced regulations with respect to light pollution being emitted from greenhouse operations and the odour issues arising from the production and/or processing of cannabis. In and around the same time, a number of zoning by-law amendment applications were being filed by greenhouse operations in Kingsville, requesting an amendment to permit medical marijuana as a permitted use on specific agricultural properties, prompting the concern about odour.

In response to the concerns raised regarding the zoning by-law amendment applications, language was included in the zoning by-law amendment to regulate odour as it related to medical marijuana production facilities. These regulations are only applicable to those greenhouses which received approval for a zoning by-law amendment and not those growing cannabis as designated growers (formerly referred to as Part 2 growers).

With respect to light pollution, the Manager of Planning Services previously began revising the language in the site plan agreements in an effort to clearly outline the Town's expectations in this regard. It is important to note that greenhouse facilities that are not subject to a site plan agreement are not bound by any lighting provisions.

In the fall of 2019 Council approved the investigation of area greenhouses to determine to what extent grow lighting was in use and which greenhouse operations were in compliance

with their site plan agreements in terms of lighting, if applicable. Inspection of grow light usage in Kingsville commenced in November of 2019. Shortly thereafter, an information letter was circulated to all 85 property owners advising that if grow lighting was being used that appropriate mitigation measures must be employed.

In December 2019, inspections were again conducted. A total of eight greenhouse operations were non-compliant. Of those eight, three greenhouses are not subject to site plan approval. The remaining five have site plan agreements in place with some form of lighting control provisions. Additional inspections were completed in January 2020 and at that time 7 greenhouses were not compliant and included three greenhouses with no site plan approval.

In the spring of this year, a follow-up letter was prepared for each of the offending greenhouse operations noting the need for dark sky compliance. Following delivery of this correspondence, approximately half of the growers with site plan agreements in place contacted the Town directly to determine what was required to get into compliance. Staff indicated that proper wall and/or ceiling curtains needed to be installed as soon as possible; the general goal being by fall of 2020 but no later than the end of 2020.

DISCUSSION

Notwithstanding the Town's efforts to persuade compliance, the Town is still experiencing issues with light and odour nuisance.

Accordingly and to address these issues, Administration has prepared a Nuisance By-law (the "By-law") specifically relating to nuisances related to odours and lighting from the cultivation of plants for Council's consideration and adoption.

Provisions 3-5 of the draft By-law specifically address light nuisance and prohibit a person, owner or occupier of land from permitting light used in the cultivation of plants from shining upon the land of others or into the dark night sky so as to cause a nuisance. The draft By-law does not provide any timeframes in which light emitted is expressly prohibited. As drafted, the by-law prohibits light nuisance at all times. If Council wishes, Administration could include a provision in the By-law to permit grow lighting when it is less of a nuisance to residents, such as during the early evening and morning hours (i.e. between 6am-10pm). Including such a provision would demonstrate Council's commitment to support the greenhouse industry balanced against the public interest.

Provisions 6 and 7 of the draft By-law prohibits the emission of an odour from the cultivation of cannabis plants which causes a nuisance to any person or the public generally.

The Enforcement section of the By-law gives the Town extensive authority, as provided for in the *Municipal Act, 2001* and other relevant legislation, to issue orders, fines, and take broad powers the necessary steps to conduct inspections and enforce the provisions of the By-law.

Enforcement

There are eight repeat violators with respect to light nuisance. Three other facilities have resolved their light nuisance violations and are periodically inspected for maintenance purposes. The enforcement of light nuisance is predominately for greenhouse operations that are emitting excess light from grow lamps when daylight hours are limited. This is seasonal in nature and typically occurs from September to March. Council has directed administration to make this enforcement a priority.

Enforcement will require increased staffing levels. Inspections will be necessary outside normal working hours. The current workload of the department is overwhelming and projections for 2021 are showing volumes will continue in an upward trend.

To properly enforce the By-law, overtime for By-Law Enforcement Officers must be expanded to compensate for weekend and evening/midnight shifts, which will necessarily require an increase in the budget.

In addition, an additional By-Law Enforcement Officer is recommended to be hired on a part time temporary basis.

Administration expects that once the violators are in compliance, ongoing enforcement of the light nuisance by-law can be maintained under regular operations with shifting of schedules for enforcement personnel. It is expected that full compliance will take up to two years to achieve.

If enforcement efforts are successful and greenhouse operations install the required devices and equipment to comply with the By-law, the resources needed for continued enforcement will lessen.

Odour nuisance can be investigated and enforced during normal business hours.

Summary

Administration recognizes that there is potential for controversy associated with the implementation of this By-law. Accordingly, although it is recommended that Council adopt same, Council may wish to defer consideration of the By-law to the November 9, 2020 Regular Meeting to allow Administration to gather public comments. If Council elects to proceed in that manner, Administration will bring back the comments received from the public for Council in a Staff Report.

LINK TO STRATEGIC PLAN

Promote the betterment, self-image and attitude of the community.

FINANCIAL CONSIDERATIONS

The estimated cost of enforcement activity related to light nuisance issues is approximately \$10,000 in overtime costs, using two officers for an additional 80 hours each.

Enforcement of the odour provisions would be payable at the same overtime rate if the work cannot be completed during regular working hours due to workload demands.

There may also be additional costs associated with enforcement of orders or prosecution/defence under the by-law. Identifying these amounts would be purely speculative as these costs depend on the nature of the enforcement activity necessary, whether the Town needs to retain external legal counsel, and the number of orders in which the Town would be required to take action. While Administration cannot definitely provide Council with a cost associated with general enforcement, it would be prudent for Council to set aside no less than \$25,000 toward enforcement initiatives/defence.

CONSULTATIONS

Building Services
Planning Services
Senior Management Team

RECOMMENDATION

That Council adopts By-law 96-2020, being a By-law to Prohibit and Regulate Public Nuisances related to odours and lighting from the cultivation of plants within the Town of Kingsville;

And That Council authorize enforcement of the By-law with an additional \$25,000 in overtime, and approval \$25,000 in legal enforcement costs.

John Norton

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Chief Administrative Officer