Best Practice Review and Reccomendations:

Medical Marihuana Growing Facilities

Prepared for the City of Niagara Falls

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1 BACKGROUND

This report summarizes the new Marihuana for Medical Purposes Regulations (MMPR), discusses how other municipalities have addressed medical marihuana facilities in their planning documents and provides a list of potential planning considerations to address the growing and processing of medical marihuana. It also includes our preliminary recommendations to the City of Niagara Falls.

Background

On June 19th, 2013, the Government of Canada introduced the MMPR which requires that medical marihuana be grown in licensed facilities and sold to members of the public who hold a medical document (similar to a prescription). The new regulations are intended to phase out the previous system under the Marihuana Medical Access Regulations (MMAR) where licensed individuals were permitted to grow medical marihuana for themselves (within their home), or designate someone to grow it on their behalf.

Under the new regulations, a licensed medical marihuana facility is a legalized commercial use permitted in Canada, but Health Canada has stated that "licensed producers must comply with all federal, provincial/territorial and municipal laws and by-laws, including zoning by-laws". This provides municipalities the opportunity to, through their planning documents, provide input on where these facilities should be located and on the requirements for siting them.

Summary of New Regulations

The previous system under the MMAR was set to expire on March 31st, 2014, although an injunction was granted on Friday March 28th, 2014. Under certain specific conditions, through the court injunction, some members of the public are still permitted to possess marihuana under the MMAR (i.e. permission to grow and possess medical marihuana under the old system).

Despite this, the new system under the MMPR is in effect and there are currently 18 fully authorized licensed producers and 7 cultivation only licensed producers of marihuana for medical purposes in Canada. The MMPR are extensive regulations which address, among other things, permitted activities, licensing, security measures, delivery, and extensive application requirements for producer licenses. The following summarizes key information about the system under the MMPR.

Operations

- A licensed producer may possess, produce, sell, provide, ship, deliver, transport and destroy marihuana.
- A medical document is required to purchase medical marihuana from a licensed producer. Medical marihuana must be shipped directly to the client. No other method of transfer is permitted (i.e. no storefront operation, no customer pick-up from the facility).

Licensing

- As part of the application process, criminal record checks are performed on licensed producers.
- Producer's licenses have expiry dates, up to a maximum of 3 years from the effective date.
- A licensed producer must notify local authorities (including the local government, the local fire authority and the local police force) when applying for a producer's licence and within 30 days, notify these same local authorities of licence issuance, renewal, amendment, suspension or revocation.

Security Measures

- A description of detailed security measures proposed for the facility, including surveillance, is a requirement of the application for a producer's licence and the licensed producer must ensure the site is designed in a manner that prevents unauthorized access to the site and that physical barriers prevent unauthorized access to areas where marihuana is stored.

Location

- None of the activities permitted by the producer's licence (production, storage, etc.) may take place within a dwelling.
- A licensed producer must store marihuana indoors at the producer's site.
- Areas where marihuana is present must be equipped with a system that filters air to prevent the escape of odours or pollen.

Municipal jurisdiction

- Under the regulations, the local authority must be informed of any applications and licences issuance for these facilities.
- While the Regulations themselves do not speak to adherence to local zoning codes, Health Canada's website under "Frequently Asked Questions" states that, "Licensed producers must comply with all federal, provincial/territorial and municipal laws and by-laws, including municipal zoning by-laws."

2 POLICY CONFORMITY AND EXISTING REGULATIONS

Niagara Region

Correspondence from Niagara Region staff to other municipalities in the Niagara Region indicates that the Region appears to be supportive of local municipalities regulating medical marihuana facilities within their by-laws. Also, the Region notes that it considers this use to fit within the definition of "agricultural use" in the Niagara Region Official Plan and that processing and distribution of medical marihuana is supported by the Region's value added policies.

The Region's policies regarding industrial development and uses are general in nature and leave the majority of the detail to be provided in the local Official Plan. The Region's policies encourage diversified industrial development and operations which attract new employment uses to the Region. The Region has had the opportunity to review previous by-law amendments pertaining to medical marihuana facilities in other municipalities and do not appear to have objections to allowing medical marihuana facilities in industrial areas.

City of Niagara Falls Official Plan

The existing City of Niagara Falls Official Plan permits agricultural uses in the Good General Agricultural designation, and describes these as "agriculture of all types including crop farming, tender fruit and vineyards, dairy farming, livestock operations, nurseries, and intensive greenhouse as well as forestry, conservation uses and farm related residential dwellings".

The City of Niagara Falls Official Plan permits industrial uses in the Industrial designation, and describes these as "manufacturing, assembly, fabricating, processing, reclaiming, recycling, warehousing, distribution, laboratory and research, and storage. All forms of service industries and utilities are included within this definition."

City of Niagara Falls Zoning by-law

There are currently four zoning by-laws in the City of Niagara Falls

- 79-200 (for Chippawa and the lands north of the Welland River);
- 395 (1966) (for the lands formally part of Willoughby Township);
- 1538 (1958) (for the lands for formally part of the Crownland Township); and
- 70-69 for the Humberstone Area.

By-law 79-200
The existing City of Niagara Falls Zoning by-law 79-200 permits agricultural uses in the Agricultural Zone (A Zone) and Rural Zone (R Zone). In the Agricultural zone, permitted agricultural uses include:

> "the growing of field, berry, bush or tree crops; truck gardening; flower gardening; nurseries; orchards; commercial greenhouses; aviaries, apiaries, mushroom farms, farms devoted to the hatching, raising and marketing of chickens, turkeys, or other poultry, fowl, rabbits or other fur-bearing animals and fish; farms or ranches for grazing of farm animals; breeding, raising or training of horses or cattle; goat or cattle dairies; the raising of sheep or goats; the raising of swine; dog kennels or the breeding and sale of dogs and other domestic animals."

Permitted uses in this zone also include commercial forestry, and commercial riding stable. As for the Rural zone, these same permitted uses apply. Medical marihuana growing would be included as an agricultural use through commercial greenhouses.

There are four industrial zones in the by-law. The Prestige Industrial and Light Industrial zones allow for the "manufacturing, compounding, processing, packaging, crating, bottling, assembling of raw or semi-processed or fully processed materials, and further provided that no such use is dangerous, obnoxious or offensive by reason of the presence, emission or production of odour, smoke, noise, gas fumes, cinders, vibration, radiation, refuse matter or water carried waste". In addition, nurseries for trees, shrubs and plants are also permitted. This latter permission could be interpreted to allow for the growing of medical marihuana.

General Industrial and Heavy Industrial zones allows for "manufacturing, compounding, processing, packaging, crating, bottling, assembling of raw or semi-processed or fully processed materials". Unlike the Prestige and Light Industrial zones, these zones do not permit nurseries for trees, shrubs or plants, and thus would not be interpreted to allow for the growing of medical marihuana.

By-law 395 (1966)
The Rural Zone of by-law 395 (1966) permits agricultural uses including: " field crops, dairy farming, hog and other animal raising, poultry raising, ranching and grazing, tree nurseries, berry or bush crops, orchards, vineyards, truck gardening, aviaries, apiaries, dog kennels- and other similar uses customarily carried on in the field of agriculture."

The Industrial Zone in by-law 395 (1966) permits industrial uses including "those manufacturing, converting, altering, finishing, fabricating or assembling product establishments which to not emit obnoxious sound, odour, dust, fumes, vibration or smoke and which are not hazardous to the surrounding uses".

Under this by-law, a medical marihuana facility would be permitted under the Rural, but not the Industrial Zone, where no type of growing is permitted.

By-law 1538 (1958)
In the Rural Agricultural RA Zone, the agricultural uses "including crops, truck and market gardening, nurseries, greenhouses, breeding animals" are permitted.

The Storage and Light Manufacturing District I1 has limited industrial permissions, including: "apparel and finished textile or fabric product, paper and allied products,

furniture and finished lumber products, light metal products such as precision instruments, watches and radios”.

Under this by-law, the use would be permitted under the Rural, but not the Industrial Zone.

By-law 70-69
Under this by-law, existing uses are permitted.

3 BEST PRACTICE REVIEW

Due to the nature of the use, municipalities across Ontario have taken various approaches to addressing this use. Some municipalities have considered medical marihuana facilities to be agricultural in nature while others have considered them to be industrial/employment in nature.

This section discusses the overall approach that other municipalities have taken in addressing medical marihuana facilities in their planning documents, particularly as it pertains to what zones the use has been permitted in.

Township of West Lincoln

The Township of West Lincoln approved a zoning by-law amendment on March 3rd, 2014, which permits medical marijuana facilities in both the Agricultural A2 and Industrial M1 Zones through a site-specific amendment.

The definition of "agricultural use" has been amended to include "medical marihuana growth and accessory processing facilities (subject to a site specific zone amendment)", which is a newly defined term. This term is listed as a permitted use in the Agricultural A2 zone through site-specific amendment. In the A2 zone, provisions for medical marihuana facilities were added that require the following: a 150 metre setback to lot lines, a restriction on outdoor storage, a requirement for a board fence of 1.8 metres where a building or structure has more than 10% glass and is lit, and a requirement for a 1.8 metre security fence. The site plan control by-law was also amended so that medical marihuana facilities in the A2 zone would be subject to site plan control.

For industrial zones, both "medical marihuana growth and accessory processing facilities" as well as "medical marihuana processing facilities" are permitted in the M1 zone, subject to a site-specific amendment. In the industrial zone, provisions were added that addressed the following: a requirement for a board fence of 1.8 metres where a building or structure with more than 10% glass is lit, a 45 metre setback required to institutional or residential zones and a requirement for a 1.8 metres security fence.

Town of Niagara On-The-Lake

In May 2014, a medical marihuana facility was approved as-of-right by the Town of Niagara On-The-Lake. At the time, medical marihuana facilities were considered as agricultural uses in the zoning by-law and permitted as-of-right in the Rural (A) Zone where commercial greenhouses are permitted.

The Town zoning by-laws were subsequently amended to specifically address medical marihuana as a defined use. Two zoning by-law amendments, one for the urban areas zoning by-law and the other for the rural areas zoning by-law, were passed. The first amendment, for the urban areas, added a definition of "marihuana for medical purposes production facility, a definition of "sensitive use" and permitted marihuana for medical purposes in the Light Industrial (LI) zone. Special requirements for the use in this zone include that no outdoor storage is permitted and that where the side or rear yards is

adjacent to the property of s sensitive use, a strip of land adjacent to the adjoining property line being a minimum of 3 metres in with be provided.

The second amendment, for the rural area, permits a greenhouse building used for a marihuana for medical purposes production facility in the Rural (A) Zone, requiring a minimum of 70 m from a property line of a sensitive land use. It also adds requirements for a minimum buffer strip of 3 meters between the property line and an adjacent sensitive strip of land, a minimum number of parking spaces of 1 per 100 m^2 of GLFA, and a prohibition of outside storage. Also, where security fencing is required by federal legislation, it shall meet the required setbacks of the zone and have a maximum height of 2.74 metres.

City of Port Colborne

The City of Port Colborne approved a zoning by-law amendment on April 14th 2014 pertaining to medical marihuana facilities. The by-law amendment defined "medical marihuana production facility" and "sensitive land use", as well as added "medical marihuana production facilities" as a permitted use in the Agricultural (A) and Rural (RU) zones. Lot, setback and other requirements were also provided specifically for this use. Other specific requirements for the use include a restriction on outdoor storage, a requirement for a fence where more than 40% of the building is glass and a parking requirement of 1 parking space for every employee on the largest shift. Council also amended the site plan control by-law to require site plan control for a Medical Marihuana Production Facility.

According to Staff Report 2014-23, an Official Plan Amendment and zoning by-law amendment would be required for cultivation to be permitted in the Industrial Zone.

Town of Fort Erie

The Town of Fort Erie passed an Official Plan amendment and a zoning by-law amendment regarding medical marihuana facilities on January 20th, 2014. While medical marihuana facilities were considered a permitted agricultural use, an Official Plan Amendment was required to permit them in lands designated as Industrial Business Park and limit them in Open Space designations outside of the Urban Settlement Area. The Official Plan Amendment also amended the Site Plan Control policies to require site plan control for medical marihuana facilities.

The zoning by-law amendment includes a definition of "medical marihuana grow and production facility". This definition is listed as a permitted use in the Agricultural (A) Zone, the Rural (RU) Zone, the Industrial (IN) Zone, Prestige Industrial (PI) Zone and the Existing Open Space (EOS) zone.

City of Ottawa

The City of Ottawa takes the approach that a Medical Marihuana Production Facility is most similar to a pharmaceutical manufacturing plant and is zoned similar to how this use would be zoned. Within the approved zoning by-law amendment, the definition of agricultural use has been revised to exclude medical marihuana facilities and the by-law has been revised to specifically permit the medical marihuana use in the General Industrial Zone, Heavy Industrial Zone, Rural General Industrial Zone and Rural Heavy Industrial Zone. Also, the by-law has been revised to require a setback of 150 metres

from these facilities to Institutional and Residential Zones (with some exceptions); prohibit outdoor storage and prohibit the use within a dwelling. New parking provisions are also provided.

According to staff Report 65A from the 26th of February 2014, medical marihuana facilities will be subject to site plan control.

Town of Caledon

On the 16th of September, 2014, the Town of Caledon passed two zoning by-law amendments that would permit Medical Marihuana Production Facilities within the Prestige Industrial or Serviced Industrial Zone. The amendment to the Comprehensive Zoning By-law 87-250 affect the lands that pertain within the Oak Ridges Moraine, while the amendment to the Comprehensive Zoning By-law 2006-088 pertains to the rest of the Town's lands. Both by-law amendments introduce a definition of a "Medical Marihuana Production Facility" and introduce the following provisions:

- Submission of a copy of the production licence to the municipality;
- 150 metre separation to any residential or institutional zones, areas designated as villages, hamlets and Palgrave estate residential community in the Official Plan or to any day nursery, school, community centre or training facility;
- No outdoor signage or advertising shall be permitted;
- Loading and delivery should be in rear yards or wholly enclosed buildings; and
- Site Plan approval shall be required.

At the moment, the Zoning by-law amendments are under appeal at the Ontario Municipal Board.

City of Toronto

The City of Toronto approved a zoning by-law amendment on May 8th, 2014, which permits medical marihuana facilities in both the Employment Industrial (E) and Employment Heavy Industrial (EH) zone. The amendment added a definition for a medical marihuana production facility and regulations for Medical Marihuana Production Facility to the Specific Use Regulations section of the by-law. Medical Marihuana Facilities in Employment Industrial and Heavy Industrial zones must comply with the specific use regulation set out in Section 150.60, which includes specific requirements such as a 70 metres setback to residential, institutional and open space uses, a requirement for loading to occur in a wholly enclosed building and a restriction on open storage.

City of Mississauga

The City of Mississauga passed a zoning by-law amendment regarding medical marihuana facilities on March 11, 2015. Previous to this amendment, in 2014, the City took an interim approach to permit a single new medical marihuana facility through a minor variance. The minor variance amended the definition of industrial use to include "growing/cultivating" to permit the use on a specific site basis within the Employment zone.

Since then, the City has approved the zoning by-law amendment 0055-2015 which introduced the definition to Medicinal Product Manufacturing Facility by allowing the "altering, assembling, cultivating, growing, inspecting, processing or producing, medical products", which "may include medical marihuana". This definition is listed as a permitted use in the E1 (Employment in Nodes), E2 (Employment), and E3 (Industrial). Provisions for this use also restrict it to be located within a building structure, or part thereof.

This by-law also adds a definition for Medicinal Product Manufacturing Facility – Restricted, which prohibits medicinal marihuana production where a Medicinal Product Manufacturing Facility is located in a Neighbourhood Character Area as identified in the Mississauga Official Plan.

City of Hamilton

The City of Hamilton passed a zoning by-law amendment regarding medical marihuana growing and harvesting facilities on June 25, 2014. The by-law amendment introduced a definition for medical marihuana growing and harvesting facility and revised the definition of Farming to include a "medical marihuana growing and harvesting facility". The amendment then further amended the permitted uses in all zones where farming is a permitted use (including the Agricultural District, Suburban Agricultural and Residential Etc. District and the Light and Limited Heavy Industrial, Etc. District), to exempt medical marihuana growing and harvesting facilities from the list of permitted uses. The effect was that, while the use is considered a type of farming, none of the zones that permit farming permit this use. The amendment does however add a medical marihuana growing and harvesting facility as a permitted use in the Heavy Industry District, with a minimum setback of 20 meters from any medical marihuana facility to any Residential District or Institutional Zone and no retail or outside storage is permitted.

Town of Grimsby

In the Town of Grimsby a medical marihuana facility was defined separately in the Town's new comprehensive zoning by-law to differentiate it from an agricultural, nursery or greenhouse operations. As well, it was listed as a specific permitted use in the agricultural zones, but subject to specific provision including a minimum setback of 150 metres from a residential lot, no outdoor storage and no signage. These provisions were added into the by-law as part of the comprehensive zoning by-law update in 2014.

Township of Wainfleet

The Township of Wainfleet passed a zoning by-law amendment regarding medical marihuana growing facilities in June of 2014. A medical marihuana facility was defined in the zoning by-law to differentiate it from an agricultural, nursery or greenhouse operation. Although it was listed as a potential permitted use in the Agricultural Zones, it specifically requires a site specific zoning amendment to allow the use and subject to specific provisions set out in the zoning by-law that included a minimum setback of 150 metres from a residential lot, no outdoor storage and no signage.

Summary of the Best Practice Review

The best practice review found that in most by-law amendments to address medical marihuana a definition of medical marihuana facility has been added in order to define

this use separately from other similar uses. Some municipalities permit the use only in agricultural zones and others permit it only in the industrial zone, while some municipalities permit the use in both. Municipalities commonly provide additional requirements specific to this use, often related to separation distances, outdoor storage etc. In terms of separation distances to sensitive uses, there is a range of separation distances required. In agricultural areas, other municipalities have required 70 metres (Niagara on the Lake) or 150 metres (West Lincoln, Wainfleet, Grimsby). In industrial areas, other municipalities have required 20 metres (Hamilton), 45 metres (West Lincoln), 70 metres (Toronto) or 150 metres (Ottawa and Caledon). Additionally, some municipalities have opted to permit the use as-of-right, while others have opted to require a site-specific zoning amendment.

4 CONSIDERATIONS APPLICABLE TO NIAGARA FALLS

Through our review of the treatment of medical marihuana facilities in other municipal zoning by-laws, we have identified several possible regulations that Niagara Falls could consider. These possible regulations are summarized and discussed in the following.

Whether the zoning by-law should specifically define a medical marihuana facility or include it in the definition of an agricultural use.

This is depended on which zones the use is to be permitted in. Defining a "medical marihuana facility" apart from the definition of "agricultural use" allows specific provisions to be applied to the use. Providing specific provisions for a medical marihuana facility would reinforce the requirements of the MMPR and address any potential for nuisance that may be specifically associated with this use. One option to consider, is to ensure that the facility is agricultural in nature (and suitable for the Agricultural Zones) the definition of the facility should specify that growth of the crop (medical marihuana) is the primary use, and all other functions such as testing, processing, packing and shipping be permitted as accessory uses. Within Industrial Zones however, this would not be appropriate, although crop growth would need to be included. Thus either having a definition that fits the use in both zones or two definitions are options.

Whether the zoning by-law should have separate provisions for medical marihuana facilities or address medical marihuana facilities as part of a broader category of indoor growing operations.

Regulating medical marihuana facilities separately from other categories of indoor growing operations (ie. Greenhouses) provides the opportunity for specific requirements to address concerns with such facilities such as outdoor storage, setbacks to sensitive use, signage restrictions, fencing and security requirements.

Whether to permit the use as-of-right in the or through a site-specific rezoning.

Permitting the uses as-of-right with specific requirements simplifies the approval process with strong zoning regulations. However, requiring a site-specific approval allows greater community input.

Whether a lot or a building that contains a medical marihuana use should be permitted to accommodate another use.

Given that Health Canada is the regulating body for the use and will review the security and health measures taken for each licensed facility, this restriction may not be needed.

Whether the zoning by-law should state that the facility is not permitted within a dwelling as this is a requirement for a licensed facility.

This restriction is a requirement of the licence with the Federal government, but including the restriction in the by-law would allow City enforcement and regulation.

Whether the zoning by-law should establish a minimum separation distance to the lot line of a residential use.

A separation distance or setback requirement to sensitive land uses such as residential use can address the public concern for living next to a medical marihuana facility. In other locations, separation distances have generally been larger in agricultural zones with most implementing a 150 m separation distance while in urban industrial zones, the separation requirement has ranged from 20 metres to 150 metres.

The determination of an appropriate setback between land uses is largely related to the potential for nuisance impacts from one use to adjacent or nearby sensitive land uses, such as a residential use. In terms of a medical marihuana use, it is likely to have similar characteristics to a commercial greenhouses or a light industrial operation. Health Canada regulates the emission output on these facilities, so matters such as smell and dust should not be a significant concern, and because of the requirement for the use to be carried out indoors, noise is also not expected to be a significant concern. Truck and employee traffic, normal for the running of a production facility, is expected, although the extent of this would be dependent on the size and scale of the facility.

In Wainfleet, the recommendation for 150 metre setback in the rural area was purposely done to align with the Zoning by-law requirement (at that time) "that all greenhouses which used artificial lighting for growing purposes during the night shall be located a minimum distance of 150 metres from any residential use on a lot." We believe this to be a reasonable setback requirement as it would serve the multiple purpose of addressing lighting concerns, other nuisances from a commercial operation in a rural area and any perceptions of stigma. We would expect homeowners living next to the facility would have a concern for safety and security given incidents in the news surrounding medical marihuana dispensaries /grow ops. It is reasonable to consider the "fear" impact of homeowners not wanting a facility established directly next to their rural home. Further, in rural areas, there is an expectation of separation between commercial uses and residences. Given the nature of the medical marihuana facilities in terms of commercial operation, size, lighting, required security including security fencing, it is reasonable to require a setback between the use and a rural residence.

In an industrial area, where the built form and nature of the operation of a medical marihuana facility is likely to be similar to light industrial building, the required distance separation should be less. This is particularly the case where a medical marihuana facility occupies a former industrial building. In such cases, there is unlikely to be greater lighting, noise, odour or traffic impacts than the previous industrial operation.

As a indicator of an appropriate separation distance, we have reviewed the D-6 Guidelines from the Ministry of Environment. Under these guidelines, a medical marihuana facility would likely be considered a Class 1 Facility based on limited expectation of odour, no outdoor storage and low fugitive emissions. In line with the D-6 guidelines, a 20 metres setback may be appropriate. This requirement matches that employed in the City of Hamilton.

If additional security features, such as fencing, should be required in the zoning by-law, or if the security features needed to satisfy the licence requirement are sufficient.

The security of the site will be addressed through the Health Canada licensing application. The applicants must show proof of the level of security and physical barriers to the product in order to be approved for a Health Canada licence. To allow for some flexibility in site design, any additional security concerns could be addressed through the site plan process as opposed to the zoning by-law. However, some municipalities such as West Lincoln specifically require in the zoning by-law a 1.8 metre fully enclosed fence around the entire area of the facility.

Whether provisions to address nuisance associated with lighting within and around the facility should be included in the by-law/site plan guidelines.

In West Lincoln, where more than 10% of a wall is glass and artificial lighting is required, a board on board fence a minimum of 1.8 metres high must be provided adjacent to any lot line that abuts a residential zone or use. Although this provision would assist in addressing lighting from within the facility, it doesn't address exterior lighting.

Whether the by-law should require sign-off from the municipality or other authority (e.g. Chief Building Official, Fire department etc.) for the use to be permitted.

The MMPR regulations require that the municipality and emergency services be notified of the presence and location of licensed facility. If a sign-off was determined to be desirable by the City, it could be done through an occupancy permit.

Whether the by-law should state that outdoor storage is prohibited.

This restriction is a requirement of the licence with the Federal government, but including the restriction in the by-law would allow City enforcement and regulation.

Whether an agreement with the City pertaining to decommissioning of the facility upon cessation of use should be required.

An earlier draft amendment for the Town of Caledon considered this, although it was not incorporated into the final approved by-law**.** This agreement could be incorporated into a site plan agreement.

Whether the notification be required for every new licence granted or licensed renewed

This is a requirement of the MMPR. The municipality is to be notified within 30 days of any changes to the licence (i.e. licence issuance, renewal, amendment, suspension or revocation). As such, this requirement is not necessary in the zoning by-law or site plan approval.

Whether the application form should require that the owner of the property be informed of the use if this is not the operator of the use.

This is also a requirement of the Health Canada licensing application. As well, ownership is a required question on any site plan application. As such, the City will be made aware if the property owner through a site plan application, if site approval is required by the City.

Whether the loading facilities are required to be in wholly enclosed buildings.

Health Canada, through the licensing process, ensures the security of the site. As such, this requirement does not need to be addressed in the by-law, but could be added as an additional regulation.

Whether the overall number of medical marijuana facilities should be limited within the City.

Health Canada does not appear to have limited to the number of the facilities that they will be licensing across Canada. Given the potential for the range in size in facilities, this is not recommended.

Whether the size of the medical marihuana facilities should be limited.

To our knowledge, there is no overall size limit that Health Canada is imposing for these facilities. We understand that there is likely to be a large range in facility sizes.

Whether a separation distance between medical marihuana facilities should be included in the by-law.

Early versions of the Caledon draft by-law considered a separation distance, though this requirement was not included in the final amendment. Since facility sizes may vary, it would be difficult to determine an appropriate setback between facilities. It seems more appropriate to set a distance to sensitive uses rather than to other medical marihuana facilities.

Whether odour nuisance should be regulated.

A 150 metre minimum separation distance to sensitive uses in the rural/agricultural area should be appropriate to accommodate any potential noise, odour emission or lighting nuisance. A lesser standard in an urban environment may be appropriate.

Whether to require that ventilation, site, and security plans be submitted to the City.

These plans could be required as part of a site plan application.

Whether the zoning by-law should state that a sign identifying the facility is prohibited.

This is a requirement introduced in the Caledon By-law and may be an appropriate restriction as it may reduce negative perceptions including security concerns.

5 RECOMMENDATIONS

It is recommended that a definition that describes a medical marihuana facility should be added to the City's zoning by-law in order to separately define this use from other uses and provide additional clarity in the by-law. The medical marijuana facility should be differentiated from other similar uses primarily to provide clarity and consistency of interpretation in the by-law. The point of defining the use is not about restricting it, but providing transparency given that the use, while similar to other permitted uses, has some distinctions. Since it is a federally regulated use, there are certain land use aspects that are not permitted such as sales and outdoor storage. It also clarifies where the use is permitted for proponents, residents and Council. The wording of this definition should include the growing of the product, as well as the other processing and packing functions.

It is further recommended that the be listed as a permitted use in both the agricultural and industrial zones. It could be permitted as of right in the by-law, or as some municipalities have done, list the use as a permitted use subject to a site specific zoning by-law amendment.

Whether or not to permit the use as-of-right or only through a site specific by-law amendment depends on the level of control the City would like to retain in reviewing and approving each application separately. If the City wishes to encourage the use, requiring a site-specific amendment may act as a deterrent to prospective users. If the City wishes to have greater community input, a site specific zoning by-law amendment process would facilitate that objective.

Whether the use is permitted as of right or through site specific amendments, it is recommended that the following specific regulations be applied to the use:

- prohibiting the use in a dwelling;
- prohibiting a sign identifying or advertising the use;
- establishing a minimum separation distance of 150 metres to sensitive uses in agricultural areas and and 20 metres to sensitive uses in or adjacent to industrial areas; and
- prohibiting outside storage.

Given the variation in size of medical marihuana facilities, the existing lot and building requirements should be sufficient. In the Prestige Industrial and Light Industrial Zones, the maximum lot coverage is 60% and 70% respectively. This should be sufficient. However, in the Agricultural Zone, there is no maximum lot coverage. Given the requirement for the operation to be entirely enclosed in a building, a maximum lot coverage should be required specifically for this use. Grimsby implemented the following requirements which may be applicable: 70% for lots less than 5 ha, 50% for lots between 5-20 ha. and 25% for those over 20 ha.

With either zoning process, we recommend that the use be subject to site plan control, therefore, even if it is to be permitted as-of-right in the zoning by-law, the municipality will have some control over the design of the site. Site Plan control can further address matters such as ventilation, security, fencing, light pollution and site decommissioning.