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City of Niagara Falls

Cannabis Growing Facilities


Land Use Review

October 2020

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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 for recreational purposes in Canada.

Currently, cannabis and its related uses are not addressed in the Niagara Falls Official Plan. Production of cannabis is addressed in Zoning by-law No. 79-200 which applies to Chippawa and the lands north of the Welland River, but only in the context of production for medical purposes. 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 purpose of this Study is to examine the opportunities for the City of Niagara Falls to regulate activities permitted under the Cannabis Act. 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.

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

Section 3 describes the current Niagara Falls 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 of this report provides an overview of policy options for Niagara Fall's consideration.

2 Cannabis Production in Canada



2.1 Legal Framework of Cannabis Production in Canada

Prior to the introduction of the Cannabis Act, 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.

With the introduction of the Cannabis Act, 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.

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 m²),
- Standard cultivation, and
- Nursery.

The federal licences do not permit sales to the general public, rather only sale of medical cannabis, through the mail and not in a store format. **Figure 1** provides a summary of the types of licences that can be applied for under the Cannabis Act.

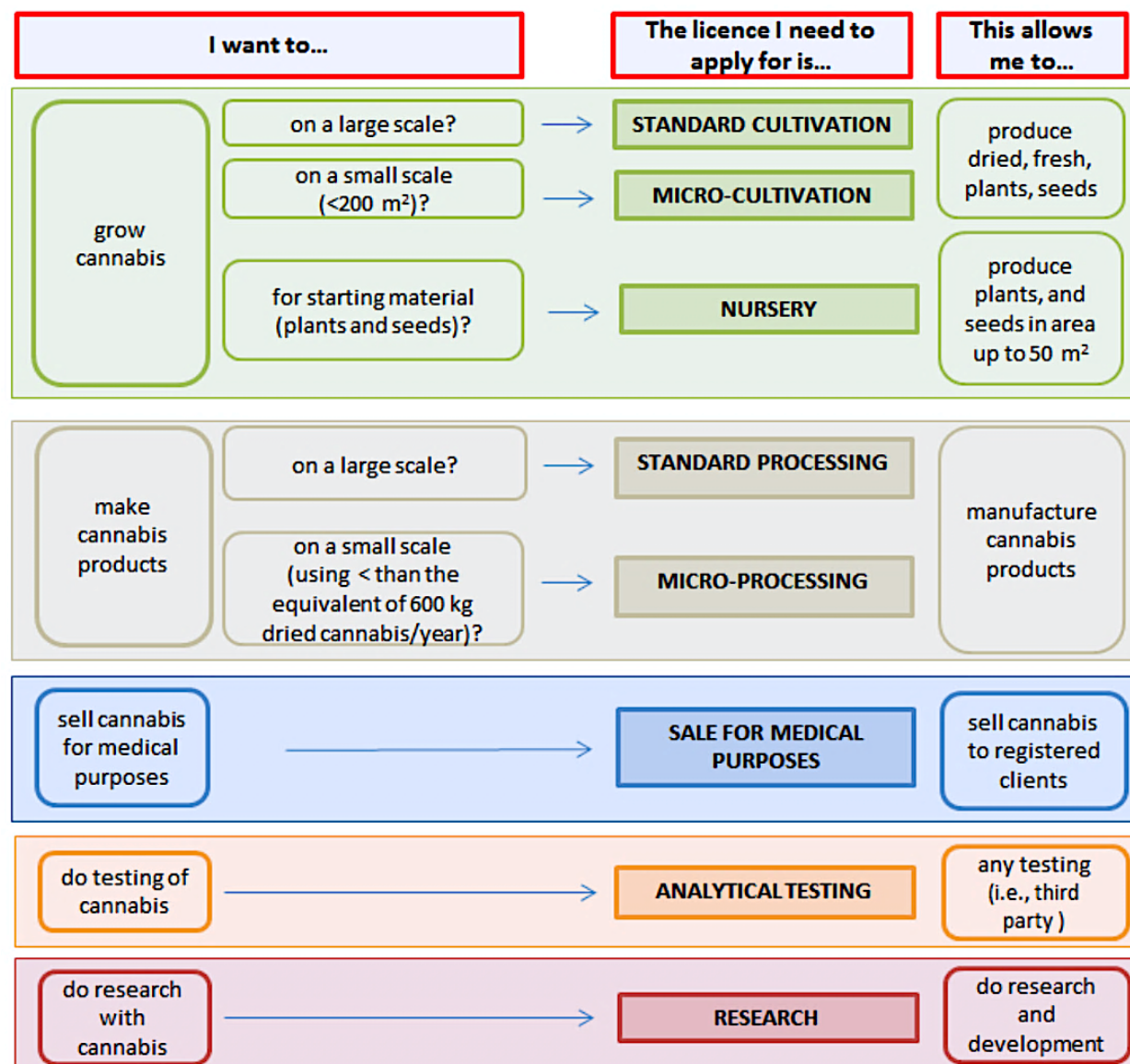


Figure 1: Types of licences Under the Cannabis Act

Source: Cannabis Licensing 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 format. 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 City of Niagara Falls has chosen to allow retail sales of recreational cannabis within the City, and did not opt out. According to the City's website, the definitions within the Official Plan and Zoning By-law are applicable to all retail, including cannabis retail

stores. 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 Cannabis Act also permits, without a licence, personal growth of cannabis, with a permission for up to 4 plants per dwelling. Personal growth of cannabis within a household falls outside of the scope of this Study.

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.

2.2 Cannabis Act and 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 City of Niagara Falls) (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. (By Part 2, Section 40)
- Only cultivation, propagation and harvesting may occur outdoors while testing, storage, packaging and labeling of cannabis cannot occur outdoors. (B 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 device 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 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 a clustering of designated growth for medical cannabis can raise odour and concerns.

2.3 Other Acts and Policy

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, as well as from 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”, as defined, have been restricted.

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.”

3 Niagara Falls Planning Framework



This section examines the current policy and zoning permissions related to Cannabis production in Niagara Falls.

3.1 Official Plan

The Niagara Falls Official Plan does not make any direct reference to marihuana/marijuana, cannabis nor cannabis facilities. **Figure 2** illustrates the City's land use designations, which highlights the locations of Niagara Falls' agricultural and industrial areas.

3.1.1 Good General Agriculture Area

The policies for the Good General Agriculture area are outlined in Part 2 Section 7 of the Niagara Falls Official Plan. The intent of the Official Plan policies are to protect the continuation of farming operations by permitting a range of agricultural uses and related uses that support and enhance the agricultural industry. It is also the intent of the Plan to restrict the establishment of non-farm uses and minimize land use conflicts in favour of agriculture wherever possible.

According to the Official Plan, the predominant use of land in the Good General Agriculture Area will be for agriculture of all types, which include, among others:

- Crop farming;
- Nurseries and intensive greenhouses;
- Agricultural value retention uses (Section 7.1, in part).

Section 7.2.2 of the Plan addresses value added uses, which include "small scale uses related to the current on-site farming activity or surrounding farm operations that support farming and adds value to the agricultural products through processing, sales or distribution involving:

- production i.e. the processing of agricultural products such as wineries, cideries, canneries, bakeries, cheese, abattoirs; or
- marketing i.e. methods of increasing sales of raw and/or processed farm products such as road side stands, farm markets, limited retail sales of items that implement the farm products, or agri-tourism; or
- support i.e. uses that provide for day to day farming such as: machinery repair, seed supplies and other uses that are not appropriate for urban areas"

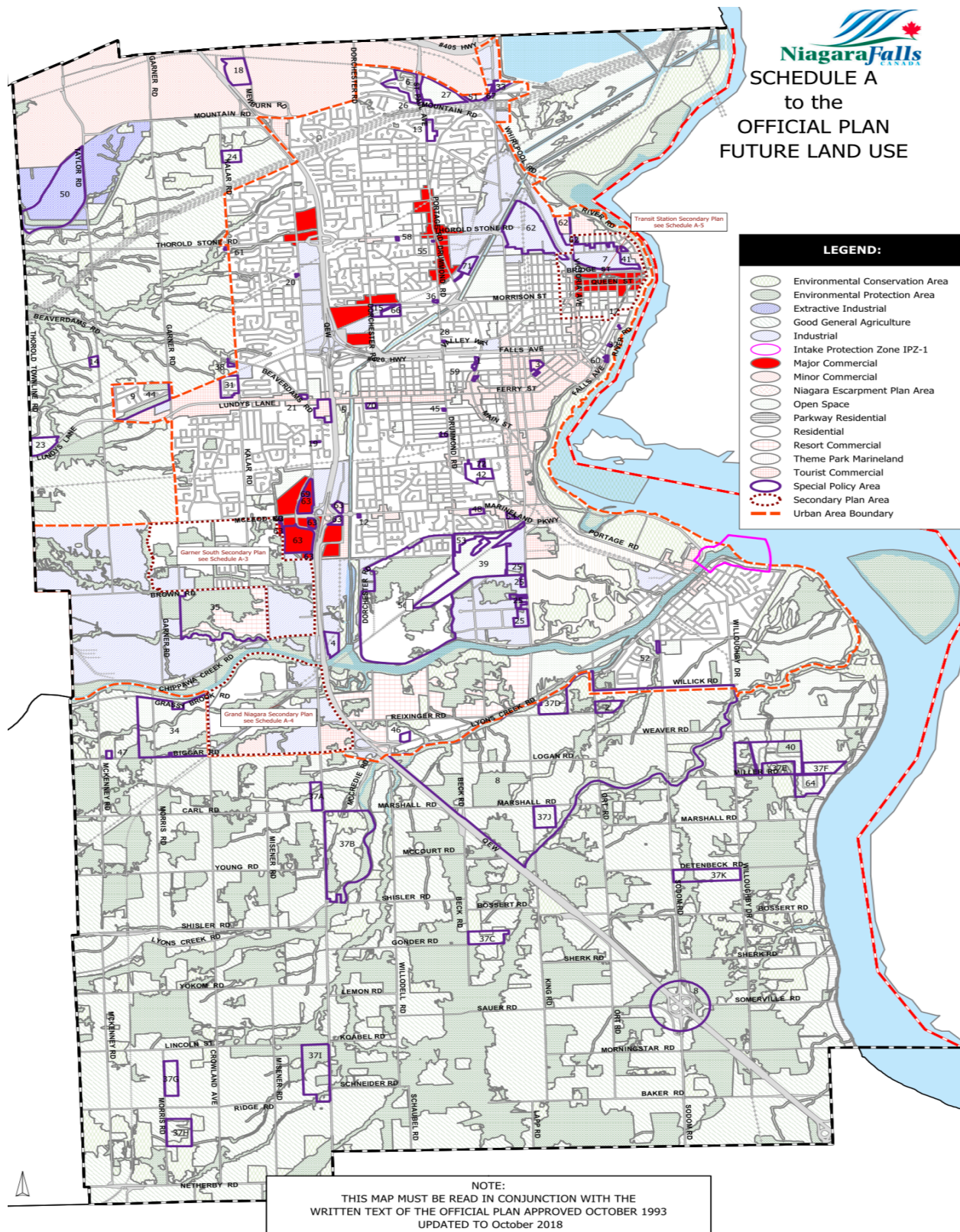


Figure 2. City of Niagara Falls Future Land Use Official Plan Map

According to this Section, “value added uses are to remain secondary to the principal farm activity and operated on behalf of the individual and/or corporation farming the lands and will be permitted as-of-right through the City’s Zoning By-law”. Uses that either exceed the Zoning By-law’s maximum size provisions, or pose a potential conflict on off-site traffic or normal farming operation, water and effluent usage, or impacts on utilities or infrastructure, are subject to site specific Planning Act amendments. The amendment will be evaluated based on the following criteria:

- “the appropriateness of the use for the agricultural area and its requirement to be located close to the agricultural use of the property it is intended to support and complement;
- compatibility with existing and future farm operations both on and adjacent to the property;
- the appropriateness of scale with regards to lot size and farming activity;
- consistency with and maintenance of the character of the agricultural area; and
- acceptable mitigation of off-site conflicts.”

According to Section 7.3, “farm related small-scale commercial and industrial uses may be considered where such uses are directly related to and require close proximity to the farm operations which they serve and if not possible to locate these uses within the designated Urban Area”. These uses are to be located where there is minimal impact on adjacent uses and will be implemented through a site specific zoning amendment, in order to establish site design details and floor space area limits.

3.1.2 Industrial Area

Policies for the Industrial Area designation are outlined within Part 2 Section 8 of the Official Plan. According to this section, “the intent of the Industrial Area is to provide opportunities for the expansion of existing industry and the stimulation of new industrial growth”. The Plan recognizes the need to accommodate the changing requirements of industry growth, and places emphasis on improved aesthetics and environmental quality. This includes measures “which will safeguard the integrity of adjacent land uses”.

The primary uses within the Industrial designation will be for industry. The Official plan defines industry as:

“manufacturing, assembly, fabricating, processing, reclaiming, recycling, warehousing, distribution, laboratory and research, and storage” (Part 2, Section 8.2).

According to the Plan, “all forms of service industries and utilities are included within this definition”.

Section 8.3 of the Plan states that the Zoning By-law will establish categories of industrial land use to accommodate a variety of activities, ranging from heavy to

prestige. These zones will be arranged in graduation, with lighter prestige-type industries located closer to sensitive land uses. This zoning will have regard for providing suitable environments for the use; minimizing potential land use conflicts; and protecting adjacent lands, particularly residential areas, from the effects of incompatible uses.

3.2 Zoning By-laws

The City of Niagara Falls has four different Zoning By-laws that apply to different areas of the municipality: Zoning By-law No. 79-200; Zoning By-law No. 395 (1966); Zoning By-law No. 1538; and Zoning By-law No. 70-69.

While the City is currently working on a new Comprehensive Zoning By-law to replace the four existing by-laws, the following review addresses the four individual by-laws and their current regulations.

3.2.1 Zoning By-law No. 79-200

Zoning By-law 79-200 applies to Chippawa and the lands north of the Welland River.

Niagara Falls Zoning By-law 79-200 currently defines ‘medical marihuana facility’ as:

“the use of a building or lot for the cultivation, processing, testing, destruction, packaging or shipping of medical marijuana licensed under the Marijuana for Medical Purposes Regulations (S.O.R. 2013-119 as amended from time to time), promulgated pursuant to the Controlled Drugs and Substances Act, S.C. 1996, c. 19, as amended from time to time”.

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 By-law also provides a definition for ‘sensitive land use’, which means:

“any use that may be adversely affected by the proximity of a Medical Marijuana Facility including, without limiting, the generality of the foregoing, residential uses, campgrounds, child care facilities, playgrounds, schools, parks and institutional uses”.

Medical marihuana facilities are only directly addressed once within the by-law, under Section 4 – General Provisions. According to Section 4.35, “when considering any application to permit a Medical Marihuana Facility, Council shall among other things, consider the proximity of the proposed location of the Medical Marijuana Facility to any and all Sensitive Land Uses”.

3.2.1.1 Agricultural Zone

Regulations for the Agricultural Zone (A) are addressed in Section 12 of the Zoning By-law. Within this zone, agricultural uses are permitted which include, among others: the growing of field, berry, bush or tree crops; and commercial greenhouses. Accessory buildings and structures which are accessory to any of the permitted uses are also permitted, including storage buildings.

The following are the building and structure requirements for all development within the Agricultural Zone, excluding dwelling unit regulations:

Minimum Lot Area	16 hectares
Minimum lot frontage	150 metres
Minimum front yard depth	10 metres plus any applicable distance specified in section 4.27.1 (specifying Road Allowance Requirements for Specific Roads)
Minimum side yard width, each side	10 metres plus any applicable distance specified in section 4.27.1 (specifying Road Allowance Requirements for Specific Roads)
Minimum rear yard depth	10 metres plus any applicable distance specified in section 4.27.1 (specifying Road Allowance Requirements for Specific Roads)
Parking and access requirements	In accordance with Section 4.19.1

3.2.1.2 Rural Zone

The Rural Zone (R) is addressed in Section 13 of the by-law, which among other uses, permits all agricultural uses as outlined within the Agricultural Zone.

According to the by-law, all of the regulations for the agricultural uses, buildings or structures in the Agricultural Zone shall also apply to those permitted within the Rural Zone.

3.2.1.3 Industrial Zones

Industrial Zones within Section 10 of the Zoning By-law consist of Prestige Industrial (PI), Light Industrial (LI), General Industrial (GI), Heavy Industrial (HI), Transportation-Distribution Industrial (TDI), and Extractive Industrial (EI). While these zones do not specifically permit agricultural uses, the Prestige Industrial and Light Industrial Zones permit a nursery for trees, shrubs, or plants. These two zones also permit:

“manufacturing, compounding, processing, packaging, crafting, bottling, assembling of raw or semi-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”.

The General Industrial and Heavy Industrial Zones permit “manufacturing, compounding, processing, packaging, crafting, bottling, assembling of raw or semi-processed or fully processed materials”.

The Transportation-Distribution Industrial and Extractive Industrial Zones do not permit any manufacturing or agricultural uses that would relate to the production of cannabis or cannabis related uses.

The following are the building and structure requirements applicable to the Prestige Industrial, Light Industrial General Industrial and Heavy Industrial Zones:

Regulation	Prestige, Light, General and Heavy Industrial Zones
Minimum Lot Frontage	30 metres
Minimum Lot Area	2000 m ² (Prestige and Light Industrial) 4000 m ² (Heavy and General Industrial)
Minimum Front Yard Depth	10 metres plus any applicable distance specified in section 4.27.1
Minimum Interior Side Yard Width	3.5 metres
Minimum Exterior Side Yard Width	7.5 metres plus any applicable distance specified in section 4.27.1
Minimum Rear Yard Depth	7.5 metres plus any applicable distance specified in section 4.27.1 (Heavy Industrial)
Where the Rear Lot Line Abuts a Residential Zone	15 metres plus any applicable distance specified in section 4.27.1 (Prestige and Light Industrial) 30 metres plus any applicable distance specified in section 4.27.1 (General Industrial)
Where the Rear Lot Line Does Not Abut a Residential Zone	7.5 metres plus any applicable distance specified in section 4.27.1 (Prestige, Light and General Industrial)
Maximum Height of a Building or Structure	12 metres subject to section 4.7 (Prestige and Light Industrial) 20 metres subject to section 4.7 (General Industrial) 30 metres subject to section 4.7 (Heavy Industrial)
Minimum Height of Exterior Walls	The minimum vertical height of each exterior wall of any such building or structure shall be 2.5 metres above the elevation of the finished ground level at the mid-point of the wall in question. In the Heavy Industrial Zone this regulation does not apply to structures such as storage

	tanks or buildings used for bulk storage or non-flammable solids or liquids.
Maximum Lot Coverage	60% (Prestige Industrial) 70% (Light, General and Heavy Industrial)
Minimum Landscaped Open Space	
For an Interior Lot	67% of the required front yard (Light and Prestige Industrial) 50% of the required front yard (Heavy and General Industrial)
For a Corner Lot	67% of the required front yard and 67% of the required exterior side yard (Light and Prestige Industrial) 50% of the required front yard and 50% of the required exterior side yard (Heavy and General Industrial)
Parking and Access Requirements	In accordance with Section 4.19.1
Loading Area Requirements	In accordance with Section 4.20.1

3.3 Existing Facilities

To date, only one property within the City has received approval for site specific zoning by-law amendment to permit a medical marijuana business, which was passed in 2017. By-law 2017-83 added a medical marijuana facility as a permitted use within the General Industrial Zone. The facility is located within the Stanley Avenue Industrial Park, south of Marineland Parkway.

3.3.1 Zoning By-law No. 395 (1996)

The portion of the City previously part of Willoughby Township is regulated by Zoning By-law No. 395 (1966).

3.3.1.1 Rural Zone

The uses permitted in the Rural Zone of the Township of Willoughby include agricultural uses, which among others, include:

- Field crops;
- Tree nurseries;
- Berry or bush crops; and
- "Other similar uses customarily carried on in the field of agriculture".

The applicable requirements for the Rural Zone are as follows:

Site or Lot Area Minimum Holding	1 acre
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Minimum Frontage on a Public Street	200 feet
Maximum Height	35 feet
Minimum Building Setback – All Roads	68 feet from centre line of road allowance
Minimum Rear Yard	30 feet
Minimum Side Yard	15 feet

3.3.1.2 Industrial Zone

Uses permitted within the Industrial Zone include industrial uses, which shall include “those manufacturing, converting, altering, finishing, fabricating or assembling of products establishments which do not emit obnoxious sound, odour, dust, fumes, vibration or smoke and which are not hazardous to the surrounding uses”.

This section also provides a list of heavy industrial uses that may only be permitted by specific amendment, which includes “any use which is conducted so as to cause or result in the dissemination of noise, vibration, odour, dust, smoke, gas or fumes, or other pollutant beyond the lot on which such use is conducted”.

The applicable requirements for the Industrial Zone are as follows:

Maximum Lot Coverage	30% of any lot or parcel of land
Minimum Front Yard	40 feet from a public highway, street or road boundary (with street specific exceptions)
Minimum Side Yard	15 feet from any side boundary line of the lot or parcel on which the building is situated 30 feet where a side lot line is a boundary between an Industrial Zone and a Residential Yard, additionally requiring a minimum four foot, maximum six foot bufferstrip and/or a close boarded fence, or suitable alternative
Minimum Rear Yard	25 feet from any rear boundary line of the lot or parcel on which the building is situated 40 feet where a rear lot line is a boundary between the Industrial Zone and Residential Zone, additionally requiring a suitable bufferstrip, fence or alternative
Loading Facilities	Any building or structure used for manufacturing, storage or commercial purposes, or any purpose involving the use of vehicles for the receipt or distribution of materials shall provide and maintain loading areas on land that is not part of a highway and not part of the required parking in such a manner

	and to such extent as to render unnecessary obstruction of, or interference with, traffic upon any street or alley
Open Storage	Open storage other than temporary parking vehicles shall not be permitted in any front or side yard

3.3.2 Zoning By-law No. 1538 (1958)

The former area of Crowland Township is regulated by Zoning By-law No. 1538 (1958).

The by-law currently permits general agricultural uses within the Rural Agricultural District; light manufacturing uses within the Storage and Light Manufacturing District; and heavy manufacturing uses within the Yard Storage and Heavy Manufacturing District.

3.3.3 Zoning By-law No. 70-69

Zoning By-law No. 70-69 applies to the Humberstone area. It does not categorize any areas into zones. According to this by-law, nothing shall apply to prevent any land from being used for any agricultural purpose and residence associated with that use, provided:

- there is a minimum lot size of 25 acres;
- there are minimum front, side and rear yards of 25 feet; and
- where a farm building abuts a neighbouring residential use, that buildings will be set back a minimum distance of 100 feet.

3.4 Site Plan Control

According to the Official Plan, Part 4 Section 10, all of the area of the City shall be a site plan control area. According to the Official Plan, “it is intended that all classes of development including but not limited to Residential, Commercial, Industrial, Institutional and Open Space, shall be subject to site plan control”. However, the Official Plan references that the following may be exempted from the provisions of the site plan control by-law:

“Any farm operation, with the exception of agri-tourism uses, commercial farm markets, permanent or mobile farm help houses and greenhouses” (10.1.3).

4 Best Practice Review



4.1 Summary of Best Practice Review

The available information from 16 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: Niagara-on-the-Lake, Port Colborne, Wainfleet, Lincoln, West Lincoln, and Pelham. Other Ontario municipalities were chosen to represent urban and rural approaches. These include Chatham-Kent, Halton Hills, Leamington, Norfolk, Oakville, Arnprior, Ottawa, Haldimand County, 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 discussions with Staff, it is anticipated that an Issues and Opportunities Report will go to Council in October outlining options for draft zoning, site plan and licencing agreements and the Interim Control By-law is not anticipated to be extended. Wainfleet's report was not yet available during the writing of this report; and
- 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 details of Best Practice Review are summarised below in **Table 1** and the sections to follow.

Table 1 illustrates that municipalities have permitted cannabis growing facilities either as-of-right or through a zoning by-law amendment. The designation and/or zone where cannabis and related uses are permitted, as well as any special regulations that are applied, are described within Table 1.

Table 1. Summary of Municipal Cannabis Facility Regulations

Municipality	Official Plan	Zoning		Other
		Uses Permitted	Regulations	
Niagara Region				
Wainfleet	Interim Control By-law in Place (renewed until November 2020)			
Niagara-on-the-Lake (Passed by Council June 2020 and Under Appeal: Interim Control By-law in Place until LPAT Decision)	Not specifically addressed.	Permitted use as-of-right within the Rural Zone: <ul style="list-style-type: none">• buildings or structures;• producing (indoor);• processing;• testing;• storing;• destroying;• packaging;• shipping.	<ul style="list-style-type: none">• 600 m minimum setback to sensitive land uses.• Air treatment control requirement (thus, indoor growth a requirement).• Security buildings may be located in the required front yard and do not have to comply with setbacks, as established through site plan process.• No outdoor storage.	<ul style="list-style-type: none">• Site Plan Control.
Lincoln	<ul style="list-style-type: none">• Cannabis Production Facilities (indoor and outdoor) permitted in the Specialty Agricultural and Prime Agricultural designation.	Permitted as-of-right in Agricultural Zone: <ul style="list-style-type: none">• any building, structure or use• grow (indoor and outdoor);• posses;• sell;• ship;• deliver;• transport;• destroy;• produce;• export/import;• related research.	<ul style="list-style-type: none">• Not permitted on a lot containing a residence.• Minimum setback of 300 m from any Residential, Institutional or Open Space Zone and residential use, day nursery and institutional use.• Planting strip requirements.• Parking requirements.• No outdoor storage.• Minimum separation distance of 1,000 m between facilities.• Minimum lot area (6 ha.).• 30 m minimum setback for structures from all property lines.• Security buildings may be located in the front yard, do not have to comply with setbacks.	<ul style="list-style-type: none">• Amended Site Plan Control By-law to include cannabis production facilities within the list of agricultural buildings that are not exempt.

Municipality	Official Plan	Zoning		Other
		Uses Permitted	Regulations	
			<ul style="list-style-type: none"> Loading spaces must be wholly enclosed 	
Pelham	<ul style="list-style-type: none"> Indoor Cannabis and Industrial Hemp Production permitted in Good General Agricultural, Speciality Agricultural and Industrial designation subject to a zoning by-law amendment. Outdoor cultivation permitted in Agricultural areas under agricultural use definition. 	<p>Indoor Cannabis-related Use and Industrial Hemp Related Use permitted through a zoning by-law amendment in Agricultural Cannabis Zone and General Industrial Cannabis Zones:</p> <ul style="list-style-type: none"> activities authorized in accordance with Federal Cannabis Regulation; within an enclosed building or structure. <p>Outdoor growth defined but not permitted anywhere.</p>	<ul style="list-style-type: none"> 1 parking space per 100 m² of GFA for indoor. Minimum setback for outdoor uses of 300 m from a sensitive land use. Prohibits a retail store. 30% maximum lot coverage. No storage area within 30 m of a street or the lot line of an adjacent residential use. 	<ul style="list-style-type: none"> Site Plan Control. Odorous Industries Nuisance By-law.
Port Colborne	<ul style="list-style-type: none"> A Cannabis Production Facility is permitted within the Industrial/ Employment, Economic Gateway Centre, Agricultural and Rural designations. 	<p>Permitted as-of-right in Light Industrial, Heavy Industrial, Gateway Industrial, Rural and Agricultural Zones:</p> <ul style="list-style-type: none"> facility structure; indoor cultivation in all zones; outdoor cultivation in rural and agricultural zones; processing; packaging; shipping. 	<ul style="list-style-type: none"> Air treatment control requirements. Minimum setback of 150 m from any sensitive land use. Security building may be located in the required front yard. Greenhouses should be shielded so no light escapes between sunset and sunrise when abutting a sensitive land use. Fencing. Lot requirements differ between zones. No outdoor storage. 1 parking space for every employee on the largest shift. Servicing requirements. 	<ul style="list-style-type: none"> Site Plan Control.

Municipality	Official Plan	Zoning		Other
		Uses Permitted	Regulations	
West Lincoln	Not specifically addressed.	<p>Permitted through site-specific/Zoning by-law amendment in Agricultural and Employment Zones the following:</p> <ul style="list-style-type: none"> • indoor cultivation, • processing; • testing; • destruction; • packaging. 	<ul style="list-style-type: none"> • Minimum setback from all other lot lines (50m where permitted in Agricultural Zones and 45m where permitted in Employment Zones). • Security fence requirements. • No outdoor storage/growing. 	
Other Municipalities				
Chatham-Kent	<ul style="list-style-type: none"> • Cannabis production is permitted within the Employment, Agricultural and Rural Industrial designations. 	<p>Permitted as-of-right in Agricultural and Industrial Zone:</p> <ul style="list-style-type: none"> • indoor cultivation; • processing; • sale; • analytical testing; • research. <p>Permitted as-of-right in Agricultural Zone:</p> <ul style="list-style-type: none"> • outdoor cultivation. 	<ul style="list-style-type: none"> • Minimum separation distance of buildings/structures from residential, institutional or open space boundary (75 m in Industrial Zones and 100 m in Agricultural and Rural zones). • Parking Requirement: Two spaces per three employees (maximum enrolment) or one space per 18 m² floor area used for office, whichever is greater, plus one space per 1,000 m² floor area used for production. 	<ul style="list-style-type: none"> • Site Plan Approval.
Halton Hills	<ul style="list-style-type: none"> • Indoor and outdoor cannabis cultivation and processing is a permitted use. 	<p>Permitted as-of-right in EMP1 and RU-EMP Zone:</p> <ul style="list-style-type: none"> • indoor cultivation, • processing; • testing; 	<ul style="list-style-type: none"> • Parking requirements. • Loading space requirements. • Setback from sensitive uses (150 m). • Outdoor growth of cannabis must be 50m from lot lines. 	<ul style="list-style-type: none"> • Site Plan Control.

Municipality	Official Plan	Zoning		Other
		Uses Permitted	Regulations	
		<ul style="list-style-type: none"> research. <p>Permitted as-of-right in A and PC Zone:</p> <ul style="list-style-type: none"> outdoor cultivation. 		
Ottawa	Not specifically addressed	<p>Permitted as-of-right in Heavy Industrial Zone, Rural General Industrial Zone, and Rural Heavy Industrial Zone:</p> <ul style="list-style-type: none"> within a building that is not a greenhouse. <p>Permitted as-of-right in Light Industrial and Business Park Industrial Zones:</p> <ul style="list-style-type: none"> within a building that is not a greenhouse; limited to 350 m² GFA. <p>Permitted as-of-right in Agricultural and Rural Countryside Zone:</p> <ul style="list-style-type: none"> limited to outdoor cultivation and greenhouse cultivation. 	<ul style="list-style-type: none"> No outdoor storage. Not permitted in a dwelling. No nuisance permitted due to odour or fumes. Minimum setback for all facilities from sensitive land uses (300m). Any facility may be located within 300m of a sensitive use zone if the only permitted uses of these zones are environmental preserve and education area, emergency service, municipal service centre, office, storage yard or warehouse. 	
Leamington	Not specifically addressed	<p>Permitted as-of-right in Agricultural Zones where greenhouses are permitted or in Industrial Zone:</p> <ul style="list-style-type: none"> indoor cultivation processing; 	<p>Independent By-law:</p> <ul style="list-style-type: none"> Odour protocol regulations. Applicable licences and permits. Setback from sensitive uses (200 m). Inspection and compliance regulations. 	

Municipality	Official Plan	Zoning		Other
		Uses Permitted	Regulations	
		<ul style="list-style-type: none"> • extracting; • packaging; • testing; • destruction; • storage; • shipment. 		
Norfolk	Not specifically addressed.	<p>Permitted as-of-right in Agricultural and Industrial Zones:</p> <ul style="list-style-type: none"> • producing; • processing; • testing; • destroying; • packaging; • shipping. <p>No reference is made to indoor vs. outdoor cultivation.</p>	<ul style="list-style-type: none"> • Minimum setback from Residential Zones, Institutional Zones or Open Space Zones (70 m where equipped with air treatment control in Industrial Zones and 150 m in Agricultural Zones). • Minimum setback from sensitive land uses (existing use as opposed to zone) (150 m in Industrial or Agricultural Zones and equipped with air treatment control and 300m in Industrial or Agricultural Zones and not equipped with air treatment control). • Security building/structure requirements. • No outdoor storage. 	<ul style="list-style-type: none"> • Site Plan Control.
Oakville	Not specifically addressed.	<p>Not specifically addressed. According to the Town's website, the Cannabis Legalization – One Year Review Report and discussion with the Manager of Zoning, "Staff direct notices to the Chief Building Official to be reviewed for zoning compliance. Applications for cultivation, processing and/or sale of cannabis are reviewed to determine what the primary use is in accordance with existing use definitions such as Agriculture or Manufacturing,</p>	N/A	

Municipality	Official Plan	Zoning		Other
		Uses Permitted	Regulations	
		and the applicable zoning permissions.” Therefore, under the agricultural use, outdoor growing facilities may be permitted.		
Arnprior	Not specifically addressed	<p>Permitted as-of-right within the Employment Zone:</p> <ul style="list-style-type: none"> • cultivation; • processing; • analytical testing; • research. <p>No reference is made to indoor vs. outdoor cultivation.</p>	<ul style="list-style-type: none"> • Setback from residential or institutional (100 m). • No residential is permitted on the same lot. • Loading space and storage must be within a fully enclosed building. • Retail sales are not permitted. • Parking space requirements. 	
Haldimand County	Not specifically addressed	<p>Permitted as-of-right in the Agricultural and Industrial Zones within a building:</p> <ul style="list-style-type: none"> • shipment; • delivery; • transport; • destruction; • growth (indoor); • drying; • exporting; • importing. 	<ul style="list-style-type: none"> • Dwelling units are not permitted on same site. • Minimum setback from Residential, Commercial, Institutional or Open Space Zones; any sensitive land uses; and any settlement area boundary (150 m). • Increased setbacks based on building/structure size (less than 6,967 m²: 150 m; less than 9,260 m²: 200 m; greater than 9,260 m²: 300 m). • Setback where an air treatment control system is not provided (300 m). • Parking requirements. • Outdoor storage is prohibited. • Outdoor signage is prohibited. • No other uses permitted other than growing of accessory agricultural crops. • Minimum lot area. 	<ul style="list-style-type: none"> • Site Plan Control.

Municipality	Official Plan	Zoning		Other
		Uses Permitted	Regulations	
			<ul style="list-style-type: none"> • Minimum setback of structures from all property lines. • Security building regulations. • Loading spaces must be within wholly enclosed building. 	
Brant County	Not specifically addressed.	Permitted as-of-right within Agricultural and Industrial Zones: <ul style="list-style-type: none"> • indoor cultivation; • processing; • testing; • destroying; • packaging; • shipping. 	<ul style="list-style-type: none"> • Setback from Residential Zone or use, Industrial Zone or use or Open Space Zone (150 m). • Loading space requirements. • Security building regulations. • Parking space requirements. 	<ul style="list-style-type: none"> • Site Plan Control.
Barrie	Not specifically addressed	Permitted as-of-right within the General Industrial Zone: <ul style="list-style-type: none"> • wholly enclosed building or structure; • possess; • produce (indoor); • sell; • provide; • ship; • deliver; • transport; • destroy. 	<ul style="list-style-type: none"> • No specific regulations outlined. 	

4.1.1 Official Plan Permissions

Of all the municipalities reviewed, five currently address cannabis facilities within their Official Plans: Pelham, Port Colborne, Lincoln, 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 the 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 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. These criteria include a minimum of 300 to 500 metres from sensitive land uses and a minimum of 2,000 to 4,000 metres from other facilities.

An 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 amendment requires compatibility with neighbouring land uses through installation and operation of odour and light mitigation systems; maintenance and monitoring plans; 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; permit indoor storage and processing; and require mitigation measures as well as buffering, screening and security requirements.

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.

4.1.2 Mechanism for Zoning Permissions

Most of the municipalities reviewed permit cannabis growing facilities in some way, whether as-of-right or through a zoning by-law amendment process.

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.

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 requires an odorous industrial facility to 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.

4.1.3 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:

- 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”; and
- Norfolk County amended definitions within their zoning by-law for “farm”, “garden centre”, and “wholesale outlet” to specifically exclude “cannabis production and processing”.

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. 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.

4.1.4 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:

- Port Colborne permits indoor cultivation within their light, heavy and gateway industrial zones, as well as their rural and agricultural zones;
- Niagara-on-the-Lake (passed by Council and under appeal) permits indoor cultivation within rural areas;
- Lincoln permits indoor cultivation within agricultural areas;
- Chatham Kent permits indoor cultivation within agricultural and industrial zones;
- Halton Hills permits indoor cultivation within employment and rural employment zones;
- Ottawa permits indoor cultivation within its industrial and rural industrial zones, granted it is within a building that is not a greenhouse;
- Leamington permits indoor cultivation within agricultural zones (where greenhouses are permitted) and industrial zones;
- Haldimand County permits indoor cultivation within agricultural and industrial zones; and
- Barrie permits indoor cultivation within the industrial zone;
- Brant County permits indoor cultivation within agricultural and industrial zones.

In comparison to these other examples, the Town of Pelham requires a site-specific Zoning By-law Amendment to permit indoor cultivation and applies its newly established Agricultural Cannabis and General-Industrial Cannabis zones to these applications. 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.

4.1.5 Zoning Permissions – Outdoor Cultivation

Outdoor Cultivation Permitted

Only some of the municipalities reviewed specifically allow the outdoor cultivation of cannabis. Chatham-Kent, Halton Hills and the City of Ottawa permit outdoor cultivation as of right within their Agricultural and/or Protected Countryside Zones.

While the Town of Pelham introduced Official Plan and zoning permissions for indoor cultivation, according to reports prepared for the Cannabis Control Committee, outdoor cultivation is considered to be permitted as an agricultural within agricultural areas.

The City of Port Colborne 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 the Town of 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), 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.

4.1.6 Additional 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 draft 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.

5 Options



This section of the report discusses options for considering cannabis facilities in Niagara Falls' planning documents. Based on the background discussed in the previous sections of this report, a number of options and the pros and cons of the different options for permitting and regulating the uses are explored.

5.1 Permitting the Use

5.1.1 Should cannabis related uses be permitted in agricultural and/or employment areas?

Option 1a. Specifically permit indoor cultivation of cannabis in Agricultural Areas

The definition of agricultural uses could be interpreted to permit cannabis cultivation and greenhouses in the agricultural and rural area. However, the City could specifically permit indoor cultivation in greenhouses or other buildings in the Agricultural and Rural Area.

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

Pro	Con
<ul style="list-style-type: none"> Permitting the indoor cultivation of cannabis would align with permitting indoor cultivation of other crops in greenhouses, agricultural and rural areas 	<ul style="list-style-type: none"> 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 permission of the indoor cultivation of cannabis in agricultural areas would include:

- No change to the Official Plan, 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 specifically clarify that the indoor cultivation of cannabis is permitted in agricultural designations;

and

- Amend the City's zoning by-laws to clarify that the indoor cultivation of cannabis and associated uses are permitted, by listing it as a permitted use, updating the existing reference to medical marijuana facilities within By-law 79-200 to include any licenced cannabis facility and including it as a defined term within the other by-laws.

Option 1b. Do not permit indoor cultivation of cannabis in Agricultural 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 City of Niagara Falls. While there are nuisance concerns, as discussed within the following 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. Personal 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.

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

Pro	Con
<ul style="list-style-type: none"> • Alleviates nuisance concerns related to indoor cultivation of cannabis. 	<ul style="list-style-type: none"> • 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 anywhere agricultural uses are currently permitted by the Normal Farm Practices Protection Board.

The mechanisms for removing the permission of indoor cultivation of cannabis in agricultural areas would include amending both the Official Plan and zoning by-laws to define the use and list it as a prohibited use, as well as to remove the reference to medical marijuana facilities in Zoning By-law 79-200.

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

The key concerns associated with outdoor cultivation include lighting and odour. However, there is currently limited information available to assist in understanding the nuisances related to outdoor cultivation of cannabis. While outdoor growing is able to take advantage of sunlight, which reduces the need for artificial light, nuisances may still result from lighting required for security measures. In terms of odour, to our knowledge, only one outdoor facility exists within Ontario at the time of writing this report. 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 Niagara Falls:

Pro	Con
<ul style="list-style-type: none"> Permitting outdoor cultivation would align with permitting the cultivation of other crops in agricultural and rural areas. 	<ul style="list-style-type: none"> 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 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 Niagara Fall's Agricultural 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 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 Niagara Falls:

Pro	Con
<ul style="list-style-type: none"> Alleviates nuisance concerns related to the uses. 	<ul style="list-style-type: none"> 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 Employment 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.

The following outlines the pros and cons of permitting cannabis related uses in Employment Areas in Niagara Falls:

Pro	Con
<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> Nuisance concerns related to noise, 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:

- Leave the Official Plan policies as they are, with the interpretation that the cultivation and processing of cannabis are already captured as agricultural uses and processing uses are permitted in the City's Industrial Zones; **or**
- Amend the Official Plan to specifically clarify that cannabis cultivation/processing /packaging etc. is permitted in Industrial Areas;

And

- Amend the zoning by-laws to clarify that cannabis cultivation and processing /packing/testing etc. are permitted in Industrial areas;

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

Limiting certain uses in employment areas are typical official plan and zoning provisions. However OMAFRA indicated that they consider the Farming and Food Production Protection Act and its associated protections for normal farm practices, to also apply in Employment Areas where agriculture activities are currently permitted.

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

Pro	Con
<ul style="list-style-type: none">• Alleviates nuisance concerns related to the uses.	<ul style="list-style-type: none">• The post-cultivation uses (processing, packaging, etc.) are not that different from other industrial uses and have similar nuisance potential.• By-laws may be deemed not to apply by the Normal Farm Practices Protection Board anywhere agricultural uses are currently permitted.

If the City of Niagara Falls 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 medical marijuana facilities from Zoning By-law 79-200.

5.2 Regulating the Use

5.2.1 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.

Currently, Niagara Falls Zoning By-law 79-200 requires Council to consider, among other things, the proximity of a proposed Medical Marijuana Facility to any and all sensitive land uses. The by-law defines sensitive land use as:

“any use that may be adversely affected by the proximity of a Medical Marijuana Facility, including, without limiting, the generality of the foregoing, residential uses, campgrounds, child care facilities, playgrounds, schools, parks and institutional uses”.

As mentioned previously 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. The guide indicates that:

- “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.

Through our review of cannabis facilities within Niagara Region, Health Canada was contacted and asked how odour concerns 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, 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”. As well, odour related to outdoor cultivation is not addressed in the regulations or guidelines.

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.

The Normal Farm Practices Protection Board also provides a mechanism for complaints. From our discussions with them, there is currently one application in progress from a private party complaining of nuisance related to a cannabis facility, which specifically pertains to odours, light and dust. As only a prehearing has occurred at this time, no decision on the matter has occurred. As well, to our knowledge, the Normal Farm Practices Protection Board has not yet had to make a determination on what constitutes a normal farm practice as it relates to cannabis production.

Our best practice review did identify that a number of municipalities have implemented separation requirements for cannabis growing facilities in zoning by-laws. One of the concerns with implementing a setback and/or separation distance is that these requirements in zoning by-laws could be appealed.

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

Pro	Con
<ul style="list-style-type: none"> 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. Zoning By-law 79-200 already addresses separation requirements from sensitive land uses for medical marijuana facilities 	<ul style="list-style-type: none"> Difficult to determine appropriate setback as lack of evidence/studies exist around nuisance related to Cannabis facilities. Health Canada inspects air filtration and 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

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
<ul style="list-style-type: none"> Provides an additional security measure. 	<ul style="list-style-type: none"> 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

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
<ul style="list-style-type: none"> Parking requirements for cannabis facilities would help to regulate the size of lots and number of spaces. 	<ul style="list-style-type: none"> Limited information is available on appropriate parking rates for cannabis related uses.

Option 4: Require loading spaces to be enclosed in 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
<ul style="list-style-type: none"> As a security measure, some by-laws also require that the loading bays be wholly enclosed within a building. 	<ul style="list-style-type: none"> 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 and advertisement of the facility

The following outlines the pros and cons of implementing signage and advertisement requirements for cannabis related uses in the zoning by-law:

Pro	Con
<ul style="list-style-type: none"> The restriction of outdoor signage and advertisement would further outline the municipality's expectations on advertisements. 	<ul style="list-style-type: none"> Marketing is addressed by the Cannabis Act and Regulations. Further, any use would also be subject to the Municipality's sign by-law, thus this provision may not be required.

Option 6: Restrict outdoor storage

The following outlines the pros and cons of restricting outdoor storage related to cannabis uses in the zoning by-law:

Pro	Con
<ul style="list-style-type: none"> The specific restriction on outdoor storage of cannabis product, other than harvesting, would provide additional clarity to the public and applicants as to what the permitted uses entail. 	<ul style="list-style-type: none"> Prohibition of outdoor storage is already addressed in the Act and Regulations, and therefore it may not be needed.

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

The following outlines the pros and cons of prohibiting dwellings on lots containing licenced cannabis uses in the zoning by-law:

Pro	Con
<ul style="list-style-type: none"> The restriction of residential uses on the same lot as a cannabis related facility would ensure that all operations occur in non-residential buildings. 	<ul style="list-style-type: none"> The Cannabis Act does not allow any of the licenced activities to take place in a dwelling.

- Agricultural operations typically have a dwelling on the property.

5.3 Implementing Changes

5.3.1 Should cannabis related uses be permitted as of right?

Option 1: Require a zoning by-law amendment application to permit the use

If the City were to list cannabis related uses within their zoning by-law as a permitted use, it would be considered an as-of-right use.

Alternatively, the City could restrict the use within any zone through its definition, therefore requiring 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 City could require completion of studies that assess potential nuisances and identify mitigation measures.

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

Pro	Con
<ul style="list-style-type: none"> • Provides the City the opportunity to consider the use on a case by case basis and involve the public each time. • Gives the City the opportunity to request studies of potential nuisances. 	<ul style="list-style-type: none"> • This approach may be viewed as a restriction of normal farm practices.

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 2: Permit Cannabis related uses in the by-law so all that is needed from the Town is a Building Permit

Should cannabis related uses be permitted in Niagara Falls, allowing these as-of-right is more consistent with the existing policies and provisions of the zoning by-law, which already allow for the cultivation of crops in agricultural areas and processing in industrial

areas. This option is also less likely to be considered a restriction of Normal Farm Practices, and provides more clarity and certainty for prospective licence holders.

The following outlines the pros and cons of permitting cannabis related uses as of right:

Pro	Con
<ul style="list-style-type: none"> • Better transparency for licence holders. • Less chance of challenge of implementing by-laws. 	<ul style="list-style-type: none"> • No process to assess each individual new use. • No public process to take place for each individual new use.

The most straight-forward option to implement permissions for cannabis related uses as-of-right would be to define the use and list it as a permitted use within the desired zones.

5.3.2 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

All areas of the City are subject to site plan control. However, farm operations are exempted from site plan control, with the exception of “agri-tourism uses, commercial farm markets, permanent or mobile farm help houses and greenhouses”.

In order to require site plan control for cannabis related facilities, the provision of the site plan by-law could be amended to clarify whether these facilities are classified as greenhouses, which are subject to site plan control. Alternatively, the by-law could additionally specify that any cannabis related use is subject to site plan control.

Site plan control for cannabis facilities would allow the City more control in ensuring sites are designed in a way that mitigate impact and nuisance. As greenhouses 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
<ul style="list-style-type: none"> • Site Plan control would allow the City better opportunity to mitigate nuisance potential. • Since greenhouses are currently subject to site plan control, it is reasonable to 	<ul style="list-style-type: none"> • Health Canada reviews the site plans and layouts of proposed facilities to ensure compliance with the Act and Regulations.

extend this to other similar uses, such as an indoor cannabis cultivation facility.

- A site plan agreement can address matters such as odour control allowing for easier enforcement.

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 City may choose to leave the design of the site, subject to meeting any by-law requirements, to the Health Canada application/licencing process.

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

Pro	Con
<ul style="list-style-type: none"> • Health Canada already reviews the site plans and layouts of proposed facilities. 	<ul style="list-style-type: none"> • The City 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.

5.4 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 Niagara Falls 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. As OMAFRA has taken the stance that cannabis is a crop subject to the Act, any by-law implemented that overly restricts these uses could be brought forward to the Normal Farm Practices Board and deemed not to apply. However, as cannabis cultivation is a new use, there is not yet a clear standard for normal 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 the City of Niagara Falls' 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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