



Cannabis control fever grips south Niagara

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Amid the rapid growth of the cannabis industry since legalization in 2018, a number of municipalities have been looking to slam on the brakes. In south Niagara, the first to take the plunge was Pelham, who pre-emptively introduced an interim control bylaw on cannabis on Oct. 15, 2018, two days before legalization had even occurred.

Shortly after, Niagara-on-the-Lake and Port Colborne both jumped in with their own bylaws. Late in 2019, Welland councillors voted in favour of their own control bylaw, and Fort Erie is considering following suit.

So what exactly is an interim control bylaw anyway?

Up until cannabis legalization, an interim control bylaw was a little-used section of the Ontario Planning Act. Since then, municipalities have been using it to temporarily prevent cannabis facilities from opening up within their borders.

According to the act, “Interim control bylaws put a temporary freeze on some land uses while the municipality is studying or reviewing its policies.”

The act mandates that an interim control bylaw can only remain in place for one year, and unlike most municipal planning decisions, citizens cannot challenge the bylaw at the Local Planning Appeal Tribunal (LPAT) stage.

However, once that first-year freeze has expired, municipalities can enforce an extension for a maximum of one more year. Although the initial bylaw freeze cannot be appealed at the Local Planning Appeal Tribunal, the extension period for the second year is subject to possibly being overturned if a challenge is made to the tribunal after the extension is granted.

That’s where Pelham currently finds itself. Leviathan Cannabis Group has taken legal action against the town, arguing that the control bylaw is unfairly preventing them from developing their property on Foss Road into a cannabis facility. Citing the interim control bylaw, the town has refused to issue a building permit for the property.

Down the road in Port Colborne, the city has just passed the initial one-year cannabis freeze put in place with their own interim control bylaw. The city is in the process of crafting its finalized cannabis bylaws, but it too has earned a raised eyebrow.

The draft version of the new bylaw includes a ban on growing cannabis outdoors, even on property zoned agricultural. According to the planning department from Niagara Region, that could spell trouble. Agricultural legislation in Ontario requires all crops to be treated equally, and by preventing cannabis from being cultivated on agricultural property, the city could run afoul of those rules.

Port Colborne's Ward 4 Coun. Harry Wells, one of city hall's more vocal opponents of cannabis facilities, said it falls on the city to enforce proper cannabis regulations, because the federal regulations from Health Canada are inadequate. When the city's interim control bylaw comes back for approval in early 2020, Wells said he wants to see it include strict regulations around light and odour pollution.

Over in Welland, city hall staff recommended against bringing in an interim cannabis control bylaw, but councillors forged ahead with one nonetheless. Staff and some councillors, like Ward 4 Coun. Bryan Green, said their chief concern was the ongoing legal challenge against Pelham's use of the interim bylaw to put the brakes on cannabis facilities.

Some councillors in Fort Erie said they share similar concerns, and aren't keen to see the town introduce its own interim cannabis control bylaw.

"It's been more than a year since legalization, and the cannabis industry has only brought positive things here," said Ward 1 Coun. George McDermott, who noted two local cannabis operations, CannaCure and Stevens Greens, are growing the town's employment options and putting people to work.

A third cannabis company, Greenherb Farms, is in the process of setting up shop in Ridgeway. Neighbours are none too pleased about that facility, and have vowed to bring a fight to town hall. The ward councillor for that area, Ward 6 Coun. Ann Marie Noyes, has given notice of motion that she plans to seek an interim control bylaw in early 2020.

"Considering the legal challenges and headaches that an interim control bylaw has caused Pelham and other municipalities, it doesn't look like a good idea to me," said McDermott, who noted federal regulations will still allow people to grow cannabis in their backyards, so concerns about odour and property values are moot. "I won't support any kind of control bylaw that seeks to undermine the growth of the cannabis industry in Fort Erie."

Neighbours of the Ridge Road cannabis facility have formed a citizens group in opposition to the proposed cannabis farm on their street. Nearby residents like Cathy Tatarnok said she worries about the underground water supply, since most people on the street are on well water.

"They're going to use so much water, it could dry the well," said Tatarnok.

Issues of odour, light and water aside, a consistent theme from those in opposition to cannabis facilities is a perceived loss of home value.

Tatarnok said she worries her home has shed \$50,000 or \$100,000 worth of value due to the nearby cannabis facility. At his mayor's breakfast earlier this year, Pelham mayor Marv Junkin claimed homeowners in Fenwick have lost 25 per cent of the value of their homes due to the nearby cannabis facilities.

"Everyone says it's going to devalue their home, but I've never seen any evidence to back those claims up," said McDermott.

Indeed, there appears to be no study or research that shows homes devalued as a result of their proximity to cannabis-related facilities. In fact, the only such study, published in April 2019 by the Cato Institute, found the opposite to be true. According to their results, which looked at five years worth of data since legalization in Colorado, homes in close proximity to cannabis-related

operations increased in value by 8.4 per cent more than homes located further away from those same facilities.

On the Ontario multi-listing system for real estate in December, the average price of a home listed for sale in Fenwick was \$799,400. That's up about 9 per cent since Ontario legalized cannabis.