

TO:	CHAIR AND MEMBERS COMMUNITY AND PROTECTIVE SERVICES COMMITTEE MEETING ON FEBRUARY 21, 2018
FROM:	G. KOTSIFAS, P. ENG. MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL
SUBJECT:	PROPOSED PUBLIC NUISANCE BY-LAW AMENDMENT TO ADDRESS ODOUR

RECOMMENDATION

That on the recommendation of the Managing Director, Development and Compliance Services and Chief Building Official:

- (a) the report and attached draft Public Nuisance By-law amendment (Schedule “A”) to address nuisance odours related to Anaerobic Digestion Facilities, Composting Facilities and Rendering Plants **BE RECEIVED**;
- (b) the attached draft by-law amendment (Schedule “A”) **BE REFERRED** to a public participation meeting to be held by the Community and Protective Services Committee on April 4, 2018 for the purpose of seeking public input on the draft by-law;
- (c) municipal enforcement activities **BE ENHANCED** through the hiring of one additional Municipal Law Enforcement Officer on a two-year, temporary basis with the budget not to exceed a maximum of \$90,000 per year with the source of funding from the Sanitary Landfill Site Reserve Fund; it being noted, that this amount and source of funding was previously approved by Council for enhanced Provincial compliance activities however further dialogue has resulted in complementary compliance and enforcement activities that are maintained within each level of government’s legal responsibilities to avoid duplication; and
- (d) Civic Administration **BE DIRECTED** to report back after one year of administration and enforcement of the Public Nuisance By-law regulations pertaining to odour.

PREVIOUS REPORTS

Review of Impacts from Industrial Sources (Focus on Odour) and Potential Municipal Actions (Primarily South of Highway 401) PEC - August 28, 2017

Update & Next Steps – Review of Impacts from Industrial Sources (Focus on Odour) and Potential Municipal Actions (Primarily South of Highway 401), PEC - April 24, 2017

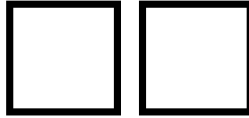
Comments - Orgaworld Canada Ltd, PEC - November 13, 2012

Various submissions and comments were made by delegations and participants at the Public Participation Meeting held on November 13, 2012

BACKGROUND

Municipal Council, at its meeting held on September 5, 2017 resolved:

That, on the recommendation of the Managing Director, Development & Compliance Services and Chief Building Official and the Managing Director, Environmental & Engineering Services and City Engineer, the following actions be taken with respect to current and potential odour challenges from waste management facilities near the communities of Brockley, Shaver and Glanworth :



f) the Provincial Government’s local MOECC compliance activities with respect to waste management and industrial facilities in south London BE ENHANCED through direct funding from the City of London, for a two-year period;

g) the source of funding for the MOECC’s enhanced compliance activities noted in f), above, BE APPROVED up to a maximum of \$90,000 per year for two years from the Sanitary Landfill Site Reserve Fund; it being noted that the draw from the Reserve Fund may not be required should the service area generate a surplus position at year end;

h) a Pilot Project (May to August 2018) BE IMPLEMENTED by the City of London in order to test an odour detection device to enhance its monitoring capabilities and/or facilitate the imposition of charges for non-compliance;

m) the Civic Administration BE DIRECTED to report back to with proposed amendments to the City of London’s Nuisance By-law to address the odor concerns raised by the public, including information with respect to additional resources that may be required to enforce the By-law.

This report addresses the above applicable resolution items from the Council Resolution noting that the others items contained within the August 28, 2017 report deal with matters under the jurisdiction of Civic Works Committee.

DISCUSSION

The issue of odours is complex as the possible impacts of odours range from mere detection to a causing a public nuisance. Usually, the impact of odour is described in terms of five different dimensions, which are commonly referred to as the acronym “FIDOL”:

- the **F**requency that an odour is detected during a given time period
- the **I**ntensity of the odour
- the **D**uration of the period in which the odour remains detectable
- the **O**ffensiveness or strength of the odour
- the **L**ocation or source of the odour

Municipal Law Enforcement Services primarily address negative externalities and quality of life issues predominantly in response to citizen complaints. Based on provincial legislative authority conferred to municipalities to address public nuisance and quality of life issues, numerous by-laws are currently in place and actively enforced. The courts have described public nuisance as conduct that amounts to an attack upon the rights of the public generally to live their lives unaffected by inconvenience, discomfort and other forms of interference. Section 128 of the *Municipal Act, 2001* provides that the City may prohibit and regulate with respect to public nuisances, and that the opinion of Council is not subject to review by the courts if Council’s opinion is arrived at in good faith.

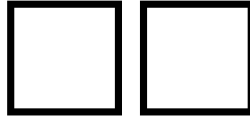
The Municipal Act (sec 10.2) sets out broad authority to a municipality to pass by-laws respecting the following matters:

5. Economic, social and environmental well-being of the municipality, including respecting climate change.
6. Health, safety and well-being of persons.
8. Protection of persons and property, including consumer protection.

The Municipal Act, 2001 authorizes a municipality to pass by-laws regulating public nuisances.

128. (1) *Without limiting sections 9, 10 and 11, a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances. 2001, c. 25, s. 128 (1); 2006, c. 32, Sched. A, s. 68.*

(2) *The opinion of council under this section, if arrived at in good faith, is not subject to review by any court.*



Section 129 of the Municipal Act, 2001 authorizes a municipality to pass by-laws to prohibit and regulate with respect to odour.

129. *Without limiting sections 9, 10 and 11, a local municipality may,*
 (a) *prohibit and regulate with respect to noise, vibration, odour, dust and outdoor illumination, including indoor lighting that can be seen outdoors; and*
 (b) *prohibit the matters described in clause (a) unless a permit is obtained from the municipality for those matters and may impose conditions for obtaining, continuing to hold and renewing the permit, including requiring the submission of plans.*

As noted in the August 28, 2017 PEC report, there are several Canadian municipalities which have attempted to address odour within their municipal by-law regime. Although many different approaches are used, not any one approach is the ultimate solution. Civic Administration undertook further research of American municipal ordinances specific to odour and detection methodology.

Many ordinances reference the use of a field olfactometer for odour detection. This device is used to measure and quantify odour strength in the surrounding ambient air. Readings are taken by the user sniffing the air through the device and making a determination whether they detect an odour or not. The device comes equipped with carbon filters which are able to filter out odorous particles from the air. The unit of measurement for odour is called the dilution to threshold ratio (D/T) which is the volume of clean air divided by the volume of odorous air. A D/T value of 0 means that the user will be sniffing 100% carbon filtered air without any odour particles in the sample. The higher the D/T value at which the smell is detected, the more powerful the odour. In attending and reviewing presentations at scientific odour conferences and a review of odour ordinances, any odour detected at a D/T value of seven or higher can be considered a public nuisance for regulatory purposes.

Field olfactometers allow enforcement officers to confidently monitor odour strength at specific locations within the community. A standard operating procedure will be prepared to implement processes for random odour monitoring, scheduled monitoring and monitoring in response to citizen complaints. Random testing will include taking odour readings in the area of municipal facilities, such as the City's Landfill W12A and the Dingman Pumping station for the purposes of data collection and continuous improvement of odour mitigation. City facilities will be exempt from municipal enforcement.

As part of the program, a select number of MLEOs will be tested as to their ability to detect and differentiate various strengths of odours. Reporting and data gathering standard operating procedures will be developed and implemented.

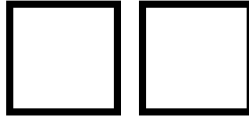
The proposed Nuisance By-law amendment includes two key definition categories focusing on the source of the odour and the location of the odour.

To address sources of the odour the following definitions are proposed:

- “Anaerobic Digestion Facility” means a facility where anaerobic processes are used to digest organic waste and includes an “anaerobic digestion facility” for which an approval under the Environmental Protection Act has been issued;
- “Composting Facility” means a facility where aerobic processes are used to process non-hazardous organic products to be used as a soil conditioner, and includes an “aerobic composting facility” for which an approval under the Environmental Protection Act has been issued, but does not include composting incidental to a residential use, an institutional use, nor an agricultural use;
- “Rendering Facility” means a facility at which dead animals are processed into hides, meat, bone, meal, meat meal or inedible fats;

To address the receiver of the odour, the following definition is proposed:

- “Sensitive Receptor” means any location, external to the Facility site, where routine or normal activities occurring at reasonably expected times could experience adverse effects from unreasonable odour discharges from the Facility, including one or a combination of:
 - a) private residences or public facilities where people sleep, including dwellings, hotels, motels, nursing homes, hospitals, trailer parks, and camping grounds;



- b) institutional facilities (including schools, churches, community centres, day care centres, and recreational centres);
- c) outdoor public recreational areas (including trailer parks, play grounds, and picnic areas); and
- d) other outdoor areas where the public congregates (including commercial shopping centres, and office buildings).

The amendment includes a “deeming provision” describing an unreasonable odour:

- at a Sensitive Receptor, odour is detected in a sample of ambient air after it is diluted with at least seven equally sized samples of odour-free air for two samples not less than fifteen minutes apart within a one-hour period, as measured by any instrument, device or method designated by the Manager of Municipal Law Enforcement to be used in the determination of the unreasonableness of an odour.

The draft amendment includes a fine set at a daily maximum of \$50,000 for the first offence plus a special fine of \$50,000. For subsequent offences, the daily maximum fine is set at \$100,000 plus a maximum special fine of \$100,000. The Municipal Act permits special fines designed to eliminate or reduce any economic advantage or gain from contravening the by-law. This range of fines is used by the courts as a result of a conviction resulting from a Part III Information. The City will also seek a new set fine order for the issuance of Part I’s (tickets).

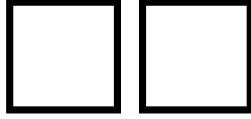
Civic Administration previously recommended an Enhanced MOECC Compliance Initiative with the local MOECC office with direct municipal funding for a two year period (refer to item (f) and (g) in the above resolution). This item was further discussed with MOECC local officials to determine the overall practicality, jurisdictional requirements and other implications to address the direction of Municipal Council and the intended outcomes of enhanced compliance activities. During these discussions, the City prepared amendments to the Public Nuisance By-laws including compliance and enforcement measures (e.g., Part I set fines and Part III Information submitted to the courts). It was determined that compliance and enforcement activities can run in parallel. Each level of government has distinct compliance and enforcement powers on the matter of odours and a separate municipal program is a better representation of the enhancement directed by Municipal Council.

Enforcement of the above Public Nuisance By-law amendment will require additional enforcement resources as response to odour complaints requires an enhanced response protocol to undertake odour detection measurements at the location of the sensitive receptor. In order to implement this enforcement program, one addition Municipal Law Enforcement Officer will be required on a two year temporary basis. The cost of this position including office equipment and vehicle will be funded by the previously approved Sanitary Landfill Site Reserve Fund which was slated for the Enhanced MOECC Compliance proposal. There will be no impact on the approved municipal budget.

CONCLUSION

Civic Administration recommend that a Public Participation Meeting (PPM) be held on the proposed amendments to the Public Nuisance By-law to address nuisance odours. In order to meet a timeline of implementing an odour enforcement protocol for the spring of 2018, this PPM is tentatively scheduled for April 4, 2018.

PREPARED BY:	RECOMMENDED BY:
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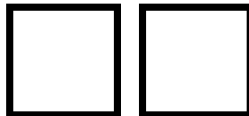


cc. Kelly Scherr, City of London EES
Jay Stanford, City of London EES

Orgaworld Canada Ltd, Michael Leopold, General Manager
2940 Dingman Drive, London Ontario N6N 1G4

StormFisher Environmental Ltd., Brandon Moffatt, P.Eng, MBA, Vice President
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Schedule "A"

Bill No.
2018

By-law No. PH-18-

A by-law to amend By-law PH-18 entitled, "A by-law to prohibit and regulate public nuisances within the City of London."

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25 ("*Municipal Act, 2001*"), provides that a municipal power shall be exercised by by-law;

AND WHEREAS subsection 10(2) of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting: 5. Economic, social and environmental well-being of the municipality; 6. Health, safety and well-being of persons; 8. Protection of persons and property;

AND WHEREAS section 128 of the *Municipal Act, 2001* provides that, without limiting sections 9 and 10, a municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisances, and the opinion of Council under this section, if arrived at in good faith, is not subject to review by any court;

AND WHEREAS, in the opinion of Council, unreasonable odour from certain Facilities is or could become or cause a public nuisance;

AND WHEREAS section 129 of the *Municipal Act, 2001* provides that, without limiting sections 9 and 10, a municipality may prohibit and regulate with respect to odour;

AND WHEREAS section 429 of the *Municipal Act, 2001* provides that a municipality may designate continuing offences, and may establish special fines in addition to the regular fine for an offence which are designed to eliminate or reduce any economic advantage or gain from contravening the by-law;

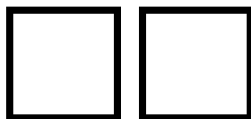
NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. Section 1 of By-law PH-18 is amended by inserting the following new definitions after the definition of "Dwelling":

"Facility" means an "Anaerobic Digestion Facility", a "Composting Facility", or a "Rendering Facility";

"Anaerobic Digestion Facility" means a facility where anaerobic processes are used to digest organic waste and includes an "anaerobic digestion facility" for which an approval under the *Environmental Protection Act* has been issued;

"Composting Facility" means a facility where aerobic processes are used to process non-hazardous organic products to be used as a soil conditioner, and includes an "aerobic composting facility" for which an approval under the *Environmental Protection Act* has been issued, but does not include



composting incidental to a residential use, an institutional use, nor an agricultural use;

“Rendering Facility” means a facility at which dead animals are processed into hides, meat, bone, meal, meat meal or inedible fats;

2. Section 1 of By-law PH-18 is amended by inserting the following new definition after the definition of “Municipality”:

“Manager of Municipal Law Enforcement” means the Chief Municipal Law Enforcement Officer;

3. Section 1 of By-law PH-18 is amended by inserting the following new definition:

“Sensitive Receptor” means any location, external to the Facility site, where routine or normal activities occurring at reasonably expected times could experience adverse effects from unreasonable odour discharges from the Facility, including one or a combination of:

- (a) residences and facilities where people sleep (including dwellings, hotels, motels, nursing homes, hospitals, trailer parks and camping grounds);
- (b) institutional facilities (including schools, churches, community centres, day care centres and recreational centres);
- (c) outdoor public recreational areas (including trailer parks, play grounds and picnic areas); and
- (d) other outdoor areas where the public congregates (including exterior areas of commercial shopping centres and office buildings).

4. Section 2, subsection 2(1) and subsection 2(2) of By-law PH-18 are amended by renumbering them as section 2.1, and subsections 2.1(1) and 2.1(2) respectively.

5. Section 3 of By-law PH-18 is amended by renumbering it as section 2.2.

6. Section 4, subsection 4(1) and subsection 4(2) of By-law PH-18 are amended by renumbering them as section 2.3, and subsections 2.3(1) and 2.3(2) respectively.

7. By-law PH-18 is amended by inserting the following new section 2.4 after subsection 2.3(2):

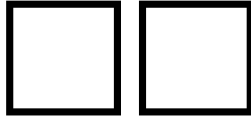
“2.4. NUISANCE ODOURS – Composting Facility, Anaerobic Digestion Facility, Rendering Facility

2.4(1) No owner, operator, occupant or tenant of a Facility shall make, cause or permit an unreasonable odour to be emitted that is detectable at a Sensitive Receptor.

2.4(2) Without limiting the generality of subsection 2.4(1), the following shall be deemed to be unreasonable odour:

- (a) at a Sensitive Receptor, odour is detected in a sample of ambient air after it is diluted with at least seven equally sized samples of odour-free air for two samples not less than fifteen minutes apart within a one-hour period, as measured by any instrument, device or method designated by the Manager of Municipal Law Enforcement to be used in the determination of the unreasonableness of an odour.

2.4(3) The provisions in subsection 2.4(1) shall not apply to odours arising from any City-owned or City-operated Facility.”



8. Section 8 of by-law PH-18 is deleted and replaced with new section 8 and subsections 8(1) and 8(2):

“8. PENALTY

8(1) Every person who contravenes any provision of this By-law is guilty of an offence, and on conviction is liable to:

- (a) a maximum fine of \$10,000; and
- (b) for convictions under subsections 2.3 (1), 2.3(2), or 5(4), a minimum fine of \$500.

8(2) (a) Subsection 2.4(1) of this By-law is a continuing offence.

- (b) Despite subsection 8(1), every person who contravenes subsection 2.4(1) of this By-law is guilty of an offence and on conviction is liable to a maximum regular fine of \$10,000 per day, plus a maximum special fine of \$100,000 per day.”

9. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on _____, 2018.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading -
Second Reading -
Third Reading -