



Briefing Note

To: Council
 From: Phil Armstrong, MDS / Planner
 Date: 2018 07 31
 File: 3900-20 Cannabis 2018

RE: Cannabis legalization

SUMMARY OF ISSUE

Cannabis legalization creates new challenges for local governments and staff is seeking Council direction prior to bylaw drafting.

BACKGROUND

On June 21st, 2018 Bill C-45 the *Cannabis Act* (an Act to amend *the Controlled Drugs and Substances Act* and *Criminal Code* and other Acts) received assent and once the law is in force will allow adults to access and possess regulated, quality controlled cannabis. It will reduce the burden on the criminal justice system and impose serious criminal penalties for those breaking the law and selling to minors. Bill C-46 also received assent, which is an Act to amend the *Criminal Code* and other acts associated with cannabis.

Previously, and for the time being, the *Access to Cannabis for Medical Purposed Regulations (ACMPR)* is still in effect. The ACMPR allows for individuals with prescriptions, including those under 19, to access medical cannabis via licensed producers. Medical “dispensaries” remain illegal.

Under the new legislation, which was coming down the pipe for some time, the federal government has allowed the provinces to oversee the distribution and sale of cannabis, subject to minimum conditions that cannabis, including other products, may only be sold if it:

- Qualifies as fresh cannabis, oil, plants, or seeds;
- Does not have an appearance, shape or attribute that could be appealing to a young person;
- Does not contain ingredients such as caffeine, alcohol or nicotine; and
- Has not been recalled.

Further, edibles or food such as candy and baked goods that have been infused with cannabis are not currently authorized and neither is the sale of cannabis through vending machines.

Many of the activities involved in cannabis legalization fall under provincial jurisdiction and the BC Government has delegated some of these authorities to local government.

Federal	Provincial	Municipal
Cannabis production	Wholesale and retail distribution	Zoning (density, location, setbacks)
Cannabis production limits	Workplace safety	Business licensing
Trafficking	Discretion to set more restrictive limits for:	Nuisance
Advertising	-Minimum age of consumption	Smoking restrictions
Minimum Age (18)	-Possession limits	
Oversight of medical cannabis		

Adapted from FCM’s Municipal Guide to Cannabis Legalization

BC Government

The following excerpts are sourced from the Province's website.¹

Cannabis Control and Licensing Act (CCLA)

The Cannabis Control and Licensing Act is guided by the Province's priorities of protecting children and youth, promoting health and safety, keeping the criminal element out of cannabis, keeping BC roads safe, and supporting economic development. The Act:

- Sets 19 as the provincial minimum age to purchase, sell, or consume cannabis;
- Allows adults to possess up to 30 grams of cannabis in a public place;
- Prohibits cannabis smoking and vaping everywhere tobacco smoking and vaping are prohibited, as well as at playgrounds, sports fields, skate parks, and other places where children commonly gather;
- Prohibits the use of cannabis on school properties and in vehicles;
- Authorizes adults to grow up to four cannabis plants per household, but the plants must not be visible from public spaces off the property, and home cultivation will be banned in homes used as day-cares;
- Establishes a cannabis retail licensing regime similar to the current licensing regime for liquor;
- Provides enforcement authority to deal with illegal sales;
- Creates a number of provincial cannabis offences which may result in a fine ranging from \$2,000 to \$100,000, imprisonment of 3 to 12 months, or both; and
- Where necessary, to comply with Charter Rights and human rights law, exemptions will provide to individuals who are federally authorized to purchase, possess and consume medical cannabis.

The CCLA also includes consequential amendments to various statutes, including:

- *Liquor Control and Licensing Act* to ensure administrative consistency between that Act and the CCLA;
- *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act* to prohibit cannabis smoking under existing leases that prohibit smoking tobacco and to prohibit the personal cultivation of cannabis under existing leases, except for federally authorized medical cannabis. For new leases, the existing provisions of each Act that allow landlords and tenants to negotiate the terms of leases will apply;
- *Police Act* to set provincial priorities for policing and require municipal police boards to take provincial priorities and the priorities of the municipal council into account as they develop their own priorities;
- *Community Safety Act* to reflect that with legalization cannabis will no longer be a controlled substance under the federal *Controlled Drugs and Substances Act*;
- *Provincial Sales Tax Act* to add a reference to cannabis in the definition of "small seller" consistent with liquor; and
- *Business Practices and Consumer Protection Act* to recognize that the CCLA is a complete licensing scheme.

Cannabis Distribution Act (CDA)

The Province has decided that the Liquor Distribution Branch will be the wholesale distributor of non-medical cannabis in B.C. and will run provincial cannabis retail stores. *The Cannabis Distribution Act* establishes:

- A public wholesale distribution monopoly; and
- Public (government-run) retail sales, both in stores and online.

Motor Vehicle Act amendments

BC has increased training for law enforcement and has toughened provincial regulations by amending the *Motor Vehicle Act* to give police more tools to remove drug-impaired drivers from the road and deter drug-affected driving, including:

¹ <https://www2.gov.bc.ca/gov/content/safety/public-safety/cannabis>

- A new 90-day Administrative Driving Prohibition (ADP) for any driver whom police reasonably believe operated a motor vehicle while affected by a drug or by a combination of a drug and alcohol, based on analysis of a bodily substance or an evaluation by a specially trained police drug recognition expert (DRE); and,
- New drivers in the Graduated Licensing Program (GLP) will be subject to a zero-tolerance restriction for the presence of THC (the psycho active ingredient in cannabis).

Liquor and Cannabis Regulation Branch

The Liquor Control and Licensing Branch was renamed to the Liquor and Cannabis Regulation Branch (LCRB) to represent its new additional responsibility of licensing and monitoring the retail sale of non-medical cannabis in British Columbia.

The Province will operate a number of public cannabis stores in BC. Interestingly, by policy, government cannabis stores will not be located in communities that have expressed opposition, through the local government or Indigenous nation, to having cannabis retailers operating in their area. The Province will also sell cannabis online.

Jointly, with local government approval, the Province will license private retail stores (privately owned stores are not authorized to sell cannabis online).

It is the introduction of this new retail cannabis that is likely the most visible priority for most local governments and determining an appropriate regulatory response.

A couple weeks ago, a new website was launched by the LCRB with an application portal in a beta stage - most of the information below is from this site.²

“Non-medical cannabis retail licence”

1. A cannabis retail store must be a standalone business that sells only non-medical cannabis and cannabis accessories. Licensees can only sell federally approved cannabis products. Currently, these include dried cannabis, cannabis oil and seeds. Retail sale of edible products is not currently authorized by the federal government.
2. All of the cannabis sold in the store must be purchased from the Liquor Distribution Branch. Licensees must not sell cannabis that is not obtained from the Liquor Distribution Branch. Only non-medical cannabis produced by federally licensed producers may be sold.
3. Cannabis retail stores are permitted to be open for business between 9 a.m. and 11 p.m., unless the local government or Indigenous nation imposes shorter hours. Unlike liquor stores, minors are not allowed to enter cannabis retail stores for any reason.
4. All sales must be conducted at the physical store location.
5. Customers must not consume cannabis inside the store, including sampling the products.
6. Federally licensed producers of cannabis are not eligible for a cannabis retail store licence.
7. The Province is not placing a cap on the number of non-medical cannabis stores that can operate in BC; however, a licensee can only hold or have an interest in a maximum of eight cannabis retail store licences. For the purposes of the retail store licence cap, generally a franchisor cannot have more than 8 franchisees. This limit will be reviewed on January 1, 2021.
8. The Provincial application fee will be \$7500, with an annual license fee of \$1500; to be announced is the fee for biannual security screening.
9. All applicants for a non-medical cannabis retail licence must undergo security screening—including criminal and police record checks—and financial integrity checks. This includes screening of associates of the applicant and other persons having connection to the applicant or associate.
10. A licensee's entire cannabis inventory must be stored onsite.
11. The Province is still developing its physical security requirements.

² <https://justice.gov.bc.ca/cannabislicensing/>

12. A store's name cannot mislead the public about what kind of business it operates. The name cannot imply a licensee is selling medical cannabis, and cannot include words in any form or combination or manner the words "apothecary," "pharmacy," "medicines," "drugs," "drug store," "drug department," "dispensary," or any other words of similar meaning that imply licensing under the *Pharmacy Operations and Drug Scheduling Act*. Additionally, a store name cannot imply an association with another business.
13. Cannabis products cannot be visible from outside the store. Applicants must submit pictures of proposed signage or renderings of what the signage will look like. The sign must show the name of the store. Signage cannot contain any pictures, images or symbols that imply the sale of medical cannabis. For example, signage cannot include a green cross. Additionally, signage cannot imply an association with another business. This applies to the store name, trademarks and any type of branding.
14. Employees will have to register with the Province and in the future pass a Provincial Training Program, likely similar to Serving it Right.

Applicants for a non-medical cannabis retail store licence must submit a licence application to the LCRB. When an application is received, the LCRB will notify the local government of the area where the proposed store will be located. Upon receipt of notice, local governments can:

1. Choose not to make any recommendation in respect of the application for a cannabis retail store licence (Note: this would end a licence application in progress because the LCRB cannot issue a licence unless the local government gives the LCRB a positive recommendation that the licence be issued).
2. Choose to make comments and recommendations in respect of an application for a cannabis retail store licence. Note that:
 - a. if the local government chooses to make comments and recommendations on the licensee's application to the LCRB, it must gather the views of residents
 - b. if it makes a recommendation to deny the application then the LCRB may not issue the licence
 - c. if it makes a recommendation in favour of the application, then the LCRB has discretion whether or not to issue the licence, but must consider the local government's recommendation.

A local government may gather residents' views by using one or more of the following methods:

- Receiving written comment in response to a public notice of the application
- Conducting a public hearing in respect of the application
- Holding a referendum, or
- Using another method the local government considers appropriate.

It is up to the local government to determine the area, relative to the licensee's application, where residents' views must be gathered. Please note: each individual application must be considered separately by the local government.

Once conditional approval is granted by the Province, an applicant can:

- Finalize any arrangements for the store location; and
- Make renovations to ensure the store's layout and exterior matches the information submitted in the application

When the store is ready, the applicant can contact the Province to schedule a final inspection.

DISCUSSION

These legislative changes mean that it is high time local governments consider the implications for their jurisdictions. Prior to drafting bylaw amendments, or new bylaws, staff is seeking direction from Council.

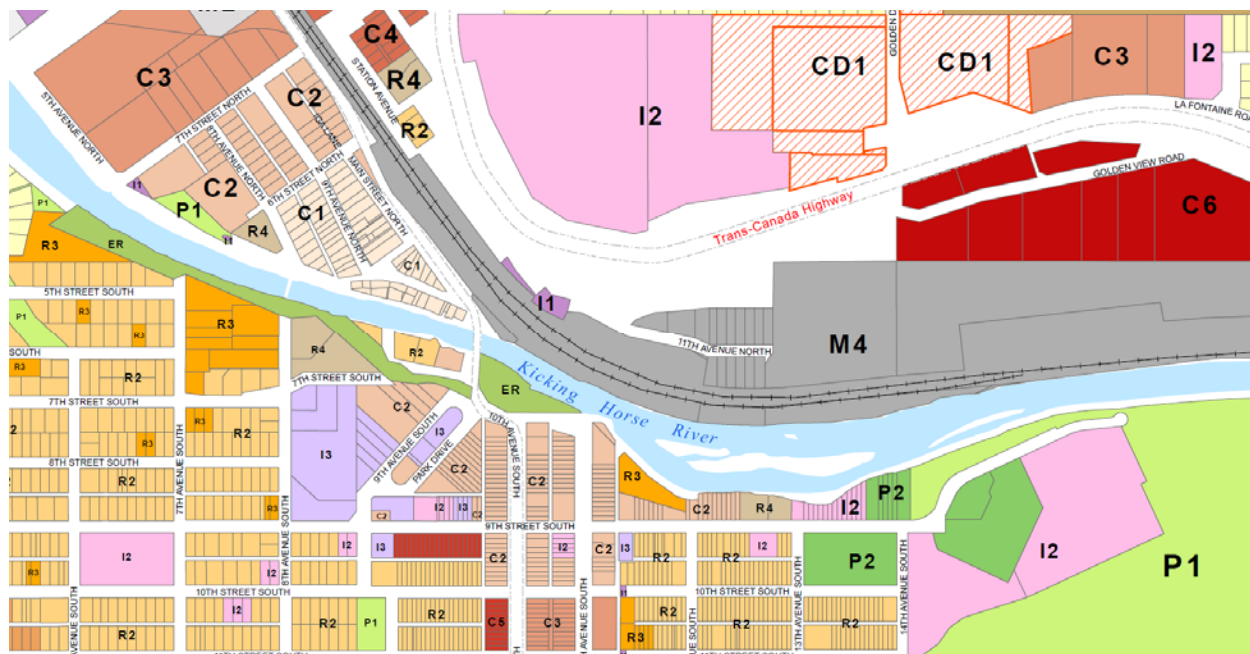
Below are some of Council's authorities in regards to cannabis and also some issues to consider:

1. To either allow or prohibit retail sale of non-medical cannabis retail sale.
 - a. Through zoning, consideration may also be given to locations, setback from schools, parks etc., densities and caps on licenses.
 - b. A policy on responding to applications forwarded by the LCRB. For example,
 - i. Caps on licenses can also be implemented via a policy and individual responses to the Province.
 - ii. Method for gathering public input and a fee for the consideration of applications.
 - iii. A simple scoring matrix for applications.
 - c. Through a business regulations bylaw, further restrict operating hours and require additional security measures.
2. To introduce a clean air bylaw.
3. Any other impacts, nuisances that Council considers appropriate.
4. To introduce a use for cannabis production into the zoning bylaw.

Zoning

Staff is of the opinion that a permitted use for retail cannabis should be defined and added to the zoning bylaw's C2 – Mixed Use Commercial zone. This shows openness to the new economic sector while at the same time cautiously testing the water by limiting the use to only one commercial zone. This is prudent while the potential community ramifications of this new business are still a little hazy. The C2 zone is also a block away from schools or parks where children frequent and includes the existing government liquor store and a private liquor store (also a controlled substance).

Further, it is not felt it would be appropriate to introduce this new use into the more densely developed central business district (C1 zone) with proximity to Spirit Square and the Early Years Centre.



Policy

Only allowing the use in one zone is a significant signal to prospective operators that the Town is cautiously experimenting with this use. Further, Council could adopt a policy limiting the number and nature of cannabis retail stores (privately and public operated) and implement this utilizing the referrals from the LCRB. Many small and large communities are implementing such a cap.

This policy could also outline Council's public gathering process. Some communities have undergone significant public consultation processes on this topic but thoughtful consideration by staff and Council coupled with the consultation at the federal and provincial level may be deemed sufficient by Council.

That said, the Province will not issue a license without approval and a recommendation from Town Council through a unique public gathering process for each application.

It is suggested the fee for this process be \$1530 in line with our rezoning application fee. For consistency, the notification process could follow that of rezoning applications i.e. a sign, two ads in the paper and mailout /delivery to properties within 100m. The sign and the two ads would be an additional cost borne by the applicant.

A policy could also provide for an initial intake period and provide a scoring matrix in case the Town receives a number of applications at once.

Business Regulation

In regards to business regulation, the Province already has proposed a significant process which consists of an application review process, security measures and reasonable hours (9 a.m. to 11 p.m.). It is not felt by staff further regulations are necessary at this time.

Public Smoking, Nuisance and Impacts

Notwithstanding, the health benefits of cannabis for a number of illnesses and medical conditions and that access to cannabis for medical purposes is a right for Canadians, public smoking of cannabis is associated with a range of potential public harms, from health impacts of second hand smoke generally and to children specifically, as well as behavioral effects for children and youth. Council should give consideration to balancing these benefits, harms and nuisances.

Many factors other than the law, or bylaws, influence how and when people consume cannabis. No single regulatory approach eliminates all public impacts. Having the sale restricted to the C2 zone *may* help keep some smoking out of the downtown and Spirit Square to a small degree, but in order to address the impacts stated above as well as nuisances, Council may want to consider passing a clean air bylaw. This could be a relatively straightforward process as there are many communities with a clean air bylaw, specifically 30 communities within the Interior Health region. Also, Interior Health will be referred the bylaw for comment and prior to adoption it requires ministerial approval.³

It is true that provincial legislation prohibits cannabis smoking and vaping everywhere tobacco smoking and vaping are prohibited, as well as at schools, playgrounds, sports fields, skate parks, and other places where children commonly gather, but having bylaw notices tickets available to the police and bylaw could be useful as Interior Health's enforcement resources are more directed at selling to minors at this time.

Council may want to ensure that signage is limited in size, in addition to the provincial requirements stated on above (refer to page 4, point 14), and perhaps this could be a policy objective and commented back to the LCRB.

Production

Lastly, staff is of the opinion that production of cannabis should be clearly introduced to the M2 light industrial zone and not allowed in the R5-Residential Reserve zone which allows agriculture. This is due to the industrial nature of growing cannabis in large "bunkers."

In closing, following Council discussion, the communication official and undersigned will coordinate on a Town website post.

IMPLICATIONS

Strategic

- Creates a new business opportunity in Town and will be expected in a resort community.
- OCP Council vision *Golden provides the opportunity for all to live in a healthy, vibrant community.*

³ Note at this time the Province is stating the focus is on a establishing a retail sector for non-medical cannabis and will not be allowing consumption lounges.

-p.80 #12. Encourage a child friendly atmosphere in Golden

Financial

At this time staff is not proposing to amend the business license bylaw to require a significant licensing fee; rather, charge \$1530 for a rezoning application fee.

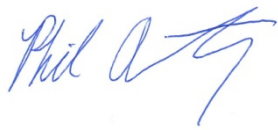
Administrative

Zoning bylaw refresh is part of the MDS work plan.

OPTIONS

1. Council discusses the issues raised in this briefing note and provides staff direction for bylaw drafting.
2. Request further information.
3. Request public input.
4. Take no action.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Phil Armstrong".

Phil Armstrong MCIP, RPP

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