
REPORT TO COUNCIL

DATE: August 10, 2018 **REPORT NO.:** 18-137

SUBMITTED BY: Alex Wallace **FILE NO.:** 1-6-5.4
Development Services Manager

SUBJECT: Cannabis Bylaw Amendments

PURPOSE

To present Council with updates to the Zoning, Smoking Regulation and Annual Business Licence & Regulation Bylaws relating to the legalization of cannabis.

ANTICIPATED OUTCOMES

The City will have regulations in place prior to the legalization of Cannabis.

SUMMARY/BACKGROUND

On October 17, 2018 the government of Canada will legalize cannabis which will allow for the retail sale of recreational cannabis. Provinces and territories are responsible for developing, implementing, maintaining and enforcing systems to oversee the distribution and sale of cannabis. Municipalities are provided with the authority to set the regulations for retail outlets, public consumption, and personal cultivation. Over a number of months, the City has been working to understand how the legalization of cannabis will affect the City's bylaws and the community. Staff worked through the Cannabis Implementation Plan and hosted a number of public consultations to assess public opinion. Council has requested staff prepare bylaws based on the following:

Retail Sales:

- Non-Medical Cannabis (NMC) will be sold in commercial zones and stores and should be located 150 metres from schools, colleges, sports fields, and parks.
- Provide for an appropriate buffer between NMC retail stores.

Public Consumption:

- Update the appropriate bylaws to allow smoking and vaping in public spaces except areas frequented by children including community parks, playgrounds, trails or sports fields.
- Restrict smoking at special public events.
- Add cannabis to the current smoke-free buffer zone around public entrances, windows and air intakes to 7.5m. Apply this to business entranceways that are not meant for the public (i.e.,

laneway doors and loading docks) as per the Smoking Regulation Bylaw.

Cultivation:

- Update the bylaws to permit licensed commercial producers to grow on land outside of the Agricultural Land Reserve (ALR) within M-2 Industrial Light & M-3 Industrial Heavy zones and the determined residential land use setbacks.
- Allow individuals to grow a maximum of four cannabis plants (indoor or outdoor). Plants must not be visible from public spaces.

This direction was used to amend the zoning, smoking, and business licence bylaws. Each amendment is based on best practices and the current *Cannabis Control and Licencing Act (CCLA)* established by the Province of B.C.

Zoning Bylaw No. 4115, 2011:

The proposed amendments will allow for the sale and cultivation of cannabis in the City. Municipalities have jurisdiction to regulate a number of factors relating to the retail sale of cannabis. The following amendments are proposed to the zoning bylaw:

- Add definitions for Cannabis Retail Store and Cannabis Cultivation.
- The cultivation of homegrown plants must be in accordance with the *CCLA*¹ as per division 2.
- Set a 60m residential zoning buffer for cultivation within the Agricultural Land Reserve and Industrial zones (M-2 & M-3).
- Define the locations of cannabis and distance parameters. Allow in C-2, C-3, and C-4 zones. Must be 150 metres from:
 - any park as defined in Parks Bylaw No. 4371, 2018;
 - any playing field;
 - any parcel on which a school or college is located;
 - any other premises used for the display or sale of cannabis.

Staff intends to further review the cultivation regulations during the zoning bylaw review that is underway currently.

Smoking Regulation Bylaw No. 4240, 2014:

These proposed amendments will regulate the smoking and vaping of tobacco and cannabis within the City in a similar manner. Both substances are prohibited from being smoked or vaped in business places, hospitals, and school grounds. Through this bylaw, Council may, by resolution, establish certain Designated Smoking Areas to be exempt from the Smoking Bylaw (including both cannabis and tobacco).

¹ <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/3rd-session/bills/third-reading/gov30-3>

Updates to the Smoking Bylaw are consistent with the community's input, Council's direction, the provincial regulations regarding the smoking and vaping of tobacco, and many of the provincial regulations regarding smoking or vaping cannabis. As the provincial CCLA establishes restrictions on the consumption of cannabis that exceed the City's regulatory intent (and potential jurisdiction), the CCLA is only referred to where the provisions in that Act are consistent with the regulatory intent of Council regarding smoking or vaping cannabis. For example, while the CCLA prohibits the smoking of cannabis while operating a vehicle or boat, those provisions are not referenced in the Smoking Bylaw. Regulations in the CCLA beyond the City's bylaw will be enforced by the RCMP. The following amendments are proposed to the smoking bylaw:

1. Smoke Definition

The definitions for 'Smoke' or 'Smoking' have been revised. The revised definitions reflect current best-practices and considers smoking and vaping tobacco, cannabis, or other substances. It is adapted from the definition for 'Smoke' in the Smoke-Free Places Act in New Brunswick. Significantly, the definition maintains an exception for ceremonial practices, as well as the use of prescribed vapour products or devices for medical purposes.

2. Business and Business Place Definitions

The definition for "Business" has been amended to consolidate the bylaw and include the types of businesses that were individually listed in the current bylaw. The effect of this amendment is consistent with the current bylaw.

3. Designated Smoking Area

Under the proposed amendments, the City may establish Designated Smoking Areas by Council Resolution. Allowing Council to establish a Designated Smoking Area helps to define specific areas in the City to which the Smoking Bylaw would not apply, such as a specific 'smoking area' in an outdoor space. Any federal and provincial regulations, however, will continue to apply to a Designated Smoking Area.

Annual Business Licence & Regulation Bylaw No. 4288, 2016:

Proposed amendments are to ensure that all businesses need to adhere to zoning requirements (and other bylaws) in order to get a Business Licence.

- For Cannabis, only those businesses that comply with the setback requirements in the zoning bylaw, as well as the smoking provisions in the Smoking Bylaw, would be eligible for a licence.
- Only licenced cannabis sale and cannabis production businesses are permitted in the City.
- Add a proposed retail and cannabis cultivation fee of \$2,500. Staff has based this fee on the estimated amount of time it will take to process applications, educate staff and bylaw enforcement resources related to retail and cultivation. Staff is unaware of how the cost sharing between the province and municipalities how the funds will be distributed to recoup

the cost associated with enforcing and processing cannabis licenses. It is recommended after a year staff reviews the costs related to these licenses to determine if the fee is appropriate.

- The intercommunity business license bylaw does not need to be updated, these types of licenses are issued to traveling vendors and contractors, not storefronts. Cannabis licenses will only be available for storefront retail.

Bylaw Notice Enforcement Bylaw No. 4277, 2016:

A review of the bylaw indicates that many of the regulations that the City may be seeking to enforce with regards to the pending legalization of non-medical cannabis are likely to be addressed in the current bylaw. For example, with regards to the Business Licence Bylaw, Schedule B already considers penalties for contraventions of that Bylaw, such as “failure to obtain and maintain a licence”; “failure to hold a licence”; or “failure to provide information.” With regard to the Zoning Bylaw, there is already a penalty for the “unlawful land use or failure to meet zoning regulations.”

As a result, only necessary amendments to the Bylaw Notice Enforcement Bylaw have been recommended, such as those to amend the section number references to the Smoking Bylaw. These will be amended after the bylaws are adopted, and when cannabis is legal.

Sign Regulation Bylaw No. 4369, 2018:

Under the *Community Charter*, the City is authorized to regulate the following: erection, placing, alteration, maintenance, demolition, and removal of signs, signboards, advertisements, advertising devices, and structures. Simultaneously, the case law has established that expressive content on advertising, including commercial signs, may be protected under the right to freedom of expression under the *Canadian Charter of Rights and Freedoms*. The City must ensure any regulation affecting the type and form of expressive content on public display is connected to a proper municipal purpose if it intends to regulate cannabis-related advertising.

For these reasons, it is recommended to not amend the sign bylaw at this time. It is not clear if it is within a municipality’s jurisdiction to pose regulations on the size or location of signage that would be specific to cannabis retailers or producer. In saying that, both the federal and provincial governments have established significant regulations for the promotion and retail of cannabis.

Under the federal *Cannabis Act*, there are content-related restrictions on the promotion of cannabis, cannabis accessories, or any service related to cannabis. Under Section 17 of the *Cannabis Act*, it is prohibited to promote cannabis and related services in a manner where there are reasonable grounds to believe it could be appealing to youth, or by “presenting it, or any of its brand elements, in a manner that associates it or the brand element with, or evokes a positive or negative emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk, or daring.”

At a federal level, there has been a restriction placed on point of sale retail. Cannabis may only be promoted as long as it indicates its availability and price only. Brand elements may be used in promotions for cannabis services, but only as long as those brand elements are not on things that are associated with youth, or “a way of life such as one that includes glamour, recreation, excitement, vitality, risk, or daring.”

As part of its retail licence criteria, the provincial government has established signage restrictions for all cannabis retail licences. The province has indicated that a potential store's name or signage cannot mislead the public about what kind of business it operates; it 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" or any other words of similar meaning that imply licensing under the *Pharmacy Operations and Drug Scheduling Act*. A store name cannot imply an association with another business. The signage for a cannabis retail licensee cannot contain any pictures, images or symbols that imply the sale of medical cannabis. For example, signage cannot include a green cross. All cannabis retail licence applicants are to submit pictures of proposed signage or renderings of what the signage will look like for evaluation in the licence application process. Signage will be presented to Council before the City gives consent for the retail licence. The City still has the jurisdiction to regulate public smoking of cannabis through signs.

Nuisance (Controlled Substance) Bylaw No. 3874, 2006:

After October 17th, cannabis will no longer fall within the definition of a "controlled substance" under Bylaw No. 3874. Staff does not suggest updating this bylaw at this time regarding the personal cultivation of plants. The CCLA (Section 5, division 2), provides restrictions on the cultivation of cannabis within a residence. Staff believe this restriction will suffice and, because this is not regulated by our bylaws, it will be within the RCMP's jurisdiction to enforce. Also, stratas, landlords and property rental companies will be able to decide if they want to permit personal cultivation within their own properties.

ALTERNATIVES

1. Council may provide an alternative direction to staff;
2. Council may defer any changes to its bylaws until the Provincial regulations are passed into law. The Province has started accepting applications as of August 10, 2018, for non-medical retail sales. It is suggested that staff be proactive towards non-medical cannabis implementation to be prepared for the pending legalization on October 17, 2018.

IMPLICATIONS

(1) Social

Legalization of cannabis is a vast and complex issue. The regulation of the use and sale of cannabis, like tobacco and alcohol, has been a very controversial issue due to various moral, ethical, public health, legislative and logistic issues associated with the matter. These amendments may need to be revised when the legalization is passed by the federal and provincial government.

(2) Environmental

None anticipated.

(3) Personnel

Administration and Planning staff will work toward updating the bylaw amendments and prepare for the public hearing. All staff will work toward educating themselves about the new bylaws.

(4) Financial

The Request for Proposals for “Retail Sales of Cannabis Regulation Development” was awarded to Young Anderson for \$15,000 plus taxes. As noted in previous meetings, this work will be funded through the operational budget utilizing money allocated for the South Peace Comprehensive Development Plan, which City staff has been advised will not be completed this year.

(5) Risk Assessment

Compliance: Amendments have been approved by Corporate Administration and have undergone an extensive legal review. Bylaw amendments were formed by information gathered through research, the public consultation process and the requirements of federal and provincial legislation and objectives.

Risk Impact: Low

Internal Control Process: Bylaw amendments are being considered and approved by Council. Bylaw and Corporate Administration staff will obtain the required approval prior to including the bylaw(s) on the September meeting for consideration of adoption.

GUIDING PRINCIPLES

Trust and Integrity: We will have a reputation for acting with integrity and will earn the trust of our stakeholders by working to develop positive relationships.

Governance: We will strive to make decisions that reflect the needs and desires of our community by encouraging a wide range of agencies and citizens to take a meaningful role in decision-making.

STRATEGIC PRIORITIES

N/A

IMPLEMENTATION/COMMUNICATION

Should Council give first and second readings to:

- Zoning Amendment Bylaw No. 4391, 2018;

And first three readings to;

- Smoking Regulation Amendment Bylaw No. 4390, 2018; and
- Annual Business Licence & Regulation Amendment Bylaw No. 4389, 2018;

the required advertising will be published in the local newspaper in accordance with the *Local Government Act* and included on the City’s website. Staff will refer the smoking bylaw to Northern Health. A public hearing will be held prior to the next Council meeting regarding the zoning

amendment bylaw and the bylaws will be included on the regular agenda for consideration of third reading (if applicable) and/or adoption.

RECOMMENDATION

That Report No. 18-137 from the Development Services Manager re: Cannabis Bylaw Amendments be received; further that Zoning Amendment Bylaw No. 4391, 2018, be given first and second readings; and further, that Smoking Regulation Amendment Bylaw No. 4390, 2018 and Annual Business Licence & Regulation Amendment Bylaw No. 4389, 2018 be given first three readings.

Respectfully submitted,

ORIGINAL SIGNED BY

Alex Wallace
Development Services Manager

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APPROVED FOR AGENDA BY CAO

Attachments:

- Annual Business Licence & Regulation Amendment Bylaw No. 4389, 2018
- Smoking Regulation Amendment Bylaw No. 4390, 2018
- Zoning Amendment (18-04) Bylaw No. 4391, 2018