



The Corporation of the Town of Tecumseh

Corporate Services & Clerk

To: Mayor and Members of Council
From: Laura Moy, Director Corporate Services & Clerk
Date to Council: December 11, 2018
Report Number: CS-2018-47
Subject: Legalization of Cannabis Use and Retail Sales

Recommendations

It is recommended:

That CS-2018-47 regarding the legalization of cannabis use and retail sales, **be received**;

And that The Corporation of the Town of Tecumseh **opt-out** of hosting retail cannabis sales;

And further that the Clerk **be authorized** to send a letter to the Alcohol and Gaming Commission of Ontario advising that the Council of the Town of Tecumseh at their meeting held on Tuesday, December 11, 2018 passed a resolution to opt-out of cannabis sales.

Background

Throughout this report the terms cannabis, marihuana and cannabis marihuana will be used interchangeably and are largely synonymous with each other. The term cannabis is used in the federal and provincial legislation governing the legal production and sale of medical marihuana and non-medical (recreational) marihuana. The term cannabis is employed because it covers

not only marihuana plants and dried marihuana, but also cannabis oil and other derivatives of the marihuana plant.¹

Prior to 2000, the production, sale and possession of cannabis marihuana was illegal. Legal prohibitions against cannabis marihuana could be found in federal legislation².

The Ontario Court of Appeal recognized that the Canadian Charter of Rights and Freedoms required that a viable medical exemption be created by the federal government.

In 2001, the federal government responded by enacting regulations³. The scheme devised was subject to multiple constitutional challenges on the basis that the regulations were too restrictive and did not provide sufficient access to persons who needed medical marihuana to alleviate their conditions.

In 2013, after further court challenges, the federal government enacted new regulations⁴. Physicians could prescribe marihuana to patients which could be supplied in the following manners:

- purchased from a licensed grower;
- grown on behalf of the patient by another individual designated to grow on behalf of the patient, “designated grow system”; or
- grown by the patient for personal use.

In 2016, the federal government replaced those regulations.⁵

The production, sale, use and consumption of Cannabis is regulated by the Federal and Provincial Government under the following legislation:

- *Cannabis Act* (Federal)
- *Ontario Cannabis Act, 2017* (Provincial)
- *Cannabis Statute Law Amending Act, 2018*
- *Smoke-Free Ontario Act, 2017*
- *Cannabis Licence Act, 2018*

The *Cannabis Licence Act, 2018* gives municipalities the one-time opportunity to opt-out of allowing retail cannabis stores in the communities. The decision to opt-out must be made by January 22, 2019. Unless a municipality opts out, they are deemed to have opted-in to recreational cannabis retail sale by default.

¹ Municipal Guide to Cannabis Legalization, Federation of Canadian Municipalities, Spring 2018, page 5

² Narcotics Control Act; Controlled Drugs and Substances Act

³ Marihuana Medical Access Regulations, [“MMAR”]

⁴ Marihuana for Medical Purposes Regulations, [“MMPR”]; Narcotics Control Regulations

⁵ Access to Cannabis for Medical Purposes Regulations, [“ACMPR”], Statutory Orders and Regulations/ 2016-230

Comments

On October 17, 2018, it became legal in Canada to possess or use cannabis subject to certain limits. The federal government amended the Criminal Code to enable Canadians to buy, sell and consume cannabis and cannabis products. Under federal legislation, Health Canada administers the licensing regime for recreational cannabis growers. These licensed producers serve as the sole source of legal recreational cannabis in Canada. The federal framework includes rules regulating grow operations as well as the advertisement and promotion of cannabis, which is strictly controlled to protect youth.

Under federal legislation, provinces are responsible for establishing wholesale and retail distribution systems. Jurisdiction over rules regarding where individuals can consume cannabis also resides with the provinces.

A brief summary of the various cannabis related legislation is provided below to help understand the governments' roles in legalizing cannabis and to offer a recommendation on whether to opt-in or to opt-out of permitting the retail sale of cannabis within the Town of Tecumseh.

Federal Government

Cannabis Act

The federal *Cannabis Act* received Royal Assent June 21, 2018 and came into force October 7, 2018. This Act creates rules for producing, distributing, selling and possessing cannabis across Canada and establishes the overarching framework for cannabis, in Canada including:

Supply Chain Oversight and Regulation

- Federal licensing for the production, cultivation, and processing of cannabis
- Provinces and territories authorized to distribute and sell cannabis, subject to federal condition
- Federal regulation of cannabis for medical purposes would continue

Youth Access Restrictions

- Minimum age of 18
- Not an offence for youth to possess five grams or less of cannabis

Adult Access

- 30-gram adult public possession limit of legal dried cannabis
- Adults can grow up to 4 cannabis plants per residence for personal use

Provincial Government

Provinces and territories have the ability to set their own rules for cannabis, including the legal minimum age, how recreational cannabis can be sold, where cannabis can be used, and how much cannabis can be possessed and by whom.

Cannabis Act, 2017

The Ontario *Cannabis Act, 2017* aligns with the federal *Cannabis Act* and also came into effect October 17, 2018. In brief summary it establishes rules with respect to the sale, distribution, purchase, possession, transportation, cultivation and consumption of cannabis. The key elements include:

- Prohibiting the sale of recreational cannabis to anyone under the age of 19
- Prohibiting youth (under 19) from possessing, cultivating, consuming and sharing cannabis
- Addressing illegal selling, including storefront dispensaries.

On October 17, 2018, Bill 36, *Cannabis Statute Law Amendment Act, 2018* was passed by the Province. This statute includes new legislation and amendments to existing cannabis legislation, including the *Cannabis Act, 2017* to enable the implementation of private retail storefront sales in Ontario, introduces new places of consumption rules and other various amendments.

On October 17, 2018, the Ontario Cannabis Retail Corporation operating as the Ontario Cannabis Store is the exclusive online retailer for legal cannabis in Ontario.

Smoke Free Ontario Act, 2017 (SFOA)

Under the *Smoke-Free Ontario Act, 2017*, the smoking and vaping of cannabis (medical and recreational) is prohibited in the same places where the smoking and vaping of tobacco is prohibited, including:

- in enclosed public places, enclosed workplaces, and other specified places;
- at school, on school grounds, and all public areas within 20 metres of these grounds;
- on children's playgrounds and public areas within 20 metres of playgrounds;
- in child care centres or where an early years program is provided; and
- in places where home child care is provided, even if children aren't present.

Smoking and vaping of medical and recreational cannabis is allowed in private residences and many outdoor places [i.e. sidewalks and parks].

All methods of consuming cannabis [i.e. smoking, vaping, ingestion] are prohibited in vehicles and boats that are being driven or under a person's care or control, subject to certain

exceptions that would be prescribed by regulation, such as the use of medical cannabis edibles by a passenger who is a medical cannabis user.

Municipalities may pass by-laws further restricting the use of cannabis. The Town's Smoke Free Outdoor Spaces By-law 2014-60 provides greater restriction than the SFOA. It **prohibits smoking**, which includes the carrying of a lighted cigarette, cigar, pipe, or any other lighter or heated smoking equipment used to smoke or vaporize any tobacco **or non-tobacco substance**, as well as the use of smokeless tobacco, such as chewing tobacco (plugs, snus or snuff), in the following places:

- Parks, sports fields and recreational facilities;
- Within a nine (9) metre radius of any entrance of any building or structure under the control, supervision, ownership and/or operation of the Town of Tecumseh; and
- Within a nine (9) metre radius of a transit stop.

The Town's definition of smoking includes cannabis (as a non-tobacco substance) and as such prohibits smoking and vaping in parks, sports field and recreational facilities, which SFOA would otherwise permit.

Cannabis Licence Act, 2018

The *Cannabis Licence Act, 2018*, creates a regulated licensing model and regulatory framework for private retail of cannabis in Ontario and enables the implementation of a tightly regulated licensing and regulatory framework for private storefront cannabis retailing in Ontario and establishes the Alcohol and Gaming Commission of Ontario (AGCO) as the provincial regulator for cannabis storefronts.

Private retailers must be licensed by the AGCO. The AGCO is to begin accepting applications in December 2018 and permitting private retailing of cannabis by April 1, 2019.

Retail Cannabis Stores

The Province has committed to allowing private recreational cannabis retail stores throughout Ontario starting April 1, 2019. As recreational cannabis is a legal, controlled and regulated product, cannabis stores will be considered like any other type of retail, and as such no zoning changes are needed.⁶

Municipalities will not be able to designate cannabis retail as a separate land use from retail generally or create a cannabis retail licensing regime within their jurisdiction.

⁶ AMO Municipal Cannabis Update, November 21, 2018, page 2

To that end, it has established a regulatory framework, Ontario Regulation 468/18 s. 22 (O. Reg. 468.18) under the *Cannabis Licensing Act, 2018* that provides further clarity on how private businesses will be licensed and regulated by the AGCO. These regulations provide the Registrar with authority to establish standards and requirements in the following areas:

- store premises, equipment and facilities, including surveillance and security
- the prevention of unlawful activities
- advertising and promotional activities
- training related to the responsible use and sale of cannabis
- the protection of assets
- record-keeping and measures to maintain confidentiality and security of records
- compliance with the federal cannabis tracking system.⁷

These Standards will be outlined in the *Registrar's Standards for Cannabis Retail Stores*, which at this writing are not yet available on the AGCO website.

The AGCO's process will begin with it reviewing and completing due diligence on applications from corporations and individuals seeking to sell recreational cannabis. The Process will include:

- Issuing a Retail Operator Licence after investigation [i.e. due diligence] into the business;
- Issuing a Retail Store Authorization to a licensed Retail Operator for the operation of a specified retail store after a local public notice process and upon confirmation of meeting certain requirements [i.e. safety and security plans in place];
- Issuing certain individuals a Cannabis Retail Manager Licence;
- Conducting compliance and audit processes, including store inspection prior to opening.

Municipalities have a one-time opportunity to opt-out of allowing retail cannabis stores in their communities. **The decision to opt out must be made by January 22, 2019.** A municipality that has not opted-out as per O. Reg. 468.18 will by default opt-in to permitting recreational cannabis retail sale.

⁷ AGCO Registrar's Standards for the Private Retail Sale of Cannabis

To protect youth, the provincial cannabis retailing regulations include a 150-meter buffer area for cannabis stores to keep them separated from schools. No buffer from any other use has been specified by the regulations.

The Association of Municipalities of Ontario (AMO) in its Municipal Cannabis Update, dated November 21, 2018, suggests that municipalities consider setting out a policy statement identifying specific and significant locally sensitive considerations or uses, to best represent the expectations of the community in allowing cannabis retail. This statement would provide direction to municipal staff input to the AGCO within its 15-day review period.⁸

The AGCO cannabis licensing process, much like the process for liquor licensing applications, requires that a notice of a proposed cannabis store site be posted for comments from area residents and businesses before a site authorization is made. At this point, municipalities will not be provided pre-notification of the application, but can make comments about whether the proposal is in the public interest as described in Section 10 of O. Reg. 468.18 as:

1. Protecting public health and safety.
2. Protecting youth and restricting their access to cannabis.
3. Preventing illicit activities in relation to cannabis.

When a licensed operator submits a request for a store location to be authorized in a municipality that has not prohibited cannabis retail, the *Cannabis Licence Act, 2018* requires the AGCO to issue a public notice process.

A public notice would be posted on the AGCO website and a placard displayed at the proposed retail store location for a 15-day period to indicate that a licensee has applied for an authorization at that location. Local residents and municipalities would be provided with 15 days to provide written submissions to the AGCO with respect to objecting to the application.

While there is no regulatory requirement for the AGCO to act on municipal input, it is reasonable that a council could choose to set out any locally sensitive uses as part of the decision to allow cannabis retail stores or to opt-out. Setting out these sensitive uses would specify the expectations of the community as cannabis retail sites are proposed. However, care needs to be taken so that this statement would not prohibit any cannabis retail store from locating in a municipality. Opting out is the appropriate mechanism for not permitting any stores in a municipality.⁹

⁸ AMO Municipal Cannabis Update, November 21 2018

⁹ AMO Municipal Cannabis Update, November 21, 2018, page 3

The province has just released the funding approach to help municipal governments offset implementation costs. Please see the Financial Implications later in this report for discussion on the funding.

As previously mentioned, the AGCO will have a 15-day window for the public and municipalities to provide comments for each store site proposed by an approved operator in their jurisdiction, if a municipality has not opted-out. The legislation provides that municipal comments should focus on whether a proposed storefront location is in the public interest, as defined. The definition was provided earlier in this report.

The process for municipalities choosing to opt-in or to opt-out of allowing cannabis retail stores in their municipality is summarized as follows and what it means for municipalities who decide to permit retail stores in their community.

Opting-out of Retail Cannabis Stores

Municipalities may opt-out of having cannabis retail stores within their jurisdiction. To do so, the *Cannabis Licence Act, 2018* requires them to pass a resolution to that effect by January 22, 2019.

The manner in which municipalities must notify the AGCO of their decision to opt-out is for the municipal Clerk, Chief Administrative Officer or Mayor to send the AGCO Registrar written notification that the municipality has passed a resolution prohibiting cannabis retail stores and send written notification to the AGCO no later than January 22, 2019.

A municipality that decides to prohibit cannabis retail stores may later reverse its decision; however, under the *Cannabis Licence Act, 2018*, **a decision by a municipality to allow cannabis retail stores is final** and may not be subsequently reversed.

If the AGCO has not received written notification from a municipality within the process described above, by January 22, 2019, then, by default, private cannabis retail stores will be allowed within this jurisdiction beginning April 1, 2019, providing all other eligibility criteria have been met.

Opting-in to Allow Retail Cannabis Stores

Any time before January 22, 2019, a municipality may decide it will allow cannabis retail stores within its jurisdiction. Those municipalities are encouraged to notify the AGCO as soon as possible to allow the AGCO to process retail store applications, complete the public notice process and provide more time for stores to set up their operations. Early notification to the AGCO will not change the date that licensed retail stores may open, which remains April 1, 2019 at the earliest.

Considerations

Many municipal programs may be directly impacted by the provincial legislative framework governing the sale and use of cannabis including, but not limited to: building inspections, by-law enforcement, public use in public places, fire services, Provincial Offences Act Courts, policing, property standards (home cultivation), public health (enforcement, education), transit, employee impairment and accommodation (for medicinal use of marijuana) and zoning.

Concerns being expressed by municipalities are: siting of cannabis retail locations, enforcement of restrictions on use in prohibited locations, lack of provincial regulation of home cultivation, complaints about home cultivation, public use and intoxication, odour, implications in two-tier municipalities, funding, training and lack of resources.

Specific concerns related to retail sales are:

- No cap on the number of retailers per municipality;
- Municipalities are prohibited from using licensing and land use planning by-laws to control the placement of or number of cannabis retail outlets;
- Only 15 days to respond to a notice of retail authorization (public notice) and the lack of direct notification to municipalities [i.e. must go to AGCO website find notices];
- Response to notices limited to the definition of 'public interest;'
- Lack of setback for retail stores away from sensitive areas other than schools (i.e. vulnerable communities, parks, childcare centres;
- Illegal storefronts; and
- Organized crime.

Community Engagement

The Town has an online survey to engage the community on this topic. Results to date on the survey will be communicated at the December 11, 2018 Regular Meeting of Council.

Consultations

Financial Services
Parks & Recreation Services
Planning & Building Services
Chief Administrative Officer
Windsor Essex County Health Unit
Association of Municipalities of Ontario
Association of Municipal Clerks, Managers and Treasurers of Ontario

Financial Implications

The Minister of Finance's letter dated November 26, 2018, to municipalities announced funding for all municipalities through the Ontario Cannabis Legalization Implementation Fund (Fund). The Fund will provide \$40 million in funding over two years to municipalities across Ontario to help with the implementation costs of recreational cannabis legalization.

A first payment will be made in January 2019 to municipalities to distribute \$15 million of the Fund between all municipalities based on:

- 2018 MPAC household numbers
- 50/50 split in household numbers between lower and upper tier municipalities
- Adjustment to provide at least \$5,000 to each municipality.

According to the 2018-2019 Allocation Notice, the Town will receive a funding allocation of \$11,635. The County of Essex will also receive, for all area lower tier municipalities, an amount equal to the lower tier's allocation, total County allocation is \$92,455.

The second payment will distribute \$15 million of the Fund between all municipalities based on the following:

- If a municipality has **not opted-out** of hosting private retail stores in accordance with the *Cannabis Licence Act*, it **will receive** funding based on the 2018 MPAC household numbers, adjusted so that **at least \$5,000** is provided to each municipality;
- If a municipality **has opted-out** of hosting retail stores in accordance with the *Cannabis Licence Act*, it **will receive a maximum of \$5,000**. If a municipality opts-out before January 22, 2019, and opts back in at a later date, it will not be eligible for additional funding.

The Province will send an allocation notice to municipalities setting out the second payment based on the above criteria by March 2019.

The Funds provided by the Province may be used solely for implementation costs related directly to the legalization. Examples of these permitted costs include:

- Increased enforcement [i.e.: police, public health, and by-law enforcement, court administration and litigation]
- Increased response to public inquiries [i.e.: telephone calls, correspondence]
- Increased paramedic services
- Increased fire services
- By-law / policy development [i.e.: police, public health, workplace safety policy]

The Fund must not be used to pay for costs that have been, or will be, funded or reimbursed by any other government body, or third party; and costs not related to cannabis legalization.

Upper-tier municipalities and lower-tier municipalities may transfer any money they receive from the Fund between each other, however remain responsible for ensuring compliance with the terms of use.

Area municipalities may wish to enter into discussions with the County of Essex regarding transfer or sharing of these Funds.

The Ministry of Finance intends to work with the Association of Municipalities of Ontario (AMO) and the City of Toronto to establish a sample group of municipalities to provide information on

use of Funds and impact of funding. In addition, the Province or any authorized representative or identified independent auditor, may request to review the records or conduct an audit in respect of the expenditure of money a municipality has received from the Fund.

Link to Strategic Priorities

Applicable	2017-18 Strategic Priorities
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- | | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | Make the Town of Tecumseh an even better place to live, work and invest through a shared vision for our residents and newcomers. |
| <input checked="" type="checkbox"/> | Ensure that the Town of Tecumseh's current and future growth is built upon the principles of sustainability and strategic decision-making. |
| <input checked="" type="checkbox"/> | Integrate the principles of health and wellness into all of the Town of Tecumseh's plans and priorities. |
| <input type="checkbox"/> | Steward the Town's "continuous improvement" approach to municipal service delivery to residents and businesses. |
| <input checked="" type="checkbox"/> | Demonstrate the Town's leadership role in the community by promoting good governance and community engagement, by bringing together organizations serving the Town and the region to pursue common goals. |

Communications

Not applicable

Website

Social Media

News Release

Local Newspaper

This report has been reviewed by Senior Administration as indicated below and recommended for submission by the Chief Administrative Officer.

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Director Planning & Building Services

Reviewed by:

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Director Financial Services & Treasurer

Recommended by:

Tony Haddad, MSA, CMO, CPFA
Chief Administrative Officer

Attachment Number	Attachment Name
None	None