

Refers Item No. 1
Public Hearing of June 10, 2015

MEMORANDUM

June 8, 2015

TO: Mayor Robertson and Councillors

COPY TO: P. Ballem, City Manager
S. A. Johnston, Deputy City Manager
J. MacKenzie, City Clerk
R. Kendall-Craden, Director, Corporate Communications
B. Jackson, Director of Planning and development Services
J. Dobrovolny, Acting General Manager of Engineering Services
F. Connell, Director of Legal Services
A. Toma, Chief Licence Inspector
I. Dixon, Assistant Director, Development and Real Estate, Legal Services

FROM: T. Hartman, Acting General Manager, Community Services
B. Jackson, General Manager, Planning and Development Services

SUBJECT: Marijuana-Related Uses: Clarification and Correction

At a Public Hearing on June 10, 2015, Council will consider a report dated April 21, 2015 and entitled "Regulation of Retail Dealers - Marijuana-Related Uses". In regard to this report, this memo: a) clarifies the regulations as they pertain to minors; b) brings forward housekeeping corrections to the recommended by-law to amend the Zoning and Development By-law; and c) provides a briefing on the legal status of marijuana and recent litigation.

A) Clarification of the definition of "minor"

The proposed regulations include provisions specific to the protection of minors (e.g. minors may not enter a marijuana-related use, proprietors may not advertise to minors). A question about the definition of "minor" has arisen. In the Province of BC under the Age of Majority Act an adult is at least 19 years old. Anyone aged 18 years or younger would be considered a minor.

B) Zoning and Development By-law Amendments

On subsequent review of the Zoning and Development By-law amendments proposed in Appendix B of the April 21, 2015 report, Legal Services has identified several housekeeping corrections, as follows:

- i) In Paragraph 2 remove quotation marks from around the words “Medical Marijuana-related Use” in order to align with the By-law’s protocol for definitions;
- ii) In Paragraph 3 capitalise the first letter of the terms “Council”, “School - Elementary or -Secondary”, “Community Centre” and “Neighbourhood House” in order to align with the By-law’s protocol for referring to terms defined in the Definitions section;
- iii) In Paragraph 3 capitalise the first letter of “Street” when referring to “Robson Street” to correct a typographic error;
- iv) In Paragraph 3 clarify the reference to a street with a painted center line in order to avoid confusing language;
- v) In Paragraph 3 replace the term “Automated Teller Machine (ATM) Use” with “automated banking machine” in order to align the terminology with a more commonly-used format;
- vi) In Paragraph 3 group the locational regulations together to improve clarity;
- vii) In Paragraph 12 insert “under 2.2 R” in order to correct an oversight in specifying the exact placement of the recommended amendment;

Staff recommend that Council replace Appendix B of the report with an updated draft by-law (see Attachment 1).

C) License By-law Amendments

On subsequent review of the License By-law amendments proposed in Appendix E of the April 21, 2015 report, Legal Services has identified several corrections and changes, as follows:

- i) After Paragraph 2 insert a new Paragraph 3 stating “In section 4 (5), Council strikes out “section” and substitutes “by-law”.” in order to clarify that the Chief Licence Inspector must only issue a Business Licence to marijuana-related uses which meet the applicable regulations contained in the By-law;
- ii) Renumber all subsequent Paragraphs accordingly;
- iii) In renumbered Paragraph 4 in the reference to S. 24.5 (4), replace the words “more than one” with “more than five” to allow greater flexibility for a single licensee to hold more than one Business Licence, but not more than five;
- iv) In renumbered Paragraph 4 in the reference to S. 24.5 (7), delete the words “Notwithstanding the provisions of Section 4(1) of this By-law,” to remove unnecessary language;
- v) In renumbered Paragraph 4 in the reference to S. 24.5 (8), delete the words “Notwithstanding the provisions of Section 4 of this By-law, the Chief Licence Inspector may issue a Retail Dealer - Medical Marijuana-related business licence subject to conditions” and replace with “Notwithstanding the provisions of Section

4 of this By-law, the Chief Licence Inspector may impose conditions on a Retail Dealer - Medical Marijuana-related business licence” in order to clarify language;
vi) In renumbered Paragraph 4 in the reference to S. 24.5 (8)(f), insert after “conditions related to public health and safety in relation to the licenced premises” the following:

“ , including conditions regarding the posting of signage informing the public of potential health risks associated with medical marijuana use”

in order to enable the City to require public health warnings in marijuana -related uses;

vii) In renumbered Paragraph 4, after S. 24.5 (22), insert S. 24.5 (23) and (24) as follows:

“(23) The Chief License Inspector must not issue any business license for a Retail Dealer - Medical Marijuana-related prior to [x date].

(24) The Chief License Inspector must review all license applications for a Retail Dealer - Medical Marijuana-related received prior to [x date] on the following basis:

(a) if the proposed location contravenes section 11.28.2(b) of the Zoning & Development By-law, the Chief License Inspector must refuse to issue the license;

(b) if the proposed location contravenes section 11.28.2(a) of the Zoning & Development By-law, the Chief License Inspector must:

(i) evaluate the applications for that location and assign points to each application , based on the criteria set out in the following table:

Criteria	Points
Individual applicant	1
>1 complaint by >1 complainant in previous 12 months	2
Existing work without permit	3
History of poor business practices	4

and the Chief License Inspector must issue the license to the applicant with the lowest number of points; and

(ii) in the event of a tie, the Chief License Inspector must issue the license based on a random draw, after prior notification to all affected applicants, who may attend in person to witness the random draw.”

in order to correct an oversight in the original bylaw and give the City authority to impose a declustering process on marijuana-related uses that are located too close to each other.

Staff recommend that Council replace Appendix E of the report with an updated draft by-law (see Attachment 2).

D) Legal Briefing

The Legal Status of Marijuana

Marijuana is a controlled substance listed in Schedule II of the *Controlled Drugs and Substances Act (CDSA)*.

Prior to 2000 the *CDSA* contained a blanket ban on the possession, production and sale of marijuana. In 2000 the Ontario Court of Appeal held that the blanket marijuana prohibition found in the *CDSA* was constitutionally invalid as it did not contain any exemption for medical use. The Court affirmed that in cases of medical need a person has a constitutionally protected right to access marijuana.

As a result of Ontario Court of Appeal decision the federal government provided an exemption for medical marijuana, *Marihuana Medical Access Regulations*, SOR/2001-227 (the MMAR). The introduction of the MMAR meant that it remained illegal to possess, grow, produce or sell marijuana in Canada except in accordance with the regulations set out in the MMAR. The MMAR created a licencing structure within which marijuana could be produced, possessed and sold for medical purposes.

In March 2014 the Federal Government introduced new regulations governing the possession and sale of medical marijuana; the *Marihuana for Medical Purposes Regulations*, SOR/2013-119 (the MMPR).

The *CDSA* does not allow for the use of marijuana for non-medical purposes.

Litigation of the MMPR

Prior to March 2014 the Federal government medical marijuana regulations, the MMAR, allowed individuals to produce marijuana for their own consumption and allowed a licensed grower to produce marijuana for a small number of users.

The new federal regulations, the MMPR introduced in March 2014, require all users to purchase their marijuana from authorized large scale producers. The small scale growing of marijuana by users is banned. Possession of more than 150 grams of dried marijuana, even for medical purposes, was also banned.

Shortly after the new regulations came into effect a lawsuit (*Allard v. Canada*) was commenced that claimed that the MMPR violates the section 7 Charter right to life, liberty

and security of the person. In particular, the lawsuit challenges the MMPR's prohibition of the personal production of marihuana for medical purposes and the possession limit of 150 grams of dried marijuana.

Prior to the coming into force of the MMPR, the MMAR governed access to marijuana for medical purposes. The MMAR provided for a licence scheme whereby eligible persons who had a declaration signed by a medical practitioner were issued an Authorization to Possess (ATP) marijuana. Individuals who had an ATP could lawfully obtain access to marijuana:

- (i) through a Personal Production Licence pursuant to which the individual was allowed to produce a determined quantity of marijuana for his own use;
- (ii) through a Designated Person Licence pursuant to which the individual was able to designate another person to produce his or her marihuana; or
- (iii) by purchasing dried marijuana directly from Health Canada which contracted with a private company to produce and distribute marijuana.

The MMAR removed replaced these regulations with a requirement that all users of medical marijuana purchase their marijuana from authorized large scale producers.

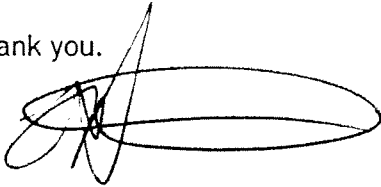
In March 2014, as a preliminary step, the plaintiff in *Canada v. Allard* sought an injunction to preserve certain rights that were available under the MMAR thus staying the full coming into force of the MMPR for the persons and classes of persons covered by the order, pending determination of the trial on the merits. This injunction was granted and allows the continuation of the MMAR rules pertaining to individual production of marijuana described above pending the outcome of the trial.

The trial in *Allard v. Canada* commenced in February 2015, at the Federal Court, and there is no decision at this time.

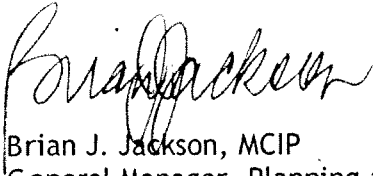
In addition to the challenges to the constitutionality of the MMPR there is ongoing litigation surrounding the constitutionality of the restriction of the possession and production of medical marijuana to dried plants found in both the MMPR and the MMAR. In March 2014 the BC Court of Appeal decided that the restriction in the MMAR that allows only dried marijuana breaches the s. 7 rights of individuals who possess an Authorization to Possess ("ATP") marijuana under the MMAR but require other forms of cannabis, such as oils, to treat symptoms of serious illness. The Court held that the provision is arbitrary and cannot be justified in a free and democratic society. The Court suspended the effect of its decision for one year to allow Parliament time to determine how best to amend the regulatory scheme to ensure its constitutionality. The Federal government did amend the regulatory scheme, by enacting the MMPR, but the ban on oils remains.

This decision has been appealed by the Federal government to the Supreme Court of Canada and that appeal was heard in March 2015, but there is no decision at this time.

Thank you.

A handwritten signature in black ink, appearing to be 'Teresa Hartman', written over a horizontal oval line.

Teresa Hartman
Acting General Manager of Community Services
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A handwritten signature in black ink, appearing to be 'Brian Jackson', written in a cursive style.

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General Manager, Planning and Development Services
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TK/tk

Attach. (1)

**Attachment 1: Revised Appendix B to the Report
By-law to amend the Zoning and Development By-law (By-law No. 3575)**

Amendments to
Zoning & Development By-law regulations
Regarding Medical Marijuana-related Use

Draft for Public Hearing

BY-LAW NO. _____

**A By-law to amend
Zoning and Development By-law No. 3575
Regarding Medical Marijuana -related Use**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

Zoning District Plan Amendment

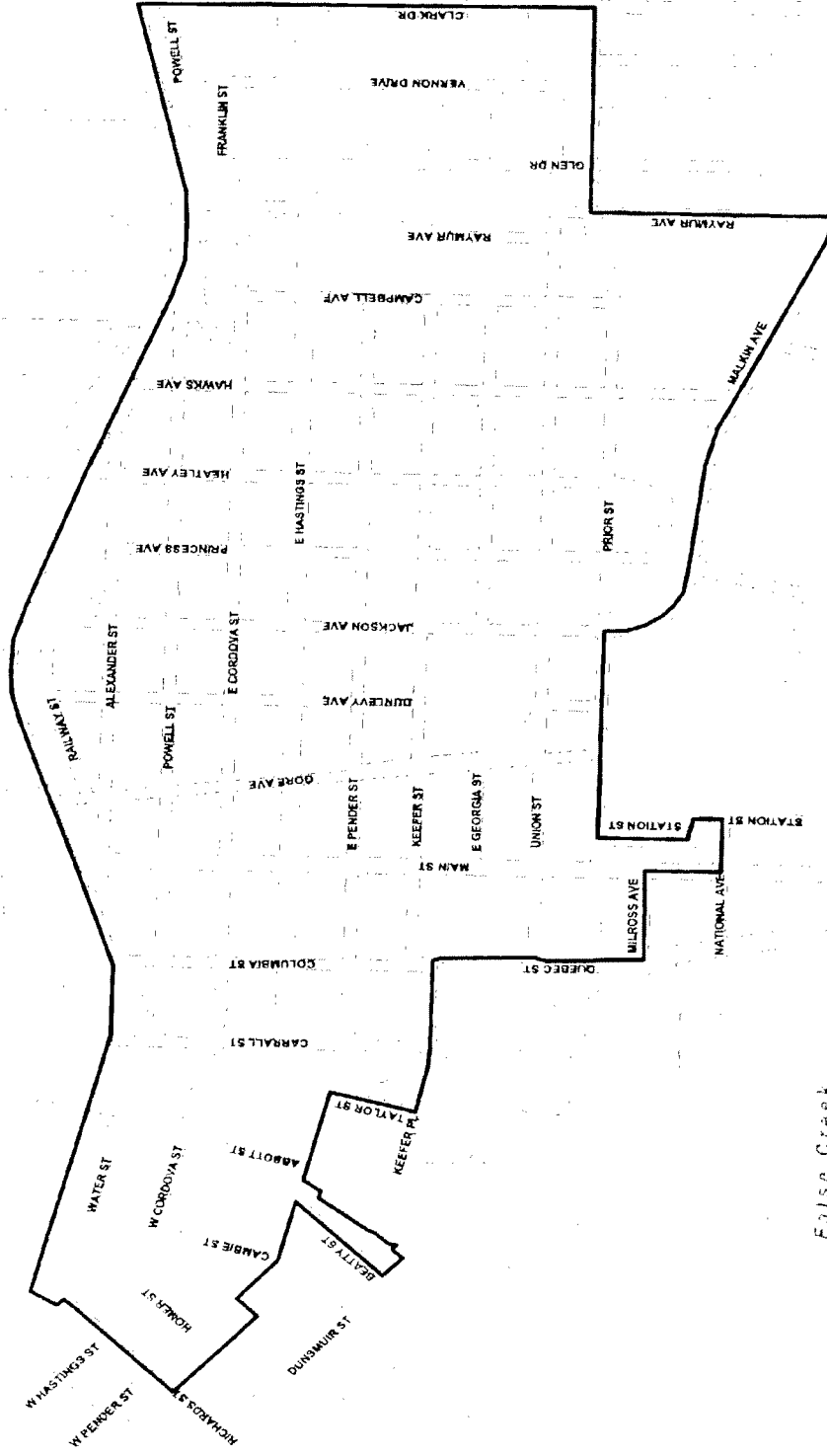
1. This By-law amends the indicated provisions of By-law No. 3575.
2. In section 2, under “Retail Uses”, Council adds in correct alphabetical order:

“**Medical Marijuana-related Use** means a retail use in which the use of marijuana for medicinal purposes is advocated;”
3. In section 11, Council adds:

“**11.28 Medical Marijuana-related Use**

11.28.1 Before granting a development permit, the Director of Planning shall:
 - (a) notify surrounding property owners and residents and have regard to their opinions;
 - (b) have regard to the liveability of neighbouring residents; and
 - (c) consider all applicable Council policies and guidelines.
11.28.2 A Medical Marijuana-related Use is not permitted:
 - (a) within 300 metres of the nearest property line of a site containing another Medical Marijuana-related Use;
 - (b) within 300 metres of the nearest property line of a site containing a School - Elementary or Secondary, Community Centre or Neighbourhood House;
 - (c) within the area outlined on Figure 1 below, except for sites with a property line on Hastings Street or Main Street;

Figure 1



- (d) on any site with a property line on Granville Street between Robson street and Pacific Boulevard;
- (e) on any site other than a site adjacent to a street that has a painted center line;
- (f) in conjunction with any other use; or
- (g) in conjunction with an automated banking machine.”

4. In the C-1 District Schedule, under section 3.2.R, Council adds, in alphabetical order:

“

- Medical Marijuana-related Use, subject to the provisions of section 11.28 of this By-law.”

5. In the C-2 District Schedule, under section 3.2.R, Council adds, in alphabetical order:

“

- Medical Marijuana-related Use, subject to the provisions of section 11.28 of this By-law.”

6. In the C-2B District Schedule, under section 3.2.R, Council adds, in alphabetical order:

“

- Medical Marijuana-related Use, subject to the provisions of section 11.28 of this By-law.”

7. In the C-2C District Schedule, under section 3.2.R, Council adds, in alphabetical order:

“

- Medical Marijuana-related Use, subject to the provisions of section 11.28 of this By-law.”

8. In the C-2C1 District Schedule, under section 3.2.R, Council adds, in alphabetical order:

“

- Medical Marijuana-related Use, subject to the provisions of section 11.28 of this By-law.”

9. In the C-3A District Schedule, under section 3.2.R, Council adds, in alphabetical order:

“

- Medical Marijuana-related Use, subject to the provisions of section 11.28 of this By-law.”

10. In the C-5, C-5A and C-6 Districts Schedule, under section 3.2.1.R, Council adds, in alphabetical order:

“

- Medical Marijuana-related Use, subject to the provisions of section 11.28 of this By-law.”

11. In the C-7 and C-8 Districts Schedule, under section 3.2.1.R, Council adds, in alphabetical order:

“

- Medical Marijuana-related Use, subject to the provisions of section 11.28 of this By-law.”

12. In the FC-1 District Schedule, under section 2.2.R, Council adds, in alphabetical order:

“

- Medical Marijuana-related Use, subject to the provisions of section 11.28 of this By-law.”

13. In the HA-1 and HA-1A Districts Schedule, under section 3.2.R, Council adds, in alphabetical order:

“

- Medical Marijuana-related Use, subject to the provisions of section 11.28 of this By-law.”

14. In the HA-2 District Schedule, under section 3.2.R, Council adds, in alphabetical order:

“

- Medical Marijuana-related Use, subject to the provisions of section 11.28 of this By-law.”

15. In the HA-3 District Schedule, under section 3.2.R, Council adds, in alphabetical order:

“

- Medical Marijuana-related Use, subject to the provisions of section 11.28 of this By-law.”

16. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.

17. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this day of , 2015

Mayor

City Clerk

**Attachment 2: Revised Appendix E to the Report
By-law to amend the License By-law (By-law No. 4450)**

BY-LAW NO. _____

**A By-law to amend License By-law No. 4450
regarding Retail Dealer - Medical Marijuana-related**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. This By-law amends the indicated provisions of the License By-law.
2. In Section 2, in alphabetical order, Council adds:

“Retail Dealer - Medical Marijuana-related” means any person not otherwise herein defined who carries on a retail business in which the use of marijuana for medicinal purposes is advocated.”
3. In section 4(5), Council strikes out “section” and substitutes “by-law”.
4. After Section 24.4, Council adds:

“RETAIL DEALER - MEDICAL MARIJUANA-RELATED

24.5 (1) The provisions of this section apply to all persons carrying on business as a Retail Dealer - Medical Marijuana-related.

 - (2) No person shall carry on business as a Retail Dealer - Medical Marijuana-related, without having first obtained a licence to do so from the Chief Licence Inspector.
 - (3) No corporation shall carry on the business of a Retail Dealer - Medical Marijuana-related, except that a society registered under the Society Act may carry on the business of a Retail Dealer - Medical Marijuana-related.
 - (4) No person shall hold more than five licences as a Retail Dealer - Medical Marijuana-related.
 - (5) No person shall hold a licence as a Retail Dealer - Medical Marijuana-related unless the person is the registered owner or lessee of the licensed premises.
 - (6) A person who has been granted a license as a Retail Dealer - Medical Marijuana-related must not transfer, or transfer control of that license to another person.

- (7) A person who applies for a Licence to carry on business as a Retail Dealer - Medical Marijuana-related, shall submit, together with an application in a form acceptable to the Chief Licence Inspector and the requisite fees, the following documents:
- (a) a security plan acceptable to the Chief Licence Inspector;
 - (b) contact information for a responsible person or persons available to be contacted at any time;
 - (c) a list of the names of all staff, together with a copy of photo identification for each staff member;
 - (d) a police information check for the applicant and for every employee;
 - (e) proof of a security alarm contract providing for monitoring at all times;
 - (f) the certificate of title or the lease for the business premises; and
 - (g) such other documents as may be required by the Chief Licence Inspector.
- (8) Notwithstanding the provisions of Section 4 of this By-law, the Chief Licence Inspector may impose conditions on a Retail Dealer - Medical Marijuana-related business licence, including:
- (a) conditions related to safety and security on and about the licenced premises;
 - (b) conditions requiring that the applicant submit consents to police information checks for the applicant and every employee;
 - (c) conditions requiring that a minimum of two employees be present on the business premises at all times while the business is open to the public;
 - (d) conditions requiring that the applicant promptly bring to the attention of the Chief Licence Inspector any criminal charges brought against the licence holder or any employees of the licensed business;
 - (e) conditions related to the protection of minors, including but not limited to conditions regarding signage and patron identification;
 - (f) conditions related to public health and safety in relation to the licenced premises, including conditions regarding the posting of signage informing the public of potential health risks associated with medical marijuana use;
 - (g) conditions related to prevention of nuisances, including but not limited to conditions intended to reduce noise, odours, and patron misconduct on and about the licenced premises; and

- (h) such other conditions as the Chief Licence Inspector may require to ensure that the business does not have a negative impact on the public, the neighbourhood or other businesses in the vicinity.
- (9) No person shall permit, suffer or allow a person to work in a Retail Dealer - Medical Marijuana-related business without having first submitted a police information check for that employee to the Chief Licence Inspector.
- (10) No person shall carry on any business other than Retail Dealer - Medical Marijuana-related on the business premises.
- (11) No person shall permit, suffer or allow, or facilitate the mailing or delivery of any produce or products from a business premise that is licensed as Retail Dealer - Medical Marijuana-related.
- (12) No person shall sell food on the business premises of a Retail Dealer - Medical Marijuana-related, except that this provision does not apply to the sale of edible oils in sealed containers.
- (13) No person shall permit, suffer or allow a minor to enter or remain on the business premises of a Retail Dealer - Medical Marijuana-related.
- (14) No person shall directly or indirectly advertise or promote the use of marijuana to a minor, in or from the business premises of a Retail Dealer - Medical Marijuana-related.
- (15) No person shall display items related to the consumption of marijuana in any manner by which the display may reasonably be seen by a minor who is outside the business premises of a Retail Dealer - Medical Marijuana-related.
- (16) No person shall advertise or promote the use of marijuana in any manner by which the advertising or promotion may reasonably be seen or heard by a minor who is outside the business premises of a Retail Dealer - Medical Marijuana-related.
- (17) No person shall carry on the business of a Retail Dealer - Medical 8 a.m. the following day.
- (18) No person shall block the windows of the business premises of a Retail Dealer - Medical Marijuana-related with translucent or opaque material, artwork, posters, shelving, display cases or similar elements.
- (19) No person shall install, or permit, suffer or allow the installation of an ATM (Automated teller machine) on the business premises of a Retail Dealer - Medical Marijuana-related.

- (20) No person shall install security bars that are located within one meter of the front windows of the business premises of a Retail Dealer - Medical Marijuana-related.
- (21) No person shall install roll down shutters on the business premises of a Retail Dealer - Medical Marijuana-related.
- (22) The following security measures shall be installed and maintained on the business premises of a Retail Dealer - Medical Marijuana-related:
- (a) video surveillance cameras that monitor all entrances and exits and the interior of the business premises at all times;
 - (b) video camera data shall be retained for at least 21 days after it is gathered;
 - (c) a security and fire alarm system that is monitored at all times; and
 - (d) valuables shall be removed from the business premises or locked in a safe on the business premises at all times when the business is not in operation.
- (23) The Chief License Inspector must not issue any business license for a Retail Dealer - Medical Marijuana-related prior to [x date].
- (24) The Chief License Inspector must review all license applications for a Retail Dealer - Medical Marijuana-related received prior to [x date] on the following basis:
- (a) if the proposed location contravenes section 11.28.2(b) of the Zoning & Development By-law, the Chief License Inspector must refuse to issue the license;
 - (b) if the proposed location contravenes section 11.28.2(a) of the Zoning & Development By-law, the Chief License Inspector must:
 - (i) evaluate the applications for that location and assign points to each application, based on the criteria set out in the following table:

Criteria	Points
Individual applicant	1
>1 complaint by >1complainant in previous 12 months	2
Existing work without permit	3
History of poor business practices	4

and the Chief License Inspector must issue the license to the applicant with the lowest number of points; and

- (ii) in the event of a tie, the Chief License Inspector must issue the license based on a random draw, after prior notification to all affected applicants, who may attend in person to witness the random draw. "

5. Council renumbers sections 30(2), (3) and (4) as sections 30(3), (4) and (5) respectively and inserts, in chronological order:

“(2) Every person who fails to comply with a condition of a business licence commits an offence against this by-law that is punishable on conviction by a fine of not less than \$250.00 and not more than \$10,000.00 for each offence.”

6. To Schedule A, in alphabetical order, Council adds:

“RETAIL DEALER - MEDICAL MARIJUANA -
RELATED.....\$30,000.00”

7. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.

8. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this day of , 2015

Mayor

City Clerk

EXPLANATION

License By-law amending By-law Re: Retail dealer - medical marijuana-related

The attached By-law will implement Council's resolution of _____, 2015 to amend the License By-law to create a new licence class and regulations regarding the business called retail dealer - medical marijuana-related.

Director of Legal Services
_____, 2015