



POLICY REPORT

Report Date: May 29, 2018
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Meeting Date: June 5, 2018

TO: Vancouver City Council

FROM: General Manager of Development, Buildings and Licensing,
General Manager of Planning, Urban Design and Sustainability

SUBJECT: Amendments to Zoning and Development By-law and Licence By-law to
Align with the *Cannabis Control and Licensing Act*

RECOMMENDATION

- A. THAT the General Manager of Planning, Urban Design and Sustainability be instructed to make application to amend the Zoning and Development By-law to enable regulation of non-medical cannabis retail outlets, generally in accordance with Appendix A, and that the application be referred to a Public Hearing;
- FURTHER THAT the Director of Legal Services be instructed to prepare the necessary amending by-law, generally in accordance with Appendix A, for consideration at Public Hearing.
- B. THAT the Director of Legal Services be instructed to prepare amendments to the Licence By-law as outlined in Appendix B to implement the recommendations set out in this Report regarding Cannabis Retail;
- C. THAT, subject to the enactment of the amending by-laws described in Recommendation A, the General Manager of Planning, Urban Design and Sustainability be instructed to bring forward, at the time of enactment of such amending by-laws, updates to the Guidelines for Retail Dealer - Medical Marijuana-Related Uses Near Youth Facilities to update the land use terminology, for Council adoption.
- D. THAT, if the application to amend the Zoning and Development By-law as described in Recommendation A is referred to Public Hearing, then an application to amend the Downtown-Eastside/Oppenheimer Official Development Plan By-law to update the land use for non-medical cannabis retail outlets, generally as set out in Appendix C be referred to the same Public Hearing;

FURTHER THAT the Director of Legal Services be instructed to prepare the necessary amending by-law, generally in accordance with Appendix C, for consideration at Public Hearing.

- E. THAT, if the application to amend the Zoning and Development By-law as described in Recommendation A is referred to Public Hearing, then an application to amend the Downtown Official Development Plan By-law to update the land use for non-medical cannabis retail outlets, generally as set out in Appendix D be referred to the same Public Hearing;

FURTHER THAT the Director of Legal Services be instructed to prepare the necessary amending by-law, generally in accordance with Appendix D, for consideration at Public Hearing.

REPORT SUMMARY

This report recommends municipal regulations for the pending legalization of non-medical cannabis, and its sale within a retail outlet. The regulations will allow for alignment with the federal and provincial regulatory frameworks, expected to be enacted in late summer or early fall 2018.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

The Vancouver Charter accords Council the authority to regulate land use and businesses such as retail shops (S. 272).

On June 24, 2015, Council enacted amendments to the *Zoning and Development By-law* and *Licensing By-law* to support the regulation of Retail Dealers for Medical Marijuana-Related Uses (MMRU).

On December 13, 2016, Council approved an amendment to the *Ticket Offence By-law*, increasing the fine for operating without a valid business license from \$250 to \$1,000.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The City Manager, the General Manager of Development, Buildings and Licensing, and the General Manager of Planning, Urban Design and Sustainability RECOMMEND approval of the by-law amendments needed to update the cannabis retail framework as described in this report.

REPORT

Background/Context

On June 24, 2015, Council implemented the MMRU framework to regulate the emerging sector of retail businesses related to the provision of advice for medical marijuana. The retail framework was achieved via amendments to the *Zoning and Development By-law*, *Licence By-*

law and *Ticket Offences By-law*, the combination of which established distancing and operating by-laws for medical marijuana-related retail uses.

Legalization of non-medical cannabis through Bill C-45 is expected to be enacted by the Federal government in late summer or early fall of 2018. The exact date of legalization is unclear due to the slow progress of the legalization bill through the Senate, however the current timeline indicates sometime in September 2018.

Under legalization the Federal government will retain authority over the production of both medical and non-medical cannabis. The Federal government will remain responsible for the distribution of medical cannabis and provinces will be responsible for the distribution of non-medical cannabis products. The Federal government has not proposed any changes to the existing structure for the production and distribution of medical cannabis, and has indicated that they will review 5 years post-legalization.

The Federal government is only proposing to legalize non-medical dried and fresh cannabis, and cannabis oils. The Federal government has indicated that legalization of edible cannabis products will occur within one year of legalization of non-medical cannabis.

On April 26, 2018, the Provincial government introduced Bill 30: the *Cannabis Control and Licensing Act*. The *Cannabis Control and Licensing Act* will create a scheme by which non-medical cannabis can be distributed and sold in British Columbia. Under the proposed legislation all non-medical cannabis distribution will be run by the Provincial government through the Liquor Distribution Branch and retail sales will be allowed in both privately and publically owned stores, licensed by the Liquor Control and Licensing Branch (LCLB).

The *Cannabis Control and Licensing Act* is expected to come into force prior to legalization, which is expected to occur in late summer or early fall 2018.

This report focuses specifically on the by-law changes required to update Vancouver's cannabis retail model to align with these forthcoming changes. Staff will put forward a memo to Council with the other anticipated municipal impacts of the Federal and Provincial legalization regimes.

Strategic Analysis

Municipal Role in Cannabis Retail under the *Cannabis Control and Licensing Act*

Under the forthcoming *Cannabis Control and Licensing Act*, municipalities will have two roles in the regulation of non-medical cannabis sales under the new provincial scheme:

1. Zoning

Municipalities have the ability to regulate the location of cannabis retail stores pursuant to municipal land use powers.

2. Licensing Recommendations

The proposed provincial scheme stipulates that the legal sale of non-medical cannabis is subject to issuance of a provincial licence. Once a proposed retailer makes an application for a provincial license the Province will inform the relevant municipality. Upon receipt of this notification from the Province the City may provide a recommendation as to whether the Council supports the application. This scheme is similar to the existing process under the *Liquor Control and Licensing Act*. The Province is not bound by the municipal recommendation.

Vancouver's Current Medical Marijuana Regulations

In 2015 Council adopted a structure for regulating Medical Marijuana Related Uses (MMRUs) in the City of Vancouver. These regulations were enacted through amendments to the *Licence By-law* and the *Zoning and Development By-law*. The key aspects of these regulations are distancing restrictions between MMRUs and various sensitive uses and licence restrictions to manage operations. Currently, legal MMRU's obtain a development permit and a municipal licence to meet these obligations.

Alignment of the MMRU Scheme with the *Cannabis Control and Licensing Act*

In general approach and structure, the City of Vancouver's MMRU Regulations align with the impending Federal and Provincial legislation, in that the MMRU regulations leverage zoning and licensing. However the scope of the City's current by-laws are focused on medical marijuana and not non-medical cannabis retail.

Once cannabis is legalized, the existing MMRU Regulations will no longer serve their intended purpose as they will not regulate the opening of retail cannabis locations in retail zones. Non-medical cannabis will be a legal product which can be sold lawfully, from a zoning perspective, in any retail zone. If the MMRU Regulation definitions are not changed to encompass non-medical cannabis retail then any retail cannabis store located in a retail district could be immune to subsequent zoning changes, and the City could lose the ability to regulate any of these established businesses from a zoning perspective in the future.

Overall, staff believe that the distancing rules established for MMRUs are logical and effective and should be maintained for all cannabis retail. The rules and processes established for MMRU permits and licensing are consistent with those of liquor stores and fit cleanly into the regulatory regime being implemented by the Province for retail distribution of legal non-medical cannabis. In addition, and like liquor stores, staff expect that in addition to requiring a development permit and provincial licence, retail outlets will also be required to obtain a municipal business licence.

In order to ensure that the City is able to enforce the distancing requirements set out by Council for MMRUs and to restrict the location of non-medical cannabis retail locations, the definition of MMRU in both the *Zoning and Development By-law* and the *Licence By-law* must be changed to encompass the sale of non-medical cannabis.

The proposed new definition in the *Zoning and Development By-law* for Cannabis Store use is found in the attached draft bylaw provisions in Appendix A and follows the format used for the Liquor Store use.

In the *Licence By-law* it is proposed that the current **Retail Dealer – Medical Marijuana-related** licence category be changed to **“Retail Dealer – Cannabis”**. The proposed new definition, found in the attached draft bylaw provisions in Appendix B creates a licence category that encompasses all direct to the public legal cannabis sales

The *Licence By-law* includes a number of other restrictions on MMRUs. These restrictions were enacted in order to fill the void created by the inaction of the Federal and Provincial governments on cannabis. Under the *Cannabis Control and Licensing Act* these restrictions are likely unnecessary as the control of licensees will now be a Provincial responsibility. Staff do not recommend altering these restrictions at this time but recommend reviewing these restrictions one year post legalization.

Municipal Approval of Licence Applicants

Section 33 of the *Cannabis Control and Licensing Act* provides the ability for municipal councils to provide a recommendation as to the acceptability of each application for a cannabis retail licence in their jurisdiction.

Section 33 is based on an identical provision in the *Liquor Control and Licensing Act*. Under both the *Cannabis Control and Licensing Act* and the *Liquor Control and Licensing Act* this power can be delegated to a staff member.

For the purposes of applications under the *Liquor Control and Licensing Act*, Council have chosen to delegate their recommendation power to the Chief Licence Inspector for certain categories of liquor licence. In the absence of this delegation each application for a liquor licence would have to be considered by Council and a resolution passed either approving or rejecting the proposed licence.

Pursuant to the *Cannabis Control and Licensing Act* in the absence of a delegation of the authority to make recommendations each proposed licence would need to be considered by Council in a timely manner. Staff recommend that Council delegate the recommendation power to the Chief Licence Inspector who will evaluate each application, conduct an appropriate public consultation process and make recommendations regarding those licences proposed for zoning compliant locations.

In 2015, a thorough public process was undertaken to create a regulatory system, including distancing requirements, to allow for MMRU outlets. The MMRU regulations implemented by Council in 2016 create a comprehensive zoning scheme which is directly applicable, with the above changes to the definitions, to the sale of non-medicinal cannabis in the new legalized structure created by the Federal and Provincial governments. The requirement for each retail cannabis location to obtain a development permit ensures that the neighbourhoods surrounding each proposed location are informed of the proposal and are able to express their views on the proposed location. The regulations create a robust framework within which the Chief Licence Inspector can consider whether to recommend a particular location for a Provincial licence.

It is anticipated that the Chief Licence Inspector will consider the public feedback from the existing public consultation procedure in arriving at a decision regarding individual applications for a Provincial Licence. In addition, the Chief Licence Inspector will review complaint and other operational information to assess past performance of the applicants, as is the process for making recommendations for liquor stores. In the absence of negative information, it would be anticipated that the Chief Licence Inspector would approve Provincial licence applications that have proceeded through the established public process and have been issued a development permit.

Implications/Related Issues/Risk

Financial

There are no financial implications associated with these proposed by-law changes.

Legal

Aligning the City of Vancouver's bylaw scheme regulating cannabis retailing with the new Federal and Provincial licencing schemes reduces the City's legal risk and enables more effective enforcement of the municipal bylaws by the Law Department.

CONCLUSION

Amending the existing definitions related to MMRU Retail outlets in the Zoning and Development By-law and Licensing By-law will create alignment with the pending legalization of cannabis in Canada. The proposed amendments will enable regulation of retail cannabis locations under the regulatory system created for medical marijuana, including distancing requirements. The regulations utilize the robust framework created for medical marijuana within which the Chief Licence Inspector can consider whether to recommend a particular location for a Provincial licence. Staff do not recommend altering any of the existing restrictions at this time but anticipate reviewing the existing restrictions one year post legalization.

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**DRAFT By-law Provisions to amend Zoning and Development By-law No. 3575
Regarding a New Retail Use – Cannabis Retail**

Note: A By-law will be prepared generally in accordance with the provisions listed below, subject to change and refinement prior to posting.

1. In section 2, Council:
 - (a) strikes out the definition of Medical Marijuana-related Use under Retail Uses; and
 - (b) adds the following definition in correct alphabetical order under Retail Uses:

“**Cannabis Store**, which means the use of premises for the sale of cannabis, including any products containing cannabis, for consumption off premises, and includes a Compassion Club as defined in the License By-law;”.
2. In section 11.28, Council strikes out “Medical Marijuana-related Use” wherever it appears and substitutes “Cannabis Store”.
3. In section 2.2.R of the FC-1 District Schedule, Council:
 - (a) strikes out:

“

 - Medical Marijuana-related Use, subject to the provisions of section 11.28 of this By-law.”; and
 - (b) adds, in correct alphabetical order:

“

 - Cannabis Store, subject to the provisions of section 11.28 of this By-law.”.
4. In section 3.2.R of the C-1, C-2, C-2B, C-2C, C-2C1, C-3A, HA-1 and HA-1A, HA-2, and HA-3 District Schedules, Council:
 - (a) strikes out:

“

 - Medical Marijuana-related Use, subject to the provisions of section 11.28 of this By-law.”; and
 - (b) adds, in correct alphabetical order:

“

 - Cannabis Store, subject to the provisions of section 11.28 of this By-law.”.
5. In section 3.2.1.R of the C-5, C-5A, and C-6, and the C-7 and C-8 District Schedules, Council:
 - (a) strikes out:

“

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

(b) adds, in correct alphabetical order:
“

- Cannabis Store, subject to the provisions of section 11.28 of this By-law.”.

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**DRAFT By-law to amend License By-law No. 4450
Regarding a New Retail Use – Cannabis Retail**

Note: A By-law will be prepared generally in accordance with the provisions listed below, subject to change and refinement prior to posting.

1. In section 2, Council:

- (a) strikes out the definition of “Retail Dealer – Medical Marijuana-related”; and
- (b) adds the following definition in correct alphabetical order:

““Retail Dealer – Cannabis” means any person not otherwise herein defined who carries on the business of selling cannabis, including any products containing cannabis, directly to the public.”.

2. Council adds a new section 9A.2 as follows:

“COMMENTS UNDER CANNABIS CONTROL AND LICENSING ACT

- 9A.2 (1) Council delegates to the Inspector its powers and duties under section 33 of the Cannabis Control and Licensing Act to provide comments and recommendations to the general manager under that Act, on any application for a prescribed class of licence or any application for an amendment to a prescribed class of licence.
- (2) Despite the delegation of powers and duties set out above in subsection (1), the Inspector may refer any application referred to in subsection (1) to Council for comments and recommendations.
 - (3) If the Inspector provides comments and recommendations, the applicant whose application is the subject of the delegated comments and recommendations has the right to a reconsideration by Council, and may apply for a reconsideration by delivering a request for reconsideration to the City Clerk setting out the reasons for the request.
 - (4) Every applicant for a licence referred to in subsection (1) in respect of which Council or the Inspector provides to the general manager under that Act comments and recommendations, must pay the city the applicable fee specified in Part 1 of Schedule B to this By-law. ”.

3. In section 12.2, Council strikes subsections (29) and (30).

4. In section 24.5, Council:

- (a) strikes out the title “RETAIL DEALER – MEDICAL MARIJUANA-RELATED” and substitutes “RETAIL DEALER – CANNABIS”;
- (b) strikes out “Retail Dealer – Medical Marijuana-related” wherever it appears and substitutes “Retail Dealer – Cannabis”;
- (c) in subsections 8(f), (14), (15), and (16), strikes out “marijuana” and substitutes “cannabis”; and

- (d) strikes out subsections (23) and (24).
5. In Schedule A, Business License Fees, Council strikes out “RETAIL DEALER – MEDICAL MARIJUANA-related” and substitutes “RETAIL DEALER – CANNABIS”.
 6. In Schedule B, Miscellaneous Service Fees, Council adds the words “on an application for the issue or amendment of a cannabis licence, or” after “Fee for assessing and providing comments”.

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**DRAFT By-law to amend the Downtown
Official Development Plan By-law No. 4912
regarding new Retail Use - Cannabis Store**

Note: A By-law will be prepared generally in accordance with the provisions listed below, subject to change and refinement prior to posting.

1. In section 18 of **Section 1 - Land Use**, Council strikes “Medical marijuana-related use” and substitutes “Cannabis Store use”.

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**DRAFT By-law to amend the Downtown Eastside/Oppenheimer
Official Development Plan By-law No. 5532
regarding new Retail Use - Cannabis Store**

Note: A By-law will be prepared generally in accordance with the provisions listed below, subject to change and refinement prior to posting.

1. In section 4.2.1(j), Council strikes "Medical Marijuana-related Use" and substitutes "Cannabis Store".

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