

DATE OF MEETING | JULY 9, 2018 |

AUTHORED BY | DALE LINDSAY, DIRECTOR, COMMUNITY DEVELOPMENT |

SUBJECT | CANNABIS TASK FORCE RECOMMENDATIONS

OVERVIEW

Purpose of Report

To provide Council with recommendations of the Cannabis Task Force regarding the regulation of production, distribution and consumption of cannabis in the City of Nanaimo. |

Recommendations

1. That Council direct Staff to prepare and introduce Zoning Bylaw amendments to clarify that Cannabis Retail Stores are separate use from retail.
2. That proposed Cannabis Retail Stores be required to submit site-specific rezoning applications.
3. That the attached rezoning criteria, including recommended minimum 300m from another Cannabis Retail Store, be considered for endorsement subject to receiving input from the Nanaimo School Board regarding recommended guidelines for separation from schools.
4. That specific business license fees for Cannabis Retail Stores not be established at this time and that business license fees for Cannabis Retail Stores be considered as part of any future review of liquor license fees.
5. That Council direct Staff to prepare and introduce Zoning Bylaw amendments to replace the existing use of “Medical Marihuana Growing and Production” with “Cannabis Production and Processing” and permit this as a use in the I4 (Industrial) Zone.
6. That Council direct Staff to prepare and introduce Zoning Bylaw amendments to allow small scale cannabis production in the I1 (Highway Industrial) and I2 (Light Industrial) zones subject to the development of an odour abatement strategy.
7. That cannabis production not be permitted in the Agricultural Rural Residential Zones (AR1 and AR2).
8. That no further restrictions be placed on the personal production of cannabis beyond those established by the Federal and Provincial Governments.
9. That Council adopt an updated and revised smoking bylaw to regulate the smoking of cannabis in public areas.
10. That Council direct Staff to refer the recommendations provided by the Cannabis Task Force to the School Board for input.
11. That Council direct Staff to complete a review of the cannabis-related bylaws and regulations one year following the adoption of the associated bylaws.

BACKGROUND

Council, at their regular meeting of 2018-JAN-22 established the Cannabis Task Force (CTF) and approved their terms of reference and membership. The task force was chaired by Councillor Jim Kipp and included one representative from the Vancouver Island Health Authority, the RCMP,

the Public Safety Committee, the Planning and Development Committee, the Community Vitality Committee, and two representatives from the Cannabis Industry.

The CTF met over the months of April, May and June of 2018 to review the proposed regulatory framework for cannabis, the implications of cannabis legalization, the associated options available to local government, and to provide recommendations for Council's consideration. The work of the task force is now complete and this report outlines their recommendations to Council.

The *Federal Cannabis Act* (Bill C-45) ("Federal Act") is anticipated to come into force later this year. The Federal Act, which is intended to legalize, regulate and restrict access to cannabis, will create a framework for controlling the use of recreational cannabis in Canada. Under this framework, the Federal, provincial and local governments will jointly regulate non-medical cannabis.

The Federal Government will be responsible for the licensing of cannabis producers and product regulation. The provincial governments are empowered to enact their own legislative measures consistent with the Federal Act that would authorize and regulate sales within their jurisdiction, including retail distribution.

The Province of BC has also introduced its own legislation regarding legal cannabis. The *Cannabis Control and Licensing Act* (Bill 30) ("Provincial Act") provides clarity with respect to the proposed licensing scheme, possession/consumption restrictions, and enforcement, including confirmation that:

- possession of recreational cannabis is limited to 30g in a public place for an adult (19);
- the Provincial licensing scheme for retail cannabis stores will be very similar to the process and requirements under the *Liquor Control Act*;
- local government approval for retail cannabis stores is required; and,
- the growing of recreational cannabis is limited to four plants per "dwelling house".

Role of Local Government in Retail Cannabis

In BC, the distribution of recreational cannabis will be through the Liquor Distribution Branch (LDB). As with liquor, the LDB will establish and operate government stores, and the Liquor Control and Licensing Branch (LCLB) will be responsible for the licensing and monitoring of retail cannabis stores. As outlined in the draft Provincial Act, the Province will make the ultimate determination on which applicants are "fit and proper" to obtain a licence.

As outlined in Section 33 of the Provincial Act, applications for cannabis retail licenses are made to the Province with formal referral to the local government. The General Manager (Province) must not issue a retail licence unless the local government provides a recommendation that the licence be issued. The Provincial Act clarifies that the local government is responsible for gathering the views from residents on how the proposed cannabis store would impact the community before responding (this very closely parallels the liquor licence approval process).

The Province is not capping the number of licences in a community or establishing a maximum density through a store separation distance as they currently apply to Liquor Stores; however, the Province has been clear that local governments can choose not to allow cannabis stores or cap the number permitted in the community.

At this point, the Province has confirmed they are focusing on the establishment of a retail store system and will not be proceeding with licensed consumption lounges or off-site sales (outdoor festivals, etc.) at this time.

Through existing legislation, local government does have the authority to regulate certain aspects of cannabis-related business. Zoning authority under the *Local Government Act* allows Council to regulate location, size, and siting of cannabis-related businesses, and the regulatory authority under the *Community Charter* allows Council to regulate the licensing and operation of cannabis-related businesses. This could include items such as licence fees, application requirements, hours of operation, restrictions on the age of clientele, and security. Local governments have no authority to regulate or implement regulations specific to the actual sale of cannabis. These types of regulations would include taxation, quality control, labelling, and packaging.

Based on the above and what is now known of the proposed licensing and regulatory scheme of cannabis, the task force considered the following questions:

How will the City address Retail Cannabis Stores?

What changes, if any, need to be done to existing regulations around cannabis production and processing in the community?

Are further restriction beyond that imposed in Bill 30 required for the personal cultivation?

Do City bylaws or regulations need updates or revision to address the public consumption of cannabis? |

DISCUSSION

Siting Approval and Licensing of Cannabis Retail Facilities

As the regulatory and licensing scheme for proposed Cannabis Retail Stores (CRS) is very similar to that of liquor distribution, the CTF is recommending the City follow the same approach as that which is required for licensed retail stores (liquor stores). By amending the Zoning Bylaw to clarify that CRS's are a separate use that is not currently permitted in any zone, all new stores will require site-specific rezoning. This approach positions the City to best control the approval of cannabis sales, as opposed to relying on a yet-to-be-determined Provincial referral criteria that is subject to change.

In order to assist with the evaluation of site-specific rezoning applications the CTF recommends that Cannabis Retail Store Rezoning Criteria be established. The proposed guidelines (see Attachment A) include a recommended minimum separation of 300m from another CRS. Although the draft criteria includes a proposed 150m minimum separation from schools and daycares, the CTF is recommending that Council refer this item to the Nanaimo School Board for their consideration and recommendation prior to adoption of the criteria.

Currently all businesses in Nanaimo pay a yearly business licence fee of \$165, with the following exceptions:

- Casino - \$3,000
- Escort Service/Massage Parlour - \$3,000
- Cabaret/Lounge/Pub - \$1,100
- Financial Institution - \$1,110

At present, a Liquor Store (LRS) pays the \$165 business licence fee, while liquor primary establishments pay \$1,100. A review of licensing fees for liquor establishments will be included within the City's upcoming revisions to the Liquor Control Strategy. As such, the CTF is recommending that the business licence fee for a CRS be consistent with an LRS and be set at \$165, but that the fee be reviewed in conjunction with liquor-related licensing fees as part of the Liquor Control Strategy review.

As the proposed Provincial Act is anticipating that the Province will regulate the operation of a licensed Cannabis Store, including signage, security and hours of operation, the CTF is not recommending the City establish additional restrictions through the creation of a cannabis-specific business bylaw at this time.

Cannabis Task Force Recommendations regarding the Siting, Approval and Licensing of Cannabis Retail Facilities:

1. That Council direct Staff to prepare and introduce Zoning Bylaw amendments to clarify that Cannabis Retail Stores are separate use from retail.
2. That proposed Cannabis Retail Stores be required to submit site-specific rezoning applications.
3. That the attached rezoning criteria, including recommended minimum 300m from another Cannabis Retail Store, be considered for endorsement subject to receiving input from the Nanaimo School Board regarding recommended guidelines for separation from schools.
4. That specific business license fees for Cannabis Retail Stores not be established at this time and that business license fees for Cannabis Retail Stores be considered as part of any future review of liquor license fees.

Siting and Approval of Commercial Production and Processing

At present, the Zoning Bylaw only allows "Medical Marihuana Growing and Production" as a site-specific use within the I4 (Industrial) zone. With the adoption of the pending *Federal Cannabis Act* (Bill C-45), federally-regulated facilities will be authorized to produce cannabis for both the medical and recreational market. As such, the CTF is recommending the Zoning Bylaw's reference to Medical Marihuana be replaced with the more all-encompassing term of "Cannabis Production and Processing".

In addition to broadening the definition to include the growing of recreational cannabis, the CTF is also recommending the use be added as an outright use in the I4 (Industrial) zone. If this amendment is approved, "Cannabis Production and Processing" will be allowed on all properties within the I4 zone without the need for rezoning. The I4 zone is the City's heavy industrial zone and is limited to lands at Duke Point. Cannabis production is consistent with the intent of the

zone and is in keeping with other heavy industrial uses such as chemical plants, composting facilities, concrete plants, and livestock processing.

In response to the Federal Government's intention to create a distinction between micro or craft cannabis producers and large-scale producers, the CTF recommends that small-scale cannabis production be permitted within the I1 (Highway Industrial) and I2 (Light Industrial) zones. The CTF's recommendation is conditional that the growing of cannabis be done within a building and with the development of an odour-abatement strategy for each business. Small-scale production should be limited to a maximum of 200m², which is in keeping with the Federal Government's definition of a micro cannabis producer.

Today, approximately 16% of the lands in the city of Nanaimo are zoned for agricultural use, and the majority of those lands are designated for use other than agricultural by the Official Community Plan (OCP). Given the limited amounts of agricultural lands in the city and as many of the remaining parcels are in close proximity to residential lands, the CTF does not recommend adding cannabis production to the Agricultural Rural Residential Zones (AR1 and AR2) at this time.

Cannabis Task Force Recommendations regarding the Siting and Approval of Commercial Production and Processing:

5. That Council direct Staff to prepare and introduce Zoning Bylaw amendments to replace the existing use of "Medical Marihuana Growing and Production" with "Cannabis Production and Processing" and permit this as a use in the I4 (Industrial) Zone.
6. That Council direct Staff to prepare and introduce Zoning Bylaw amendments to allow small scale cannabis production in the I1 (Highway Industrial) and I2 (Light Industrial) zones subject to the development of an odour abatement strategy.
7. That cannabis production not be permitted in the Agricultural Rural Residential Zones (AR1 and AR2).

Personal Cultivation of Cannabis

The *Federal Cannabis Act* (Bill C-45) permits the personal cultivation of up to four cannabis plants in a "dwelling house". The definition of dwelling house includes within a building and "any land that is subjacent to it and the immediately contiguous land that is attributable to it, including a yard, garden or any similar land." The total number of plants per dwelling house is limited to four regardless of the number of adults residing in the dwelling. Provinces, and local governments are able to impose further restrictions related to personal cultivation, including with respect to plant height.

The *Cannabis Control and Licensing Act* (Bill 30) proposes that the maximum number of non-medical plants that can be grown at a "Dwelling House" to be four. The Provincial Act states that plants cannot be visible from a "public place", which includes any place where the public has access.

Given the framework established by the Federal and Provincial Governments for the personal production of cannabis, the CTF is not recommending the City further restrict this matter.

Cannabis Task Force Recommendations regarding the Personal Cultivation of Cannabis:

8. That no further restrictions be placed on the personal production of cannabis beyond those established by the Federal and Provincial Governments.

Public Consumption of Cannabis

Sections 61 through 67 of the draft Provincial Act clarify where public consumption is not permitted, including, but not limited to, school property, health board property, parks and associated outdoor public places, a workplace, a common area in an apartment, in a vehicle or boat (regardless if the vehicle is in motion or not), a bus stop, or taxi stand.

Although the Provincial Act has provided rules surrounding consumption of cannabis as well as locations where it is prohibited, Section 68 stipulates that where any person is found to have contravened the Provincial Act by smoking cannabis in a prohibited area, the owner of the property shares vicarious liability and is also deemed to have contravened the applicable section of the Provincial Act. The Provincial Act further stipulates that if the owner of the property is deemed to have taken reasonable steps to prevent the contravention, then said action will be considered a reasonable defence to the charge.

As such, and in order to mitigate any liability that the City may have should any person be found guilty of a contravention on City-owned property, Staff recommend that a new bylaw (see Attachment B) be adopted. The updated Smoking Bylaw clarifies that cannabis smoking or vaping is restricted the same as tobacco smoke and defines that areas within the community where the activity is prohibited, including any part of a park, beach, designated public space, transit stop, or City property. As a municipal bylaw, there will be the ability for City Bylaw Enforcement Officers to issue tickets for violations.

Cannabis Task Force Recommendations regarding the Public Consumption of Cannabis:

9. That Council adopt an updated and revised smoking bylaw to regulate the smoking of cannabis in public areas.

Review

As the final regulatory system is not yet in place and as the production and distribution schemes will likely evolve as the Federal and Provincial Governments further consider the legalization of cannabis, the CTF recommends that the City of Nanaimo regulations be reviewed one year following their adoption.

Cannabis Task Force Recommendation regarding Review of the Cannabis Related Bylaws and Regulations:

10. That Council direct Staff to refer the recommendations provided by the Cannabis Task Force to the School Board for input.
11. That Council direct Staff to complete a review of the cannabis-related bylaws and regulations one year following the adoption of the associated bylaws.

SUMMARY POINTS

- The Cannabis Task Force, established by Council at their 2018-JAN-22 meeting, met over the months of April, May, and June 2018 to review the proposed regulatory framework for cannabis, the implications of cannabis legalization and the associated options available to local government, and to provide recommendations for Council's consideration.
- The *Federal Cannabis Act* is anticipated to come into force later this year, the Province of BC has also introduced its own legislation regarding legal cannabis.
- The Cannabis Task Force is recommending that the regulations and licensing of Cannabis Retail stores follow a similar process as to licensed retail stores (liquor stores).
- The Cannabis Task Force is recommending additional opportunities for full-scale and small-scale cannabis production within the community.

ATTACHMENTS

ATTACHMENT A: CRS Rezoning Policy
ATTACHMENT B: Draft Smoking Bylaw

Submitted by:

Dale Lindsay
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