

## REPORT

### Council

**Meeting Date: February 28, 2022**

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**FROM:** Municipal Enforcement Services Department

**DATE:** February 15, 2022

**SUBJECT:** Cannabis Legalization Review

**LOCATION:** Town-wide

**WARD:** Town-wide

Page 1

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#### **RECOMMENDATION:**

That the report from Municipal Enforcement Services Dated February 15, 2022 titled Cannabis Legalization Review be received.

#### **KEY FACTS:**

The following are key points for consideration with respect to this report:

- The Alcohol and Gaming Commission of Ontario (AGCO) licenses and regulates retail cannabis stores in Ontario
- Provincial regulation for location of retail cannabis stores requires a 150m separation distance from schools
- Provincial regulation prohibits municipalities from licensing or zoning cannabis retail stores
- The Province moved to an open market for retail cannabis stores starting in January 2020
- On March 2, 2020, Council continued to opt-out of allowing retail cannabis stores within the Town of Oakville
- Legal cannabis stores cannot be located in a municipality that has opted out
- Municipalities may still opt-in to permit cannabis retail stores in their communities, but this decision is final with no financial enticement
- Production facilities, whether medical or recreational cannabis, are regulated exclusively by the Federal government

#### **BACKGROUND:**

Cannabis became legal in Canada on October 17, 2018. At that time, access to legal cannabis was limited to online purchases from the Ontario Cannabis Store (OCS). The initial sale of cannabis through private retail stores began on April 1, 2019.

Subsequently, municipal Councils were given the opportunity to opt-in or out of the private retail sale model – opting-out would mean the municipality would not permit cannabis retail stores within its boundaries.

At its Council meeting of March 2, 2020, Council continued to opt-out of the private retail cannabis model and provided the following staff direction:

*That Council's decision of January 14, 2019 to opt out of having cannabis retail stores within the Town of Oakville be deferred for one year.*

As a result of COVID-19 resource impacts, the one-year follow-up report was delayed. This report provides an overview of cannabis legalization over the period of time that has lapsed since March 2, 2020 and has been prepared to assist Council in re-assessing its decision to opt-out.

## **COMMENT/OPTIONS:**

### **Ontario Cannabis Store**

The Ontario Cannabis Store (OCS) is the province's exclusive online retailer for recreational cannabis in Ontario. The OCS offers a variety of products, including pre-rolled cannabis cigarettes, dried cannabis flower, cannabis oils and cannabis edibles. Canada Post delivers purchases, and purchasers are required to show proof of identification and age before taking possession of packages. If a purchaser is not home when a delivery is made, the package is returned to the nearest Canada Post store and must be picked up by the resident in person.

The OCS also offers same day delivery in certain municipalities, including Oakville. Same day and express (within three day) deliveries are operated by Domain Express from Domain Logistics and are advertised by the OCS as the fastest and most convenient ways to receive OCS products.

### **Cannabis Retail Stores**

The Alcohol and Gaming Commission of Ontario (AGCO) regulates privately run cannabis stores in Ontario. In doing this, the AGCO is responsible for issuance of Retail Operator and Retail Manager licences and retail store location authorization.

### **Cannabis Retail Store Requirements**

When authorizing cannabis retail stores, the AGCO considers the following:

- There must be separation between a cannabis business and other businesses. If an existing retail space is renovated to create two or more spaces, the space that is intended to be a cannabis retail store must adhere to the listed criteria below and all the eligibility requirements set out in the *Cannabis Licence Act, 2018* and regulation.
- The retail space where you will sell cannabis:

- must be enclosed by walls separating it from any other commercial establishment or activity
- does not include an outdoor area
- cannot be entered from or passed through in order to access any other commercial establishment or activity, other than a common area of an enclosed shopping mall.
- In addition, the area where cannabis will be received or stored cannot be accessible by any other business or by the public. This does not mean that an establishment is required to have a separate door for product receipt. For example, if a premises has only one door, product could be received through this door outside of business hours, or access.

### Cannabis Retail Store Location

When authorizing the location of cannabis retail stores, the AGCO considers the following:

- The Registrar cannot issue an Retail Store Authorization to a proposed cannabis retail store located less than 150 metres from a school or private school, as defined in the Education Act. This will be determined as follows:
  - When the school or private school is the primary or only occupant of a building, 150 metres shall be measured from the property line of the property on which the school or private school is located.
  - When the school or private school is not the primary or only occupant of a building, 150 meters shall be measured from the boundary of any space occupied by the school or private school within the building.
- The distance between a proposed retail store and a school or private school is measured by a straight line from the closest point of the school property or boundary as described above to the closest point of the proposed retail store.
- If either the store and/or the school is located on a floor other than the ground floor or main level in its respective building, the measure of the 150 metre distance may take into account vertical distance in assessing compliance with this requirement.
- The above rules do not apply if the private school is located on a reserve or if the private school only offers classes through the Internet.

The AGCO also indicates that an applicant is not eligible for a retail store authorization if it is not in the public interest based on the needs and wishes of the people who live in the municipality where the proposed store would be located, and provides the following guidance to applicants:

- After you apply for a Retail Store Authorization, the Registrar will inform local residents and the municipality about the application by having a notice posted at the proposed store and on the AGCO's website.
- The municipality or local residents submit written submissions to the Registrar about whether the proposed store is in the public interest, as set out

in regulation. The submissions must be sent within 15 calendar days after the notice is posted.

- Relevant submissions are limited to the following matters of public interest:
  - protecting public health & safety;
  - protecting youth and restricting their access to cannabis;
  - preventing illicit activities in relation to cannabis.

### Cannabis Retail Store Training

All employees of cannabis retail stores in Ontario must complete a training program approved by the AGCO. This includes:

- holders of a Retail Store Authorization
- holders of a Cannabis Retail Manager Licence
- employees of a cannabis retail store

### Cannabis Retailer Delivery

Due to the COVID-19 pandemic, the province sought to make cannabis products more accessible to the public. As a result, regulations under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, S.O. 2020, c. 17* that permitted Cannabis retail stores operating under the authority of a retail store authorization issued under the Cannabis Licence Act, 2018, to provide products to patrons through in-person sales or through an alternative method of sale, such as curbside pick-up or delivery.

The Ministry of the Attorney General has proposed amendments to the Cannabis Licence Act, 2018 (CLA), that once proclaimed would allow cannabis retailers to offer delivery and curbside pick-up of cannabis products. The proposed amendments generally seek to make permanent the rules that exist today under the temporary COVID measures. The deliveries would only allow delivery and curbside pick-up services offered by provincially authorized cannabis retailers.

Proposed rules for delivery include:

- Cannabis retail store licence holders must ensure that, before receiving delivery or curbside pick-up of cannabis, any individual who appears to be under 25 years of age is required to provide a valid form of government identification.
- Delivery and curbside pick-up can only be carried out by the RSA holder or their employee.
- All orders must be placed with a specific store location. Deliveries must originate and be fulfilled from the store that received/processed the order and with products that are stored on premise.

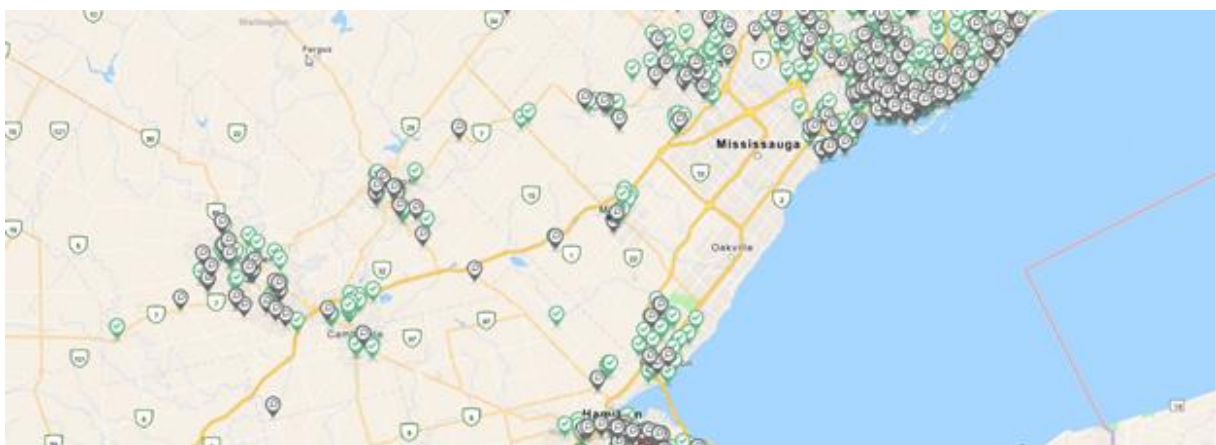
- Delivery may only take place while the retailer's physical storefront is open to customers for in-person retail. Stores that are forced to close by their landlord or the owner of the premises during the permitted operating hours for cannabis retail stores (i.e., 9 am – 11 pm) would be permitted to continue delivering when the store is closed for in-person sales, subject to permitted operating hours for cannabis retail stores.
- Cannabis retail stores would not be able to be primarily in the business of delivery.
- Delivery would be prescribed in regulation as a service for which retailers can charge a fee.
- Undelivered product must be returned to the store of origin on the same day the delivery was attempted.
- Cannabis retailers must ensure that cannabis is only removed from the store for delivery after an order has been placed by a customer.
- The cannabis must be delivered to the residential address or private place specified in the order.

Based on these proposed rules, once proclaimed, cannabis retail delivery could take place within Oakville, even though the town has opted out of permitting cannabis retail stores.

### **Municipal Status Update**

As of January 7, 2021 there are 348 municipalities in Ontario that have opted into cannabis retail sales and 66, including Oakville, which have opted out.

Looking at Halton Region, all municipalities except Oakville have opted into cannabis retail sales. The map below, taken from the AGCO website, shows cannabis retail stores authorized to open in green and in progress stores in grey. Stores in both categories can be found in Burlington, Milton, Georgetown and Acton.



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Municipality	Stores Authorized	Applications in Progress
Burlington	22	6
Milton	10	2
Halton Hills	8	4

Spanning further than our region, cities such as Hamilton and Brampton have also opted in. Mississauga continues to maintain an opt-out status prohibiting cannabis retail stores from opening in their city.

#### **Locations that would Permit Cannabis Retail Stores in Oakville**

Under the current Zoning By-laws within the Town of Oakville, any application for retail cannabis stores would be considered under the classification of retail store. Retail stores are generally permitted in the following zones:

##### **Zoning By-law 2014-014**

- Mixed use
- Residential (accessory to residential high rise)
- Commercial
- Employment
- Midtown

##### **Zoning By-law 2009-189**

- Trafalgar Urban Core
- Dundas Urban Core
- Neyagawa Urban Core
- Neighbourhood Centre
- Service Area-Employment
- Light Employment
- General Employment

The zones where retail use (therefore cannabis sales) is permitted are quite encompassing and would permit the establishment of cannabis stores in most areas, if the town opted in. The only other applicable restriction would be the provincial separation distance from schools (discussed earlier in the report).

### **Enforcement and Related Complaints**

The AGCO has enforcement tools at their disposal ranging from education and warnings to suspension or revocation of a licence, depending on the severity of the infraction. Complaints received by the AGCO increased between 2020 and 2021. In 2020, the AGCO received 884 cannabis related complaints province-wide and in 2021, 1,450 cannabis related complaints were received province-wide. The most common complaints received related to location of cannabis retail stores, operation of cannabis retail stores, advertising and COVID-19 public health measures. The increase in the number of complaints likely corresponds to the increase in licenced cannabis retail stores province wide.

Relevant to Halton, the AGCO received the following complaints relating to licensed cannabis retail stores:

Type of Complaint	Number of complaints 2020*	Number of complaints 2021*
Advertising standards	1	6
Retail store operation	2	5
Dissatisfaction with product	1	
Covid 19 precautions	2	3
Location of store		1
Holiday hours		2
<b>Total number of complaints</b>	<b>6</b>	<b>18</b>

\*2021 investigations reported related to five of the authorized cannabis retail stores within region

\*\*2022 investigations reported related to 14 of the authorized cannabis retail stores within the region

The AGCO defines complaints regarding advertisement standards to include actions contrary to the [Advertising and Promotions Standards](#) established by the Registrar. Under this category, complaints received for Halton Region included:

- 1) licensees providing cannabis or cannabis accessories free of charge or providing any other thing or benefit, as an inducement for the purchase of cannabis or a cannabis accessory
- 2) advertising associated with medicine, health, or pharmaceuticals claims
- 3) advertising accessible to persons under 19 years of age

The AGCO defines complaints regarding retail store operations to include general practices and physical store requirements. Under this category, complaints received for Halton Region included:

- 1) delivery of cannabis products outside the store (curbside pick-up)
- 2) use of cannabis by an employee during work hours
- 3) purchase of cannabis exceeding daily limit

- 4) cannabis and accessories visible from the exterior of the premise

Halton Regional Police Service (HRPS) has updated their overall enforcement strategy as it relates to cannabis and have provided the following statement:

*When cannabis was decriminalized by the Federal Government in 2018, one of the primary benefits of the new legislation was the fact that it would ensure policing resources were appropriately focused on investigating the trafficking of dangerous and illicit drugs that are having a tragic impact on the well-being and health of our communities.*

*Consequently, the Halton Regional Police Service has intentionally re-aligned enforcement strategies to ensure that our human resources are focused on reducing, to the greatest extent possible, the availability of dangerous narcotics in our community. In particular, investigative files which involve the trafficking of opioids, such as fentanyl, are given the highest priority. In parallel, the Service's Analytical Unit has re-focused their resources on tracking data, statistics, and trends that are directly related to the opioids and other dangerous drugs that are present in Halton.*

*It is difficult to overstate the tremendous impact of the opioid crisis on our community. In 2021, our officers attended 361 suspected drug poisonings, none of which are known to be attributable to cannabis. Tragically, 52 of last year's victims did not survive their last overdose. These statistics cannot adequately reflect the burden borne by loved ones across Halton.*

*While cannabis remains a regulated substance (much like alcohol), it is no longer an organizational enforcement priority for the HRPS. When appropriate, the HRPS has, and will continue to, take enforcement action related to the illegal possession or trafficking of cannabis, as well as impaired driving (by drug).*

*There continues to be an illegal cannabis market throughout Ontario which is controlled by various organized crime groups. To address this, the Provincial Government created the Provincial Forces Cannabis Enforcement Team. This team, which is led by the Ontario Provincial Police, is focused on taking enforcement action that disrupts the production and distribution of illegal cannabis.*

The Ontario Provincial Police (OPP) has undertaken investigations relating to illegal cannabis production, sale and distribution enterprises across Ontario. Upon legalization of cannabis, the OPP focused mostly on closing unlicensed cannabis stores, which has now shifted to large illegal grow operations. There are reports of online illegal sales (non-licensed operators) which is also part of enforcement focus for the OPP. According to the 2020 OPP Annual Report, \$166 million in illegal cannabis was seized province wide and 3009 charges were laid under the Ontario Cannabis Act.

Below is a comparison of provincial crimes per number between 2018 to 2020 investigated under the Provincial Cannabis Act:



<i>Cannabis Act</i>	2018	2019	2020
	Actual Occurrences	Actual Occurrences	Actual Occurrences
Possession	18	94	83
Distribution	9	58	71
Sale	17	51	50
Importation and exportation	0	0	0
Production	4	39	64
Other illegal cannabis-related	10	27	16
<b>Total</b>	<b>58</b>	<b>269</b>	<b>284</b>

Overall, the number of cannabis related crimes investigated by the OPP increased only in the area of production. This demonstrates the change of focus for illegal crime investigations as the OPP focused on investigating the illegal producers in efforts to manage the illegal cannabis market.

Public Health Inspectors also continue to play a role in the enforcement of the *Smoke-Free Ontario Act, 2017*. The *Smoke Free Ontario Act, 2017* limits smoking or vaping of cannabis to the same areas where tobacco smoking is permitted. This means that cannabis consumption is permitted in public places where tobacco can be consumed, including many public places such as sidewalks and parks.

In addition to enforcement of the *Smoke-Free Ontario Act, 2017*, Halton Region is also responsible for the enforcement of Regional by-law 40-20 Smoking and Vaping in Public Places that came into effect in 2021. Under this by-law, the smoking of cannabis, tobacco or vape products is prohibited in public parks, within nine metres of any entrance or exit of municipally owned or leased buildings or within nine meters from any entrance or exit of childcare centres. To date, Public Health has not received any cannabis-related complaints related to Halton Region's Smoking and Vaping in Public Places By-Law 40-20. In addition, no charges have been issued under the By-Law or the *Smoke-Free Ontario Act, 2017* because of non-compliance from cannabis use in prescribed areas.

Public Health have recorded three cannabis related complaints/inquiries from Halton region residents in 2020, none of which originated from Oakville. In 2021, there were 10 complaints received region wide with two of identified as being residents of Oakville. Generally, the nature of the complaints referred to the following:

- consumption of edibles
- inquiries of cannabis regulations
- smoking in backyards

- smoking in apartments/condos
- promotion of cannabis accessories
- second-hand smoke/odors
- growing cannabis
- location of store near daycare

Halton Health remains committed to supporting the residents of Halton by raising awareness of the harms and harm reduction strategies associated with edible cannabis products and topicals with education available online at Halton.ca

Specific to Oakville, complaints have been received by ServiceOakville through phone and email from members of the public. The following chart summarizes the concerns raised through these calls:

Concern	2020	2021
Smoking cannabis in park	1	
Smoking cannabis on private property-odour	2	1
Smoking cannabis on street		2
Licence for cannabis retail store	1	3
Backyard growing of cannabis plant-odour	2	1
Illegal selling of cannabis	1	
Smoking on street		
Support of cannabis retail stores	1	2
<b>Total</b>	<b>8</b>	<b>9</b>

## **Conclusion**

A significant number of municipalities across the province have opted into the provincial program to allow cannabis retail stores within their municipality, including Burlington, Milton, and Halton Hills. The cannabis retail store map information taken from the AGCO website shows the availability of multiple cannabis stores near Oakville boundaries. In addition, delivery service of cannabis is currently permitted under the ROA and the province may soon proclaim amendments to Ontario Regulation 468-18 under the CLA that would permit cannabis home delivery by licensed cannabis retailers as a permanent amendment. Based on the proposed rules for home delivery, if approved, cannabis could be delivered to Oakville, even though the town opted out of permitting cannabis retail stores.

If cannabis retail stores were permitted in Oakville, the town would have no direct ability to regulate their location or enforce violations. Any retailer that was to open without a licence would be subject to enforcement by police services (HRPS or OPP) for illegal operations. Provincial legislation continues to limit the municipalities' ability to regulate the location of cannabis retail stores through zoning or the operations of such stores through licencing. The current framework continues to fall under the provincial realm of regulations under the Ontario Cannabis Act and licensing under the AGCO.

**CONSIDERATIONS:**

**(A) PUBLIC**

Public notice has been provided through social media, the town's website and direct email to interested parties.

Further details regarding the health impacts of cannabis may be found through the province of Ontario website and the Region of Halton website.

**(B) FINANCIAL**

There is no financial impact proposed.

**(C) IMPACT ON OTHER DEPARTMENTS & USERS**

If Council decides to opt-in to allowing cannabis retail stores, any work done on existing retail spaces or the construction of new retail spaces would require a building permit.

Zoning Occupancy Certificates would also be required by each storeowner prior to choosing their location to ensure that the selected site is zoned for retail use (allowing for a cannabis store).

**(D) CORPORATE STRATEGIC GOALS**

This report addresses the corporate strategic goal(s) to:  
Livability, Engaged Community, Accountable Government,

**(E) CLIMATE CHANGE/ACTION**

N/A

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